

Russian River Emergency Regulation

As California heads into a third consecutive dry year, the State Water Resources Control Board is considering readoption of its emergency regulation to curtail unauthorized water diversions in the Russian River watershed. Exceptionally low precipitation since the beginning of the year has led to extreme drought in the watershed—water supply levels are nearly 40 percent below where they should be in both Lake Sonoma and Lake Mendocino. To safeguard drinking water and fish and wildlife, the Board's Division of Water Rights anticipates the need for continued curtailments in 2022. The Board is tentatively planning to consider readoption of the emergency regulation in early-May before the current emergency regulation expires in July 2022.

Changes

After learning from our implementation of the current emergency regulation, the Division is proposing changes for 2022 that clarify requirements, refine analyses, and address stakeholder feedback received over the past year. Changes include:

- 1) Refined water availability method
- 2) Protection of water for fish habitat in Lower Russian River tributaries
- 3) Voluntary conservation program that works in parallel with curtailments
- 4) Administrative improvements

The refined water availability method better reflects the hydrologic processes and supply situation in the upper watershed. This allows the Division to impose more precise curtailments and support correlative water use reductions by riparian water users. Four tributaries in the lower watershed may require targeted curtailment efforts to protect flows that benefit critical fish habitat. Through the voluntary conservation program, water right holders in the upper watershed can commit to conservation actions instead of ceasing diversions (the program is under development). Administrative improvements include clarifying what qualifies for Human Health and Safety needs, limiting the non-consumptive use exception to direct diversions, and streamlining actions on petitions. These updates are explained in greater detail in the emergency regulation text (below) and in the emergency regulation digest, which will be available around April 8.

Public Comments and Workshop

The Division is seeking public comments on the draft emergency regulation. The Division will hold a public workshop on April 14 to discuss the emergency regulation, answer questions, and receive comments. The public comment deadline is April 18.

Rulemaking Process

The Board will consider adopting the emergency regulation at its May 10 meeting. Once adopted, the emergency regulation will go to the Office of Administrative Law (OAL) for approval. This typically takes about two weeks. The emergency regulation goes into effect the same day it's approved by OAL.

Resources and More Information

For details on the emergency regulation (including the regulatory digest and public workshop/comment information), curtailment status, and more, visit the Board's [Russian River Drought Website](#).

Russian River Emergency Drought Regulations

Draft Regulation for 2022 Readoption

April 1, 2022

Article 24 Curtailment of Diversions Due to Drought Emergency

877 [Reserved]

877.1 Definitions

- (a) "Curtailment Order" refers to an order from the Deputy Director of the Division of Water Rights ordering a water right holder to ~~cease diversions, reduce or~~ cease diversions. A curtailment order may require the recipient to monitor and comply with a curtailment status list if curtailments are not required immediately upon issuance of the order.
- (b) "Curtailment Status List" refers to a list published by the Deputy Director with the current status of curtailments noticed under a curtailment order.
- (c) "Delta Watermaster" has the same meaning as in Water Code section 85230.
- (d) "Delta Watershed" or "Sacramento-San Joaquin Delta Watershed" refers to the Hydrologic Unit Code level 4 Sacramento and the Hydrologic Unit Code level 4 San Joaquin subregions, as defined using the U.S. Geological Survey Hydrologic Units Dataset.
- ~~(b)~~(e) "Deputy Director" refers to the Deputy Director of the Division of Water Rights, or duly authorized designee, at the State Water Resources Control Board.
- ~~(e)~~(f) "Informational Order" refers to an order issued by the Deputy Director which orders reporting of water diversion and use information in the Delta Watershed to inform water unavailability determinations and to support the curtailment process described in section **Error! Reference source not found.**
- (g) "Legal Delta" has the same meaning as the Sacramento-San Joaquin Delta, as defined in Water Code section 12220.

- ~~(d)~~ “Flood Control District” refers to the Mendocino County Russian River Flood Control and Water Conservation Improvement District.
- ~~(e)~~ “Lower Russian River” refers to the surface waters, including underflow and subterranean streams, of the Russian River downstream of the confluence of Dry Creek and the Russian River.
- ~~(f)~~ “Lower Russian River Watershed” refers to the area in Sonoma County that drains towards Dry Creek and the area downstream of the confluence of the Russian River and Dry Creek that drains towards the outlet of the Russian River to the Pacific Ocean.
- ~~(g)~~ “Mainstem of the Upper Russian River” refers to the surface waters, including underflow and subterranean streams, of the Upper Russian River downstream of Lake Mendocino and upstream of the confluence of Dry Creek and the Russian River.
- ~~(g)~~(h) “Minimum human health and safety needs” refers to the amount of water necessary ~~for prevention of to prevent~~ adverse impacts to human health and safety, for which there is no feasible alternate supply. “Minimum human health and safety needs” include:
- ~~(1)~~ Indoor domestic~~Domestic~~ water uses including water for human consumption, cooking, or sanitation purposes. ~~For the purposes of this article, water provided outdoors. Further, domestic water uses include incidental uses necessary for human consumption, cooking, or sanitation purposes, including but not limited to facilities for unhoused persons or campgrounds, shall be regarded as indoor domestic water use.~~ sustenance such as small vegetable gardens or household livestock watering. As necessary to provide for ~~indoor~~ domestic water use, water diverted for minimum human health and safety needs may include water hauling and bulk water deliveries, so long as the diverter maintains records of such deliveries and complies with the reporting requirements of Section 879, and so long as such ~~provision~~diversion and use is consistent with a valid water right.
 - ~~(2)~~ For Urban Water Suppliers, water uses allowed under and in accordance with the strictest stage of that supplier’s adopted Water Shortage Contingency Plan as part of its Urban Water Management Plan.
 - ~~(2)~~(3) Water supplies necessary for energy sources that are critical to basic grid reliability, as identified by the California Independent System Operator, California Public Utilities Commission, California Energy Commission, or a similar energy grid reliability authority.
 - ~~(3)~~(4) Water supplies necessary to prevent tree die-off that would contribute to fire risk to residences, and for maintenance of ponds or other water sources for fire fighting, in addition to water supplies identified by the

California Department of Forestry and Fire Protection or another appropriate authority as regionally necessary for fire preparedness.

~~(4)(5)~~ Water supplies identified by the California Air Resources Board, a local air quality management district, or other appropriate public agency with air quality expertise, as necessary to address critical air quality impacts to protect public health.

~~(5)(6)~~ Water supplies necessary to address immediate public health or safety threats, as determined by a public agency with health or safety expertise.

~~(6)(7)~~ Other water uses necessary for human health and safety which a state, local, tribal or federal health, environmental, or safety agency has determined are critical to public health and safety or to the basic infrastructure of the state. Diverters wishing to continue diversions for these uses must identify the health and safety need, include approval or similar relevant documentation from the appropriate public agency, describe why the amount requested is critical for the need and cannot be met through alternate supplies, state how long the diversion is expected to continue, certify that the supply will be used only for the stated need, and describe steps taken and planned to obtain alternative supplies.

~~(h)(a) "State Water Board" refers to the State Water Resources Control Board.~~

~~(j) "Upper Russian River" refers to the surface waters, including underflow and subterranean streams, of the Russian River upstream of the confluence of the Russian River and Dry Creek and includes both the East and West Forks of the Russian River.~~

~~(j)(i) "Upper Russian River Watershed" refers to the area located in Mendocino and Sonoma Counties that drains towards the confluenceoutlet of Dry Creek and the Russian River at the Pacific Ocean.~~

~~(j) "State Water Board" refers to the State Water Resources Control Board.~~

~~(k)(a) "Delta Watershed" or "Sacramento-San Joaquin Delta Watershed" refers to the Hydrologic Unit Code level 4 Sacramento and the Hydrologic Unit Code level 4 San Joaquin subregions, as defined using the U.S. Geological Survey Hydrologic Units Dataset.~~

~~(l)(a) "Legal Delta" has the same meaning as the Sacramento-San Joaquin Delta, as defined in Water Code section 12220.~~

~~(n)(a) "Delta Watermaster" has the same meaning as in Water Code section 85230.~~

~~(k) "Urban Water Supplier" has the same meaning as defined in Water Code section 10617~~

877.2 Determining Curtailment Statuses and Correlative Sharing Requirements Due to Lack of Water Availability in the ~~Lower~~ Russian River Watershed.

- (a) This section ~~applies~~877.2 and sections 877.3 and 877.4 apply only to water ~~diversions in~~diversion and use within the ~~Lower~~ Russian River Watershed.
- (b) After the effective date of this regulation, ~~when flows in the Lower Russian River Watershed are insufficient to support all diversions,~~ the Deputy Director may issue curtailment orders to water right holders, requiring the curtailment limitation or cessation of water diversion ~~and use.~~ Curtailment orders shall be effective the day after issuance. Curtailment orders may establish a maximum allowable diversion in the form of an assigned water budget based on the information in subdivision (d), below. Such assigned water budgets will form the basis for correlative reductions in diversions pursuant to riparian claims of right.
- ~~(c) In determining~~The Deputy Director will publish and regularly update a curtailment status list showing all water rights for which diversions must cease or be reduced correlatively, either because flows in the Russian River Watershed are insufficient to support diversions or where, as informed by the National Marine Fisheries Service or California Department of Fish and Wildlife, the Deputy Director determines continued diversions would unreasonably interfere with augmented stream flows or releases made as part of Voluntary Drought Initiative projects in four priority tributaries to the Russian River (Dutch Bill Creek, Green Valley Creek, Mark West Creek, and Mill Creek). Updates to the curtailment status list shall be construed as binding directives from the State Water Board to cease or limit diversions accordingly and shall be effective the day after posting. The State Water Board finds that diversion of surface water where augmented stream flows or releases are occurring as part of Voluntary Drought Initiative projects in association with the National Marine Fisheries Service or the California Department of Fish and Wildlife constitute an unreasonable use of water.
- ~~(c)~~(d) When updating the curtailment status list to reflect the extent to which water is available under a diverter's~~water user's~~ priority of right ~~or when rescinding curtailment orders,~~ the Deputy Director shall consider:
- (1) Relevant available information regarding date of priority, including but not limited to claims of first use in statements of water diversion and use, judicial and State Water Board decisions and orders, and other information contained in the Division of Water Rights files;
 - (2) Monthly water ~~right~~-demand projections based on 2017 to 2019 data in reports of water diversion and use for permits and licenses, ~~or~~ and in statements of water diversion and use, or alternative information timely received from 2017 through 2019, the water user in accordance with section 877.3, as applicable.
 - (3) Water availability projections based on one or more of the following:

- (A) Outputs from a United States Geological Survey's Precipitation Runoff Modeling System model, calibrated by State Water Board staff to estimate current or historical natural cumulative runoff throughout the watershed, as well as forecasts of monthly supplies;
 - (B) Climatic estimates of precipitation and temperature from the Parameter-elevation Regressions on Independent Slopes Model, commonly referred to as PRISM;
 - (C) Historical periods of comparable conditions with respect to daily temperatures, precipitation, or surface flows;
 - (D) Outputs from the Santa Rosa Plain Hydrologic Model developed by United States Geological Survey; or
 - (E) Stream gage data, where available.
- (4) The Deputy Director may also consider additional pertinent and reliable information when determining water right priorities, water availability, and demand projections.

- (5) ~~Evaluation~~Final calculations of ~~available supplies against demands~~water availability may be performed at the downstream outlet of ~~the~~either the Upper Russian River or Lower Russian River, or at a smaller sub-watershed scale using the ~~Drought~~ Water Rights Allocation Tool, or comparable ~~tool. Use of the Drought~~tools. The Water Rights Allocation Tool ~~will be~~automates these calculations via mathematical formulation of sub-watershed supplies; user demands and dates of priority; and maximization of water allocation, in accordance with the formulations document for the ~~Drought~~ Water Rights Allocation Tool (~~March 2, 2020~~) and ~~Drought Water Right Curtailment Analysis for California's Eel River (November 20, 2017~~January 19, 2022), which ~~are~~is hereby incorporated by reference.

~~(d)~~(e) Water users and water right holders are responsible for checking the State Water Board's drought announcements website and signing up for the email distribution list referenced in ~~subdivision (e)(2) to receive updated water supply forecasts. It is anticipated that forecasts of water supplies available to meet water rights demands will be updated on a monthly basis until cumulative rainfall of greater than 0.5 inches occurs as measured at Healdsburg, California. Following this precipitation event, it is anticipated that forecasts of supplies will be updated on a weekly basis until rescission of all curtailment orders under this section~~section 877.2(f)(1) to receive updates to the curtailment status list.

~~(e)~~(f)

~~(1) Initial curtailment. Curtailment orders will be sent to each water right holder, claimant, or the agent of record on file with the Division of Water Rights. The water right holder or agent of record is responsible for immediately providing notice of the curtailment order(s) to all diverters exercising the water right(s) covered by the curtailment order(s).~~

~~(2) The State Water Board has established an email distribution list that water right holders may join to receive drought notices, water supply forecasts, and updates regarding curtailments. Notice provided by email or by posting on the State Water Board's drought web page shall be sufficient for all purposes related to drought notices and updates regarding curtailment orders.~~

~~(f) Rescission of curtailment orders shall be announced using the email distribution list and web page described in subdivision (e).~~

~~877.3 Emergency Curtailment Where Insufficient Flows are Available in the Upper Russian River Watershed.~~

~~(a) This section applies to water diversions in the Upper Russian River Watershed.~~

~~(b)~~

~~(1) The Deputy Director may issue a curtailment order upon a determination that the conditions in subdivision (c) are occurring. Curtailment orders shall be effective the day after issuance.~~

~~(2) If maintaining minimum flows required for the protection of minimum human health and safety needs, fish and wildlife, or further preserving stored water in Lake Mendocino for human health and safety needs would require curtailment of uses otherwise exempt from curtailment under this article, then the Deputy Director shall consider whether those uses should be allowed to continue based on the most current information available regarding fish populations, human health and safety needs, and the alternatives available to protect both human health and safety and threatened or endangered fish. Curtailment of water uses under this subdivision (b)(2) and any updates regarding such curtailments shall be noticed as described in subdivision (d).~~

~~(c) When storage levels in Lake Mendocino are below those specified in section 877.4, and Sonoma County Water Agency is making Supplemental Storage Releases to satisfy Inbasin Uses, diversion of water within the Upper Russian River Watershed that does not meet an exemption identified in section 878 or section 878.1 constitutes an unreasonable use of water and is prohibited.~~

~~(1) Inbasin Uses are defined as diversions from the Mainstem of the Upper Russian River to meet minimum human health and safety needs, Reach Losses, and minimum flows required for protection of fish and wildlife as required by a water right permit or license term, including any enforceable modifications of the foregoing. Export diversions, deliveries scheduled by the Flood Control District pursuant to License 13898, and Reach Losses associated with those exports and deliveries are specifically excluded from the definition of Inbasin Uses.~~

~~(2) Supplemental Storage Releases are defined as water released from Lake Mendocino which is in excess of inflows to Lake Mendocino, as calculated on a daily basis, to satisfy Inbasin Uses.~~

~~(3) Reach Losses are defined as water that is lost from the Mainstem of the Upper Russian River due to riparian habitat, evaporative losses, or percolation to groundwater.~~

~~(d)~~

~~(1) Initial curtailment orders will be sent to each water right holder or the agent of record on file with the Division of Water Rights. The water right holder or agent of record The recipient is responsible for immediately providing notice of the curtailment order(s) to all diverters exercising the water right(s) covered by the curtailment order(s).~~

~~(2) The State Water Board has established an email distribution list that water right holders may join to receive for issuing drought notices, water supply forecasts, and updates regarding curtailments to the curtailment status list. Notice provided by email or by posting on the State Water Board's drought web page shall be sufficient for all purposes related to drought notices and updates regarding curtailment orders and the curtailment status list.~~

~~877.4 Lake Mendocino Storage Levels.~~

~~Curtailment orders for diversions in the Upper Russian River Watershed shall not be issued unless storage levels in Lake Mendocino fall below the following levels prior to the specified dates:~~

- ~~(a) 29,315 acre-feet before July 1.~~
- ~~(b) 27,825 acre-feet before July 15.~~
- ~~(c) 26,109 acre-feet before August 1.~~
- ~~(d) 24,614 acre-feet before August 15.~~
- ~~(e) 22,745 acre-feet before September 1.~~
- ~~(f) 21,251 acre-feet before September 15.~~
- ~~(g) 20,000 acre-feet on any date while the regulation is in effect.~~

~~**877.5 Rescission of Curtailment Orders in Upper Russian River Watershed.**~~

- ~~(a) Following issuance of curtailment orders pursuant to section 877.3, the Deputy Director will notify water right holders of the extent to which curtailment orders will be rescinded following a determination by the Deputy Director that Sonoma County Water Agency is no longer making Supplemental Storage Releases to satisfy Inbasin Uses and natural or abandoned flows are available.~~
- ~~(b) In determining the extent to which water is available under a diverter's priority of right when rescinding curtailment orders, the Deputy Director shall consider:
 - ~~(1) Relevant available information regarding date of priority, including but not limited to claims of first use in statements of water diversion and use, judicial and State Water Board decisions and orders, and other information contained in the Division of Water Rights files;~~
 - ~~(2) Monthly water right demand projections based on reports of water diversion and use for permits and licenses, or statements of water diversion and use, from 2017 through 2019.~~
 - ~~(3) Water availability projections based on one or more of the following:
 - ~~(A) Outputs from a United States Geological Survey's Precipitation Runoff Modeling System model, calibrated by State Water Board staff to estimate current or historical natural cumulative runoff throughout the watershed, as well as forecasts of monthly supplies.~~
 - ~~(B) Climatic estimates of precipitation and temperature from the Parameter-elevation Regressions on Independent Slopes Model, commonly referred to as PRISM.~~
 - ~~(C) Historical periods of comparable conditions with respect to daily temperatures, precipitation, or surface flows.~~
 - ~~(D) Outputs from the Santa Rosa Plain Hydrologic Model developed by United States Geological Survey; or~~
 - ~~(E) Stream gage data, where available.~~~~~~

~~(4) The Deputy Director may also consider additional pertinent and reliable information when determining water right priorities, water availability and demand projections.~~

~~(5) Evaluation of available supplies against demands may be performed at the downstream outlet of either the Upper Russian River or the Lower Russian River, or at a smaller sub-watershed scale using the Drought Water Rights Allocation Tool, or comparable tool. Use of the Drought Water Rights Allocation Tool will be in accordance with the formulations document for the Drought Water Rights Allocation Tool (March 2, 2020) and Drought Water Right Curtailment Analysis for California's Eel River (November 20, 2017), which are hereby incorporated by reference.~~

~~(c) Water users and water right holders are responsible for checking the State Water Board's drought announcements website and signing up for the email distribution list referenced in section 877.3, subdivision (e)(2), to receive updated water supply forecasts. It is anticipated that forecasts of water supplies available to meet water rights demands will be updated on a monthly basis until cumulative rainfall of greater than 0.5 inches occurs as measured at Ukiah Municipal Airport precipitation stations within the watershed. Following this precipitation event, it is anticipated that forecasts of supplies will be updated on a weekly basis until rescission of all curtailment orders under this section.~~

~~(d) Rescission of a curtailment order shall be announced using the email distribution list and web page described in section 877.3, subdivision (e)(2).~~

~~877.6 Rediversion of Water Previously Stored in Lake Mendocino.~~

~~(a) Rediversion by the Flood Control District of previously stored water released from Lake Mendocino shall be an unreasonable use of water and subject to the enforcement provisions described in section 879.2 unless such rediversion meets the requirements of this section.~~

~~(b) The Flood Control District shall schedule all deliveries of water pursuant to License 13898 at least one week in advance of release of the water.~~

~~(c) The timing of rediversion activities relative to release of water shall be based on a travel time of water along the Russian River agreed upon between the Flood Control District and Sonoma County Water Agency.~~

~~(d) The Flood Control District shall provide a monthly schedule of rediversions by the first day of each month and shall confirm by noon on Friday of each week whether these diversions will occur in the following week or have changed.~~

~~(e) No rediversions shall occur following September 1 unless Sonoma County Water Agency and the Flood Control District have jointly submitted an executed agreement to the Deputy Director specifying the amount of water stored in Lake Mendocino pursuant to License 13898, the amount of water that will remain stored in Lake Mendocino for use in 2022, and a methodology acceptable to the Deputy Director for determining how inflows to Lake Mendocino are attributed to the Flood Control District and SCWA's respective water rights.~~

878 Non-Consumptive Uses

~~Diversion and use described in this section~~

877.3 Curtailments Affecting Water Users Claiming Riparian Rights in the Russian River Watershed

- ~~(a) Diversions of surface water pursuant to riparian claims of right shall be incorporated into the water availability analysis described in section 877.2 and may be issued curtailment orders accordingly. A user claiming a riparian right who has been issued a curtailment order shall cease or reduce diversions correlatively in accordance with that curtailment order and the updated curtailment status list.~~
- ~~(b) Water users claiming a riparian right who disagree with the assigned water demand provided in their curtailment order may, within 14 days of the effective date of the curtailment order, inform the Deputy Director of their actual planned diversion and use pursuant to the claimed riparian right. The Deputy Director may accept, accept with revisions, or reject a riparian claimant's submittal under this section. The information submitted must be in the form specified by the Deputy Director and must include, at minimum, the following items:~~
- ~~(1) Estimates of planned diversion quantities, by month, for the next twelve months.~~
 - ~~(2) A summary of the uses of the water.~~
 - ~~(3) Previous water usage data, which shall be used to evaluate the reasonableness of the proposed diversion amounts.~~
- ~~(c) Water users claiming a riparian right who fail to inform the Deputy Director of their planned diversions and have failed to report diversion and use for 2017 through 2019 shall be subordinated to a junior-most priority while this regulation remains in effect. Nothing in this section 877.3 shall be construed as a basis for defining or circumscribing the existence or scope of a riparian right for purposes other than implementation of this regulation.~~
- ~~(d) Until the Deputy Director renders a decision on a request submitted under subdivision (b), the water right holder shall remain subject to the curtailment order and updated curtailment status list.~~

877.4 Reserved

This section is held in reserve for potential regulation text necessary for the support of regional voluntary conservation agreements in the Russian River Watershed.

877.5 Repealed [available]

878 Non-Consumptive Uses

Non-consumptive uses under any valid basis of right may continue after issuance of a curtailment order without further approval from the Deputy Director, subject to the conditions set forth in this section. ~~Diversions described in~~ For the purposes of this section ~~may not be required to curtail in response to,~~ a curtailment order under this article if their non-consumptive use is one for which direct diversion and use of water does not decrease downstream flows or the availability of water for downstream water users. Any diverter wishing to continue diversion under this section must submit to the Deputy Director a certification, under penalty of perjury, which describes the non-consumptive use of water and explains, with supporting evidence, how the diversion and use do not decrease downstream flows in the applicable watershed. The Deputy Director may request additional information ~~or disapprove any~~ and may invalidate any non-consumptive use certification if the information provided is insufficient to support ~~the statement~~ eligibility or if more convincing evidence contradicts the claims. ~~in the certification~~. If a certification submitted pursuant to this section is ~~disapproved~~ invalidated, the diversions are subject to any curtailment order issued for that basis of right.

This section applies to:

- (a) Direct diversions solely for hydropower if discharges are returned to the source stream or its tributaries and water is not held in storage.
- (b) Direct diversions dedicated to instream uses for the benefit of fish and wildlife pursuant to Water Code section 1707, including those that divert water to a different location for subsequent release, provided the location of release is hydraulically connected to the source stream.
- (c) ~~For Direct diversions subject to~~ curtailment orders issued under sections ~~877.2 and 877.3, direct diversions~~ 877.2 where the Deputy Director, the California Department of Fish and Wildlife, and the Executive Officer of the North Coast Regional Board have approved a substitution of releases of either stored water or groundwater into the Russian River or a tributary thereof ~~for the benefit of fish and wildlife~~ such that there is ~~not~~ no net decrease in stream flow as a result of the diversion ~~at the next downstream USGS gage~~. The rate of releases made pursuant to this subdivision must be

- measured daily using a device or measurement method approved by the Deputy Director and provided to the Deputy Director on a monthly basis. Proposals involving the release of groundwater shall provide sufficient data and information to reasonably quantify any depletions of surface water caused by the groundwater pumping, the potential time lags of those depletions, and if additional groundwater releases beyond the diversion amounts are able to offset those depletions. The release of water does not have to be conducted by the owner of the water right proposed for the continued diversions, provided an agreement between the water right holder and the entity releasing the water is included in the proposal.
- (d) Other direct diversions solely for non-consumptive uses, if those diverters file with the Deputy Director a certification under penalty of perjury demonstrating that the diversion and use are non-consumptive and do not decrease downstream flows in the watershed or the availability of water for downstream water users.
- (e) Direct diversions located within the Legal Delta used exclusively to irrigate lands entirely below sea level when comparison of diversion and drainage records provide substantial evidence that continued irrigation of those lands does not increase net channel depletions.

878.1 Minimum Human Health and Safety Needs.

- (a) Diversions described in this section under any valid basis of right may be authorized to continue ~~after issuance of a notwithstanding~~ curtailment ~~order~~, subject to the conditions set forth in this section. A diversion that would otherwise be subject to curtailment may be authorized if:
- (1) The diversion is necessary for minimum human health and safety needs; and therefore,
 - (2) The diversion is necessary to further the constitutional policy that the water resources of the state be put to beneficial use to the full extent they are capable, and that waste and unreasonable use be prevented, notwithstanding the effect of the diversions on more senior water rights or instream beneficial uses.
- (b)
- (1) Diversions for minimum human health and safety needs under any valid basis of right of not greater than 55 gallons per person per day may continue after ~~issuance of a~~ curtailment ~~order of that right~~ without further approval from the Deputy Director, subject to the conditions set forth in this section. Any diverter wishing to continue diversion under this subdivision must submit to the Deputy Director certification, under penalty of perjury, of compliance with the requirements of subdivisions ~~(b)(1)(A)-~~

~~(E), below.~~ 878.1(b)(1)(A)-(E), below. The Deputy Director may request additional information or set additional requirements on continued diversion.

- (A) Not more than 55 gallons per person per day will be diverted under all bases of right.
 - (B) The diversion is necessary to serve minimum human health and safety needs as defined in section ~~877.1, subdivision (g),~~ 877.1(h), after all other alternate sources of water have been used. To the extent other water sources are available, those sources will be used first and the total used will not exceed 55 gallons per person per day.
 - (C) The diverter and all end users of the diverted water have implemented all available conservation measures and are operating under the strictest existing conservation regime plan for that place of use, if such a plan exists for the area or service provider, ~~or shall be operating under such regime within 30 days.~~ If additional approvals are required before implementation of the conservation regime, the diverter must certify that all possible steps will be taken immediately to ensure prompt approval.
 - (D) If the diverter ~~is distributor or any user of a public water supply under~~ is an Urban Water Code sections 350 et seq., Supplier, that it has declared a water shortage emergency condition and either already has adopted regulations and restrictions on the delivery of water or will adopt conservation and water delivery restrictions and regulations within a timeframe specified by the Deputy Director as a condition of certification.
 - (E) The diverter has either pursued steps to acquire other sources of water, but has not yet been completely successful, as described in an attached report, or the diverter will pursue the steps in an attached plan to identify and secure additional water.
- (2) To the extent that a diversion for minimum human health and safety needs requires more than 55 gallons per person per day, or cannot be quantified on the basis of gallons per person per day, the continued diversion of water after ~~issuance of a curtailment order for of~~ the diversion applicable water right requires submission of a petition demonstrating compliance with the requirements of subdivisions (b)(1)(B)-(E) above and (b)(2)(A)-(F), below, ~~(F), below,~~ and approval by the Deputy Director. The Deputy Director may condition approval of the petition on implementation of additional conservation measures and reporting requirements. Any petition to continue diversion to meet minimum human health and safety needs of more than 55 gallons per person per day must:

- (A) Describe the specific circumstances that make the requested diversion amount necessary to meet minimum human health and safety needs, if ~~a larger amount is sought~~ the requested diversion is greater than 55 gallons per person per day or cannot be quantified on the basis of gallons per person per day.
 - (B) Estimate the amount of water needed.
 - (C) Certify that the supply will be used only for the stated need.
 - (D) Describe any other additional steps the diverter will take to reduce diversions and consumption.
 - (E) Provide the timeframe in which the diverter expects to reduce usage to no more than 55 gallons per person per day, or why minimum human health and safety needs will continue to require more water.
 - (F) As necessary, provide documentation that the use meets the definition of minimum human health and safety needs provided in subdivision (g) of section 877.1877.1(h). For water supplies necessary for fire prevention or firefighting purposes, substantiating documentation, such as guidance from the local fire department, local city or county ordinances, or equivalent local requirements, may be requested by the Deputy Director.
- (c) For public water systems with 15 or greater connections and small water systems of 5 to 15 connections, gallons per person per day shall be calculated on a monthly basis and the calculation methodology shall be consistent with the State Water Board's Percentage Residential Use and Residential Gallons Per Capita Daily Calculation (PRV and R-GPCD Calculation), dated September 22, 2020, which is hereby incorporated by reference.
- ~~(d) Diversions for minimum human health and safety needs that cannot be quantified on the basis of an amount per person per day require a petition and approval from the Deputy Director. The Deputy Director may approve a such a petition under this subdivision or subdivision (b)(2) upon a finding that the petition demonstrates that the requested diversion is in furtherance of the constitutional policy that the water resources of the state be put to beneficial use to the full extent they are capable, and that waste and unreasonable use be prevented, notwithstanding the effect of the diversion on senior water rights or instream beneficial uses, and may condition approval as appropriate to ensure that the diversion and use are reasonable and in the public interest.~~
- (d) For water supplies necessary for hydropower generation critical to grid reliability, substantiating documentation, such as a letter of support from California Independent System Operator, California Public Utilities Commission, California Energy Commission, or a similar energy grid reliability authority, must be provided.

- (e) To the extent necessary to resolve immediate public health or safety threats, a diversion subject to ~~a~~ curtailment ~~order~~ may continue while a petition under subdivision ~~(b)(2) or (d)~~(b)(2) is being prepared and is pending. The Deputy Director may require additional information to support the initial petition, information on how long the diversion is expected to continue, and a description of other steps taken or planned to obtain alternative supplies.
- (f) Notice of certification, petitions, and decisions under this section and section ~~878~~878 will be posted as soon as practicable on the State Water Board's drought webpage. The Deputy Director may issue a decision under this article prior to providing notice.
- (g) Notwithstanding California Code of Regulations, Title 23, section 1064, a petition pursuant to Water Code section 1435 or 1725 solely for the provision of water for minimum human health and safety, as defined by section 877.1, subdivision (h) of this article, shall be accompanied by a filing fee of \$250.
- ~~(g)~~(h) Diversion and use within the Russian River Watershed or Delta Watershed, including Mill Creek and Deer Creek, that deprives water for minimum human health and safety needs in ~~2021~~2022, or which creates unacceptable risk of depriving water for minimum human health and safety needs in ~~2022~~2023, is an unreasonable use of water. The Deputy Director shall prevent such unreasonable use of water by implementing the curtailment methodology described in ~~section 877.2~~sections 877.2 and 877.3 for diversions in the ~~Lower~~ Russian River Watershed, ~~sections 877.3, 877.4, 877.5, and 877.6 for diversions in the Upper Russian River Watershed,~~ ~~section 876.1~~section **Error! Reference source not found.** for diversions in the Delta Watershed, and section ~~876.5~~**Error! Reference source not found.** for diversions in the Mill Creek and Deer Creek Watersheds.

~~(a) All water right holders issued a curtailment order under section 876.5, 877.2, or 877.3 are required, within seven calendar days of the date of the curtailment order, to submit under penalty of perjury a certification of one or more of the following actions taken in response to the curtailment order, certifying, as applicable, that:~~

~~(1) Diversions under the water right(s) identified have ceased;~~

~~(2) Any continued use is under other water rights not subject to curtailment, specifically identifying those other rights, including the basis of right and quantity of diversion;~~

~~(3) Diversions under the water right(s) identified continue only to the extent that they are authorized in accordance with section 878.4 or are non-consumptive uses for which a certification for continued diversion has been submitted as specified in section 878;~~

~~(4) Diversions under the water right(s) identified continue only to the extent that they are to provide for minimum human health and safety needs, a certification has been filed as authorized under section 878.1, subdivision (b)(1), and the subject water right authorizes the diversion in the absence of a curtailment order; or~~

~~(5) Diversions under the water right(s) identified continue only to the extent that they are consistent with a petition filed under section 878.1, subdivision (b)(2) or (d), and diversion and use will comply with the conditions for approval of the petition.~~

~~(b)(a)~~ All water users or water right holders whose continued diversion may be authorized under section ~~878.1~~878.1 are required to submit, under penalty of perjury, information identified on a schedule established by the Deputy Director as a condition of certification or petition approval pursuant to sections 878.1. The required information may include, but is not limited to, the following:

(1) The water right identification numbers under which diversions continue;

(2) The public water system identification number for any public water system served by the diversions.

~~(2)~~(3) How the diverter complies with any conditions of continued diversion, including the conditions of certification under section 878.1, subdivision (b)(1);

~~(3)~~(4) Any failures to comply with conditions, including the conditions of certification under section 878.1, subdivision (b)(1), and steps taken to prevent further violations;

- ~~(4)~~(5) Conservation and efficiency efforts planned, in the process of implementation, and implemented, as well as any information on the effectiveness of implementation;
- ~~(5)~~(6) Efforts to obtain alternate water sources;
- ~~(6)~~(7) If the diversion is authorized under an approved petition filed pursuant to section 878.1, subdivision (b)(2), progress toward implementing the measures imposed as conditions of petition approval;
- ~~(7)~~(8) If the diversion is authorized under section 878.1, subdivision ~~(e)~~(b)(2):
- (A) The rate of diversion if it is still ongoing;
 - (B) Whether the water has been used for any other purpose; and
 - (C) The date diversion ceased, if applicable.
- ~~(8)~~(9) The total water diversion for the reporting period and the total population served for minimum human health and safety needs. The total population must include actual or best available estimates of external populations not otherwise reported as being served by the water right holder, such as individuals receiving bulk or hauled water deliveries for indoor water use.
- ~~(9)~~(10) Diversion amounts for each day in acre-feet per day, maximum diversion rate in cubic feet per second, and anticipated future daily diversion amounts and diversion rates.
- ~~(e)~~(b) The Deputy Director, or delegee, may issue an order under this article requiring any person to provide additional information reasonably necessary to assess their compliance with this article. Any person receiving an order under this subdivision shall provide the requested information within the time specified by the Deputy Director, but not less than five (5) days.
- ~~(d)~~(c) This subdivision applies to Delta Watershed curtailment orders and enhanced reporting to inform water unavailability determinations and the curtailment process described under section **Error! Reference source not found.**
- (1) All water right holders and claimants issued an initial order pursuant to section **Error! Reference source not found.** are required, within the deadlines specified in the initial order but no sooner than seven calendar days following issuance of the order, to submit under penalty of perjury a certification that they have and will continue to take actions needed to comply with section **Error! Reference source not found.**, including the following actions:

- (A) Regularly reviewing information posted on the State Water Board's drought webpage to determine when curtailments are required and when curtailments are suspended or reimposed, or subscribing to the State Water Board's Delta Drought email distribution list to receive updates directly; and
 - (B) Ceasing diversions of natural and abandoned flow when curtailments are ordered, except to the extent that continuing diversions are authorized in accordance with section ~~878, 878.1 or 878.2, 878.1, or 879.1 subdivision (b)~~, and ceasing rediversions of water released from storage, except to the extent authorized by a water right or contract.
- (2) In addition to the requirements identified under subdivision (c)(1), the Deputy Director may require water right holders and claimants who have been issued an initial order under section **Error! Reference source not found.** and whose water right or claim has a total authorized face value or recent annual reported diversion amount of one thousand acre-feet or greater to report the following information by the date specified by the Deputy Director, but no earlier than seven days after receipt of the reporting order and as specified thereafter:
- (A) Prior diversions, unless otherwise reported in annual reports of water diversion and use, including direct diversions and diversions to storage. Diversion volumes shall be provided in a daily, weekly, or monthly format, as identified in the order.
 - (B) Demand projections for subsequent months through October 1, ~~2022~~2023, including direct diversions and diversions to storage. Diversion volumes shall be provided in a daily, weekly, or monthly format, as identified in the order.
 - (C) Before issuing orders issued pursuant to subdivision (c)(2) to water right holders and claimants in the Legal Delta, the Deputy Director will consult with and obtain the concurrence of the Delta Watermaster.
- (3) In order to inform curtailment decisions, the Deputy Director, or the Delta Watermaster for rights in the Legal Delta, may issue informational orders under subdivision (c) of this section requiring a water right holder, diverter, or user to provide additional information related to a diversion or use of water in the Delta Watershed, including but not limited to: additional reporting of water diversions and use; the basis of right with supporting documents or other evidence; property patent date for the place of use; the date of initial appropriation; anticipated or actual water transfer amounts; or any other information relevant to forecasting demands and supplies and determining compliance with curtailment orders in the current drought year or in contingency planning for continuation of the current drought emergency. Informational orders may

require reporting of diversions made in prior months and diversions anticipated during subsequent months on a recurring, monthly basis.

- (4) Any water right holder or claimant receiving an order under subdivision (c) of this section shall provide the requested information within the deadlines specified therein, including any recurring deadlines associated with ongoing reporting requirements as applicable. The Deputy Director, or the Delta Watermaster for rights in the Legal Delta, may grant additional time for submission of information upon substantial compliance with the specified deadline and a showing of good cause. Information provided pursuant to subdivision (c) of this section shall be submitted in an online form maintained by the State Water Board and accessible through its website, or in an electronic format as specified by the Deputy Director or Delta Watermaster.
- (5) Failure to provide the information required under subdivision (c) of this section within the deadlines specified in the order or any time extension granted by the Deputy Director, or the Delta Watermaster for rights in the Legal Delta, 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.
- (6) In determining whether to impose reporting requirements under subdivision (c) of this section, the Deputy Director and Delta Watermaster will consider the need for the information for purposes of informing curtailment decisions and the burden of producing it, and will make reasonable efforts to avoid requiring duplicative reporting of information that is already in the Board's possession.
- (7) All orders issued under subdivisions (c)(2) and (c)(3) shall be subject to reconsideration under article 2 (commencing with section 1122) of chapter 4 of part 1 of division 2 of the California Water Code.

879.1 Conditions of Permits, Licenses and Registrations.

- (a) Compliance with this article, including any conditions of certification or approval of a petition under this article, shall constitute a condition of all water right permits, licenses, certificates and registrations for diversions from any watershed identified in this article.
- (b) Diversions may continue after the issuance of a curtailment order to the extent the maintenance of a mechanism allowing for the bypass of natural or abandoned flow is not conditioned in a water right permit, license, stockpond certificate, or registration not exceeding a total authorized face value of ten acre-feet per year.

879.2 Compliance and Enforcement.

- (a) A diverter must comply with a curtailment order issued under this article, any updates to the curtailment status list, any conditions of certification or approval of a petition under this article, and any water right condition under this article, notwithstanding receipt of more than one curtailment order. To the extent of any conflict between applicable requirements, the diverter must comply with the requirements that are the most stringent.
- ~~(b) Diversion or use of water in the Upper Russian River Watershed or the Delta Watershed in violation of this article constitutes an unreasonable use of water and is subject to any and all enforcement proceedings authorized by law.~~
- ~~(b) Diversion or use of water in the Lower Russian River Watershed or In conducting an investigation to assess a diverter's compliance with this article, the State Water Board may obtain an inspection warrant pursuant to the procedures set forth in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure where consent to inspect is withheld.~~
- ~~(c) Failure to meet the Delta Watershed in violation requirements of this article is a trespass under or of any order issued thereunder constitutes a violation subject to civil liability pursuant to Water Code section 1052 and shall constitute evidence of diversion or use in excess of a water user's rights.~~
- ~~(c) All violations of this article shall be subject to any applicable penalties under 1846, and an infraction pursuant to Water Code section 1058.5, subdivision (d), each of which can carry a fine of up to five hundred dollars (\$500) for each day in which the violation occurs.~~
- ~~(d) Nothing in this section shall be construed as limiting the enforceability of or penalties available under any other ~~applicable~~ provision of law.~~

880 Redlegation of Authorities

Authorities delegated to the Deputy Director under this article may be redelegated.

(d)