

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER WR 2015-0017-DWR

CURTAILMENT ORDER

In the Matter of Diversion of Water from

ANTELOPE CREEK TRIBUTARY TO THE SACRAMENTO RIVER

IN

TEHAMA COUNTY

BACKGROUND

1. On April 25, 2014, Governor Edmund G. Brown Jr. issued a Proclamation of a Continued State of Emergency (April 2014 Proclamation) to strengthen the state's ability to manage water and habitat effectively in drought conditions and called on all Californians to redouble their efforts to conserve water. The April 2014 Proclamation finds that the continuous severe drought conditions present urgent challenges across the state, including water shortages in communities and for agricultural production, increased wildfire activity, degraded habitat for fish and wildlife, threat of saltwater contamination, and additional water scarcity if drought conditions continue into 2015. The April 2014 Proclamation also suspends the environmental review required by the California Environmental Quality Act to allow drought emergency regulations and other actions to take place as quickly as possible.

2. The April 2014 Proclamation refers to the [Governor's Proclamation No. 1-17-2014](#), issued on January 17, 2014, declaring a drought State of Emergency (January 2014 Proclamation) to exist in California due to severe drought conditions. The January Proclamation finds that dry conditions and lack of precipitation present urgent problems to drinking water supplies and cultivation of crops, which put farmer's long-term investments at risk. The conditions also threaten the survival of animals and plants that rely on California's rivers, including many species in danger of extinction. The January Proclamation also calls on all Californians to reduce their water usage by 20 percent.

3. On December 22, 2014, in light of the continued lack of rain, Governor Brown issued [Executive Order B-28-14](#), which extends the California Environmental Quality Act suspension through May 31, 2016 for issuance of drought emergency regulations, among other actions.

4. On March 17, 2015, the State Water Board adopted an emergency regulation for Curtailment of Diversions due to Insufficient Flow for Specific Fisheries for Mill, Deer, and Antelope Creeks (California Code of Regulations, title 23, sections 877 through 879.2¹) (Regulation). The Office of Administrative Law reviewed and approved the Regulation. The Regulation is effective March 30, 2015 to December 29, 2015. The Regulation establishes drought emergency minimum flow requirements for the protection of specific runs of federal- and state-listed anadromous fish in Mill Creek, Deer Creek, and Antelope Creek. The Regulation provides that diversions from Mill Creek, Deer Creek, and Antelope Creek are unreasonable if those diversions will cause flows to drop below specified minimum flows. Under the Regulation, diversions will be curtailed as appropriate to maintain those minimum flows, with the exception of diversions necessary for minimum health and safety needs. The diversion or use of water in violation of the Regulation is an unreasonable diversion or use and a violation of Water Code section 100.

¹ All further section references are to California Code of Regulations, title 23, unless otherwise indicated.

5. Pursuant to section 877, the State Water Board has determined that it is a waste and unreasonable use under Article X, section 2 of the California Constitution to continue diversions that would cause or threaten to cause flows to fall beneath the drought emergency minimum flows provided in subdivision (c) of section 877, except as provided for minimum health and safety needs in accordance with section 878.1.

6. Voluntary agreements between diverters, National Marine Fisheries Service (NMFS), and the California Department of Fish and Wildlife (CDFW) in Mill Creek and Antelope Creek were reached last year. So far, agreements that cover a significant percentage of the water diverted in Mill Creek, Deer Creek, and Antelope Creek have not been reached this year, but may be possible in the near future. Such agreements would have the potential to provide comparable protection to the fisheries as the flows in section 877 if the agreements cover a significant percentage of the water diverted in the watersheds.

7. Pursuant to section 877, subdivision (b), the Deputy Director for the Division of Water Rights has delegated authority to issue a Curtailment Order upon a determination that without curtailment of diversions flows are likely to be reduced below the drought emergency minimum flows specified in section 877, subdivision (c).

8. Central Valley spring-run Chinook salmon (*Oncorhynchus tshawytscha*) (CV SR Salmon) are listed as threatened under the state and federal Endangered Species Acts, and California Central Valley steelhead (*Oncorhynchus mykiss*) (CCV Steelhead) are listed as threatened under the federal Endangered Species Act (16 U.S.C. § 1531 et seq.).

9. On April 1, 2015, the Antelope Creek flow measured by the CDFW downstream of the Edwards/Los Molinos Mutual Diversion Dam near Cone Grove Park was 15 cubic feet per second (cfs).

10. On April 1, 2015, the CDFW submitted a memorandum to the Division of Water Rights confirming the presence of Adult CV SR salmon in Mill Creek and Deer Creek and the presence of Adult CCV steelhead in Antelope Creek, Mill Creek, and Deer Creek. The memorandum concludes, based on historical presence data and the detection of CV SR salmon and CCV steelhead, the migration period for CV SR salmon started in February and is ongoing, and the migration period for CCV steelhead started in October and is ongoing.

11. Pursuant to section 877, subdivision (c)(3)(A)(i), a base flow in Antelope Creek of 35 cfs or full flow without diversions, whichever is less, is required from April 1 up to May 15 when Adult CV SR salmon are present.

12. Pursuant to section 877, subdivision (c)(3)(D)(i), a base flow in Antelope Creek of 15 cfs or full flow without diversions, whichever is less, is required from November 1 up to May 30 when Juvenile CV SR salmon or Juvenile CCV steelhead are present and Adult CV SR salmon or Adult CCV steelhead are not present.

13. Pursuant to section 877, subdivision (c)(3)(A)(ii), pulse flows of 70 cfs or full flow without diversions, whichever is less, may be required from April 1 up to May 15 when Adult CV SR salmon are observed between the Edwards/Los Molinos Mutual diversion dam and the Sacramento River. The pulse flow, including any required ramp down time, will last a minimum of 24 hours to a maximum of 72 hours. Pulse flows may be required if the average daily full natural flow measured upstream of the Edwards/Los Molinos Mutual diversion dam is 70 cfs or less for three consecutive days or the CDFW or the NMFS submits a request for such pulse flows that is approved by the Deputy Director.

14. Pursuant to section 877, subdivision (c)(3)(B)(i), pulse flows of 70 cfs or full flow without diversions, whichever is less, may be required from May 1 up to May 15 when Juvenile CV SR salmon or Juvenile CCV steelhead are observed in the lower reaches of Antelope Creek and CDFW or NMFS submits a request for such pulse flows that is approved by the Deputy Director. The pulse flow, including any required ramp down time, will last a minimum of 24 hours to a maximum of 48 hours.

15. Attachment A attached hereto is a summary of available water rights data on Antelope Creek that was assembled from the State Water Board's electronic water rights information management system (eWRIMS) and Report Management System (RMS) queries.

16. As required by the Regulation, the State Water Board has established an e-mail distribution list that water right holders may join to receive drought notices and updates regarding curtailment. Notices provided by e-mail or by posting on the State Board's drought web page shall be sufficient for all purposes related to drought notices and updates regarding curtailments.

FINDINGS:

1. Section 877, subdivision (c)(3) of title 23 of the California Code of Regulations establishes drought emergency minimum flows for Antelope Creek under certain conditions.
2. The conditions under which the drought emergency minimum flows identified in section 877, subdivision (c) apply are now in effect and threatened species, such as Adult and Juvenile CV SR salmon and Juvenile CCV steelhead are present at this time.
3. The Deputy Director for the Division of Water Rights has determined that without curtailment of diversions from Antelope Creek the flows in Antelope Creek have been, and are likely to continue to be reduced below the drought emergency minimum flows specified in section 877 subdivision (c)(3).
4. It is anticipated a pulse flow for adult CV SR salmon will be required prior to May 15, 2015 if conditions are conducive for migration and requested by CDFW or NMFS or flows measured upstream of the Edwards/Los Molinos diversion dam are less than 70 cfs for three consecutive days.

IT IS HEREBY ORDERED:

1. All water rights holders in the Antelope Creek watershed, including but not limited to those identified in Attachment A, are subject to curtailment pursuant to California Code of Regulations, title 23, sections 877 through 879.2 and shall immediately cease or reduce their diversions from Antelope Creek to ensure the drought emergency minimum flows specified in section 877, subdivision (c)(3) are satisfied through May 30, 2015 or until the Deputy Director suspends the Curtailment Order under section 877, subdivision (c)(3)(E), as follows:
 - (A) All post-1914 appropriative rights holders are curtailed under this Order except as provided in sections 878 (non-consumptive uses), 878.1 (minimum health and safety needs), and 878.2 (local co-operative solutions).
 - (B) All diverters on Antelope Creek shall bypass 35 cfs or full natural flow without diversion, whichever is less, in order to obtain/maintain base flows for Adult CV SR salmon migration. Flows in excess of the 35 cfs base flow can be taken in accordance with priority and basis of right, except for those post-1914 appropriative right holders referenced in paragraph 1(A), above.
 - (C) Upon notification to the Deputy Director from the California Department of Fish and Wildlife and/or the National Marine Fisheries Service that adult CV SR salmon migration has ended but that juvenile CV SR salmon or Juvenile CCV steelhead are present, base flow requirements will be reduced to 15 cfs pursuant to section 877, subdivision (c)(3)(D). At that time, all diverters on Antelope Creek shall bypass 15 cfs or full natural flow without diversion, whichever is less, in order to maintain base flows for juvenile CV SR salmon or Juvenile CCV steelhead migration. Flows in excess of the 15 cfs base flow can be diverted by water rights holders in accordance with priority and basis of right, except for those post-1914 appropriative right holders referenced in paragraph 1(A) above.

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- (D) When a pulse flow is required under section 877, subdivision (c)(3)(A)(ii) or (c)(3)(B)(i), all diverters on Antelope Creek are curtailed and must cease diverting to ensure that the pulse flow of 70 cfs or full flow without diversions, whichever is less, is bypassed at their point of diversion. If full natural flows exceed 70 cfs at a time when pulse flow is required, then flows in excess of 70 cfs can be diverted by water right holders in accordance with water right priority and basis of right, except for those post-1914 appropriative right holders referenced in paragraph 1(A) above.
2. This Curtailment Order shall be effective beginning on April 3, 2015.
 3. In accordance with section 877 subdivision (d), water rights holders or agents of record who receive this Order are responsible for immediately providing notice of this Order to all diverters exercising a water right on Antelope Creek. Los Molinos Mutual Water Company is responsible for immediately providing notice of this Curtailment Order to all water rights holders to which they provide water under the curtailed water rights.
 4. All water users or water right holders receiving this Order are required, within five days of issuance of this Order, to submit under penalty of perjury a certification in accordance with section 879.
 5. In accordance with section 879.2, diversion or use in violation of this Curtailment Order constitutes an unauthorized diversion or use. Violations of this Order shall be subject to further enforcement and any applicable penalties pursuant to Water Code sections 1052, 1831, 1845 and 1846. To the extent of any conflict between the requirements of this Curtailment Order and any other applicable Orders, notices of curtailment or conditions of approval, the diverter must comply with the requirements that are most stringent.
 6. Reservation of Enforcement Authority and Discretion: Nothing in this Order is intended to or shall be construed to limit or preclude the State Water Board from exercising its authority under any statute, regulation, ordinance, or other law, including but not limited to, the authority to bring enforcement against diverters for unauthorized diversion or use in violation of Water Code section 1052.
 7. Regulatory Changes: Nothing in this Order shall excuse individual water right holders from meeting any more stringent requirements that may be imposed by applicable legally binding legislation, regulations or water right permit requirements. This Order does not authorize any act which results in the taking of a threatened, endangered, or candidate species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this Order, the diverter shall obtain authorization for an incidental take prior to construction or operation. Diverter shall be responsible for meeting all requirements of the applicable Endangered Species Act for the long-term changes authorized under this Order.

STATE WATER RESOURCES CONTROL BOARD



Barbara Evoy, Deputy Director
Division of Water Rights

Dated: **APR 03 2015**

ATTACHMENT A

Riparian Rights and Federal Filings

Application ID	License ID	Status	Holder Name	Face Value (acre-ft)	2010-2014 Average Reported Demand (acre-ft)	Season	Year of First Use	Beneficial Use	Acres Irrigated
S019672		Claimed	SIERRA PACIFIC INDUSTRIES	5.89	3.76	May-July	2010	DA,O	
S019669		Claimed	SIERRA PACIFIC INDUSTRIES	1.72	3.76	May-July	2010	DA,O	
S012395		CLAIMED	SIERRA PACIFIC INDUSTRIES	0.00	0.00	year-round	1945	O	
S012393		Claimed	SIERRA PACIFIC INDUSTRIES	0.00	0.00		1945	O	
S012392		Claimed	SIERRA PACIFIC INDUSTRIES	0.00	0.00		1945	O	
S012391		Claimed	SIERRA PACIFIC INDUSTRIES	0.00	0.00		1945	O	
S012390		Claimed	SIERRA PACIFIC INDUSTRIES	0.00	0.00		1945	O	
S012389		CLAIMED	SIERRA PACIFIC INDUSTRIES	0.00	0.82	year-round	1945	DA,O	
S012388		CLAIMED	SIERRA PACIFIC INDUSTRIES	0.00	0.00	year-round	1945	O	
S012387		CLAIMED	SIERRA PACIFIC INDUSTRIES	0.00	1.64	year-round	1945	O,FP	
S012386		CLAIMED	SIERRA PACIFIC INDUSTRIES	0.00	1.64	year-round	1945	O,FP	
S012385		Claimed	SIERRA PACIFIC INDUSTRIES	0.00	0.82	June-Oct	1945	DA,O	
S012384		CLAIMED	SIERRA PACIFIC INDUSTRIES	0.00	0.00	year-round	1945	O	
S012383		CLAIMED	SIERRA PACIFIC INDUSTRIES	0.00	0.00	year-round	1945	O	
S012382		CLAIMED	SIERRA PACIFIC INDUSTRIES	0.00	0.00	year-round	1945	O	
S012381		CLAIMED	SIERRA PACIFIC INDUSTRIES	0.00	0.00	year-round	1945	O	
S012380		CLAIMED	SIERRA PACIFIC INDUSTRIES	0.00	0.00	year-round	1945	O	
S012379		Claimed	SIERRA PACIFIC INDUSTRIES	0.00	0.00		1945	O	
S012378		Claimed	SIERRA PACIFIC INDUSTRIES	0.00	0.00		1945	O	
S012373		CLAIMED	SIERRA PACIFIC INDUSTRIES	0.00	0.00	year-round	1945	O	
S012372		Claimed	SIERRA PACIFIC INDUSTRIES	0.00	0.00		1945	O	
S010969		Claimed	US LASSEN NATL FOREST	0.00	1.90	April-Oct	1935	O,RAH,FP	
S003443		CLAIMED	US LASSEN NATL FOREST	0.00	0.03	May-Nov	1930	RAH,O	
S001356		Claimed	SIERRA PACIFIC INDUSTRIES	0.00	0.00		1945	O	
S001352		CLAIMED	SIERRA PACIFIC INDUSTRIES	0.00	0.00	06/01-10/01	1945	O	
S001351		CLAIMED	SIERRA PACIFIC INDUSTRIES	0.00	0.00	06/01-10/01	1945	O	
S001350		CLAIMED	SIERRA PACIFIC INDUSTRIES	0.00	0.00	06/01-10/01	1945	O	
S001349		CLAIMED	SIERRA PACIFIC INDUSTRIES	0.00	0.00	06/01-10/01	1945	O	
S001348		Claimed	SIERRA PACIFIC INDUSTRIES	0.00	0.00		1945	O	
S001347		Claimed	SIERRA PACIFIC INDUSTRIES	0.00	1.97	May-Oct	1945	DA,O	
S001346		Claimed	SIERRA PACIFIC INDUSTRIES	0.00	0.00		1945	O	
S001345		Claimed	SIERRA PACIFIC INDUSTRIES	0.00	0.99	May-Oct	1945	DA,O	
S001344		CLAIMED	SIERRA PACIFIC INDUSTRIES	0.00	0.00	06/01-10/01	1945	O	
S001343		CLAIMED	SIERRA PACIFIC INDUSTRIES	0.00	0.99	06/01-10/01	1945	DA,O	
S001342		Claimed	SIERRA PACIFIC INDUSTRIES	0.00	0.00		1945	O	
S001341		CLAIMED	SIERRA PACIFIC INDUSTRIES	0.00	2.30	06/01-10/01	1945	DA,O	
S001340		Claimed	SIERRA PACIFIC INDUSTRIES	0.00	1.81	May-Sept	1945	DA,O	
S001339		Claimed	SIERRA PACIFIC INDUSTRIES	0.00	0.99		1945	O	
S001338		CLAIMED	SIERRA PACIFIC INDUSTRIES	0.00	0.99	06/01-10/01	1945	DA,O	
S001337		CLAIMED	SIERRA PACIFIC INDUSTRIES	0.00	0.99	06/01-10/01	1945	DA,O	
S001336		CLAIMED	SIERRA PACIFIC INDUSTRIES	0.00	0.00	06/01-10/01	1945	O	
S001335		CLAIMED	SIERRA PACIFIC INDUSTRIES	0.00	0.00	06/01-10/01	1945	O	
S001334		Claimed	SIERRA PACIFIC INDUSTRIES	0.00	2.30	May-Nov	1945	DA,O	
S001333		Claimed	SIERRA PACIFIC INDUSTRIES	0.00	0.00		1945	O	
S001332		Claimed	SIERRA PACIFIC INDUSTRIES	0.00	0.99	May-Oct	1945	DA,O	
S001331		CLAIMED	SIERRA PACIFIC INDUSTRIES	0.00	0.00	06/01-10/01	1945	O	
S001330		CLAIMED	SIERRA PACIFIC INDUSTRIES	0.00	2.30	06/01-10/01	1945	DA,O	
S001329		Claimed	SIERRA PACIFIC INDUSTRIES	0.00	0.00		1945	O	

Adjudicated pre-1914 Appropriative Rights

Application ID	License ID	Status	Holder Name	Face Value (acre-ft)	2010-2013 Average Reported Demand (acre-ft)	Season	Year of First Use	Beneficial Use	Acres Irrigated
S002908	pre-1914	Claimed	Los Molinos Mutual Water Co	0	7818.7	year-round	1912	I	677
S003134	pre-1914	Claimed	EDWARDS	0	4442.4	year-round	1869	I,S	330
S016326	pre-1914	Claimed	EDWARDS	88	4890.5	year-round	1869	I,S	545

Post-1914 Appropriative Rights

Application ID	License ID	Status	Holder Name	Face Value (acre-ft)	201-2013 Average Reported Demand (acre-ft)	Season	Year of First Use	Beneficial Use	Acres Irrigated
A017497	6466	Licensed	REED	272.70	NR	3/01-11/30	1957	I	40
A019011	6984	Licensed	MULHOLLAND	417.90	NR	4/15-11/15	1959	I	120
A020418	8604	Licensed	BOONE DOCK HOMESTEADERS INC	2.80	0.28	1/01-12/31	1961	I,D,S	3
A020467	8605	Licensed	BOONE DOCK HOMESTEADERS INC	10.00	NR	10/01-5/01	1961	I,S,R,FP	10
A022641	9882	Licensed	Dept of Fish and Game	2.70	2.7	Feb.	1966	FP, RAH	
A023009	10935	Revoked	OLIVER	4.20	NR	Revoked	Revoked		
A026056	12298	Licensed	REIS	3.60	NR	12/01-04/01	1979	R,RAH	

I= Irrigation
S= Stockwatering
RAH= Riparian and Aquatic Habitat
D= Domestic
O= Other

DA= Dust Abatement
FP= Fire Protection
R= Recreational
P= Power