

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER WR 2015-0039-DWR

CURTAILMENT ORDER

In the Matter of Diversion of Water from

ANTELOPE CREEK TRIBUTARY TO THE SACRAMENTO RIVER

IN

TEHAMA COUNTY

BACKGROUND

1. On April 25, 2014, Governor Edmund G. Brown Jr. (Governor Brown) issued a Proclamation of a Continued State of Emergency (April 2014 Proclamation) to strengthen the state's ability to manage water and habitat effectively in drought conditions and called on all Californians to redouble their efforts to conserve water. The April 2014 Proclamation finds that the continuous severe drought conditions present urgent challenges across the state, including water shortages in communities and for agricultural production, increased wildfire activity, degraded habitat for fish and wildlife, threat of saltwater contamination, and additional water scarcity if drought conditions continue into 2015. The April 2014 Proclamation also suspends the environmental review required by the California Environmental Quality Act to allow drought emergency regulations and other actions to take place as quickly as possible.
2. The April 2014 Proclamation refers to Governor Brown's Proclamation No. 1-17-2014, issued on January 17, 2014, declaring a drought State of Emergency (January 2014 Proclamation) to exist in California due to severe drought conditions. The January Proclamation finds that dry conditions and lack of precipitation present urgent problems to drinking water supplies and cultivation of crops, which put farmer's long-term investments at risk. The conditions also threaten the survival of animals and plants that rely on California's rivers, including many species in danger of extinction. The January Proclamation also calls on all Californians to reduce their water usage by 20 percent.
3. On December 22, 2014, in light of the continued lack of rain, Governor Brown issued Executive Order B-28-14, which extends the California Environmental Quality Act suspension through May 31, 2016 for issuance of drought emergency regulations, among other actions.
4. On April 1, 2015, Governor Brown issued Executive Order B-29-15 to require a statewide reduction in potable urban water usage and other water conservation measures, increased enforcement against water waste, investment in new water management technologies, and streamlining government response to the severe drought conditions. The Executive Order finds California's water supplies continue to be severely depleted and the current drought, which has the distinct possibility to stretch into a fifth straight year in 2016 and beyond, continues to present urgent challenges including: drinking water shortages, diminished water for agricultural production, degraded habitat for fish and wildlife species, increased wildfire risk, and the threat of saltwater contamination to fresh water supplies in the Sacramento-San Joaquin Bay Delta.

5. On March 17, 2015, the State Water Board adopted an emergency regulation for Curtailment of Diversions due to Insufficient Flow for Specific Fisheries for Mill, Deer, and Antelope Creeks (California Code of Regulations, title 23, sections 877 through 879.2¹) (Regulation). The Office of Administrative Law reviewed and approved the Regulation on March 30, 2015. The Regulation is effective March 30, 2015 to December 29, 2015. The Regulation establishes drought emergency minimum flow requirements for the protection of specific runs of federal- and state-listed anadromous fish in Mill Creek, Deer Creek, and Antelope Creek. The Regulation provides that diversions from Mill Creek, Deer Creek, and Antelope Creek are unreasonable if those diversions will cause flows to drop below specified minimum flows. Under the Regulation, diversions will be curtailed as appropriate to maintain those minimum flows, with the exception of diversions necessary for minimum health and safety needs. The diversion or use of water in violation of the Regulation is an unreasonable diversion or use and a violation of Water Code section 100.
6. Pursuant to section 877, the State Water Board has determined that it is a waste and unreasonable use under Article X, section 2 of the California Constitution to continue diversions that would cause or threaten to cause flows to fall beneath the drought emergency minimum flows provided in subdivision (c) of section 877, except as provided for minimum health and safety needs in accordance with section 878.1.
7. Los Molinos Mutual Water Company entered into a voluntary cooperative agreement with the California Department of Fish and Wildlife (CDFW) on April 8, 2015 to voluntarily curtail some diversions from Antelope Creek. The terms of the agreement would have the potential to provide comparable protection to the fisheries as the flows in section 877 if the agreement covered a significant percentage of the water diverted in the watershed.
8. Pursuant to section 877, subdivision (c), the requirements of the section shall only go into effect if the Executive Director determines that any agreements in any applicable watersheds entered into by diverters, the National Marine Fisheries Service (NMFS), and CDFW either do not cover substantially all of the water diverted in the watershed or that the agreements are no longer in effect. On October 30, 2015, the Executive Director of the State Water Board determined that the voluntary cooperative agreements entered into by the Los Molinos Mutual Water Company do not cover substantially all of the water diverted in the Antelope Creek watershed, as provided in section 877, subdivision (c).
9. Pursuant to section 877, subdivision (b), the Deputy Director for the Division of Water Rights (Deputy Director) has delegated authority to issue a Curtailment Order upon a determination that without curtailment of diversions flows are likely to be reduced below the drought emergency minimum flows specified in section 877, subdivision (c).
10. Central Valley spring-run Chinook salmon (*Oncorhynchus tshawytscha*) (CV SR salmon) are listed as threatened under the state and federal Endangered Species Acts, and California Central Valley steelhead (*Oncorhynchus mykiss*) (CCV steelhead) are listed as threatened under the federal Endangered Species Act (16 U.S.C. § 1531 et seq.).
11. On October 9, 2015, the CDFW and NMFS submitted a memorandum to the Deputy Director confirming the presence of adult CCV steelhead in the Upper Sacramento River Basin, and the presence of juvenile CV SR salmon and juvenile CCV steelhead in Deer and Antelope Creeks. The memorandum also confirms that current agricultural diversions on Deer and Antelope Creeks have resulted in dewatering of stream sections in the lower reaches of these creeks between the confluence with the Sacramento River and the Edwards/Los Molinos Mutual

¹ All further section references are to California Code of Regulations, title 23, unless otherwise indicated.

diversion dam. The conditions created by reduced flows from diversions in Antelope Creek prohibit adult CCV steelhead currently migrating in the Sacramento River from entering Antelope Creek and gaining access to spawning habitat upstream of the Edwards/Los Molinos Mutual diversion dam. Juvenile CV SR salmon and juvenile CCV steelhead are prevented from reaching the Sacramento River. The memorandum notes that historical data and trapping data show that steelhead migration begins in July and peaks in late September and early October. Pursuant to section 877, subdivision (a), for the protection of threatened and endangered fish and due to the ongoing drought and environmental conditions, the CDFW and NMFS request that the State Water Board curtail Antelope Creek diversions no later than 8:00 AM on November 1, 2015.

12. Pursuant to section 877, subdivision (c)(3)(C)(i), base flows from November 1 through March 31 of 35 cubic feet per second (cfs) or full flow without diversions, whichever is less, are required in Antelope Creek when adult CCV steelhead are present.
13. Pursuant to section 877, subdivision (c)(3)(D)(i), base flows from November 1 through May 30 of 15 cfs or full flow without diversions, whichever is less, are required in Antelope Creek when juvenile CV SR salmon or juvenile CCV steelhead are present and adult CV SR salmon or adult CCV steelhead are not present.
14. On October 30, 2015, the Antelope Creek minimum flow measured downstream of the Edwards/Los Molinos Mutual Diversion Dam at the State Water Board Antelope Creek Gauge near Cone Grove Park was 19 cfs.
15. Attachment A attached hereto is a summary of available water rights data on Antelope Creek that was assembled from the State Water Board's electronic water rights information management system (eWRIMS) and Report Management System (RMS) queries.
16. Pursuant to section 877, subdivision (d)(2), the State Water Board has established an e-mail distribution list that water right holders may join to receive drought notices and updates regarding curtailments. Notices provided by e-mail or by posting on the State Water Board's drought web page shall be sufficient for all purposes related to drought notices and updates regarding curtailments.

FINDINGS

1. Section 877, subdivision (c)(3) of title 23 of the California Code of Regulations establishes drought emergency minimum flows for Antelope Creek under certain conditions.
2. The conditions under which the drought emergency minimum flows identified in section 877, subdivision (c) apply in Antelope Creek are now in effect as threatened species, including adult and juvenile CCV steelhead and juvenile CV SR salmon, are present at this time.
3. The Deputy Director has determined that without curtailment of diversions from Antelope Creek the flows in Antelope Creek have been, and are likely to continue to be, reduced below the drought emergency minimum flows specified in section 877 subdivision (c)(3).

IT IS HEREBY ORDERED

1. All water rights in the Antelope Creek watershed, including but not limited to those identified in Attachment A, are subject to curtailment pursuant to California Code of Regulations, title 23, sections 877 through 879.2 and shall, no later than 8:00 AM on November 1, 2015, cease or reduce their diversions from Antelope Creek to ensure the drought emergency minimum flows specified in section 877, subdivision (c)(3) are satisfied through March 31, 2016, or until the Deputy Director suspends the Curtailment Order under section 877, subdivision (c)(3)(E), as follows:
 - (A) All water rights are curtailed under this Order except as provided in sections 878 (non-consumptive uses), 878.1 (minimum health and safety needs), and 878.2 (local cooperative solutions).
 - (B) All diverters on Antelope Creek shall bypass 35 cfs or full natural flow without diversion, whichever is less, in order to obtain/maintain base flows for adult CCV steelhead salmon migration. Flows in excess of the 35 cfs base flow can be diverted in accordance with priority and basis of right, except as identified in paragraph 1(A), above. The base flows for adult CCV steelhead migration shall be satisfied through March 31, 2016 unless the Deputy Director suspends the Curtailment Order or the Deputy Director receives notification from the CDFW or NMFS that adult CCV steelhead migration has ended.
 - (C) Upon notification to the Deputy Director from the CDFW or NMFS that adult CCV steelhead migration has ended but that juvenile CV SR salmon or juvenile CCV steelhead are present, base flow requirements will be reduced to 15 cfs pursuant to section 877, subdivision (c)(3)(D). At that time, all diverters on Antelope Creek shall bypass 15 cfs or full natural flow without diversion, whichever is less, in order to maintain base flows for juvenile CV SR salmon or juvenile CCV steelhead migration. Flows in excess of the 15 cfs base flow can be diverted by water rights holders in accordance with priority and basis of right, except as identified in paragraph 1(A), above.
2. This Order shall be effective beginning on November 1, 2015 at 8:00 AM.
3. In accordance with section 877 subdivision (d), water rights holders or agents of record who receive this Order are responsible for immediately providing this Order to all diverters exercising a water right on Antelope Creek. Los Molinos Mutual Water Company is responsible for immediately providing this Order to all water rights holders to which it provides water under the curtailed water rights.
4. All water users or water right holders receiving this Order are required, within five days of issuance of this Order, to submit under penalty of perjury a certification in accordance with section 879.
5. In accordance with section 879.2, diversion or use in violation of this Order constitutes an unauthorized diversion or use. Violations of this Order shall be subject to further enforcement and any applicable penalties including pursuant to Water Code sections 1052, 1831, 1845 and 1846. To the extent of any conflict between the requirements of this Order and any other applicable orders, notices of curtailment or conditions of approval, the diverter must comply with the requirements that are most stringent.
6. Reservation of Enforcement Authority and Discretion: Nothing in this Order is intended to or shall be construed to limit or preclude the State Water Board from exercising its authority under any statute, regulation, ordinance, or other law, including but not limited to, the authority

to bring enforcement against diverters for unauthorized diversion or use in violation of Water Code section 1052.

7. Regulatory Changes: Nothing in this Order shall excuse individual water right holders from meeting any more stringent requirements that may be imposed by applicable legally binding legislation, regulations or water right permit requirements. This Order does not authorize any act which results in the taking of a threatened, endangered, or candidate species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this Order, the diverter shall obtain any required incidental take authorization prior to undertaking the activity for which the authorization is required.

STATE WATER RESOURCES CONTROL BOARD



Barbara Evoy, Deputy Director
Division of Water Rights

Dated: October 30, 2015