

EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA

EXECUTIVE ORDER N-4-23

WHEREAS on April 21, 2021, May 10, 2021, July 8, 2021, and October 19, 2021, I proclaimed States of Emergency to exist due to drought conditions; and

WHEREAS the ongoing effects of climate change contribute to aridification in California, but also contribute to large swings between extreme wet and extreme dry conditions; and

WHEREAS these conditions magnify uncertainty in hydrologic forecasting and exacerbate drought impacts on our communities, environment, and economy, with particular impacts on groundwater basins, local water supplies, and ecosystems; and

WHEREAS the ongoing drought continues to have significant, immediate impacts on communities with vulnerable water supplies, farms that rely on irrigation to grow food and fiber, groundwater basins, and fish and wildlife that rely on stream flows and cool water; and

WHEREAS since I issued Executive Order N-3-23 on February 13, 2023, powerful winter storms that hit California beginning in late February have improved drought conditions in some regions, but severe drought conditions remain in much of Northern California, the Klamath River basin, and the Colorado River basin, and many groundwater basins remain depleted from overreliance and successive multi-year droughts; and

WHEREAS the March 3, 2023, snow survey conducted by the Department of Water Resources found that most regions of the Sierra Nevada are above average for snow water content, and some regions are nearing record amounts of snow, with significant snow since March 3 and more snow forecast in the next week; and

WHEREAS the upcoming significant snowmelt runoff creates both risk, in the form of catastrophic flooding if warm storms and rising seasonal temperatures cause the snowpack to melt rapidly, and opportunity, in the form of groundwater recharge resulting from snowmelt runoff that can mitigate ongoing drought impacts on depleted groundwater aquifers; and

WHEREAS groundwater use accounts for 41 percent of the State's total water supply on an average annual basis but as much as 58 percent in a critically dry year, and approximately 85 percent of public water systems rely on groundwater as their primary supply; and

WHEREAS capturing and storing storm and snowpack runoff underground to recharge aquifers is an important strategy to help regions stabilize water supplies in the face of hydrologic extremes; and

WHEREAS state agencies have created streamlined permitting pathways to enable groundwater recharge that augments natural aquifer recharge, while protecting the environment and other water users, but more opportunities exist to facilitate groundwater recharge; and

WHEREAS existing law requires that persons seeking to divert water from streams and rivers to lands where it can recharge groundwater and be beneficially used, including for drinking water and agricultural supplies, must obtain a water right permit from the State Water Resources Control Board (Water Board), but there can be additional opportunities for diversion of flood flows for groundwater recharge that do not adversely affect more senior water users, fisheries, or the environment;

WHEREAS to protect public health and safety, it is critical the State take certain immediate actions without undue delay to prepare for and mitigate the effects of the drought and potential flood conditions, and under Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this Order would prevent, hinder, or delay the mitigation of the effects of the drought conditions.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes, including the California Emergency Services Act, and in particular, Government Code sections 8567, 8571, and 8627, do hereby issue the following Order to become effective immediately:

IT IS HEREBY ORDERED THAT:

1. The orders and provisions contained in my State of Emergency Proclamations dated April 21, 2021, May 10, 2021, July 8, 2021, and October 19, 2021, and Executive Orders N-10-21 (July 8, 2021), N-7-22 (March 28, 2022), and N-3-23 (February 13, 2023), remain in full force and effect, except as modified by those proclamations and orders and herein. State agencies shall continue to implement all directions from those proclamations and orders and accelerate implementation where feasible.
2. To protect health, safety, and the environment during this drought emergency, to accelerate groundwater recharge, and to reduce the risks of local and regional catastrophic flooding, the following are suspended for diversions of flood flows that meet all requirements in paragraph 3:
 - a. Chapter 6 (commencing with section 1600) of division 2 of the Fish and Game Code, and regulations adopted pursuant to that chapter;
 - b. Division 13 (commencing with Section 21000) of the Public Resources Code, and regulations adopted pursuant to that division; and
 - c. Part 2 (commencing with section 1200) of division 2 of the Water Code, exclusive of section 1225, and regulations adopted pursuant to that part, such that applications and permits for water rights shall not be required for such diversions, nor shall such diversions create new water rights or modify existing water rights.

3. The suspensions created by Paragraph 2 shall apply to diversions of flood flows as to which all of the following conditions are met:
- a. The diversion of flood flows must occur between March 10, 2023, and June 1, 2023, for flood management and associated groundwater recharge.
 - b. A local or regional flood control agency, city, or county has given notice via its internet website, electronic distribution list, emergency notification service, or another means of public notice, that flows downstream of the point of diversion are at imminent risk of flooding and inundation of land, roads, or structures.
 - c. The diversions cease when the flood conditions have abated to the point there is no longer a risk of flooding and inundation of land, roads, or structures downstream of the point of diversion.
 - d. Any water diverted is not diverted to and will not be applied to:
 - i. dairy land application areas;
 - ii. any agricultural field where pesticide or fertilizer application has occurred in the prior 30 days;
 - iii. any area that could cause damage to critical levees, infrastructure, wastewater and drinking water systems, drinking water wells or drinking water supplies, or exacerbate the threat of flood and other health and safety concerns; or
 - iv. any area that has not been in active irrigated agricultural cultivation within the past three years, including grazing lands, annual grasslands, and natural habitats. This limitation does not apply to facilities already constructed for the purpose of groundwater recharge or managed wetlands.
 - e. With respect to diversions from waters tributary to the Sacramento and San Joaquin River Delta (Delta), the Delta is in excess conditions as described in Water Board Decision D-1641, footnote 79, at the time of the diversion.
 - f. The diversion uses:
 - i. either existing diversion infrastructure or temporary pumps;
 - ii. existing groundwater recharge locations, where available;
 - iii. no new permanent infrastructure or permanent construction; and

- iv. simple screens installed on temporary pump intakes to minimize the impacts of diversion to salmon and other aquatic life.
- g. The person or entity availing itself of suspensions created by Paragraph 2 files a preliminary report with the Water Board and any applicable Groundwater Sustainability Agency (GSA) or GSAs for the basin, no later than 14 days after initially commencing diversion of flood flows for groundwater recharge, and a final report with the Water Board and any applicable GSA or GSAs for the basin no later than June 15, 2023. The preliminary and final reports required by this subparagraph shall:
 - i. Identify the person or entity utilizing the suspensions created by Paragraph 2;
 - ii. Identify the triggering condition from subparagraph b;
 - iii. Provide the GPS coordinates for the point of diversion, a map identifying the approximate area inundated by the flood flows, and the corresponding assessor parcel number(s);
 - iv. Identify the time when diversions of flood flows to groundwater recharge commenced, and for final reports, when diversions ceased;
 - v. Provide an estimate, as of the report's date, of the amount of flood flows diverted utilizing the suspensions created by Paragraph 2.

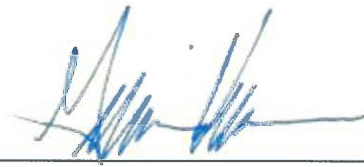
The Water Board shall post on its internet website all reports received pursuant to this subparagraph.

4. To protect public health, safety, and the environment and ensure diversions relying on the suspensions provided in this Order conform to the protective conditions identified in Paragraph 3, the Water Board and other public agencies shall use their existing enforcement authorities to ensure that diversions of flood flows for groundwater recharge relying on the suspensions created by Paragraph 2 occur in conformance with all the conditions specified in Paragraph 3.
5. The Department of Water Resources shall provide, upon request, technical assistance to any local entity making determinations pursuant to Paragraph 3.b.
6. To maximize the extent to which winter precipitation recharges underground aquifers, the Department of Water Resources, Water Board, and the Department of Fish and Wildlife shall continue to collaborate on expediting permitting of recharge projects and shall work with local water districts to facilitate recharge projects.
7. All public agencies shall consider other lawful actions for the control or prevention of flooding, and nothing in this order precludes other necessary actions to avoid or to mitigate the potential for flooding.

IT IS FURTHER ORDERED that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 10th day of March 2023.



GAVIN NEWSOM
Governor of California

ATTEST:

SHIRLEY N. WEBER, PH.D.
Secretary of State