

Emergency Actions due to Insufficient Flow for Specific Fisheries in Tributaries to the Russian River

(As approved by Office of Administrative Law on July 6, 2015.)

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In Title 23, Division 3, Chapter 2, amend the title of Article 24, and add section 876 to read:

Article 24. Curtailment of Diversions and Other Actions Based on Insufficient Flow to Meet All Needs

§ 876 Emergency Enhanced Water Conservation and Additional Water User Information for the Protection of Specific Fisheries in Tributaries to the Russian River

The State Water Resources Control Board (State Board) has determined that it is a waste and unreasonable use of water under Article X, section 2 of the California Constitution to divert or use water sourced from within the watersheds listed in subdivision (c) in a manner inconsistent with subdivision (d) during the current drought emergency, regardless of water right seniority, given limited available supply and the need for the water to support other more critical uses.

(a) For the purposes of this section:

- (1) “Untreated rainwater or gray water” means all untreated rainwater collected in a runoff capture system or any water meeting the definition in Health and Safety Code section 17922.12.
- (2) “Ornamental turf” means all turf other than turf used for community recreation by education facilities, recreation-related business, non-profit organizations, or recreational facilities, including but not limited to sports fields and playgrounds, that are generally accessible to the public.
- (3) “Landscapes” includes all plantings besides ornamental turf, including but not limited to trees, annual plants, perennial plants, and edible plants, but does not include agricultural commodities meeting the definition of Government Code section 51201, subdivision (a).

(b) For the protection of threatened and endangered fish, all water users who receive water from diversions sourced within the watersheds designated in subdivision (c) shall comply with subdivision (d). To better assess impacts on surface stream stage and flow, all landowners in, or suppliers of water from, the watersheds designated in subdivision (c) shall comply with subdivision (e).

(c)(1) The State Board has authority to ensure the protection and preservation of streams and to limit diversions to protect critical flows for species, including for state- and federally- threatened and endangered salmon and steelhead species. The following watersheds have been identified as critical rearing habitat for juvenile state- and federally-listed Central California Coast coho salmon (CCC coho salmon) and Central California Coast steelhead (CCC steelhead). All landowners and water users within the following watersheds and the use of said water shall be subject to this section.

- (A) The portion of the Mark West Creek watershed as defined by the United States Geological Survey- Watershed Boundary Dataset- Hydrologic Unit Code 180101100706. Mark West Creek enters the Russian River from the south at river mile 31, along the northern border of Forestville. This portion of the Mark West Creek watershed spans approximately 57 square miles.
 - (B) Mill Creek. Mill Creek is a tributary to Dry Creek, which enters the Russian River from the west at river mile 42, approximately one mile south of Healdsburg. The Mill Creek watershed spans approximately 23 square miles.
 - (C) Green Valley Creek. Green Valley Creek enters the Russian River from the south at river mile 29, along the northwestern border of Forestville. The Green Valley Creek watershed spans approximately 38 square miles.
 - (D) Dutch Bill Creek. Dutch Bill Creek enters the Russian River from the south at river mile 13, within the town of Monte Rio. The Dutch Bill Creek watershed spans approximately 12 square miles.
- (2) The State Board recognizes that the upper portion of each of the watersheds listed in (c)(1) is the most critical for mid- to late-summer rearing of state and federally threatened and endangered salmon and steelhead species. These upper portions are defined as:
- (A) On Mark West Creek, the portion of the watershed upstream of the confluence with an unnamed tributary (the tributary flowing parallel to western Riebli Road) as defined by the Latitude/Longitude of 38.5066°N and 122.72607°W.
 - (B) On Mill Creek, the portion of the watershed upstream of the confluence with Felta Creek, and including Felta Creek, as defined by the Latitude/Longitude of 38.58098°N and 122.88306°W.
 - (C) On Green Valley Creek, the portion of the watershed upstream of the confluence with Atascadero Creek as defined by the Latitude/Longitude of 38.44841°N and 122.88697°W.
 - (D) On Dutch Bill Creek, the portion of the watershed upstream of the confluence with Tyrone Gulch as defined by the Latitude/Longitude of 38.44776°N and 122.99979°W.

(d)(1) The use of potable and non-potable water sourced from areas identified in accordance with subdivision (d)(3) is prohibited for any of the following actions, except where necessary to address an immediate health and safety need or where used exclusively for irrigation for commercial agricultural use meeting the definition of Government Code section 51201, subdivision (b):

- (A) The application of water, except untreated rainwater or gray water, to ornamental turf;
- (B) The application of water to landscapes in a manner that causes runoff such that water flows onto adjacent property, non-irrigated areas, private and public walkways, roadways, parking lots, or structures;
- (C) The application of water, except untreated rainwater or gray water, to landscapes more than two days per week;
- (D) The application of water, except untreated rainwater or gray water, to landscapes between the hours of 8:00a.m. to 8:00p.m.;

- (E) Washing motor vehicles, except with untreated rainwater or gray water or at car wash facilities where the water is part of a recirculating system;
 - (F) The application of water to driveways and sidewalks;
 - (G) The use of water, except untreated rainwater or gray water, to fill or refill decorative ponds, fountains and other decorative water features;
 - (H) The use of water, except untreated rainwater or gray water, in a fountain or other decorative water feature, except where the water is part of a recirculating system; and
 - (I) The application of water to landscapes during and within 48 hours after measurable rainfall.
- (2) To prevent the waste and unreasonable use of water and to promote water conservation, operators of hotels and motels shall provide guests with the option of choosing not to have towels and linens laundered daily, if daily laundering is offered. The hotel or motel shall prominently display and/or communicate notice of this option to each guest using clear and easily understood language.
- (3) The conservation measures identified in subdivisions (d)(1) and (d)(2) shall take effect immediately for all water users who receive water from diversions, whether surface or subsurface, sourced from within the watersheds designated in subdivision (c)(2). Recycled water, as defined in Water Code section 13050, subdivision (n), is not a diversion subject to this paragraph. The Deputy Director for the Division of Water Rights (Deputy Director), after consultation with the California Department of Fish and Wildlife (CDFW) or the National Marine Fisheries Service (NMFS), may extend those requirements to some or all of the remainder of each tributary watershed identified in subdivision (c) to support CCC steelhead and CCC coho salmon passage during the fall 2015 through spring 2016 migratory season. The Deputy Director may, after consultation with CDFW or NMFS, lift the conservation measures identified in subdivisions (d)(1) and (d)(2) for all or any portion of the watersheds listed in subdivision (c), based on availability of sufficient streamflow in the tributaries to protect CCC coho salmon and CCC steelhead.
- (4) Subdivision (d) shall not place additional restrictions on a party who participates in a voluntary drought initiative program (program) determined by CDFW or NMFS to be at least equivalent to the conservation measures in subdivisions (d)(1) and (d)(2), so long as the party fully complies with the terms and conditions of the program. CDFW or NMFS must provide the Division of Water Rights with a copy of the program and a list of all parties included in the program to confirm participation. Participation in such a program shall not affect any other obligations to implement conservation practices, comply with informational orders, curtail diversions, or comply with other requirements or prohibitions not based on subdivision (d).
- (5) The conservation measures required by subdivision (d) are in addition to and do not supersede or affect other conservation requirements for water suppliers, or individual end users.
- (6) The taking of any action prohibited in subdivisions (d)(1) or failure to take the action required by subdivision (d)(2) is an infraction, punishable by a fine of up to five hundred dollars (\$500) for each day in which the violation occurs. The fine for

the infraction is in addition to, and does not supersede or limit, any other remedies, civil or criminal, including civil liability pursuant to Water Code section 1846.

- (e) Due to the known hydraulic connection between sub-surface water and surface streams in the Russian River watershed, as well as the limited water use information in the area, additional information on diversions, whether surface or subsurface, and use of water is needed to better assess impacts on surface stream flows. The Deputy Director may issue informational orders to some or all landowners in, or suppliers of water from, the watersheds identified in subdivision (c)(1), requiring them to provide additional information related to diversion and use of water, including but not limited to the: date of first use, location of diversion, type of diversion, types of beneficial uses, distance of well from the nearest surface stream, depth of the well, well screen interval(s), place of use, estimated 2014 diversion amount, estimated 2014 use amount, source of water, volume of storage, estimated pumping/diversion rate, amount of water anticipated to be needed this year, or any other information relevant to forecasting use and impacts to the surface streams in the current drought year or in contingency planning for continuation of the existing drought emergency. Any party receiving an order under this subdivision shall provide the requested information within 30 days. The Deputy Director may grant additional time for the submission of information regarding diversion and use of water upon substantial compliance with the 30-day deadline and a showing of good cause.
 - (1) Each landowner is responsible for immediately providing notice of any informational order(s) to all water users associated with the parcel of land related to the informational order.
 - (2) The failure to provide the information requested within 30 days or any additional time extension granted, is a violation subject to civil liability of up to \$500 per day for each day the violation continues pursuant to Water Code section 1846.
- (f) New Diversions. For purposes of this subdivision, a new diversion means a surface or subsurface diversion initiated after issuance of a watershed-wide informational order to landowners in the watershed in which the new diversion is located. The owner of any new diversion must submit to the Deputy Director any information required by a watershed-wide informational order issued under subdivision (e) prior to commencement of the new diversion, unless the Deputy Director approves commencement of the diversion based on substantial compliance.
- (g) The State Board has established an email distribution list that landowners or others may join to receive notices and updates regarding informational orders and conservation measures required per this section. Notice provided by email or by posting on the State Board's webpage shall be sufficient for all purposes related to notices and updates regarding the provisions of this section.

Authority: Sections 1058, 1058.5, Water Code

Reference: Article X, Section 2, California Constitution; Sections 100, 102, 104, 105, 109, 174, 275, 1011, 1051, 1052, 1058.5, Water Code; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463