

# Memorandum

6/19/07 BdMtg Item 10  
WR Enforcement  
Deadline: 6/6/07 Noon

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To:

State Water Resources Control Board  
Division of Water Rights  
Post Office Box 100  
Sacramento, California 95812

Department of Water Resources



Subject:

DWR Comments on the SWRCB's Policy for Water Rights Enforcement Workshop

The California Department of Water Resources (DWR) reviewed the issues presented in the REVISED NOTICE OF PUBLIC WORKSHOP dated May 3, 2007 on the State Water Resources Control Board's water right enforcement program. A policy on enforcement actions should allow for the most efficient use of available staff and should target water right violations that cause significant substantive harm. Such a policy should incorporate flexibility so that methods can be used to resolve water right concerns before resorting to enforcement measures. DWR believes that a flexible approach will foster fairness and improve compliance overall. DWR's specific comments are provided below.

#### Enforcement Priorities.

In general, the factors listed in Water Code Section 1055.3 should provide the basis for establishing enforcement priorities. Also, if the Board establishes such policies, they should be developed consistent with Title 23 of the California Code of Regulations section 649.

#### Opportunity for Voluntary Compliance.

DWR strongly encourages Board staff to establish flexible policies that allow alternatives for voluntary compliance of potential violations. Voluntary compliance can often be more effective, timely and less costly in terms of limited Board resources as well as the resources of the water user. Voluntary compliance can often be accomplished in a less adversarial manner than formal enforcement proceedings.

Prior to initiating an enforcement action Board staff should obtain specific information, including a complete background of the diversion, nature of the violation, and hydrologic conditions. This may require a detailed technical analysis. In cases where Board resources or expertise in a specific area are limited the diverter may be able to provide the analysis for Board review if it is given adequate notice. DWR recommends that the Board obtain information from other resource agencies that have expertise related to in-stream flow issues when establishing policies for enforcement.

The amount of time the Board should allow for voluntary compliance should be based on the particular circumstances of the water use being evaluated. Factors that should be considered when providing time for voluntary compliance should be the efforts of the water users to develop a solution, the complexity of the project, the practicality of potential solutions, and the implications of noncompliance to the state's resources and other impacted parties.

### Existing Diversions

A number of the issues listed in the workshop notice relate to whether the Board should take enforcement action against unauthorized diversions, including those parties with pending petitions for change where the requested actions have already commenced. This question raises issues related to errors in permit terms due to mistakes in document preparation, service area changes over time, and processing delays. With current staffing at the Board, petitions filed to correct errors or to update maps can take many years to process. If the Board elected to initiate enforcement actions against petitioners in these situations, this effort could consume time and resources of staff, exacerbating the backlog. Therefore, DWR recommends that the Board's policy include an assessment of the need to take an enforcement action on a petitioner in the context of the type of potential permit violation, the intentions of the petitioner in filing the petition, the nature of the potential violation, and the potential impacts to water resources or other legal users of water if an enforcement action is or is not initiated.

If a water right holder or applicant is working towards a permit or change, the Board should allow a reasonable time for completion where efforts are underway. Determining the time needed for a project permit or change should be evaluated considering its complexity, including compliance with CEQA, coordinating with regional efforts, and the multiple jurisdictional issues presented in each situation.

### Conclusion

Many of the issues facing the Board and the agencies charged with delivering a safe reliable water supply to the State's population are extremely complex and developing acceptable solutions requires time. A premature initiation of formal enforcement actions could delay the implementation of solutions rather than contribute to meaningful protections. Therefore an enforcement policy should provide flexibility and enable parties to work together towards an acceptable solution prior to enforcement. Formal enforcement actions should be reserved for circumstances where violators are unwilling to engage in a voluntary process towards solutions.

DWR appreciates the Board's interest in obtaining information for development of a water rights enforcement policy. DWR may provide additional comments and/or information to the Board at the workshop.

If you have any questions regarding the above comments, please contact me.



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