



# Fact Sheet

## **Question and Answers on Notices of Unavailability of Water Issued In the Sacramento River Watershed, San Joaquin River Watershed and Delta and Scott River**

Due to the ongoing drought, the State Water Resources Control Board (State Water Board) issued notices to specific water diverters regarding whether there is sufficient water to divert under the priority of their water rights.

These were titled "Notice of Unavailability of Water and Need for Immediate Curtailment" (Unavailability Notices) and were issued in the Sacramento River watershed, San Joaquin River watershed, the Delta and the Scott River watershed. This document answers questions about the effect of a recent Sacramento Superior Court ruling related to the Unavailability Notices.

### **Does the Court Order Mean That I Can Resume Diverting Water?**

You may only divert water if there is enough for you to do so under your priority of right. The State Water Board staff has determined based upon available data that, as of the date of the original notice, there is not enough water in the system for water right holders with your priority to divert unless you have an alternative water source or some other legal basis for diverting water. If you continue to divert water and are unable to demonstrate your diversion is authorized under California's water rights priority system, you may be subject to administrative or civil enforcement seeking injunctive relief and civil penalties.

The Court made clear the State Water Board may inquire of diverters whether they have alternate water supplies and may otherwise exercise its statutory enforcement authority, including issuing investigation orders and instituting actions for trespass under Water Code section 1052. The State Water Board may initiate enforcement actions under the Water Code against any parties, including those who filed the lawsuit, if it deems them to be in violation of any provision of the Water Code, so long as the Unavailability Notices are not the basis for that action.

### **What is the Purpose of the Recent Reissued Notice Regarding the Unavailability of Water (Clarification Notice)?**

The Clarification Notice removes a portion of the Unavailability Notices that might have been construed as ordering water right holders to stop diversions, as well as the requirement to submit a Certification Form (Form) attached to the Unavailability Notices. Otherwise, the original Unavailability Notice remains the same.





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The Clarification Notice informs its recipients that the State Water Board staff has determined, based upon available information, that there is not enough water in the system to divert under the recipient's priority of right as of the original notice date unless the recipient has an alternative water source or some other legal basis for diverting water. It informs the recipient of the severity of the situation, and provides information on whether water is needed to remain instream to serve senior right holders.

Diverters should be aware that they may be subject to enforcement if they do not stop diversions due to insufficient water supply under the priority of their water rights, unless they have an alternative water source or some other legal basis for diverting water, irrespective of whether the State Water Board has advised them that water is not available to serve their priority of right.

The Clarification Notice reminds water rights holders that diversion when there is no available water under the priority of the right is unauthorized diversion and use, subject to enforcement by the State Water Board. Penalties of up to \$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 may be assessed.

### **Am I required to complete the online Curtailment Certification Form?**

Completion of the online Curtailment Certification Form (Form) is not required. The prior Unavailability Notices provided opportunity for persons with domestic water systems to inform us whether they were under directives issued by the Division of Drinking Water, or local health or drinking water regulation to provide continued water service to meet minimum health and safety standards. This information was to have been provided to the State Water Board by submitting the Form. Although you are not required to file the Form, you can still advise the State Water Board of directives regarding your domestic water system operation or risk potential enforcement action should you divert water in an unauthorized manner.

*(This fact sheet was last updated July 15, 2015)*