



# Frequently Asked Questions

## **FAQ: executive order, flood control, groundwater recharge, water rights**

### **Overview:**

On March 10, 2023, Gov. Gavin Newsom issued Executive Order N-4-23 to facilitate the use of flood waters to recharge California's groundwater aquifers by suspending certain permitting requirements and clarifying when water right permits are required for recharge activities. The order expedites the restoration of groundwater levels in the state's groundwater basins, many of which remain depleted from overreliance and successive multi-year droughts, while also helping to alleviate impacts from flooding.

### **What does the executive order do?**

The order suspends pre-existing permit requirements that usually apply when diverting surface water for future use. It also clarifies that flows can be diverted for flood management and risk reduction and used to recharge groundwater aquifers. Specifically, the flows can be diverted to existing recharge basins, eligible active agricultural lands, managed wetlands and wildlife refuges or other flood management storage facilities. The order also suspends the California Environmental Quality Act (CEQA) requirements for diverting or capturing flood flows.

### **When does the order apply and who can authorize diversions?**

The order is in effect through June 1, 2023, under certain conditions. Specific entities such as a local or regional flood control agency, a city or a county must determine if flows downstream of a proposed point of diversion are at imminent risk of flooding and inundating land, roads or structures. If more than one of these entities operates in a system and this information is not publicly available to potential diverters, the one with the most expertise and responsibility for flood control should make the determination and post that information on its website.

### **How should local entities determine if there is an imminent risk of downstream flooding and inundation of land, roads or structures?**

Local entities that need assistance making flood risk determinations should contact their county flood managers or local flood agency. If a county or local flood manager/agency is unavailable and additional assistance is needed, please contact the Department of Water Resources at <https://forms.office.com/g/M0Uy1L6CNy>



### **Can the water be diverted anywhere or any time?**

No. The order establishes limitations on when and where the water can be diverted to protect water quality, water supplies and other water users, as well where the water can be applied.

Those limitations are as follows:

- Diversions can only occur up to June 1, 2023
- Diversions are limited to times when there is an imminent downstream risk of flooding and inundation. Diversions cease when imminent risk subsides.
- The water cannot be applied to the following areas:
  - Dairy land application areas.
  - Agricultural fields where pesticides or fertilizer application has occurred in the past 30 days.
  - Areas that could cause damage to critical levees or infrastructure, wastewater or drinking water systems, wells or supplies, or exacerbate flood and other health and safety concerns.
  - Areas not in active agricultural cultivation within the past 3 years including grazing lands, annual grasslands, and natural habitats.
- Diversions in the Sacramento-San Joaquin Delta watershed can only occur when the Delta is in “excess conditions.”
- Diversions require simple screens on temporary pump intakes to minimize the impacts of diversion to salmon and other aquatic life.
- Diversions must use existing diversion infrastructure or temporary pumps and existing groundwater recharge locations (where available).
- No new construction of permanent infrastructure is allowed.

### **How much can I divert?**

Only flows that alleviate the risk of imminent downstream flooding and inundation of land, roads or structures are authorized. The local entity that identifies the risk of imminent flooding should determine when that risk has ended.

### **Do I have to report?**

Yes. Anyone who diverts authorized flood flows must file two reports with the board: (1) a preliminary report within 14 days of initial diversions and (2) a final report by June 15, 2023. The reports must identify the diverter and include the conditions that triggered the diversions, the point of diversion, the flooded area, when diversions occurred and ceased, and the amount of water diverted. Reports must be completed using a [fillable form](#) and then emailed to [FloodDiversion@waterboards.ca.gov](mailto:FloodDiversion@waterboards.ca.gov).

### **The order precludes diversions during certain conditions in the Bay-Delta. Where can I find information about these conditions?**



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Water may only be diverted when the Delta is in “excess” conditions. To determine if those conditions exist, monitor the [status of the Central Valley Project-State Water Project Coordinated Operation Agreement](#).

### **Who controls the recharged water?**

The order does not create a water right or any right to ownership or control of the flood flows. The diverted surface water is abandoned and goes toward the net benefit of the groundwater basin. If one exists, the Groundwater Sustainability Agency can establish a crediting program or individual groundwater pumpers can use the water consistent with pumping rules for overlying and appropriative groundwater rights. The entity that diverts flood water does not retain ownership or control of any water that recharges the aquifer.

### **Does the order include any additional restrictions on diversions?**

Under most circumstances, a water right is required to divert and store surface water underground for later use. Diverting water strictly for flood management does not typically require a water right if it is of limited duration and there is no claim of ownership. The order suspends water rights permitting requirements for diversions under certain circumstances and authorizes full recharge of the diverted water. It also establishes the requirements for diversions within its scope. The board is not imposing additional restrictions beyond those contained in the order.

### **How do I notify the board if a diverter is not operating under the order's conditions?**

File a complaint through the [CalEPA Complaint System](#).

If you have additional questions, contact the board at [FloodDiversion@waterboards.ca.gov](mailto:FloodDiversion@waterboards.ca.gov).