

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF WATER RIGHTS
JULY 1, 2014**

ITEM 5

SUBJECT

CONSIDERATION OF A PROPOSED RESOLUTION REGARDING DROUGHT-RELATED EMERGENCY REGULATIONS FOR CURTAILMENT OF DIVERSIONS TO PROTECT SENIOR WATER RIGHTS

DISCUSSION

Background

On January 17, 2014, Governor Brown declared a drought state of emergency. On that same day, the State Water Board issued a Notice of Surface Water Shortage and Potential for Curtailment of Water Right Diversions. The notice advised that if dry weather conditions persist, the State Water Board would notify water right holders in critically dry watersheds of the requirement to limit or stop diversions of water under their water right, based on their priority. These notices were distributed to specific watersheds beginning in May 2014. Water right holders receiving such notice are required to stop their diversions; however there is no immediate sanction to compel diverters to comply. As of June 17, 2014, approximately 79% of all water right holders that received a notice to curtail had not returned a curtailment certification to demonstrate compliance.

On March 1, 2014, Governor Brown signed a drought relief package, SB 104, which, among other things, expanded the State Water Board's authority under Water Code section 1058.5. Water Code section 1058.5 grants the State Water Board the authority to adopt emergency regulations in certain drought years in order to: "prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion, of water, to promote water recycling or water conservation, to require curtailment of diversions when water is not available under the diverter's priority of right, or in furtherance of any of the foregoing, to require reporting of diversion or use or the preparation of monitoring reports."

The proposed emergency regulations are intended to use the authority authorized by the March drought relief legislation to address the possible widespread lack of compliance. The regulation will have no new effect on water right holders that have acted to stop their diversion in response to a notice of curtailment and report on their compliance.

Proposed Emergency Regulations

The proposed emergency regulations provide the State Water Board with a more effective approach to prevent harm to senior water right holders if there is insufficient water to meet the needs of all right holders. The regulations would allow the Board to implement the State's water right priority system on a more real-time basis. An order, issued pursuant to the emergency regulations, would go into effect immediately. This means that the regulations will both:

- 1) increase the certainty that curtailed water rights holders will cease diverting water; and
- 2) provide greater assurance that curtailed water rights holders will report on the continued exercise of their senior rights and assist the Board to refine curtailments.

The proposed emergency regulations will:

- Apply to all water right holders where curtailments are undertaken.
- Describe the information to determine whether conditions warrant curtailment.
- Require reporting to demonstrate compliance with a curtailment order.

The emergency regulations will continue to allow for water sharing agreements as an alternative means of protecting senior water rights. Water sharing agreements must demonstrate that senior water right holders will not be harmed and there will be no unreasonable effect on fish and wildlife as a result of the agreement.

Request for Input: Minimum Human Health and Safety Needs

The Board recently added, by emergency regulations, article 24 to division 3, chapter 2 of California Code of Regulations, title 23. Article 24 contains section 878.1, which identifies certain limited minimum health and safety needs that may be authorized notwithstanding the need for curtailment, and declaring use under even more senior water rights to be a waste and unreasonable use when those minimum health and safety needs cannot be met. Currently, section 878.1 only applies to curtailment orders issued pursuant to section 877 of that article, which addresses minimum flows in Deer, Mill and Antelope Creeks.

During the State Water Board’s workshop on curtailments in the Sacramento-San Joaquin Watershed held on May 20 and 21, 2014, some commenters suggested that health and safety considerations should be addressed by making changes in the water supply network, without the need for a health and safety exception. While proposed section 875 is currently written so as to not include the minimum health and safety exemption contained in section 878.1, the Board is interested in hearing comment on this issue. The Board is specifically asking interested parties to comment on whether the approach to ensure that minimum health and safety needs are addressed in the emergency regulations to address minimum flows in Deer, Mill and Antelope Creeks should be applied more broadly, or if there are alternative approaches to meeting this need.

POLICY ISSUE

Should the State Water Board adopt the proposed resolution?
 Should proposed section 875 be subject to the minimum health and safety exemption from curtailments and water right seniority under section 878.1?

FISCAL IMPACT

This activity is budgeted within existing resources, and no additional fiscal demands will occur as a result of approving this item.

REGIONAL BOARD IMPACT

None.

STAFF RECOMMENDATION

Staff recommends that the State Water Board adopt the proposed resolution adopting the emergency regulation.

State Water Board action on this item will assist the Water Boards in reaching Goal 6 of the Strategic Plan Update: 2008-2012 to enhance consistency across the Water Boards, on an ongoing basis, to ensure our processes are effective, efficient, and predictable, and to promote fair and equitable application of laws, regulations, policies and procedures.