

State Water Resources Control Board

June 26, 2015

NOTICE OF UNAVAILABILITY OF WATER AND NEED FOR IMMEDIATE CURTAILMENT FOR THOSE DIVERTING WATER IN THE MERCED RIVER WATERSHED WITH A PRE-1914 APPROPRIATIVE CLAIM COMMENCING DURING OR AFTER 1858

On January 23, 2015 and again on April 2, 2015, the State Water Resources Control Board (State Water Board) issued a Notice of Surface Water Shortage and Potential for Curtailment due to dry conditions throughout the State. On April 1, 2015, the Governor issued an executive order, order B-29-15, continuing the state of emergency, initially enacted on January 17, 2014, due to drinking water shortages, diminished water for agriculture production, degraded habitat for fish and wildlife, increased wildfire risk and the threat of saltwater contamination to fresh water supplies in the Sacramento-San Joaquin Delta (Delta).

On April 23, 2015 and May 1, 2015, the State Water Board issued curtailment notices to all post-1914 appropriative water rights in the Sacramento and San Joaquin River watersheds, inclusive of the Delta, due to insufficient projected water supplies. On June 12, 2015, the State Water Board issued a curtailment notice to all pre-1914 San Joaquin watershed diverters with a priority date commencing in 1903 or later. Based on updated water supply projections provided by the Department of Water Resources, the State Water Board is now notifying pre-1914 claims of right, with a priority date of 1858 and later for the Merced River watershed, that, due to ongoing drought conditions, there is insufficient water in the system to service their claims of right.

Curtailment of Certain Pre-1914 Claims of Right Commenced During or After 1858:

Based upon the most recent inflow projections, along with the lack of forecasted precipitation events, the existing water supply in the Merced River watershed is insufficient to meet the needs of some pre-1914 claims of right. With this notice, the State Water Board is notifying pre-1914 appropriative claims of right with a priority date of 1858 and later within the Merced River watershed of the need to immediately stop diverting water with the exceptions discussed below. This condition of curtailment will continue until water conditions improve. Even if there is water physically available at your point of diversion, that water is necessary to meet more senior water right holders' needs or the water may be released previously stored water which must continue instream to serve its intended beneficial use. If precipitation occurs in the following weeks or months, you should not commence diversion before being notified by the State Water Board that water is legally available for diversion under your priority of right. Evaluations for additional curtailments of more senior rights will be made every two weeks through September. This notice is not an order, but the State Water Board is currently in the field to determine if unauthorized diversions are actually taking place.

Compliance Certification Required:

Holders of pre-1914 water right claims on the Merced River with priority dates in 1858 or later are required to complete an online Curtailment Certification Form (Form) within seven days. The Form confirms your cessation of diversion under the specific pre-1914 claim of right.

Completion of the Form is mandatory to avoid unnecessary potential enforcement proceedings. You are required to complete the Form for each pre-1914 claim of right identified through this notice at:

http://www.waterboards.ca.gov/waterrights/water_issues/programs/ewrims/curtailment/2015curt_form.php

Exceptions to Curtailment:

If your diversion is for hydroelectric generation by direct diversion only and all water diverted is returned to the same stream system, you may continue to divert under your pre-1914 claim of right. If you continue to divert under the above circumstances, you must identify that on the Form and provide the information requested. If you have previously collected water to storage in a reservoir covered by a pre-1914 claim of right prior to this curtailment notice, you still may beneficially use that previously stored water. However, you must bypass all inflow into the reservoir at all times during the period this notice remains in effect.

No Exception for Health and Safety:

There is no exception to this notice for health and safety needs. However, we are aware that some water users must comply with directives issued by the Division of Drinking Water (DDW), or local health or drinking water regulation to provide continued water service to meet minimum health and safety standards. Should you continue to divert water under a claim of right subject to this notice to meet human health and safety needs, you must complete the Form identifying your health and safety needs, whether there is an applicable DDW, state or local regulation and your attempts at securing an alternate water supply. The State Water Board will carefully analyze the non-exempted continued diversions for minimum health and safety needs on a case-by-case basis.

Potential Enforcement:

Those who are found to be diverting water beyond what is legally available at the priority related to a valid water right may be subject to administrative penalties, cease and desist orders, or prosecution in court. If the State Water Board finds, following an adjudicative proceeding, that a person or entity has diverted or used water unlawfully, the State Water Board may assess penalties of \$1,000 per day of violation and \$2,500 for each acre-foot diverted or used in excess of water available to the water right priority. (See Water Code, §§ 1052, 1055.) Additionally, if the State Water Board issues a cease and desist order against an unauthorized diversion, violation of any such order can result in a fine of \$10,000 per day. (See Water Code, §§ 1831, 1845.)

The State Water Board is encouraging diverters to work together to reach local voluntary agreements that not only provide solutions that help local communities with water shortages, but also prevent injury to other legal users of water and do not cause unreasonable effects on fish and wildlife.

If you have any questions, please call our Curtailment Hotline at (916) 341-5342, contact us by email at: SWRCB-Curtailment-Certification@waterboards.ca.gov, or review our drought year webpage at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/index.shtml#notices. The State Water Board also encourages water right holders to assist in the prevention of unlawful diversion of water and in discouraging any waste or unreasonable use of water. To assist the State Water Board, you may file a complaint at:

http://www.dtsc.ca.gov/database/CalEPA_Complaint/index.cfm

We recognize the burden the drought creates, and want to assure that others do not illegally benefit from your curtailments.

Sincerely,

A handwritten signature in black ink that reads "Thomas Howard". The signature is written in a cursive style with a prominent initial 'T'.

Thomas Howard
Executive Director