
State Water Resources Control Board

June 05, 2020

«First_Name» «Last_Name»
«Company_Name»
«Attention_Line»
«Address»
«City», «State»«Zip_Code»

NOTICE OF IMMEDIATE CURTAILMENT
TERM 91 WATER RIGHT “INTERESTED PARTY” WATER RIGHT
PERMIT/LICENSE NO. «Permit_ID_» «License_ID» (APPLICATION NO.
«StatementApp_»)

You are receiving this notice because your Permit/License No. «Permit_ID_» «License_ID» (Application No. «StatementApp_») contains Standard Water Right Term 91 (Term 91) that 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.

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, Project inbasin deliveries, 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.

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

With this notice, the State Water Board is invoking Term 91 and ordering you to immediately stop diverting water under the above water right. This condition of curtailment will continue until water conditions improve. Even if there is water physically available at your point of diversion, that water is necessary to meet senior water holders' needs or water quality objectives, or is water released from storage, that you are not entitled to divert under the above water right. You should not commence diversion under the above water right before being notified by the State Water Board that water is legally available for diversion under this priority of right.

Following the initial Term 91 diversion curtailment notice this year, 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 list and posted on the Division's website at:

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

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.

Compliance Certification Required:

Curtailed Term 91 diverters should document receipt of this Notice by completing the Curtailment Certification Survey (Survey) on the Division's Water Right Form and Survey Submittal Portal. The web address for the Survey Portal is:

<https://public.waterboards.ca.gov/WRInfo>

To access the Survey Portal, use the same login credentials that you use when filing your annual reports of diversion and use. Please complete and submit the Survey online within seven (7) days of receipt of this Notice. The Survey confirms cessation of diversion under the specific water right (listed above) that includes Term 91, or, if applicable, either (i) identifies the alternative water supply to be used in lieu of the curtailed water right, or (ii) claims there is no hydraulic continuity between the surface water at the authorized point of diversion and the surface water in the Sacramento-San Joaquin Delta. A claim of no hydraulic continuity should be supported by photographs and additional information submitted/uploaded via the Survey website. Completion of the Survey and identification of alternate rights can avoid unnecessary enforcement proceedings. State Water Board staff may perform a field inspection to determine compliance with this Notice.

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.

If you plan to use water during a Term 91 curtailment period, you 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 for you during the irrigation season, and we want to ensure that others do not illegally benefit from your 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, you 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: continued on next page.

cc: (continued)

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

This letter has been sent to the following application files:

A012842
A014858B
A016186
A017001
A020957
A021162
A022061
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