



## MEMORANDUM

TO: SLDMWA Water Resources Committee Members and Alternates

FROM: Scott Petersen, Water Policy Director

DATE: August 2, 2021

RE: Update on Water Policy/Resources Activities

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### BACKGROUND

This memorandum is provided to briefly summarize the current status of various agency processes regarding water policy activities, including but not limited to the (1) Reinitiation of Consultation on Long-Term Operations (“ROC on LTO”), (2) State Water Resources Control Board Action, including the Bay-Delta Water Quality Control Plan update, (3) San Joaquin River Restoration Program, (4) Delta Conveyance, (5) Delta Stewardship Council, and (6) Water Blueprint for the San Joaquin Valley.

### POLICY ITEMS

#### [Reinitiation of Consultation on Long-Term Operations of the Central Valley Project and State Water Project](#)

In August 2016, the Bureau of Reclamation and California Department of Water Resources (DWR) requested reinitiation of consultation with NOAA Fisheries, also known as National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (FWS) due to multiple years of drought, low populations of listed species, and new information developed as a result of ongoing collaborative science efforts over the last 10 years.

On Jan. 31, 2019, Reclamation transmitted its Biological Assessment to the Services. The purpose of this action is to continue the coordinated long-term operation of the CVP and SWP to optimize water supply delivery and power generation consistent with applicable laws, contractual obligations, and agreements; and to increase operational flexibility by focusing on nonoperational measures to avoid significant adverse effects to species.

The biological opinions carefully evaluated the impact of the proposed CVP and SWP water operations on imperiled species such as salmon, steelhead and Delta smelt. FWS and NMFS documented impacts and worked closely with Reclamation to modify its proposed operations to

minimize and offset those impacts, with the goals of providing water supply for project users and protecting the environment.

Both FWS and NMFS concluded that Reclamation's proposed operations will not jeopardize threatened or endangered species or adversely modify their critical habitat. These conclusions were reached for several reasons – most notably because of significant investments by many partners in science, habitat restoration, conservation facilities including hatcheries, as well as protective measures built into Reclamation's and DWR's proposed operations.

On Oct. 21, 2019, FWS and NMFS released their biological opinions on Reclamation's and DWR's new proposed coordinated operations of the CVP and SWP.

On Dec. 19, 2019, Reclamation released the final Environmental Impact Statement analyzing potential effects associated with long-term water operations for the CVP and SWP.

On Feb. 18, 2020, Reclamation approved a Record of Decision that completes its environmental review for the long-term water operations for the CVP and SWP, which incorporates new science to optimize water deliveries and power production while protecting endangered species and their critical habitats.

On January 20, 2021, President Biden signed an Executive Order: “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis”, with a fact sheet<sup>1</sup> attached that included a non-exclusive list of agency actions that heads of the relevant agencies will review in accordance with the Executive Order. Importantly, the NOAA Fisheries and U.S. Fish and Wildlife Service Biological Opinions on the Long-Term Operation of the Central Valley Project and State Water Project were both included in the list of agency actions for review. It’s unclear what this agency review will analyze, but staff will be engaged.

## Reclamation Manual

### Documents out for Comment

#### *Draft Directives and Standards*

- [FIN 07-24 Assets Under Construction \(AUC\) Comments by 08/09/2021](#)

#### *Draft Facilities Instructions, Standards, and Techniques (FIST)*

- There are currently no Facilities Instructions, Standards, and Techniques out for review.

#### *Draft Reclamation Safety and Health Standards (RSHS)*

- There are currently no Safety and Health Standards out for review.

#### *Draft Reclamation Design Standards*

- There are currently no Design Standards out for review.

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<sup>1</sup> <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review/>

## State Water Resources Control Board (State Water Board) Activity

### Documents out for Comment

#### *Draft Racial Equity Resolution*

The State Water Resources Control Board (State Water Board and, together with the Regional Water Quality Control Boards, Water Boards) will receive public comments on the draft proposed Resolution<sup>2</sup> Condemning Racism, Xenophobia, and Racial Injustice and Strengthening Commitment to Diversity, Equity, Access, Inclusion and Anti-Racism (Racial Equity Resolution). The draft proposed Racial Equity Resolution articulates the State Water Board's commitment to racial equity, expositing why this work is needed and offers a roadmap for how the State Water Board can (1) ensure its programs and policies preserve, protect, and restore California's water resources equitably for people of all races, and (2) create an equitable, diverse, and inclusive workplace where all employees feel they belong and their opportunities and professional outcomes are not predicted by their race.

The draft proposed Racial Equity Resolution is posted on the State Water Board's website at: [https://www.waterboards.ca.gov/racial\\_equity/](https://www.waterboards.ca.gov/racial_equity/). You may request a paper copy of the draft proposed Racial Equity Resolution by emailing: [racialequity@waterboards.ca.gov](mailto:racialequity@waterboards.ca.gov).

#### *Submission of Comments*

The State Water Board will accept written comments on the draft proposed Racial Equity Resolution. All written comments must be received no later than 12:00 noon on Monday, August 2, 2021.

#### *Restoration Projects Statewide Order*

Written comments will be accepted by the State Water Resources Control Board ("State Water Board") on the proposed Order for Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements for Restoration Projects Statewide (proposed General Order) and supporting California Environmental Quality Act (CEQA) draft Program Environmental Impact Report (PEIR). The proposed General Order and draft PEIR would apply statewide and establish a permit authorization process for specific types of restoration activities. The draft PEIR identifies potential significant impacts to agriculture and forestry resources; air quality and greenhouse gas emissions; biological resources (terrestrial); biological resources (aquatic); cultural resources; geology and soils; hazards and hazardous materials; land use and planning; noise; transportation; tribal cultural resources; and utilities and service systems and public services.

Additionally, the State Water Board will hold a public workshop on the proposed General Order and supporting draft PEIR. A quorum of the Board will be present; however, the Board will not take any action at the public workshop. The public workshop will be:

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<sup>2</sup> See Appendix A.

Tuesday, August 3, 2021, 9:00 a.m.

Video and Teleconference Only No Physical Meeting Location

(Authorized and in furtherance of Executive Orders N-08-21 and N-29-20) Video Broadcast:

<https://video.calepa.ca.gov/>

#### [Submission of Comments](#)

State Water Board will also accept written comments on the proposed General Order and draft PEIR. Written comments must be received no later than 12:00 noon on August 13, 2021.

#### [Draft Emergency Regulation: Sacramento-San Joaquin Delta Watershed](#)

The staff of the State Water Resources Control Board (State Water Board or Board) is proposing an emergency regulation<sup>3</sup> that, if adopted and approved, may affect the ability of water right holders in the Sacramento-San Joaquin Delta (Delta) watershed to divert water. The notice includes information on how to participate in public discussion and provide comments regarding the proposed emergency regulation<sup>4</sup>. The notice also includes an update on water availability for pre-1914 appropriative and certain riparian water right claimants. The emergency regulation will be presented for review and possible adoption at the State Water Board's August 3, 2021 public meeting.

The proposed emergency regulation would require water right holders in the Delta watershed to curtail their diversions when the State Water Board determines, based on the best information available to the Board, that water is not available to serve certain priorities of water rights, based on the "Water Unavailability Methodology"<sup>5</sup>. The emergency regulation would also allow the Board to require water right holders to provide additional information related to their diversion and use of water.

#### [Background](#)

On May 10, 2021, Governor Newsom issued a Proclamation of a State of Emergency due to drought in 41 counties, including those in the Delta watershed. On July 8, 2021, the Governor issued an expanded Proclamation of a State of Emergency for 9 additional counties and called upon Californians to voluntarily reduce their water use by 15 percent compared to the same period in 2020.

To ensure protection of water needed for health, safety, and the environment, the May 10, 2021 Proclamation directs the State Water Board to consider adoption of an emergency regulation to curtail water diversions in the Delta watershed when water is not available at water right holders' priority of right and to protect releases of previously stored water.

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<sup>3</sup> See Appendix B.

<sup>4</sup> See Appendix C.

<sup>5</sup>

[https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/drought/drought\\_tools\\_methods/delta\\_method.html](https://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/drought_tools_methods/delta_method.html)

On June 15, 2021, the State Water Board sent Notices of Water Unavailability to all water right holders in the Delta watershed, alerting all post-1914 appropriative water right holders that the Board had determined, based on the best information available to the Board, that water was not available to serve their priorities. The June 15 notice also warned all pre-1914 appropriative and riparian water right claimants in the Delta watershed of impending water unavailability based on worsening drought conditions and the resulting likelihood of consideration of an emergency regulation to curtail water use throughout the Delta watershed.

On July 8, 2021, the San Luis & Delta-Mendota Water Authority, Friant Water Authority, Tehama Colusa Canal Authority, and the State Water Contractors sent a letter<sup>6</sup> to State Water Board Chairman Joaquin Esquivel expressing a need for action to protect stored water and to reduce unauthorized diversions of water in the Delta, in order to protect authorized beneficial uses of water.

On July 29, 2021, the San Luis & Delta-Mendota Water Authority sent a letter<sup>7</sup> to State Water Board Chairman Joaquin Esquivel expressing support for protecting stored water, the need to ensure due process in the protection of appropriately exercised water rights, and the need to consider a number of comments expressed by water users related to the Water Unavailability Methodology.

The draft emergency regulation is scheduled to be considered by the State Water Board at its August 3, 2021 meeting. If adopted by the State Water Board, the emergency regulation will be submitted to the Office of Administrative Law for a public comment period, review, and requested approval. If approved, the emergency regulation would become effective upon submittal to the Secretary of State as early as mid to late August 2021. The emergency regulation would remain in effect for up to one year but could be repealed if hydrologic conditions improve, or readopted if drought conditions continue through next year.

#### *WATER UNAVAILABILITY FOR SENIOR WATER RIGHT CLAIMS*

The June 15, 2021 Notices of Water Unavailability applicable to all post-1914 appropriative water rights in the Delta watershed remain effective. In addition, updated information available to the Board, evaluated by State Water Board staff using the Water Unavailability Methodology, indicates that water supply is currently insufficient to support lawful diversions under most senior claims of right (claims identified in Initial Statements of Water Diversion and Use). Specifically, as of the date of this notice, State Water Board staff has indicated that water is not available for:

- All post-1914 appropriative water rights in the Delta watershed (inclusive of the Sacramento River and San Joaquin River watersheds);

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<sup>6</sup> See Appendix D.

<sup>7</sup> See Appendix E.

- All pre-1914 appropriative water right claims in the San Joaquin River watershed;
- All pre-1914 appropriative water right claims in the Sacramento River watershed with a priority date of 1883 or later; and
- Some pre-1914 appropriative water right claims in specific Sacramento River tributary sub-watersheds with a priority date earlier than 1883.

According to State Water Board staff, these claims face water unavailability either due to limited local supplies or the need to bypass natural flows so that more senior rights downstream can be met.

All of the pre-1914 appropriative water right claims for which State Water Board staff has indicated that water is unavailable are identified on a List of Noticed Pre-1914 Appropriative Water Right Claims, which can be found under the Notices of Water Unavailability section on the Delta Watershed Drought Information webpage at: <https://www.waterboards.ca.gov/drought/delta/>

Information evaluated using the Water Unavailability Methodology by State Water Board staff, indicates that, as of the date of this notice, water supply is insufficient to meet the demands of all riparian claims of right in the following watersheds and sub-watersheds:

- San Joaquin River watershed: In the months of July, August, and September 2021, demands under riparian water right claims will face a total deficit of approximately 197,000 acre-feet, 170,000 acre-feet, and 73,000 acre-feet, respectively. This amounts to a deficit of supply compared to riparian demand in the San Joaquin River watershed of approximately 82 percent in July, 91 percent in August, and 85 percent in September.
- Bear River sub-watershed: In the months of July and August 2021, demands under riparian water right claims will face a total deficit of approximately 79 acre-feet and 370 acre-feet, respectively. This amounts to a deficit of supply compared to riparian demand in the Bear River sub-watershed of approximately 9 percent in July and 42 percent in August.
- Upper American River sub-watershed: In the month of September 2021, demands under riparian water right claims will face a total deficit of approximately 687 acre-feet. This amounts to a deficit of supply compared to riparian demand in the Upper American River sub-watershed of approximately 100 percent in September.
- Putah Creek sub-watershed: In the month of July 2021, demands under riparian water right claims will face a total deficit of approximately 177 acre-feet. This amounts to a deficit of supply compared to riparian demand in the Putah Creek sub-watershed of approximately 7 percent in July.

In times of such supply shortage, State Water Board staff has indicated that riparian users are required to share the shortage on a correlative basis. Accordingly, riparian claims are not

individually listed. These numbers include projections through September 2021 and may be updated as new information becomes available.

The State Water Board is using its updated Water Unavailability Methodology for the Delta Watershed (Methodology) to identify which water rights in the Delta watershed face insufficient supplies to support diversion. For further information regarding the Methodology, please visit the Methodology webpage<sup>8</sup>.

#### *FUTURE COMMUNICATIONS REGARDING WATER SUPPLY CONDITIONS*

If the State Water Board adopts and the Office of Administrative Law approves an emergency curtailment and reporting regulation, the emergency regulation will update the method of communicating with water right holders, including for when curtailments are imposed and lifted based on evolving water supply and demand conditions. Under the proposed emergency regulation, such communication will be exclusively by electronic means.

For further information regarding drought in the Delta watershed, you are strongly encouraged to subscribe to the Delta Drought list on the State Water Board's Email Lists webpage<sup>9</sup>.

Please note that, if adopted and approved, the draft emergency regulation will require water users to subscribe to the Delta Drought list or to frequently visit the Board's Delta Watershed Drought Information webpage for updates.

#### *Bay Delta Water Quality Control Plan Update*

The State Water Board is currently considering updates to its 2006 Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary ("Bay Delta Plan") in two phases (Plan amendments). The first Plan amendment is focused on San Joaquin River flows and southern Delta salinity ("Phase I" or "San Joaquin River Flows and Southern Delta Salinity Plan Amendment"). The second Plan amendment is focused on the Sacramento River and its tributaries, Delta eastside tributaries (including the Calaveras, Cosumnes, and Mokelumne rivers), Delta outflows, and interior Delta flows ("Phase II" or "Sacramento/Delta Plan Amendment").

During the December 12, 2018 Water Board Meeting, the Department of Water Resources ("DWR") and Department of Fish and Wildlife presented proposed "Voluntary Settlement Agreements" ("VSAs") on behalf of Reclamation, DWR, and the public water agencies they serve to resolve conflicts over proposed amendments to the Bay-Delta Plan update.<sup>10</sup> The State Water

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[https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/drought/drought\\_tools\\_methods/delta\\_method.html](https://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/drought_tools_methods/delta_method.html)

<sup>9</sup> [https://www.waterboards.ca.gov/resources/email\\_subscriptions/swrcb\\_subscribe.html](https://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.html)

<sup>10</sup> Available at <https://water.ca.gov/-/media/DWR-Website/Web-Pages/Blogs/Voluntary-Settlement-Agreement-Meeting-Materials-Dec-12-2018-DWR-CDFW-CNRA.pdf>.



Board did not adopt the proposed VSAs in lieu of the proposed Phase 1 amendments, but as explained below, directed staff to consider the proposals as part of a future Delta-wide proposal.

**Phase 1 Status:** The State Water Board adopted a resolution<sup>11</sup> to adopt amendments to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary and adopt the Final Substitute Environmental Document during its December 12, 2018 public meeting.

**Phase 2 Status:** In the State Water Board’s resolution adopting the Phase 1 amendments, the Water Board directed staff to assist the Natural Resources Agency in completing a Delta watershed-wide agreement, including potential flow and non-flow measures for the Tuolumne River, and associated analyses no later than March 1, 2019. Staff were directed to incorporate the Delta watershed-wide agreement as an alternative for a future, comprehensive Bay-Delta Plan update that addresses the reasonable protection of beneficial uses across the Delta watershed, with the goal that comprehensive amendments may be presented to the State Water Board for consideration as early as possible after December 1, 2019. As the State Water Board further refines this update, there will be opportunity for public comment.

The effort has made progress since an initial framework was presented to the State Water Board on December 12, 2018.

On March 1, 2019, the California Department of Water Resources and the Department of Fish and Wildlife submitted documents<sup>12</sup> to the State Water Board that reflect progress since December to flesh-out the previously submitted framework to improve conditions for fish through targeted river flows and a suite of habitat-enhancing projects including floodplain inundation and physical improvement of spawning and rearing areas.

Since the March 1 submittal, work has taken place to develop the package into a form that is able to be analyzed by State Water Board staff for legal and technical adequacy. On June 30, 2019, a status update with additional details was submitted to the Board for review. Additionally, on February 4, 2020, the State team released a framework for the Voluntary Agreements to reach “adequacy”, as defined by the State team.

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<sup>11</sup>Available at

[https://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/resolutions/2018/rs2018\\_0059.pdf](https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2018/rs2018_0059.pdf).

<sup>12</sup> Available at [http://resources.ca.gov/docs/voluntary-agreements/2019/Complete\\_March\\_1\\_VA\\_Submission\\_to\\_SWRCB.pdf](http://resources.ca.gov/docs/voluntary-agreements/2019/Complete_March_1_VA_Submission_to_SWRCB.pdf)



Further work and analysis is needed to determine whether the agreements can meet environmental objectives required by law and identified in the State Water Board's update to the Bay-Delta Water Quality Control Plan.

### Delta Conveyance Project

The Department of Water Resources (DWR) is hosting four informational webinars between July and September 2021 to provide background information related to preparation of the Draft Environmental Impact Report (EIR) for the Delta Conveyance Project. The first webinar focused on State Water Project and Delta operations, and featured presentations on State Water Project operations and the models the Department will use to analyze the project.

Carrie Buckman, the Delta Conveyance Project Environmental Project Program Manager with the Department of Water Resources, reviewed the proposed project, the overall schedule, the planning processes, and future opportunities for public participation. Ms. Buckman noted that they are currently developing the draft EIR, so the impact analysis and mitigation have not yet been identified. So they will be focusing on the background of the topics and the methodology of how they will analyze things and will continue to share further details as they move towards a draft EIR.

The fundamental purpose of the Delta Conveyance Project is to modernize the aging State Water Project infrastructure in the Delta and restore and protect the reliability of SWP water deliveries in a cost-effective manner, consistent with the state's water resilience portfolio. As part of that, there are several specific objectives, including addressing sea level rise and climate change, minimizing water supply disruption due to seismic risk, protecting water supply reliability, and providing operational flexibility to improve aquatic conditions.

Ms. Buckman presented the project schedule. Currently, the Department is developing a draft EIR under the California Environmental Quality Act (CEQA). The Army Corps of Engineers, the federal lead agency, is preparing a draft environmental impact statement or EIS under the National Environmental Policy Act (or NEPA).



Although they are two separate documents, they are working on coordinating the public review for mid-2022. After the public review, they will finalize the documents and release decision documents later in 2023.

Ms. Buckman noted they are concurrently working on other environmental processes. They are starting the preliminary planning for developing a biological assessment and the incidental take

permit application, which are documents needed for compliance with the state and federal Endangered Species Acts; those are also expected in 2023. The Department will also be working toward obtaining a change in point of division for our water rights, certifying consistency with the Delta Plan, and securing other environmental permits in mid-2024.

### Water Blueprint for the San Joaquin Valley Activity

#### Background

The Water Blueprint for the San Joaquin Valley<sup>13</sup> (Blueprint) is a broad group of stakeholders, working to better understand shared goals for water solutions that support environmental stewardship with the needs of communities and industries throughout the San Joaquin Valley. The Blueprint has engaged with stakeholders to try and ensure that everyone has safe, reliable and affordable access to water for drinking, supporting their farms and communities and a thriving ecology.

The SJV faces significant impacts to its long-term economic, social, and environmental health if nothing is done to address water scarcity, as highlighted in Phase I of Dr. David Sunding's Economic Impact Assessment (EIA).

The Large Group and committees are pursuing the goals of Blueprint, including outreach, technical support and working in conjunction with other stakeholders.

**2021 Strategy & Focus:** The Blueprint is discussing the overall focus for 2021, its organizational structure, role with sub basins, project pursuits, fundraising and work with the San Joaquin Valley Water Collaborative Action Partnership (SJWV CAP).

**Governance:** The Blueprint is in the process of hiring a new project management team to replace Vista Consulting, with the goal of bringing on the new manager on in August. It is also updating its governance structure to better reflect its current participants, contributors, and its approach of a "coalition of the willing" while allowing for a streamlined review and action process. Exploring the expansion of the number of directors to the 501c4 to include adequate representation of the Central Valley.

**Outreach & Engagement:** SJV Blueprint is in the process of bringing on a dedicated team to engage with local community stakeholders in coordination with GSAs and other organizations to discuss the SJV Blueprint: new water sources, new conveyance, land repurposing, expanded beneficial use: groundwater recharge, wetland & riparian habitats.

- Near Term Investments for an Effective Drought Response – Letter to Gov. Newsom
- Land Repurposing – State Legislation

**Technical Committee:** A scope of work and cost estimate from ESA is being developed to ensure inclusion of east and west interests for a regulatory and permitting path forward for the

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<sup>13</sup> <https://www.waterblueprintca.com>

Blueprint. This would be a detailed plan listing of all permits needed, the approvals, the reports and documents essential to prepare and obtain from the Federal and/or State Agencies for the solutions provided. Blueprint will continue to engage with the Water Commission to inform them of its progress and has submitted a comment letter that highlighted State grants to construct infrastructure, balanced approach to water resources, low interest loans for farmers unable to farm and focus on inter-regional conveyance and habitat restoration.

The technical committee is working with sub basins (recently Madera and Tulare) and respective working groups on solution sets to be added to the EIA to illustrate reduced economic impacts. A critical part will be project proponents 'evaluation and development of these activities in coordination with the Blueprint. These solution sets will ideally have input and support from the coalition of interest groups formally engaging in the SJV Collaborative Action Program.

**SJV Water Collaborative Action Program (SJVWCAP):** Stanford University working in coordination with the Blueprint, Central Valley Community Foundation, Fresno State, NGOs and 60+ stakeholders are drafting a mutual convening to create a collaborative solution to the water issues we face in the SJV. The Planning group is establishing working groups to draft an inter-caucus Problem Statement and Solution Set. Blueprint committed \$50,000 to the SJVCAP.

**DAC Drinking Water Feasibility Study – FKC:** A funding application was submitted and includes participants FWA, FSU, Self Help, Sustainable Conservation and Leadership Council to study a five -county area within the Millerton Place of Use boundary related to surface water supply, recharge and drinking water supplies. DWR is continuing to work with the Blueprint group and has indicated funding for the study.

**WaterSmart:** The Water Blueprint was not selected by Reclamation for the 2021 WaterSmart Water Management Options Pilot (WMOP) Program. An application was submitted on February 17th and focused on increased conjunctive management and groundwater recharge. Blueprint obtained support letters from districts, water agencies, municipalities and elected. A debrief is being scheduled.

## **APPENDIX A**

**STATE WATER RESOURCES CONTROL BOARD  
RESOLUTION NO. 2021-****CONDEMNING RACISM, XENOPHOBIA, AND RACIAL INJUSTICE AND  
STRENGTHENING COMMITMENT TO RACIAL EQUITY, DIVERSITY, INCLUSION,  
ACCESS, AND ANTI-RACISM****WHEREAS:**

1. As part of the California Environmental Protection Agency (CalEPA), the shared mission of the State Water Resources Control Board (State Water Board) and nine Regional Water Quality Control Boards (Regional Water Boards), collectively Water Boards, is to preserve, enhance, and restore the quality of California's water resources and drinking water for the protection of the environment, public health, and all beneficial uses, and to ensure proper water resource allocation and efficient use for the benefit of present and future generations. In relation to this mission, the Water Boards accept responsibility for confronting structural and institutional racism and advancing racial equity. According to the Government Alliance on Race and Equity (GARE), racial equity occurs when race can no longer be used to predict life outcomes, and outcomes for all groups are improved.
2. Historically, government agencies used race to establish structures and systems that continue to deliver disparate outcomes, including wealth, health, and environmental inequities. Because race intersects with many, if not all, other marginalized identities, prioritizing and addressing racial inequities improves outcomes for other marginalized communities.
3. CalEPA's 2021 Pollution and Prejudice Story map demonstrates that historically redlined neighborhoods are "generally associated with worse environmental conditions and greater population vulnerability to the effects of pollution today." In addition, Black, Indigenous, and people of color are overrepresented in the neighborhoods that are the most environmentally degraded and are still experiencing severe racial wealth gaps caused by redlining and other land-use practices.
4. The Office of Environmental Health Hazard Assessment's (OEHHA's) CalEnviroScreen mapping tool identifies communities that are disproportionately impacted by a combination of environmental stressors and socioeconomic disadvantages. The tool's 2021 update reveals that the top 10 percent of least-polluted neighborhoods are 72 percent white, while the top 10 percent of most-polluted neighborhoods are 89 percent Black, Indigenous, and people of color.
5. In contrast, State of California workforce census data from 2020 show that 43% of the state's population is white, yet about 56% of the Water Boards' workforce and 68% of the Water Boards' management is white. Only 42% of the Water Boards' workforce and 32% of its management are Black, Indigenous, and people of color compared to 63% of the state's population.

6. Contaminated water sources disproportionately burden low-income communities and Black, Indigenous, and people of color communities throughout California, further exacerbating persistent inequities, which can be seen in data collected by the Human Right to Water Framework and Data Tool 1.0 (released January 2021).
7. In September 2012, with the enactment of Water Code section 106.3, California became the first state in the nation to legislatively recognize the human right to water. It states, in part, "...every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes."
8. In February 2016, to advance the implementation of Water Code section 106.3, the State Water Board adopted [Resolution No. 2016-0010](#), "The Human Right to Water as a Core Value and Directing Its Implementation in Water Board Programs and Activities." Resolution No. 2016-0010 includes direction for the Water Boards' staff to work with stakeholders to improve the State Water Board's administration of its programs and projects to realize the human right to water.
9. From 2016 to 2019, the North Coast, Central Coast, Central Valley, and Santa Ana Regional Water Boards adopted similar resolutions, further elevating and emphasizing the importance of the human right to water in the Water Boards' work and the need to improve administration of the Water Boards' programs and projects to realize the human right to water.
10. In March 2017, the State Water Board adopted [Resolution No. 2017-0012](#), "Comprehensive Response to Climate Change," directing a proactive approach to climate change in all State Water Board actions, including drinking water regulation, water quality protection, diversification of regional water supplies, and financial assistance. The effects of climate change—including extreme changes in water cycle patterns, flooding, sea level rise, and heat—are expected to become more severe every year, leading to threatened access to safe and affordable water, increased demand for limited water and wastewater infrastructure funding, and increased risk of cumulative, negative health and economic outcomes for all communities. Climate change impacts disproportionately affect Black, Indigenous, people of color and unsheltered communities.
11. From 2017 to 2018, the San Diego, Los Angeles, and Lahontan Regional Water Boards adopted similar resolutions to direct staff to address the impacts of climate change. In addition to specific climate change resolutions, the San Francisco Bay, Los Angeles and Central Valley Regional Water Boards have developed and implemented climate change action plans.
12. In recent years, California has passed critical legislation and bonds, administered and implemented by the Water Boards, to fund projects that remediate the harm, or threat of harm, to human health, safety, and the environment caused by existing or threatened surface water and groundwater contamination. These include, among others, Senate Bill (SB) 445 (2014), establishing the Site Cleanup Subaccount Program; the Water Quality, Supply, and Infrastructure Improvement Act of 2014

(Proposition 1); the California Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access For All Act of 2018 (Proposition 68); and SB 828 (2016), establishing the Drinking Water for Schools Grant Program. Many of these programs set aside or target specific funding for projects in disadvantaged and severely disadvantaged communities, thereby further advancing environmental and economic justice and the realization of safe, clean water for all.

13. In 2019, California enacted SB 200, establishing the \$130 million per year Safe and Affordable Drinking Water Fund. In conjunction with SB 200, the State Water Board created the Safe and Affordable Funding for Equity and Resilience (SAFER) Program to advance the human right to water. The SAFER Program encompasses regulatory, funding, and public engagement strategies to work toward long-term solutions for the estimated 1 million Californians without access to safe drinking water, thereby advancing environmental and economic justice.
14. In 2021, the State Water Board released the 2021 SAFER Drinking Water Needs Assessment, which (1) identifies California small water systems and domestic wells that are failing, or at risk of failing, to provide access to safe drinking water; (2) estimates the cost of interim and long-term solutions for these systems; and (3) determines the statewide funding gap and affordability challenges that may be barriers to implementing these solutions. There are approximately 345 systems that fail to meet the goals of the human right to water. In addition, the needs assessment identified 617 at-risk public water systems, 611 at-risk state small water systems, and 80,000 at-risk domestic wells. It also identified 13 federally regulated tribal water systems that failed to meet the goals of the human right to water and 22 at-risk tribal water systems.
15. Since 2018, the Water Boards have been participating in GARE, an international network of governmental organizations working to achieve racial equity and advance opportunities for all. The GARE network utilizes a racial equity model of change described as iterative stages of normalizing, organizing, and operationalizing.
16. Since 2019, the Water Boards' staff have been actively engaged in CalEPA's racial equity team, which is implementing the agency's "Plan to Achieve Racial Equity." Approximately 40 of the Water Boards' staff are participating across five sub-teams that are each focused on a specific outcome: (1) improve access to data and information on racial equity; (2) improve communication with communities and partners; (3) improve language access; (4) advance racial equity trainings for the CalEPA workforce; and (5) improve workforce hiring, retention, and promotion practices to advance racial equity within the environmental protection role that each board, department, and office shares with CalEPA.



17. In 2019, the Water Boards released the document, “Immediate Hiring Practices Action Plan for Advancing Workforce Diversity at the Water Boards” in alignment with CalEPA’s “Practices to Advance Racial Equity in Workforce Planning.” Both documents were developed to articulate the benefits of a diverse workforce and to identify practices to advance racial equity. The Water Boards’ plan directs hiring managers and supervisors to take specific short-term actions to improve workforce diversity while a more holistic plan is being developed.
18. In April and May 2020, CalEPA collaborated with GARE to survey staff of all CalEPA boards, departments, and offices, including the Water Boards, to establish baseline progress toward efforts to advance racial equity. Responses reveal that within the Water Boards’ workforce, the Water Boards are beginning to normalize conversations about racial equity by establishing the shared language, set of facts, and approaches required to advance racial equity. In addition, the summary report of the Water Boards’ staff responses indicates that more work is needed to further normalize racial equity, and it includes a specific recommendation for the Water Boards to center racial equity work on the perspectives and experiences of Black staff. Overall, the survey responses strongly support the need for additional training and tools for advancing racial equity and for stronger communication with staff.
19. During its August 18, 2020 meeting, the State Water Board directed staff to implement a racial equity initiative. Executive Director Sobeck established the Racial Equity Steering Committee and Working Group to advance the initiative. The Racial Equity Steering Committee’s charge is to ensure leadership remains committed to furthering racial equity and to direct the Working Group’s progress on implementing the following priorities: (1) establish a foundation of internal and external engagement that values listening and collaboration to drive action; (2) draft a resolution on racial equity to be considered for adoption by the State Water Board and also leveraged by the Regional Water Boards to adopt their own resolutions; and (3) develop racial equity strategies and action plans to drive the Water Boards’ efforts to institutionalize racial equity.
20. In November and December 2020, the Racial Equity Steering Committee and Working Group hosted four public listening sessions to solicit input on the challenges that Black, Indigenous, and people of color are facing and how the Water Boards can better facilitate equitable participation from these communities in their decision-making and policy development processes. Feedback from participants included several common themes, such as: a general distrust of government; feeling excluded from decision-making processes that ultimately affect them; not feeling heard when presenting issues to the Water Boards or that participation results in a change; a desire for more evidence that state government is committed to providing safe drinking water to disadvantaged communities; and concern that the Water Boards’ decision-makers and staff do not reflect the diversity of the communities they serve.
21. In March 2021, the Racial Equity Steering Committee and Working Group hosted listening sessions for the Water Boards’ staff to learn how the Water Boards can foster a workplace where all staff feel they belong and can contribute, and where

the impacts of institutional racism are being recognized, addressed, and dismantled. To encourage honest, open discussion, each session was facilitated by professional racial equity consultants. Several common themes emerged during the sessions, such as: a general lack of opportunities to increase diversity and promote inclusion within the workforce; a need for mandatory training for all the Water Boards' staff in the areas of racial equity, racism, implicit bias, and cultural competence; the importance of allocating resources to support racial equity efforts; and the need to bring a racial equity lens to the Water Boards' decision-making processes, including more meaningful opportunities for community involvement.

22. Although the Water Boards' racial equity and environmental justice work began prior to 2020, the national and worldwide backlash against racism toward Black people and related Black Lives Matter protests of 2020 accelerated and informed the Water Board's decision to develop an initiative, resolution, and subsequent action plan to address racial inequities within the Water Boards and through the Water Boards' work.
23. Historically, the Water Boards' programs were established over a structural framework that perpetuated inequities based on race. These inequities persist, and prior to this resolution, the Water Boards had not explicitly acknowledged the role racism has played in creating inequities in affordability and access to clean and safe water and in the allocation and protection of water resources. Toward reconciliation, the State Water Board now acknowledges:
  - a. White supremacy is a systemically and institutionally perpetuated system of exploitation and oppression of nations and peoples of color by white people for the purpose of maintaining and defending a system of wealth, power, and privilege. In the United States, white supremacy led to the genocide and forced relocation of Indigenous people to facilitate white resettlement and the enslavement of Black people for white economic gain. White supremacy has been served by many other government policies targeting people of color, including for example, race-focused immigration restrictions, the internment of Japanese Americans, exclusionary housing policies, and lack of investment in communities of color.
  - b. White supremacist ideologies have driven many governmental policies for centuries and have created persistent racial inequities and deeply entrenched systems of oppression. The impacts of federal, state, and local decision-making and policies made decades ago continue to impose challenges for Black, Indigenous, and people of color, who still grapple with the lasting effects of historical racial inequities stemming from those governmental decisions and policies.
  - c. The colonization, displacement, and murder of Indigenous people in the United States have contributed to the loss of watershed management practices that supported Indigenous people's traditional ways of life.

Watersheds are now largely managed in the context of the large-scale diversion of water for municipal, industrial, agricultural, and commercial beneficial uses to the detriment of traditional, local uses and the Indigenous people that depend on them.

- d. The historical seizures of land from Black, Indigenous, and people of color have had, and continue to have, long-standing impacts that extend beyond the loss of the land itself. These impacts include the loss of the associated water rights and other natural resources of value, lack of access to affordable and reliable governmental services, and forced relocation to areas with fewer or lower quality resources.
  - e. California government has played a role in historically and institutionally perpetuating racial inequities that Black, Indigenous and people of color continue to face. In California, race is a predictor of access to, and the quality of, the governmental services a person receives, including access to safe, clean water for drinking, and affordable services to support sanitation, and wastewater collection, treatment, and reuse. In fact, race is the strongest predictor of water and sanitation access.
  - f. To better represent and serve California's communities, the Water Boards must address the connection between water management and systemic and institutional racism.
24. On a community scale, race is strongly correlated with more severe pollution burdens. However, none of the Water Boards' policies, programs, or plans specifically consider or address racial inequities. As a government agency with a role in ensuring access to clean, safe, and affordable water for all Californians, the State Water Board recognizes the need to acknowledge racial inequity and to take action to address racial inequity within the agency and as part of the programs the Water Boards' carry out for the communities we serve.

THEREFORE, BE IT RESOLVED THAT:

The State Water Resources Control Board:

1. Condemns acts of racism, xenophobia, white supremacy, and institutional and systemic racism; adopts racial equity, diversity, and inclusion as core values; and acknowledges the role of government agencies — including the Water Boards — in redressing racial inequities and dismantling institutional and systemic racism.
2. Commits to making racial equity, diversity, inclusion, and environmental justice central to our work as we implement our mission so that the access the State Water Board creates, and outcomes it influences, are not determined by a person's race and the benefits are shared equitably by all people.

3. Commits to centering its work and decision-making on Black, Indigenous, and people of color who are disproportionately represented in the most vulnerable communities and in unsheltered populations, while ensuring the full benefits of the Water Boards' programs for all people.
4. Reaffirms our commitment to upholding California's human right to water law, upholding the State Water Board's human right to water resolution, and demonstrating that every human being in California, including Black, Indigenous, and people of color, deserves safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitation purposes.
5. Reaffirms our commitment to ensuring cleanup of contaminated soil, soil vapor and groundwater; control of wastes discharged to land and surface water; and restoration of impaired surface waters to protect public health and environmental quality in all communities, particularly communities of color disproportionately burdened by environmental pollution.
6. Commits to expanding implementation of the State Water Board's Climate Change Resolution to address the effects of sea-level rise and extreme hydrologic conditions, from drought to flooding, on Black, Indigenous, and people of color communities.
7. Directs staff to create a proposal by January 2022 to establish an Office of Equity, Diversity, and Inclusion to achieve a workplace, workforce, and work outcomes that reflect racial equity.
8. Directs staff to normalize conversations about racial equity and foster a workforce that competently integrates racial equity into our work by (1) developing and implementing training curricula for racial equity, diversity, inclusion, and environmental justice; (2) incorporating racial equity concepts into existing mandatory Water Boards training courses; (3) educating staff about Equal Employment Opportunity (EEO) laws and the Water Boards' EEO Office's process for preventing and responding to complaints of discrimination, harassment, bullying, or retaliation; (4) developing policies that will lead to a racially equitable and diverse workforce by ensuring the Water Boards' Immediate Hiring Practices Action Plan addresses recruitment, hiring, retention, promotion, succession planning, mentorship, STEM outreach to schools, and leadership development; and (5) partnering with other organizations to expand opportunities for community capacity building.
9. Directs staff to develop strategies for effectively reaching and engaging with Black, Indigenous, and people of color communities; involving Tribes, stakeholders, and other interested parties in our decision-making processes; providing accessible, open and transparent opportunities for people to participate in our public meetings, hearings, and workshops; improving our communications by addressing barriers to public participation, including language, digital, and time-of-day access; and meeting people in their communities and spaces to seek out their perspectives.

10. Directs staff to develop and implement a Racial Equity Action Plan that articulates a vision for racial equity and outlines specific actions the State Water Board will take to dismantle systems that perpetuate racial inequities while establishing new, resilient systems.
  - a. The plan shall include goals, objectives, actions, timelines, and metrics; incorporate all State Water Board divisions, offices, and programs; and address all aspects of our work, including, those detailed above in this resolution, as well as water quality control plans, policies, permits, enforcement, compliance assurance, contracting, funding, procurement, site remediation, monitoring, and water rights administration.
  - b. Staff shall advance a framework of transparency, accountability, and continuous improvement for our racial equity work by establishing metrics and using quantitative and qualitative data collection methods to measure and evaluate the Water Boards' progress toward implementing those metrics; equitizing our systems, practices, and policies; and diversifying the Water Boards' workforce.
  - c. Staff shall include a framework for analyzing how decisions and staff recommendations to the board may impact Black, Indigenous, and people of color communities.
  - d. Staff shall present the action plan to the Board no later than one year after adopting this resolution and report on implementation progress annually thereafter.
  - e. Staff shall provide updates on implementing the plan at least quarterly as part of the Executive Director's Report.
11. Encourages the nine Regional Water Boards to adopt this resolution, or a similar resolution that condemns racism, xenophobia, and racial injustice; affirms a commitment to equity, diversity, inclusion and anti-racism; and otherwise prioritizes this important work.

**CERTIFICATION**

The undersigned Clerk to the State Water Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on [Instruction: Insert date].

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Jeanine Townsend  
Clerk to the Board

## **APPENDIX B**

## Enhanced Water Use Reporting and Curtailment of Diversions due to Lack of Water Availability in the Sacramento – San Joaquin Delta Watershed

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In Title 23, Division 3, Chapter 2, Article 24, amend the title of Article 24, add Sections 876, 876.1, and 878.2, and amend Sections 877.1, 878, 878.1, 879, 879.1 and 879.2 to read:

### **Article 24. Curtailment of Diversions due to Protect Water Supplies and Threatened and Endangered Fish in the Russian River Watershed Drought Emergency**

#### **§ 876 [Reserved]**

#### **§ 876.1 Emergency Curtailments Due to Lack of Water Availability in the Sacramento/San Joaquin Delta Watershed**

- (a) This section applies to water diversions in the Delta Watershed as defined in section 877.1.
- (b) After the effective date of this regulation, when flows are determined to be insufficient to support all diversions, the Deputy Director as defined in section 877.1 may issue curtailment orders as defined in section 877.1 to water right holders and claimants in the Delta Watershed in order of water right priority, requiring the curtailment of water diversion under designated water rights and claims, except as provided in sections 878, 878.1, and 878.2.
- (c) Initial orders requiring curtailment or reporting as defined in section 877.1 will be mailed to each water right holder, claimant, or the agent of record on file with the State Water Board, Division of Water Rights. The water right holder, claimant, or agent of record is responsible for immediately providing notice of the orders to all diverters exercising the water right or claim covered by the orders. Communications regarding changes in water availability, including notification of when curtailments of water diversions are required and when curtailments are temporarily suspended or reimposed, will be provided by email to the State Water Board's Delta Drought email distribution list and by posting on the State Water Board's drought webpage. Notice provided by email and by posting on the State Water Board's drought webpage shall be sufficient for all purposes related to required curtailments and reporting pursuant to this section and section 879.



(d) In determining whether water is unavailable under a water right holder or claimant's priority of right and whether to order curtailment of water diversions under specific water rights, the Deputy Director will 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. Absent evidence to the contrary, riparian water rights are presumed senior to appropriative water rights for the purposes of curtailments pursuant to this section.
- (2) Monthly water right demand projections based on reports of water use for permits and licenses, or statements of water diversion and use, from calendar years 2018, 2019, or 2020.
- (3) Monthly water right demand projections based on information submitted in response to an informational order issued under section 879, subdivision (d).
- (4) Water supply projections based on the following sources of forecasted supply data:
  - (A) Monthly full natural flow forecasts contained in the Department of Water Resources' California Cooperative Snow Surveys Bulletin 120 Water Supply Forecast, where available;
  - (B) Daily full natural flow forecasts from the California Nevada River Forecast Center, where data is not available in the Bulletin 120 Water Supply Forecasts; and
  - (C) Other available and reliable data on projected or actual precipitation and runoff events that may inform water availability at a monthly or sub-monthly scale.
- (5) The Deputy Director may also consider any other pertinent, reliable, and publicly available information when determining water right priorities, water availability, water supply projections, and demand projections.

- (6) Evaluation of available water supplies against demands may be performed using the Water Unavailability Methodology for the Delta Watershed, or comparable tools. The Water Unavailability Methodology for the Delta Watershed is described in the Water Unavailability Methodology for the Delta Watershed report dated July 23, 2021, which is hereby incorporated by reference. Evaluation of available supplies against demands may be performed at the Hydrologic Unit Code level 4 Sacramento and Hydrologic Unit Code level 4 San Joaquin River watershed scale, or at the subwatershed scale. Subwatersheds within the Delta Watershed are defined in the July 23, 2021 Water Unavailability Methodology for the Delta Watershed summary report and were established based on Hydrologic Unit Code level 8 watersheds.
- (e) Upon receipt of an initial order pursuant to this section, a water right holder or claimant may submit information to the Deputy Director to support a proposed correction to the water right priority date of the right for which the order was issued. Any proposed priority date correction and all supporting information and analysis shall be submitted to the Deputy Director within 14 days of receipt of the initial order. Proposals for priority date corrections, supporting information, and analyses submitted more than 14 days after receipt of an initial order may be considered to support corrections in advance of future curtailments. The Deputy Director will review timely-provided proposals and supporting information and analyses as soon as practicable, make a determination regarding the appropriate water right priority date, and inform the affected water right holder or claimant of any appropriate update to the priority date used for purposes of water diversion curtailment orders. Before making any determinations regarding proposed corrections to the priority date of water right holders or claimants who divert within the Legal Delta, the Deputy Director will consult with the Delta Watermaster.
- (f) Water right holders and claimants in the Delta Watershed must either subscribe to the Delta Drought email distribution list referenced in subdivision (c) or frequently check the State Water Board's drought webpage to receive updated information regarding water diversion curtailment and reporting orders and water unavailability.
- (g) The Deputy Director may temporarily suspend curtailments for some diverters, in order of water right priority, when water availability increases or is projected to increase due to precipitation and runoff events. The Deputy Director will consider the best available information, such as water supply forecasts from the California Department of Water Resources and other similarly reliable sources, to

determine the geographic scope and duration of suspension. The Deputy Director will promptly consider reliable and publicly available information that supports suspension, extension of suspension, or reimposition of curtailments of water diversions.

(h) All curtailment orders issued under this section 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.

Authority: Sections 1058, 1058.5, Water Code

Reference: Cal. Const., Art. X, § 2; Sections 100, 100.5, 104, 105, 275, 1058.5, Water Code; *Stanford Vina Ranch Irrigation Co. v. State of California* (2020) 50 Cal.App.5th 976.

## **§ 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.
- (b) “Deputy Director” refers to the Deputy Director of the Division of Water Rights, or duly authorized designee, at the State Water Resources Control Board.
- (c) “Flood Control District” refers to the Mendocino County Russian River Flood Control and Water Conservation Improvement District.
- (d) “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.
- (e) “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.
- (f) “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) “Minimum human health and safety needs” refers to the amount of water necessary for prevention of 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 water uses including water for human consumption, cooking, or sanitation purposes. For the purposes of this article, water provided outdoors 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. 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 is consistent with a valid water right.
- (2) 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) 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) 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) Water supplies necessary to address immediate public health or safety threats, as determined by a public agency with health or safety expertise.
- (6) 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. Diversifiers 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) "State Water Board" refers to the State Water Resources Control Board.
- (i) "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) "Upper Russian River Watershed" refers to the area located in Mendocino and Sonoma Counties that drains towards the confluence of Dry Creek and the Russian River.
- (k) "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 Watershed Boundary Dataset which is incorporated by reference herein.
- (l) "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 876.1.

Authority: Sections 1058, 1058.5, Water Code

Reference: Cal. Const., Art., X § 2; Sections 100, 100.5, 104, 105, 106.3, 275, 1058.5, Water Code; *Environmental Defense Fund v. East Bay Muni. Util. Dist.* (1980) 26 Cal.3d 183.

## **§ 878. Non-Consumptive Uses**

Diversion and use described in this section 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 this section may not be required to curtail in response to a curtailment order under this article if their diversion and use of water does not decrease downstream flows. Any diverter wishing to continue diversion under this section ~~subdivision~~ 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 certification if the information provided is insufficient to support the statement or if more convincing evidence contradicts the claims. If a certification submitted pursuant to this section is disapproved, 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 ~~Russian River~~ 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 ~~Russian River~~.
- (c) For curtailment orders issued under sections 877.2 and 877.3, d Direct diversions 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 a 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.

- (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.

Authority: Sections 1058, 1058.5, Water Code

Reference: Cal. Const., Art. X, § 2; Sections 100, 187, 275, 348, Water Code

### **§ 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 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 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. 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), 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 are operating under the strictest existing conservation regime 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 of a public water supply under Water Code sections 350 et seq., 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, the continued diversion of water after issuance of a curtailment order for the diversion requires submission of a petition demonstrating compliance with the requirements of subdivisions (b)(2)(A)-(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.
  - (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 877.1.
- (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 "Guidance for Estimating Percentage Residential Use and Residential Gallons Per Capita Daily" dated September 22, 2020.
- (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.
- (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) 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 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) Diversion and use within the Russian River Watershed or Delta Watershed that deprives water for minimum human health and safety needs in 2021, or which creates unacceptable risk of depriving water for minimum human health and safety needs in 2022, 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 for diversions in the Lower Russian River Watershed ~~and~~, sections 877.3, 877.4, 877.5, and 877.6 for diversions in the Upper Russian River Watershed, and section 876.1 for diversions in the Delta Watershed.

Authority: Sections 1058, 1058.5, Water Code

Reference: Cal. Const., Art. X, § 2; Sections 100, 100.5, 104, 105, 106.3, 275, 1058.5, Water Code; *Environmental Defense Fund v. East Bay Muni. Util. Dist.* (1980) 26 Cal.3d 183; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463; *Stanford Vina Ranch Irrigation Co. v. State of California* (2020) 50 Cal.App.5th 976.

### **§ 878.2 Alternative Water Sharing Agreements**

Water users may propose alternatives to water diversion curtailment that achieve the purposes of the curtailment process described under section 876.1 by submitting a proposal to the Deputy Director. Proposals must describe the setting, the parties, the actions, and the purported benefits of the proposal in sufficient detail to demonstrate to the satisfaction of the Deputy Director that implementing the proposal will not injure non-party legal users of water or result in an unreasonable impact on fish and wildlife. In considering a proposal under this section, the Deputy Director may consult with other entities that may have technical or legal information that should be considered in evaluating such proposals, including but not limited to the California Department of Water Resources and United States Bureau of Reclamation. The Deputy Director will consult with the Delta Watermaster on any proposals among diverters within the Legal Delta. The Deputy Director may approve a proposal subject to conditions, including record keeping and reporting requirements. Diversions consistent with a proposal approved pursuant to this section are subject to this article, and violations of the terms of the approved proposal shall be subject to enforcement as a violation of this article or as an unauthorized diversion or use of water.

Notice of proposals and decisions under this section will be posted as soon as practicable on the State Water Board's Delta drought webpage. The Deputy Director may issue a decision under this section prior to providing notice. Any interested person may file a comment or objection to the proposal or decision with the Deputy Director with simultaneous service to the parties who submitted the proposal. The Deputy Director will

consider any comment or objection. The State Water Board may hold a hearing on any proposal to which parties have objected, after notice to all interested persons.

Authority: Sections 1058, 1058.5, Water Code

Reference: Sections 109, 1011, 1011.5, 1051.5, Water Code; *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224.

## **§ 879. Reporting**

- (a) All water right holders issued a curtailment order under ~~this article~~ section 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 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) All water users or water right holders whose continued diversion may be authorized under section 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. The required information may include, but is not limited to, the following:

- (1) The water right identification numbers under which diversions continue
- (2) How the diverter complies with any conditions of continued diversion, including the conditions of certification under section 878.1, subdivision (b)(1);
- (3) 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) Conservation and efficiency efforts planned, in the process of implementation, and implemented, as well as any information on the effectiveness of implementation;
- (5) Efforts to obtain alternate water sources;
- (6) 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) If the diversion is authorized under section 878.1, subdivision (d):
  - (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) 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) 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.

(c) 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) This subdivision applies to Delta Watershed curtailment orders and enhanced reporting to inform water unavailability determinations and the curtailment process described under section 876.1.

(1) All water right holders and claimants issued an initial order pursuant to section 876.1 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 876.1, 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.

(B) Subscribing to the State Water Board's Delta Drought email distribution list to receive updates directly or frequently checking the State Water Board's drought webpage; and

(C) Ceasing water diversions when curtailments are ordered, except to the extent that continuing diversions are authorized in accordance with section 878, 878.1 or 878.2.

(2) In addition to the requirements identified under subdivision (d)(1), the Deputy Director may require water right holders and claimants who have been issued an initial order under section 876.1 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, 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, including direct diversions and diversions to storage. Diversion volumes shall be provided in a daily, weekly, or monthly format, as identified in the order.
- (3) The Deputy Director may issue informational orders under this subdivision 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 informational order under this subdivision shall provide the requested information within the deadlines specified therein, including any recurring deadlines associated with ongoing reporting requirements as applicable. The Deputy Director 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 this subdivision shall be submitted in an online form maintained by the State Water Board and accessible through its website.
- (5) Failure to provide the information required under this subdivision within the deadlines specified in the order or any time extension granted by the Deputy Director 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.

Authority: Sections 1058, 1058.5, Water Code

Reference: Sections 100, 187, 275, 348, 1051, 1058.5, 1841 Water Code

### **§ 879.1. Conditions of permits, licenses and registrations**

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 in the Russian River Watershed from any watershed identified in this article.



Authority: Sections 1058, 1058.5, Water Code

Reference: Cal. Const., Art. X, § 2; Sections 275, 1253, 1058.5, Water Code; *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419.

## **§ 879.2. Compliance and Enforcement**

- (a) A diverter must comply with a curtailment order issued under this article, 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.
- (c) Diversion or use of water in the Lower Russian River Watershed or the Delta Watershed in violation of this article is a trespass under Water Code section 1052 and shall constitute evidence of diversion or use in excess of a water user's rights.
- (d) All violations of this article shall be subject to any applicable penalties under Water Code section 1058.5. Nothing in this section shall be construed as limiting the enforceability of or penalties available under any other applicable provision of law.

Authority: Sections 1058, 1058.5, Water Code

Reference: Cal. Const., Art. X, § 2; Sections 275, 1052, 1055, 1058.5, 1825, 1831, Water Code; *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419.

## **APPENDIX C**

# DRAFT

## STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2021-

### TO ADOPT AN EMERGENCY CURTAILMENT AND REPORTING REGULATION FOR THE SACRAMENTO-SAN JOAQUIN DELTA (DELTA) WATERSHED

#### WHEREAS:

1. California and the entire western United States are facing a significant drought in the wake of one of the driest periods on record, driven by climate change and unprecedented hydrologic conditions. Water supply in many parts of California, including the Delta watershed, is insufficient to meet demands and requires urgent action to ensure the protection of health, safety, and the environment;
2. On April 21, 2021, Governor Gavin Newsom issued a [Proclamation of a State of Emergency for Mendocino and Sonoma counties](#), in response to drought conditions in the Russian River watershed. On May 10, 2021, Governor Newsom issued an expanded Proclamation of a State of Emergency for 41 counties, including those within the Sacramento-San Joaquin Delta (Delta) watershed ([May 2021 Proclamation](#)), in response to drought conditions. The May 2021 Proclamation finds that it is necessary to act expeditiously to mitigate the effects of drought conditions in the Delta watershed, both to ensure the protection of health, safety, and the environment and to prepare for potential sustained drought conditions. On July 8, 2021, the Governor [expanded the emergency declaration](#) to 9 additional counties and called upon Californians to voluntarily reduce their water use by 15 percent;
3. The May 2021 Proclamation directs the State Water Resources Control Board (State Water Board or Board) to consider adopting an emergency regulation to curtail water diversions when water is not available at water right holders' priority of right or to protect releases of stored water in the Delta watershed. For purposes of approving an emergency regulation pursuant to this directive, the May 2021 Proclamation also suspends the California Environmental Quality Act (CEQA) in Public Resources Code, Division 13 (commencing with section 21000) and regulations adopted pursuant to that Division;
4. The Delta watershed has experienced two consecutive extremely dry years. Together, Water Years<sup>1</sup> 2020 and 2021 are expected to be the second driest two-year period on record, behind only 1976-77. As of July 20, 2021,

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<sup>1</sup> A water year is a 12-month period from October 1 to September 30 of the following year. For example, Water Year 2020 was from October 1, 2019 through September 30, 2020.

# DRAFT

cumulative precipitation for Water Year 2021 was approximately 47 percent of average across the Delta watershed, with precipitation in the Sacramento River watershed being 23.2 inches and precipitation in the San Joaquin River watershed being 18.3 inches. Earlier this year, the state also experienced unprecedented loss of snowmelt runoff, which was absorbed by dry soils or evaporated amid unusually warm temperatures before reaching streams and reservoirs. These conditions have resulted in reservoir storage levels that are significantly below average: as of July 20, 2021, storage levels in major reservoirs, specifically Shasta, Oroville, and Folsom reservoirs, are around 30 percent of capacity and below 50 percent of historical average storage conditions for that date;

5. There is an urgent need to address severe water shortages in the Delta watershed to protect water supplies necessary to meet human health and safety needs, preserve stored water needed to prevent salinity from the ocean from intruding into the Legal Delta and making water unusable for municipal, industrial, and agricultural purposes, and to minimize impacts to fish and wildlife. The Delta watershed is the state's largest surface water source, supplying two-thirds of Californians with at least some portion of their drinking water. It is also home to numerous fish, wildlife, and plant species listed as threatened, endangered, or special status under the state and federal Endangered Species Acts, as well as species that hold significant cultural importance to California tribes and are vital to the commercial and recreational fishing economy. Water quality within the Legal Delta relies on an intricate balance between freshwater flows and tidal actions. Leaving freshwater storage unprotected could result in severe salinity intrusion in the Legal Delta, rendering this critical water source unusable for humans and ecosystems alike;
6. Further, there is a need to ensure continued minimum human health and safety needs are met, notwithstanding the shortage conditions. The California Water Code declares water supplies for consumption, sanitation, and cooking as a human right (Wat. Code, § 106.3); identifies domestic use as the highest water use (Wat. Code, § 106); and provides water suppliers with authority to declare a water shortage emergency to allow sufficient water for human consumption, sanitation, and fire protection (Wat. Code, § 350). Additional efforts are needed in the Delta watershed this year to ensure that water right holders and claimants without other means to access basic health and safety supplies are able to continue to access water for these uses under critical drought conditions;
7. Water agencies across California have taken actions in response to the dry conditions, including reducing or eliminating contract water deliveries and implementing mandatory and voluntary conservation efforts. The Central Valley Project (CVP) and the State Water Project (SWP), the state's two major water supply projects operating reservoirs throughout the Delta

## DRAFT

watershed, have announced severe reductions in contract deliveries. In 2021, the U.S. Bureau of Reclamation (Reclamation), which operates the CVP, has made no allocation to agricultural service contractors and a 25 percent allocation, or the amount needed for minimum health and safety, to municipal and industrial contractors. The Department of Water Resources (DWR), which operates the SWP, has made a five percent allocation for both municipal and agricultural contractors. In addition to water supply reductions and conservation efforts, water users have requested and received approvals for temporary changes to regulatory requirements to extend limited supplies. Many water users have also pursued water transfers and purchases from willing sellers to make up for reduced supplies;

8. On March 22, 2021, the State Water Board sent [letters regarding ongoing dry conditions in most California watersheds](#) to all water right holders and claimants in the state regarding ongoing dry conditions in most California watersheds. These letters encouraged water right holders and claimants to plan and prepare for potential water shortages later this year. The letters also notified water right holders and claimants that accurate and timely reporting of water use data will help to provide critical information needed to manage the state's water resources;
9. On June 15, 2021, the State Water Board sent [Notices of Water Unavailability](#) to all 4,300 post-1914 appropriative water right holders in the Delta watershed and warned approximately 2,300 water users with more senior water right claims that continued drought later this summer could also impact their ability to divert. These notices were based on the output of the Water Unavailability Methodology for the Delta Watershed ([Water Unavailability Methodology](#) or Methodology), developed by compiling water rights demand data and comparing those demands against available supplies. The comparison of available and forecasted supplies against water rights demands allows for a determination of the water rights that face insufficient supplies during times of shortage;
10. Prior to sending the June 15 Notices of Water Unavailability, the Methodology upon which the notices were based was subject to a 14-day public review and comment period, including a [public workshop](#) on May 21, 2021, to explain the Methodology and receive public comments. Board staff also presented the Methodology at the June 1, 2021 Board Meeting as part of an Informational Item. The State Water Board has updated the Methodology twice, in response to public comments, in addition to updates made in response to feedback from the prior drought. On July 23, 2021, the State Water Board sent additional Notices of Water Unavailability to some senior water right claimants in the Delta watershed based on the Methodology showing insufficient supply to meet all demands;

# DRAFT

11. As appropriate, State Water Board staff may further update the July 23, 2021 Methodology to reflect best available information. Notice of any such updates will be provided through the Board's Delta Drought email distribution list and posting on the Board's drought website;
12. During the dire drought conditions currently being experienced in the Delta watershed, it is imperative that water right holders and claimants who do not have water available at their priority of right and do not have a need or obligation to provide water for minimum human health and safety uses cease diversions of water that is needed for more senior rights and to prevent unauthorized diversion of previously stored water needed for salinity control, human health and safety supplies, and minimal ecosystem protections;
13. Water Code section 1058.5 provides the State Water Board the authority to adopt emergency regulations in certain drought years or when the Governor proclaims a drought state of emergency in order to "prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion, of water, to promote water recycling or water conservation, to require curtailment of diversions when water is not available under the diverter's priority of right, or in furtherance of any of the foregoing, to require reporting of diversion or use or the preparation of monitoring reports";
14. Article X, section 2 of the California Constitution declares that the water resources of the state must be put to beneficial use to the fullest extent possible and the unreasonable use of water be prevented. Relevant to the current drought conditions, the California Supreme Court has clarified that "[w]hat may be a reasonable beneficial use, where water is present in excess of all needs, would not be a reasonable beneficial use in an area of great scarcity and great need. What is a beneficial use at one time may, because of changed conditions, become a waste of water at a later time." (*Tulare Irr. Dist. v. Lindsay-Strathmore Irr. Dist.* (1935) 3 Cal.2d 489, 567.) The reasonable use doctrine applies to the diversion and use of both surface water and groundwater, and it applies irrespective of the type of water right held by the diverter or user. (*Peabody v. City of Vallejo* (1935) 2 Cal.2d 351, 367.) This regulation is in furtherance of article X, section 2 during this drought emergency;
15. Adoption of an emergency regulation is necessary to address the immediate and dire water shortages in the Delta watershed. An emergency regulation will enable the State Water Board to act in a timely manner to enforce the water right priority system with respect to all water right holders and claimants and to protect critical water storage needed for minimum health and safety, salinity control in the Legal Delta, and some ecosystem protection;
16. The State Water Board is adopting the emergency regulation due to severe emergency drought conditions and the need for prompt action;

## **D R A F T**

17. The regulation will rely upon the current Methodology, including any updates to that Methodology, for curtailment decisions, as well as more real-time publicly available and reliable information to support sub-monthly suspension and re-imposition of curtailments due to precipitation and runoff events as appropriate. State Water Board staff will identify the specific sources used to support sub-monthly curtailment decisions as part of its email and website updates on curtailments;
18. The regulation supports cooperative agreements among water right holders and claimants in the Delta watershed to share or forebear the use of available water and avoid curtailment. Such agreements must not result in injury to other water right holders and claimants or cause unreasonable harm to fish and wildlife. Such agreements are expected to achieve the overall objectives that would otherwise be served by curtailment;
19. Emergency regulations adopted under Water Code section 1058.5 remain in effect for up to one year; and
20. Pursuant to Water Code section 7, the State Water Board is authorized to delegate authority to staff.

### **THEREFORE BE IT RESOLVED THAT:**

1. The State Water Board adopts California Code of Regulations, Title 23, Division 3, Chapter 2, Article 24, Sections 876, 876.1, and 878.2, and amendments to Sections 877.1, 878, 878.1, 879, 879.1 and 879.2, as appended to this resolution as an emergency regulation;
2. State Water Board staff will submit the regulation to the Office of Administrative Law (OAL) for final approval;
3. If, during the approval process, State Water Board staff, the State Water Board, or OAL determines that minor corrections to the language of the regulation or supporting documentation are needed for clarity or consistency, the State Water Board Executive Director, the Deputy Director for the Division of Water Rights, or their designee, may make such changes;
4. This regulation shall remain in effect for one year after filing with the Secretary of State unless the State Water Board determines that it is no longer necessary due to changed conditions, or unless the State Water Board renews the regulation due to continued drought conditions as described in Water Code section 1058.5;

## **D R A F T**

5. The State Water Board directs staff to process as expeditiously as possible any proposals for cooperative agreements which may be offered as alternatives to curtailments;
6. The State Water Board directs staff to publicly notice through the Board's email distribution list and posting on the drought website any changes to the Water Unavailability Methodology at least 24 hours prior to implementation. If those changes are substantial, State Water Board staff shall hold a workshop as soon as practical, which may be subsequent to implementation. Staff shall provide updates on the changes to the Water Unavailability Methodology during regularly scheduled Board Meetings; and
7. The State Water Board directs staff to engage with stakeholders by December 31, 2021, or as soon as practical to identify and explore other possible approaches that could be developed and implemented to address severe water supply shortages and related concerns, including reservoir storage, minimum health and safety supplies, and maintaining salinity control in the Legal Delta. Examples include, but are not limited to, a curtailment methodology similar to standard water right Term 91 that is currently included in more junior water right licenses and permits.

### **CERTIFICATION**

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on August 3, 2021.

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Jeanine Townsend  
Clerk to the Board



## **APPENDIX D**



July 9, 2021

**VIA EMAIL**

Chair Esquivel and Members of the State Water Resources Control Board  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814

Re: Protection of Stored Water and Enforcement of California's Water Rights System

Dear Chair Esquivel and Members of the State Water Resources Control Board:

On behalf of the water agencies that serve 40 million people, those who farm more than 6 million acres of land, and those responsible for 300,000 acres of wildlife refuges, the Tehama Colusa Canal Authority, San Luis & Delta-Mendota Water Authority, Friant Water Authority, and State Water Contractors (collectively, "CVP & SWP Agencies") request that you consider, as quickly as possible, immediate action to protect the beneficial uses of water in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary ("Bay-Delta Estuary"), including the releases of previously stored water by the Central Valley Project ("CVP") and State Water Project ("SWP"). Many of us have received a zero allocation for this year's Project water, or significantly reduced public health and safety deliveries, and we all recognize that unauthorized diversions of previously stored water harm CVP and SWP future supplies. The State Water Resources Control Board ("State Water Board") has the authority and the obligation to take action to protect this water.

**Action Is Required to Protect Reclamation's and DWR's Ability to Meet Current Requirements**

As you are aware, due to the extremely dry conditions this year, the United States Bureau of Reclamation ("Reclamation") and California Department of Water Resources ("DWR") are not able to achieve the purposes established for the CVP and SWP. Among others, the urban, agricultural, fish, and wildlife uses served by the CVP and SWP are suffering. The CVP & SWP Agencies are concerned that suffering is exacerbated by the unauthorized diversion and use of previously stored water by others outside of the CVP and SWP and severely impact Reclamation's and DWR's ability to meet current and future regulatory requirements.

The CVP & SWP Agencies are concerned that the circumstances forewarned by the State Water Board, in its recent order approving Reclamation's and DWR's temporary urgency change petition, have been occurring and will continue to occur, absent action by the State Water Board:

Currently, the Petitioners [Reclamation and DWR] hold primary responsibility for meeting Bay-Delta Plan flows and salinity requirements as part of D-1641. During times of limited supplies like this year, meeting those requirements can require significant contributions of previously stored water releases, both due to limited natural flows and due to other water users diverting water when it is not available under their water rights. These circumstances deplete reservoir storage, and in years like this year when reservoir storage is at critically low levels, create significant concerns for temperature management, health and safety water supplies, and salinity management in the Delta if dry conditions persist.

(June 1, 2021 Order Conditionally Approving a Petition for Temporary Urgency Changes to License and Permit Terms and Conditions Requiring Compliance with Delta Water Quality Objectives in Response to Drought Conditions, page 7.) Indeed, depletions in the Delta have been exceeding conservative forecasts and levels that occurred in previous droughts. The unabated in-Delta depletions impair the ability of Reclamation and DWR to protect reservoir storage and meet in-Delta water quality objectives, including targets for temperature management.

Allowing these circumstances to continue and worsen would be inconsistent with the Governor's recent direction to state agencies to take action to conserve water upstream, protect carry-over storage, and protect water transfers. (May 10, 2021 Drought Proclamation.)

### **The State Water Board Has the Hydrologic and Hydrodynamic Data to Support Action**

More than twenty years ago, the State Water Board acknowledged that there is insufficient water available during certain months of the year to supply riparian water right holders in the southern Delta in certain year types. (Revised D-1641 at p. 33.) Responding to objections from South Delta Water Agency ("SDWA") to a petition to support the San Joaquin River Agreement, the State Water Board rejected claims of injury by SDWA. The State Water Board explained:

The fundamental issue with respect to SDWA's claim that its members have riparian rights that could be impaired by the proposed changes, therefore, is whether there is sufficient natural flow to satisfy the diversion requirements of riparian right holders in the southern Delta.

(Revised D-1641 at p. 30.) After reviewing evidence, including evidence presented by SDWA, and making assumptions that favored SDWA, the State Water Board rendered three conclusions:

1. On average, insufficient water is available to supply the southern Delta in Below Normal, Dry and Critical Dry years in August, September and October.
2. On average, sufficient water is available in September only in Wet Years.

3. Insufficient water is available in July during 16 percent of years, in August during 56 percent of years, in September during 78 percent of years, and in October during 70 percent of years.

(*Id.* at p. 33.) Given the current water year's classification as Critically Dry, there is no doubt that this is a year in which there is insufficient water to support the diversion of water in the southern Delta under riparian rights.

Moreover, current hydrologic and hydrodynamic data demonstrate that more water is being diverted from the Delta than natural flow to support such diversions. In DWR's June 28, 2021 Delta Operations Summary, DWR reports 8,859 cubic feet per second ("cfs") of water flowing into the Delta, the majority of which is previously CVP and SWP stored water releases. Reclamation and DWR are making 3,500 cfs available for outflow and are pumping a total of 900 cfs through the C.W. "Bill" Jones and Harvey O. Banks pumping plants. (See attached DWR Delta Operations Summary for June 28, 2021.) Using simple flow balance, in-Delta depletions are estimated to be 4,450 cfs, which exceeds the total outflow and CVP/SWP combined pumping. (*Id.*) The rights asserted by those within the Delta do not support the current level of depletions, and neither in-Delta riparian nor appropriation water right holders are entitled to divert previously stored water under their water rights. (*El Dorado Irr. Dist. v. SWRCB* (2006) 142 Cal.App.4th 937, 962, 976; see also *Phelps v. SWRCB* (2007) 157 Cal.App.4th 89, 107, 111.) Because of unabated depletions in the Delta, Reclamation and DWR have been required to increase their release of CVP and SWP water from storage and/or reduce the amount of water pumped at the Jones and Banks pumping plants, depriving the CVP and SWP of critical water supplies and placing at risk the ability of Reclamation and DWR to meet the terms and conditions of their water rights, and specifically those intended to protect the Bay-Delta Estuary.

### **The State Water Board has the Authority to Take Action**

We encourage the State Water Board to act immediately and protect the previously stored CVP and SWP water and ensure all water rights are exercised in accordance with the law. The State Water Board must take action, using best available data and respecting due process, to stop unlawful appropriation of previously stored CVP and SWP water or other appropriations not supported by law and hydrology.

We support the State Water Board's efforts to collect data to inform water rights administration, and encourage it to improve upon the data collection effort it began during the last drought. Action is required *now* to improve upon existing data and expedite decision making.

### **Conclusion**

There is no doubt that the task before the State Water Board is a difficult one. The State Water Board must take immediate action to protect CVP and SWP water flowing through the Delta. It must also continue to shore up data collection so it can be better prepared to take action in future droughts.

For all the reasons outlined in this letter, the CVP & SWP Agencies respectfully request that the State Water Board take immediate action to protect the beneficial uses of water in the Bay-Delta Estuary by protecting previously stored water from unauthorized diversions.

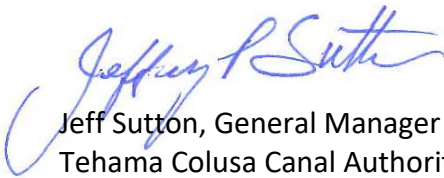
Regards,



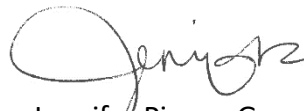
Federico Barajas, Executive Director  
San Luis & Delta-Mendota Water Authority



Jason Phillips, Chief Executive Officer  
Friant Water Authority



Jeff Sutton, General Manager  
Tehama Colusa Canal Authority



Jennifer Pierre, General Manager  
State Water Contractors

cc: Ernest Conant  
Karla Nemeth  
Eileen Sobeck  
Kristin White

From: [DWR\\_OCO\\_Export\\_Management](mailto:DWR_OCO_Export_Management@LISTSERVICE.CNRA.CA.GOV)  
To: [DWR\\_DELTA\\_OPERATIONS\\_SUMMARY@LISTSERVICE.CNRA.CA.GOV](mailto:DWR_DELTA_OPERATIONS_SUMMARY@LISTSERVICE.CNRA.CA.GOV)  
Subject: Delta Operations Summary for July 07, 2021  
Date: Wednesday, July 7, 2021 9:10:08 AM

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**PRELIMINARY DATA**

**SUBJECT TO REVISION WITHOUT NOTICE**

**EXECUTIVE OPERATIONS SUMMARY ON 7/7/2021**

This summary, State Water Project informational data, and data for previous 30 days can also be found at:  
<https://water.ca.gov/Programs/State-Water-Project/Operations-and-Maintenance/Operations-and-Delta-Status>

**SCHEDULED EXPORTS FOR TODAY**

Clifton Court Inflow = 100 cfs  
Jones Pumping Plant = 800 cfs

**ESTIMATED DELTA HYDROLOGY**

Total Delta Inflow ~ 8,859 cfs  
Sacramento River = 7,142 cfs  
San Joaquin River = 1,334 cfs

**DELTA OPERATIONS**

Delta Conditions = Balanced  
Delta x-channel Gates (% of day is open) = 100%  
Outflow Index ~ 3,500 cfs  
% Inflow Diverted = 10.3% (3-day avg)  
X2 Position (yesterday) > 81.0 km  
Controlling Factor(s) = Delta WQ  
OMR Index Daily Value = -1,400 cfs

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**RESERVOIR STORAGES (AS OF MIDNIGHT)**

Shasta Reservoir = 1,687 TAF  
Folsom Reservoir = 275 TAF  
Oroville Reservoir = 1,080 TAF  
San Luis Res. Total = 625 TAF  
SWP Share = 514 TAF

Reservoir data and reports are available at:  
<http://cdec.water.ca.gov/reservoir.html>

**RESERVOIR RELEASES**

Keswick = 9,250 cfs  
Nimbus = 1,300 cfs  
Oroville = 3,000 cfs

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If you have any questions regarding the preliminary data  
in this report, please contact [OCO\\_Export\\_Management@water.ca.gov](mailto:OCO_Export_Management@water.ca.gov)

## **APPENDIX E**



July 29, 2021

**Via Email – [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)**

Ms. Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814

Re: 8/3/2021 BOARD MEETING – ITEM #5 (Consideration of a proposed Resolution to adopt an Emergency Curtailment and Reporting Regulation for the Sacramento-San Joaquin Delta (Delta) Watershed)

Dear Ms. Townsend,

This letter is submitted on behalf of the San Luis & Delta-Mendota Water Authority, Friant Water Authority, and Tehama Colusa Canal Authority ("Water Authorities") regarding Item #5, Consideration of a proposed Resolution to adopt an Emergency Curtailment and Reporting Regulation for the Sacramento-San Joaquin Delta (Delta) Watershed, at the upcoming August 3, 2021 meeting of the State Water Resources Control Board ("State Water Board").

The Water Authorities have reviewed the State Water Board's proposed "Resolution No. 2021-\_\_\_\_ to Adopt an Emergency Curtailment and Reporting Regulation for the Sacramento-San Joaquin Delta (Delta) Watershed" and the draft regulations that would add or revise sections 876.1, 877.1, 878, 878.1, 878.2, 879, 879.1, and 879.2 of Title 23 of the California Code of Regulations ("Draft Emergency Regulations"). We appreciate the State Water Board's attention to our prior request for action to protect releases of previously stored water by the Central Valley Project ("CVP") and water transfers that are moving through the Delta. We encourage the State Water Board to take action to protect previously stored water and offer minor amendments to the Draft Emergency Regulations.

Given the underlying lack of precipitation and unanticipated reduction in the amount of runoff into reservoirs and streams this year compared to forecasts, action to curtail unauthorized diversions has become increasingly necessary to protect the United States Bureau of Reclamation's ("Reclamation") ability to achieve the urban, agricultural, and fish and wildlife



purposes established for the CVP that are met through releases of previously stored water. Despite only having the responsibility of managing a portion of flows in the Delta watershed, Reclamation (with the California Department of Water Resources) holds primary responsibility for meeting Bay-Delta Plan objectives, and unabated, unauthorized in-Delta diversions have already significantly impaired Reclamation's ability to successfully meet those objectives and protect storage in CVP reservoirs, as detailed in the operations plan conditionally approved by the State Water Board Executive Director. Allowing these unauthorized diversions to continue is inconsistent with the Governor's direction to state agencies to take action to conserve water upstream, protect carry-over storage, and protect water transfers. (May 10, 2021 Drought Proclamation.) In addition, unauthorized diversions of previously stored water pose great risk to CVP future supplies, which would have additional impacts to the Water Authorities' member agencies that are already suffering in the current drought.

The Water Authorities offer the following comments regarding the proposed Resolution and Draft Emergency Regulations. First, the Draft Emergency Regulations, Section 876.1, should be revised to clarify that the curtailments do not apply to diversions under valid contract right, authorized water transfers, or to water user storage. In contrast, the curtailments should apply to enforce against diversions of natural flows and unauthorized diversions of previously stored Project water. Second, Section 878.2, should contain specific time frames for the Deputy Director's consideration of alternative water sharing agreements. Third, the State Water Board should consider revising section 4 of the proposed Resolution that states the regulation would remain in effect for one year after filing with the Secretary of State. Given the potential for increased precipitation later in the calendar year, a shorter term seems appropriate, with an option for the State Water Board to extend the term if conditions remain dry and demand remains high. Finally, we recommend the State Water Board continue to consider comments provided by interested parties on related issues.

We appreciate the direction in the proposed Resolution that staff should engage with stakeholders to identify and explore other approaches to address severe water supply shortages and related concerns in the near future. (See proposed Resolution, § 7.) That process as well as continued data collection efforts will provide important opportunity for engagement, increase transparency, and provide additional information on the appropriation of water.

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July 29, 2021

Page 3 of 3

In closing, we encourage the State Water Board to act swiftly to protect previously stored and transfer water and ensure all water rights are exercised in accordance with the law.

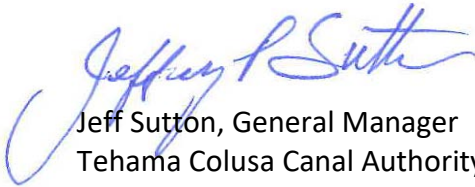
Regards,



Federico Barajas, Executive Director  
San Luis & Delta-Mendota Water Authority



Jason Phillips, Chief Executive Officer  
Friant Water Authority



Jeff Sutton, General Manager  
Tehama Colusa Canal Authority

cc: [Bay-Delta@waterboards.ca.gov](mailto:Bay-Delta@waterboards.ca.gov)

Ernest Conant

Kristin White

Russell Callejo