

# **Term 91: Stored Water Bypass Requirements**

A report to  
the State Water Resources Control Board  
and  
the Delta Stewardship Council

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# Introduction

- \* State Water Board created in 1967: merger of Water Rights and Water Quality Functions
- \* Water Rights/Water Quality: The Delta
- \* Delta Water Quality Plans
  - Water Quality objectives and implementation plans
- \* Implementation: Water Rights Authority
  - Term 91: Example of using water rights authority to implement water quality objectives



# Stored Water Bypass: Requirements and Authorities

- \* No water right holder has a right to use water that was previously stored or imported by another water right holder upstream and then released into the water course for use downstream. Such water has already been appropriated and is not natural or abandoned flow.
- \* Water Code secs. 1201, 1252, 1375:
  - As a prerequisite to the issuance of a permit to appropriate water, there must be unappropriated water available to supply the applicant

# Stored Water Bypass: Requirements and Authorities (cont'd)

- \* Water which has been appropriated may be turned into the channel of another stream, mingled with its water, and then reclaimed (Lindblom vs Round Valley Water Co. (1918) 178 Cal. 450; 173 p.994.
- \* Rule of Priority:
  - Persons are entitled to divert natural flows based on priorities
  - Persons must bypass even natural flows when such flows are needed by senior water right holders within the area of origin
  - The rule against diverting stored water is not implicated for natural flows

# Stored Water Bypass: Requirements and Authorities (cont'd)

## \* Area of Origin Statutes

- Area of origin persons are entitled to divert natural and abandoned flows before Projects may divert such water for export outside the area of origin
- Regarding stored water, area of origin diverters have priority over exporters if they pay for the water.



# The Projects & Stored Water

- \* The Projects

- State Water Project
- Central Valley Project



- \* Projects store winter and spring runoff and then release and transport it to satisfy downstream needs
- \* Delta Water Quality Control Plans/WRs Implementation
  - Projects required to meet specified water quality objectives to protect beneficial uses
  - Effect of water right conditions is to require the Projects to release water from storage or to curtail diversions when the flow of water entering the Delta would otherwise be insufficient to meet water quality.

# Term 91 Development

- \* Projects protested most water rights applications in the Delta watershed after obligation to meet water quality objectives was established.
- \* Term 91: Prohibits specified permittees from diverting stored Project water which is being released to meet Delta water quality standards or other inbasin needs.



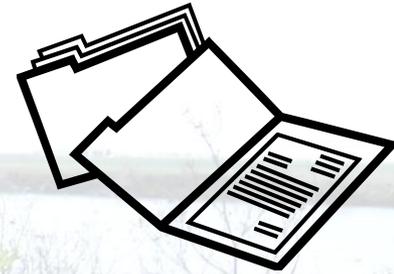
# Term 91 Development (cont'd)

- \* Named permittees (post 1965) cannot divert Project water when:
  - Natural flows entering the Delta are insufficient to meet water quality standards
  - Projects are releasing water to meet the standards
- \* Intended to be interim solution, but became long-term method of allocating responsibility for meeting standards.



# Implementation of Term 91

- \* Process
- \* 2012 Experience



# Term 91 Process



- \* 120 Permittees have Term 91
- \* Projects notify State Water Board when stored water is being released to meet standards (timing depends on type of weather year)
- \* State Water Board issues Notice of Curtailment of Water Diversions with curtailment dates
- \* Permittees file Term 91 Compliance Certification Statement
  - No diversion
  - Alternate Source (other water right, purchased water)
  - No hydraulic continuity
- \* Compliance Inspections



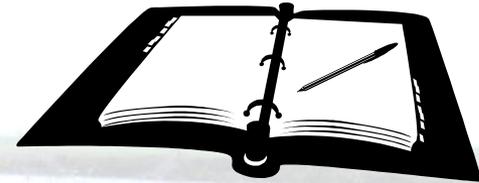
# Term 91: 2012 Experience



- \* Notification from Projects of Term 91 Condition: June 2012
- \* Curtailment Letter sent to 27 Permittees: July 2012
- \* Curtailment Period: August 2-31, 2012
- \* Compliance Certification received from 27 Permittees
  - One diverter filed after receiving draft Cease & Desist Order
  - All persons certified that they either had not diverted water or had diverted water under alternative source
- \* Compliance checks
  - File reviews, aerial photos, interviews, and inspections
  - No instance of violation found

# Expansion of Term 91

- \* Why
- \* How
- \* Practical Considerations



# Term 91 Expansion: Why

- \* Downstream water right holders should not be diverting stored water
- \* A wider application of curtailments will spread obligation to meet water quality standards more fairly
- \* Requiring a broader group of diverters to help achieve standards increases the likelihood they will be met



# Term 91 Expansion: How

- \* Appropriators: Term 91 currently applies only to 120 post-1965 permittees
- \* Term 91 can be expanded to more senior appropriators, phase-in based on priorities
- \* Term 91-like limits could be applied to pre-1914 appropriators and to riparians when curtailments beyond those made by permittees and licensees are needed to achieve water quality standards



# Term 91 Expansion: Practical Considerations

\* A proceeding(s) must be conducted to expand Term 91 to other permittees

- Existing Proceeding
- New Proceeding
- Regulations



\* How to phase-in Term 91 requirements

- Use of Groupings (Phase 8 of 1995 Delta Plan Implementation)

\* Pre-1914 and Riparians

- Only when necessary
- Implement via letter notification
- Natural flow issues (use percentage of flow curtailments)



# Conclusion

- \* Enforcement of existing Term 91 requirements
- \* Expand Term 91 requirements to more broadly apply stored water bypass obligations

