

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

**DIVISION OF WATER RIGHTS**

**ORDER WR 2014 -0030-DWR**

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**ORDER FOR ADDITIONAL INFORMATION**

In the Matter of Diversion of Water from

**SAN JOAQUIN RIVER**

**BETWEEN FRIANT DAM AND GRAVELLY FORD**

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**BACKGROUND:**

1. On April 25, 2014, Governor Edmund G. Brown Jr. issued an Executive Order 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 Executive Order finds that the continuous severe drought conditions present urgent challenges across the state including water shortages for municipal water use 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.
2. The Executive Order refers to the Governor's Proclamation No. 1 -17-2014, issued on January 17, 2014, declaring a drought State of Emergency to exist in California due to severe drought conditions. The January Proclamation notes that the state is experiencing record dry conditions, with 2014 projected to become the driest year on record. These conditions also threaten the survival and recovery of fish, wildlife, and plants that rely on California's rivers, including many species in danger of, or threatened with, extinction. The January Proclamation also calls on all Californians to reduce their water usage by 20 percent.
3. On May 27, 2014, the State Water Resources Control Board (State Water Board) issued a "Notice of Unavailability of Water and Immediate Curtailment for Those Diverting Water in the Sacramento and San Joaquin River Watershed with a Post-1914 Appropriative Right." Based upon the most recent reservoir storage and inflow projections, along with forecasts for future precipitation events, the State Water Board determined the existing water supply in the Sacramento and San Joaquin River watershed is insufficient to meet the needs of all water rights holders. With the notice, the State Water Board notified all holders of post-1914 appropriative water rights within the Sacramento and San Joaquin River watershed of the need to immediately stop diverting under their post-1914 water rights, with some minor exceptions for non-consumptive diversions. The condition of curtailment will continue until water conditions improve. Approximately 5,435 junior water-rights in the Sacramento River watershed and 3,116 water rights in the San Joaquin River watershed received curtailment notices.
4. On July 2, 2014, the State Water Board adopted emergency regulations for Curtailment of Water Diversions to Protect Senior Water Rights (California Code of Regulations, title 23, adding sections 875 and 878.3, and amending sections 878.1 and 879<sup>1</sup>) (Regulations). The Regulations were reviewed by the Office of Administrative Law and went into effect on July 16, 2014. The Regulations establish a drought emergency curtailment method for post-1914 water right holders and requirements for riparian and pre-1914 rights holders to provide additional information in specific circumstances.

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

5. Pursuant to section 879, subdivision (c), the Deputy Director for the Division of Water Rights has delegated authority to issue an Order requiring riparian or pre-1914 water right holders to provide additional information. Section 879, subdivision (c), states:

*Upon receipt of a complaint alleging interference with a water right by a riparian or pre-1914 appropriative water right holder or upon receipt of information that indicates unlawful diversions of stored water by riparians or pre-1914 appropriative water right holders, the Deputy Director may issue an order under this article requiring such water right holders to provide additional information regarding the property patent date, the date of initial appropriation, and diversions made or anticipated during the current drought year. Any water right holder receiving an order under this subdivision shall provide the requested information within five (5) days.*

6. The United States Bureau of Reclamation (Reclamation) appropriates and stores water from the San Joaquin River at Friant Dam on the boundary of Fresno and Madera Counties, pursuant to License 1986 and Permits 11885, 11886, and 11887, as part of the Central Valley Project. Reclamation has obligations under various contracts between Reclamation and riparian right claimants along the San Joaquin River between the dam and Gravelly Ford ("Holding Contracts") to maintain at least 5 cubic feet per second (cfs) flow at Gravelly Ford.
7. In May 2014, the Division of Water Rights received a complaint against Reclamation alleging that there was not 5 cfs reaching Gravelly Ford. Reclamation staff informed the Division of Water Rights that it suspected unauthorized diversions between Friant Dam and Gravelly Ford. In June 2014, Reclamation conducted a survey of the San Joaquin River between Friant Dam and Gravelly Ford, and on July 14, 2014, Reclamation identified 20 potentially unauthorized diversions to Division staff.
8. On August 7, 2014, Division staff observed 13 of the 20 potentially unauthorized diversions by boat from the San Joaquin River. Subsequent investigation by staff revealed that some of these diversions were not associated with any post-1914 appropriative rights, nor with any Statements submitted pursuant to Water Code section 5101 (i.e., regarding riparian or pre-1914 rights). Based on observations by Reclamation and Division staff during the two surveys, eight (8) of the potentially unauthorized pumps were operating at the time of one or both inspections. These eight (8) diversions appear to be serving parcels that may claim riparian rights. Reclamation releases water based on a schedule to meet its various obligations under contracts. During the months of March, April, and May 2014, the water released pursuant to the schedule did not meet the intended obligations consistently, indicating that there may have been unauthorized diversions of water below Friant Dam.
9. Attachment A is a summary of the riparian and pre-1914 appropriative water right claimants on the San Joaquin River between Friant Dam and Gravelly Ford for which Statements have been filed, as determined from the State Water Board's electronic water rights information management system (eWRIMS) and Report Management System (RMS). Additional information regarding these known diversions is necessary to determine if there have been unauthorized diversions or if there is potential for unauthorized diversion.
10. Attachment B is a summary of the unidentified, but potentially riparian diversions, observed by Reclamation and Division staff between Friant Dam and Gravelly Ford in June and August 2014. Additional information regarding these unknown diversions is necessary to determine if there have been unauthorized diversions or if there is potential for unauthorized diversion.

**FINDINGS:**

1. Section 879, subdivision (c) authorizes the Deputy Director for the Division of Water Rights to require parties claiming a riparian or pre-1914 right to divert water to submit certain information concerning the water rights claimed and concerning the past and future anticipated diversions under the claimed right.
2. The Deputy Director for the Division of Water Rights has information that indicates there may be unlawful diversions of Reclamation stored water by riparians or pre-1914 appropriative water right claimants along the San Joaquin River between Friant Dam and Gravelly Ford.
3. To determine whether unauthorized diversions have occurred, the State Water Board needs additional information on the diversions made under a riparian or pre-1914 basis-of-right for the suspected users along the San Joaquin River between Friant Dam and Gravelly Ford.

**IT IS HEREBY ORDERED:**

1. All existing and potential pre-1914 and riparian water right claimants along the San Joaquin River between Friant Dam and Gravelly Ford, including, but not limited to, those identified in Attachment A and Attachment B are subject to this Order for additional information pursuant to section 879, subdivision (c) and shall provide the following information:
  - (A) The monthly amounts of water diverted and the basis of right allowing for the diversions from October 1, 2013 through October 31, 2014, and the anticipated monthly amount of water to be diverted under each separate claim of right for November and December of 2014. The diversion information shall include the maximum rate of diversion for each month and the method used to determine the amounts reported. This diversion information shall be submitted within five (5) days of the date of this Order;
  - (B) Identification and location by map of the point of diversion and place of use for each diversion of water from the San Joaquin River, the type of water right being claimed for each point of diversion, the purpose of use, and the place of use being served with acreage and crop type, if applicable. All documentation supporting the type of water right claimed, including the property patent date and patent map, if riparian right. If pre-1914 right is claimed, a copy of notice filed with the county, copy of property deed, and all other information supporting the pre-1914 right pertaining to initial diversion and continued beneficial use of water. This information shall be submitted within 30 days of the date of this Order; and
  - (C) If this drought continues beyond December 31, 2014, the monthly diversion for each month starting with January 2015 shall be submitted by the fifth (5<sup>th</sup>) of each succeeding month until the drought ends.
2. This Order shall be effective beginning on the date signed below.
3. All water users or water right claimants receiving this Order are required to submit the information requested. Failure to comply with this Order subjects the party to enforcement action.
4. 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.

STATE WATER RESOURCES CONTROL BOARD



*Barbara Evoy, Deputy Director  
Division of Water Rights*

Dated: **NOV 06 2014**

## Attachment A

## Unidentified Diversions Observed during Pump Survey

<b>Statement or Application Number</b>	<b>Owner / Agent</b>
S022066	Rio Mesa Holdings
S018585, S019496	Terry Holmes
S020684	Sierra Foothills P.U.D.
S017290	Paramount Citrus
S024250	William W. Diedrich
A025688	Patricia J. Manning
S003733	William W. Diedrich
S017974	Ross Borba
S005468	Vulcan Materials Company c/o Integrated Resource Management
S006307	Donald Cobb
S020676	Sierra Foothills P.U.D.
S020688	Sierra Foothills P.U.D.
S020680	Sierra Foothills P.U.D.
S024276	Madera County Service Area 16 Summer Hill
S003734	William W. Diedrich

Attachment B

Unidentified Diversions Observed during Pump Survey

APN	Owner/Agent
FRESNO COUNTY APN 015-200-11S	Gregory Joel & Lori Ann Smith
FRESNO COUNTY APN 016-440-50S	Anthony F. Cubre Jr Trustee
FRESNO COUNTY APN 016-440-70S	Harry S. Pascuzzi Trustee
FRESNO COUNTY APN 300-250-15	Sumner Peck Ranch, Inc
FRESNO COUNTY APN 401-021-16T	San Joaquin River Conservancy
FRESNO COUNTY APN 576-010-01	Vulcan Lands Inc
FRESNO COUNTY APN 579-020-06	Calmat Properties Co.
FRESNO COUNTY APN 579-020-12	Allen and Ginny Hovsepian
FRESNO COUNTY APN 579-030-04	Donaghy Edward J & Janis M. Trustees
FRESNO COUNTY APN 579-040-04	Donaghy Edward J & Janis M. Trustees
MADERA COUNTY 040-172-002	William W. Diedrich
MADERA COUNTY 040-181-010-000	Jonathan & Marie Basila
MADERA COUNTY APN 040-181-011	Steve and Barbara Schaad
MADERA COUNTY APN 049-091-004	San Joaquin River Ranch LLC