
State Water Resources Control Board

October 09, 2020

NOTICE OF IMMEDIATE CURTAILMENT **TERM 91 WATER RIGHT “INTERESTED PARTY”**

This notice is being provided to water right holders with permits or licenses that contain Standard Water Right Term 91 (Term 91), which prohibits diversion of water within the Sacramento-San Joaquin River Delta (Delta) watershed when (i) the Delta is in “Balanced Condition” and (ii) Supplemental Project Water (SPW) releases are being made by the Central Valley Project (CVP) or State Water Project (collectively Projects). The Delta is referred to be in “Balanced Condition” when the Projects are being operated to meet water quality and flow requirements in the Delta. SPW releases¹ are releases of imported and previously stored Project water to meet inbasin entitlements,² including maintenance of Delta water quality and flow requirements.

Curtailment of Term 91 Water Rights:

The State Water Resources Control Board (State Water Board), Division of Water Rights (Division) has determined that the Delta is in “Balanced Condition” and (ii) SPW releases are being made by the Projects.

With this notice, the State Water Board is invoking Term 91 and ordering parties to immediately stop diverting water under all water rights that contain Term 91. This condition of curtailment will continue until water conditions improve. Even if there is water physically available at a party’s point of diversion, that water is necessary to meet senior water holders’ needs or water quality objectives, or is water released from storage, that parties are not entitled to divert under water rights that contain Term 91. Parties should not commence diversion under water rights that contain Term 91 before the State Water Board notifies them that Term 91 curtailments are no longer in effect and they ensure compliance with all other terms of their water rights.

Future notices related to Term 91 for the remainder of 2020, including notices of lifting of Term 91 curtailments, will only be provided by email to the “Term 91 Updates” email

¹ SPW is calculated as the net storage releases from Shasta, Folsom, and Oroville reservoirs, plus water imported to the Delta Watershed from the Trinity River CVP facilities, minus the sum of the Projects’ Delta exports and Carriage Water calculated from the Delta Export Index.

² Inbasin entitlements are defined as all rights to divert water from the Delta or streams tributary to the Delta for use within the respective basins of origin or the Legal Delta, unavoidable natural requirements for riparian habitat and conveyance losses, and flows required by the State Water Board for maintenance of water quality and fish and wildlife. Export diversions and Project carriage water are specifically excluded from the definition of inbasin entitlements.

list and posted on the Division's website at:

https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/term_91/

Parties are responsible for subscribing to electronic notices and/or monitoring the Division's website to determine when Term 91 curtailments are lifted and if they go back into effect after lifting this year in order to maintain compliance with Term 91. State Water Board staff may perform field inspections to determine compliance with this Notice.

To sign up for electronic notices, please visit:

https://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.html

and subscribe to the "Term 91 Updates" email list found under the "Water Rights" section of the page.

Status of Curtailment of Term 91 Water Rights:

A graph depicting the status of SPW releases and whether the Delta is in Balanced or Excess Conditions is available on the Division's website at:

https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/docs/term91graph.pdf.

Parties whose water rights contain Term 91 and who plan to use water during a Term 91 curtailment period must arrange to obtain an alternate source of water such as a more senior water right that is not under curtailment, ground water, or contract water purchased from entities with available water.

Potential Enforcement:

Those who are found to have diverted or used water beyond what is legally available to them or found to have violated a term of a permit or license, or other State Water Board order may be subject to administrative fines, Cease and Desist Orders, or prosecution in court. The State Water Board may levy fines of \$500 per day for each day on which the unauthorized diversion or use of water or the violation occurred. (Wat. Code, §§ 1052, 1055, 1846.) Additionally, if the State Water Board issues a Cease and Desist Order against an unauthorized diversion or use of water, a violation of a term of a permit or license, or other State Water Board order, violation of the Cease and Desist Order can result in a fine of \$1000 per day. (Wat. Code, §§ 1831, 1845.)

We recognize the burden and loss this notice creates to parties during their season of diversion, and we want to ensure that others do not illegally benefit from Term 91 curtailments. The State Water Board 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, any party may file a complaint at:

<https://calepacomplaints.secure.force.com/complaints/Complaint>

No later than 30 days after issuance of this notice, any interested person may petition the State Water Board for reconsideration in accordance with

Water Code section 1122 and sections 768 through 770 of the State Water Board's regulations. (Cal. Code Regs., tit. 23, §§ 768-770.)

Due to the current COVID-19 emergency, most Division staff are working from home. Accordingly, if you have any questions concerning this notice, the best means of contact is by email to Bay-Delta@waterboards.ca.gov.

Sincerely,

ORIGINAL SIGNED BY

Erik Ekdahl, Deputy Director
Division of Water

cc:

John Leahigh, Department of Water Resources (via email only)
John.Leahigh@water.ca.gov

Molly White, Department of Water Resources (via email only)
Molly.White@water.ca.gov

Kristin White, U.S. Bureau of Reclamation (via email only)
knwhite@usbr.gov

Jeff Sandberg, U.S. Bureau of Reclamation (via email only)
JSandberg@usbr.gov