



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

June 30, 2014

VIA E-MAIL

ATTN: State Board Members
commentletters@waterboards.ca.gov



SUBJECT: 7/1-2 BOARD MEETING AGENDA ITEM 5:
CONSIDERATION OF A PROPOSED RESOLUTION REGARDING DROUGHT
RELATED EMERGENCY REGULATIONS FOR CURTAILMENT OF
DIVERSIONS TO PROTECT SENIOR WATER RIGHTS

Honorable Board Members:

The Office of Enforcement supports adoption of the drought-related emergency regulations being considered by the State Water Board at the meeting and under the agenda item referenced above. The proposed emergency regulations are a necessary next step in the State Water Board's drought response and will provide the Division of Water Rights (Division) with a more timely and effective means to protect senior water rights. Under the proposed emergency regulations, a notice of unavailability would be immediately enforceable against a diverter, rather than requiring that a diversion-specific investigation be undertaken and completed before an enforcement action could be taken. Because time is of the essence in protecting stream flows for senior rights, immediate enforceability provides a critical tool for protecting the state's scarce water resources during this time of drought.

The Office of Enforcement advises and represents the Division's enforcement staff on water rights investigations and enforcement actions. The enforcement tools currently available to the State Water Board to protect senior water rights in times of scarcity are inadequate to address needed flows in a timely manner. "After the fact" penalties do not provide sufficient deterrence, and are inadequate to compensate senior rights and the public for damage caused by diversions that diminish flows to unacceptable levels. Moreover, recent drought legislation added language to Water Code section 1058.5(d) stating "any person or entity who violates a regulation adopted by the board pursuant to this section is guilty of an infraction punishable by a fine of up to five hundred dollars (\$500) for each day in which the violation occurs." Unless the emergency regulations are adopted, local law enforcement will not be able to utilize this authority except possibly on Antelope, Deer and Mill Creeks, where the Board has already acted.

The proposed emergency regulations provide a process by which State Water Board can determine when water is not available for specific classes of rights and issue curtailment orders that are immediately enforceable and require a modest level of reporting. The required reporting will provide information that will help the Division refine and improve its estimates of available supply and future demand so that senior water rights and precious natural resources can be better protected.

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

The Office of Enforcement supports the adoption of the proposed emergency regulations and will be available during the above referenced agenda item to respond to enforcement related questions concerning the proposed emergency regulations.

Sincerely,

Sincerely,



Christian Carrigan
Director, Office of Enforcement
State Water Resources Control Board

CC/bkn