

EXECUTIVE DEPARTMENT  
STATE OF CALIFORNIA

**EXECUTIVE ORDER N-3-23**

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

**WHEREAS** climate change continues to intensify the impacts of droughts on our communities, environment, and economy, and these impacts continue to affect groundwater basins, local water supplies, and ecosystems, resulting in continuing drought in the State; 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, and fish and wildlife that rely on stream flows and cool water; and

**WHEREAS** early, substantial rains in October and December 2021 gave way to the driest January-February-March period in over 100 years in California, leading the October 2021 to September 2022 water year to end with statewide precipitation at 76 percent of average, with statewide reservoir storage at 69 percent of average, and with Lake Oroville—the State Water Project's largest reservoir—at 64 percent of average; and

**WHEREAS** in January 2023, the State experienced one of the wettest three-week periods on record, yielding a snowpack that was at 205 percent of average on February 1, 2023, yet to date February has been drier than average; and

**WHEREAS** the current snowpack has not reduced stresses upon the State's water resources, including low storage levels, depleted aquifers, and diminished local water supplies; and

**WHEREAS** the State can expect continued swings between extreme wet and extreme dry periods that can present risks of severe flooding and extreme drought in the same year; and

**WHEREAS** California must adapt to a hotter, drier future in which a greater share of rain and snowfall during the wetter months will be absorbed by dry soils, consumed by plants, and evaporated into the air, leaving less water for communities, species, and agriculture; and

**WHEREAS** the frequency of hydrologic extremes experienced in the State is indicative of an overarching need to continually reexamine policies to promote resiliency in a changing climate; and

**WHEREAS** Californians continue to make progress conserving water, with urban water users conserving 17.1 percent statewide in December 2022 compared to December 2020 and agricultural producers continuing to invest in more efficient irrigation; and

**WHEREAS** despite this progress, the uncertainty of precipitation during the remainder of the winter and spring, and the potential of dry conditions next

winter and of drought conditions extending to a fifth year, make it necessary for the State to continue water-conservation measures and drought-resilience actions to extend available supplies, protect water reserves, and maintain critical flows for fish and wildlife; and

**WHEREAS** as directed in "California's Water Supply Strategy: Adapting to a Hotter, Drier Future," the State plans to stretch water supplies by storing, recycling, de-salting, and conserving the water it will need to keep up with the increasing pace of climate change; and

**WHEREAS** multiple regions of the State, such as the Klamath Basin and the Colorado River system, face severe water shortage conditions, and groundwater basins in the Central Valley continue to be depleted from years of drought and overdraft; 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** coordination between local entities that approve permits for new groundwater wells and local groundwater sustainability agencies is important to achieving sustainable levels of groundwater in critically overdrafted basins; and

**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 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) and N-7-22 (March 28, 2022), 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 maximize the extent to which winter precipitation recharges underground aquifers, the Department of Water Resources, the State Water Resources Control Board (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.
3. Paragraph 4 of my State of Emergency Proclamation dated May 10, 2021 and Paragraph 4 of my State of Emergency Proclamation dated July 8, 2021 are withdrawn, and each is replaced with the following text:

To ensure adequate water supplies for purposes of health, safety, the environment, or drought resilient water supplies, the Water Board shall consider modifying requirements for reservoir releases or diversion limitations in Central Valley Project or State Water Project facilities to: (i) conserve water upstream later in the year in order to protect cold water pools for salmon and steelhead, (ii) enhance instream conditions for fish and wildlife, (iii) improve water quality, (iv) protect carry-over storage, (v) ensure minimum health and safety water supplies, or (vi) provide opportunities to maintain or to expand water supplies north and south of the Delta. The Water Board shall require monitoring and evaluation of any such changes to inform future actions. For any actions taken pursuant to this paragraph and any approvals granted in furtherance of this paragraph, Water Code Section 13247 and Public Resources Code, Division 13 (commencing with Section 21000) and regulations adopted pursuant to that Division are suspended. Nothing in this Paragraph affects or limits the validity of actions already taken or ongoing under Paragraph 4 of my May 10, 2021 Proclamation or Paragraph 4 of my July 8, 2021 Proclamation.

4. Paragraph 9 of Executive Order N-7-22 is withdrawn and replaced with the following text:

To protect health, safety, and the environment during this drought emergency, a county, city, or other public agency shall not:

- a. Approve a permit for a new groundwater well or for alteration of an existing well in a basin subject to the Sustainable Groundwater Management Act and classified as medium- or high-priority without first obtaining written verification from a Groundwater Sustainability Agency managing the basin or area of the basin where the well is proposed to be located that groundwater extraction by the proposed well would not be inconsistent with any sustainable groundwater management program established in any applicable Groundwater Sustainability Plan adopted by that Groundwater Sustainability Agency and would not decrease the likelihood of achieving a sustainability goal for the basin covered by such a plan; or

- b. Issue a permit for a new groundwater well or for alteration of an existing well without first determining that extraction of groundwater from the proposed well is (1) not likely to interfere with the production and functioning of existing nearby wells, and (2) not likely to cause subsidence that would adversely impact or damage nearby infrastructure.

This Paragraph shall not apply to permits for wells (i) that will provide less than two acre-feet per year of groundwater for individual domestic users, (ii) that will exclusively provide groundwater to public water supply systems as defined in section 116275 of the Health and Safety Code, or (iii) that are replacing existing, currently permitted wells with new wells that will produce an equivalent quantity of water as the well being replaced when the existing well is being replaced because it has been acquired by eminent domain or acquired while under threat of condemnation.

5. No later than April 28, 2023, state agencies shall send me their recommendations for what further actions, if any, are necessary for on-going emergency drought response, and their views on whether any existing provisions in my proclamations and executive orders related to the drought emergency are no longer needed to prepare for and mitigate the effects of the drought conditions.

**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 13th day of February 2023.



---

GAVIN NEWSOM  
Governor of California

**ATTEST:**

---

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

## **Newsom suspends environmental laws to store more Delta water**

Calmatters.org, 02/14/23

Facing an onslaught of criticism that water was “wasted” during January storms, Gov. Gavin Newsom on Monday suspended environmental laws to give the go-ahead to state officials to hold more water in reservoirs.

The governor’s executive order authorized the State Water Resources Control Board to “consider modifying” state requirements that dictate how much water in the Sacramento-San Joaquin Delta is allowed to flow into San Francisco Bay.

In January, after floodwaters surged into the bay, farm groups, Central Valley legislators and urban water providers complained that people and farms were being short-changed to protect fish. They urged state officials to store more water in reservoirs, which would increase the supply that can be delivered this summer to farm fields in the Central Valley and millions of Southern Californians.

Environmental activists say Newsom’s order is another sign that California is shifting priorities in how it manages water supply for humans and ecosystems.

They said the order will likely harm Chinook salmon and Delta smelt. Large numbers of newborn Chinook salmon have perished in recent drought years — the result of low flows in the Sacramento River and its tributaries.

Doug Obegi, a water law attorney with the Natural Resources Defense Council, called Newsom’s order the latest action in “a breakdown of law and order in the Delta.” In every critically dry year since 2012, Obegi said, the state’s flow rules and water export restrictions have been waived.

“Now, it seems, we’re going to start waiving them in average years,” Obegi said, adding that it’s the first time that the state has waived Delta outflow standards in a year that isn’t designated critically dry.

“The executive order seems to signal the governor’s intention to put his thumbs on the scale in favor of extinction in the Delta.”

The state water board’s Delta flow rules are designed to help enforce the federal and state Endangered Species Acts, which protect Chinook salmon, green sturgeon, Delta smelt and longfin smelt.

Changing the rules is “like having a speed limit in a school zone except when you’re in a hurry,” said Jon Rosenfield, science director of the San Francisco Baykeeper.

“We’ve got a violation of water quality standards, a petition (by a state and federal agency) to waive those standards, and a governor’s executive order encouraging the board to waive those standards through his executive order.

“There’s not much difference between a world without environmental laws and a world where, at the stroke of a governor’s pen, environmental laws are eviscerated,” he said.

But farm groups and water suppliers said the governor’s action could bring needed balance to the Delta.

Sarah Woolf, a farmer in the Westlands Water District in the San Joaquin Valley, said that in the past several years, her family has fallowed roughly half of their land. Her family received zero allocation of Delta water in the last two years and relied almost entirely on groundwater.

Saying that the regulations can be too rigid in dry years, Woolf said the governor’s order could provide flexibility in better managing water supplies.

“We’re hopeful that this results in more water supply for a higher percentage of the contract water we are able to receive,” she said.

Randy Fiorini, a Merced County farmer, said farmers and other water users are routinely deprived of water to protect environmental resources. Now, he said, the governor is tipping the balance in the other direction.

“This gives us the chance to capture as much water now as we possibly can,” he said.

Newsom’s order says: “To ensure adequate water supplies for purposes of health, safety, the environment, or drought resilient water supplies, the Water Board shall consider modifying requirements for reservoir releases or diversion limitations in Central Valley Project or State Water Project facilities.”

His order adds that to enable those actions, two state laws — Water Code Section 13247, which requires state agencies to comply with all water-quality rules, and Public Resources Code, Division 13, which ensures environmental quality, and its regulations — “are suspended.”

The order means it’s likely that the water board will allow more water to be stored later this year in Lake Shasta and Lake Oroville, the state’s largest reservoirs, plus more water to be pumped south into San Luis Reservoir in the San Joaquin Valley. Oroville as of today contains 115.6% of its historic average and Shasta is at 88.1%. Because of the boost from the storms, the state recently announced that growers and water providers would get 30% of their requested allocations from the state aqueduct — the highest amount for January in six years.

The order also aims to streamline and increase groundwater recharge projects.

In an immediate response to Newsom's order, the state Department of Water Resources and the U.S. Bureau of Reclamation on Monday jointly petitioned the state water board to loosen the Delta flow rules "to ensure the availability of an adequate water supply while also ensuring protection of critical species and the environment."

Water board officials said in an emailed statement to CalMatters that they "are reviewing the request carefully, in coordination with the California Department of Fish and Wildlife." They said the agency's decision will come "within the next week."

Newsom has been under heavy criticism in recent years for using his emergency power to issue orders for handling COVID-19, the death penalty and other state issues.

Newsom said in the order that he hopes to help "maintain critical flows for fish and wildlife."

Storing more water could "protect cold water pools for salmon and steelhead" later in the year, the order says. During drought, low reservoir levels can lead to lethally warm water for salmon when they spawn in the summer and fall. Holding water in reservoirs now may help the ecosystem later with improved water quality, enhanced flows and cold water for reproducing salmon.

But Rosenfield and Obegi said fish need substantial flows now. High river flows push young salmon along in their spring journey from the Central Valley to the ocean, while reduced flows lead to higher mortality.

Put in place decades ago, the Delta flow regulations at stake now are designed to help juvenile salmon reach the ocean and protect the Delta from seawater intrusion, which can occur when flows from the Sacramento and San Joaquin rivers are reduced. Many environmentalists say the flow rules aren't strong enough to protect fish, while some water user groups say they allow too much water to flow into the ocean.

Triggered by January's conditions, the rules require that 29,200 cubic feet per second of water flow through the Delta through most of February. But last week, state and federal agencies unveiled a forecast saying flows could drop to 15,000 cubic feet per second. Environmental groups objected in a Feb. 10 letter to the state water board, warning "that the U.S. Bureau of Reclamation and the California Department of Water Resources appear likely to violate the minimum Delta outflow requirements."

Three days later, Newsom issued his order.

Newsom's order points out that heavy rains in 2021 were followed by the driest January through March in over a century. A similar pattern, he said, is emerging now, with the December and January storms followed by a dry February, so more water needs to be held back in reservoirs to protect cities and farms from another drought-plagued summer.

“[T]he frequency of hydrologic extremes experienced in the State is indicative of an overarching need to continually reexamine policies to promote resiliency in a changing climate,” Newsom stated.

As of Feb. 14, Delta outflow was measured at 18,000 cubic feet per second, which is just 61% of the flow required under the water board’s restrictions.

John McManus, president of the Golden State Salmon Association, said the governor is using excessive executive force.

“Newsom claims he’s using his emergency authority. What emergency is he responding to?” He noted that snowpack is at high levels so it will feed the reservoirs in the spring and provide more water to people and farms.

The January rains were considered a boon for fish and other wildlife. But “now Newsom is stepping in to kill our salmon runs, as well as other wildlife that were hoping to catch a break,” McManus said.

Water providers, however, say that the flow rules are outdated because climate change has dramatically altered water supplies.

Newsom’s order “provides flexibility to manage across all these beneficial uses ... whether that’s protecting water supply or the environment,” said Jennifer Pierre, general manager of the State Water Contractors.

“When you’re working with an unknown future, you need to make sure that you’re protecting as best you can your ability to keep your options open through the course of the year,” she said, adding that 2023 “could be a fourth year of drought.”