

Weaver, Nathan@Waterboards

From: Howard, Tom </O=MMS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=HOWARD, TOM@WATERBO97BB8206-7061-4BF7-B503-158A6481C1EA139>
Sent: Thursday, June 11, 2015 12:49 PM
To: Aquino, Nancy@Waterboards
Subject: FW: Curtailment Package
Attachments: Curtailment Press Releaseblefinal 06102015.docx; image001.png; image002.jpg; finalQAs for pre-1914 ble(3).docx; Sacramento + Proportional Delta PRE-14 Supply-Demand Analysis Web 2015-0....pdf; Sacramento + N Delta PRE-14 Supply-Demand Analysis Web 2015-06-10.pdf; Sacramento-San Joaquin PRE-14 Supply-Demand Analysis Web 2015-06-10.pdf; San Joaquin + Proportional Delta PRE-14 Supply-Demand Analysis Web 2015-....pdf; Pre-14 Combined Curtailment Letter - Cleanble.docx

From: Evoy, Barbara@Waterboards
Sent: Wednesday, June 10, 2015 1:10 PM
To: Howard, Tom
Cc: Trgovcich, Caren@Waterboards; O'Hagan, John@Waterboards; Mrowka, Kathy@Waterboards; Grober, Les@Waterboards
Subject: FW: Curtailment Package

Tom – attached is the full package of curtailment info. I believe you were intending to send the Press Release and the Pre-14 combined curtailment letter to Wade as a head up. We are ready to get the letter going as soon as you sign or give us the electronic approval. We can send tomorrow or Friday (the letter and press release are currently dated June 11). Your choice given the rain.

From: O'Hagan, John@Waterboards
Sent: Wednesday, June 10, 2015 12:19 PM
To: Evoy, Barbara@Waterboards
Cc: Mrowka, Kathy@Waterboards; Evoy, Barbara@Waterboards
Subject: Curtailment Package

Here are the documents for Tom

John O'Hagan
Assistant Deputy Director, Water Rights
State Water Resources Control Board
916-341-5368



Questions and Answers
Pre-1914 Curtailment

- How did you determine that there was no water for me to divert? When I look at the stream, I see plenty of water.

Water going by your point of diversion also flows to other downstream users. These users may have a higher priority right than you or the water may not be the type of flow (source) you are allowed to divert. Riparian users almost always have higher priority to natural flow than appropriative water rights. A post or pre-1914 appropriative water right holder is not allowed to divert natural flow when more senior riparian water rights holders are not getting their full amounts. Reservoir releases of stored water, intended for water quality needs or specific customers are other examples of water that is not available to you.

The State Water Board analyzes water right demands by priority of right and available supply. We rely on the best available water supply information. Detailed information is generally available for major tributaries but often not available for smaller tributaries. For this reason, we work closely with stakeholders in water short basins to confirm and validate the demand and supply information. Before initiating curtailments, the State Water Board shares its findings with stakeholder groups and seeks feedback. The supply and demand information is available for review and the supply/demand curves are updated and posted on our website for review.

- My property is located in the Delta. There is water all around. Why can't I just use that water?

Water in the Delta is a complex mixture of reservoir releases by the State Water Project and Central Valley Project (the "Projects"); natural flows, return flows from upstream irrigation or other uses, and other sources. Reservoir releases of stored water by the Projects for use under contracts, transfers, or for State Water Board permitted salinity, export, and fish and wildlife needs are not subject to appropriation by others. The State Water Board realizes there is some disagreement regarding the availability of water in the Delta, and will continue to work to resolve these issues. If you received a curtailment notice though, the State Water Board determined that there is insufficient water from the Sacramento-San Joaquin watershed available for your use and you should stop your diversions.

- Why should I comply with a curtailment notice? What happens if I don't do so?

The notice informs diverters about the lack of available water supply to serve their rights. Failure to observe the priority of your water right by ceasing diversion when there is insufficient water to serve your priority of right is unauthorized diversion and use of water. The State Water Board has authority to take enforcement actions if unauthorized diversions are found. These actions can include monetary penalties dating back to the date when there was insufficient water to serve that priority.

- What is the point of stopping my diversions? The neighbor will continue taking water. I will be the only one losing in this situation.

In order to prevent unauthorized use of water, the State Water Board is conducting field inspections and also using the complaint process to confirm compliance. Violations are subject to enforcement, including enhanced penalties during drought. The State Water Board invites the public to file a complaint if they are aware of illegal diversions of water, waste and unreasonable use of water or public trust violations. Your complaint can be confidential.

- I have already voluntarily reduced my water use. Why should I have to do more?

Unfortunately, the water supply situation is so bleak that there will be little or no water in many streams this summer. If you are curtailed, the water you used is needed by a more senior water right holder. Although we realize the difficulties which this causes, the water supply is simply inadequate to meet the needs of all water users. The California water rights system must be used to determine who has a legal right to water in times of shortage.

- What authority do you have to curtail a pre-1914 or riparian water diverter?

The State Water Board has authority to investigate all streams, stream systems, portions of stream systems, lakes or other bodies of water under Water Code section 1051, subd. (a). In drought years, such as 2014 and 2015, the State Water Board can determine when water is not available for certain water rights and that further diversions by such rights could constitute an unauthorized diversion.

- How can you curtail my use when you did not consider site specific information on water supply and demand at my pump?

The curtailment analysis is based on ongoing evaluation of water supply versus demand, and is conducted for major streams and watersheds. This information is compared to projected and real-time gage data. The analysis provides comprehensive information on each watershed that is subject to curtailment. Additionally, the information is shared with stakeholders in the watershed before curtailments and is posted for continued review. The State Water Board uses the best available information but site specific evaluation is not possible during the current drought emergency.

- Why aren't you relying on local self-policing and neighborly sharing of water resources?

The State Water Board is responsible for administering the water rights system. Curtailment is the traditional approach to resolve priority and quantity conflicts. Where local or regional groups can come together and provide the necessary water to all senior and established environmental needs, without causing injury to other users, the Board has shown willingness to consider these proposals.

- I am located where there are several sources of water. Why am I curtailed?

If you are located where there are multiple sources of water or below a confluence of two or more streams, your right to the flows at your point of diversion is limited by the priority of your right. This issue is considered in determining the scale and priority of curtailments.

- Are you curtailing my use, just to provide more water to Delta diverters?

Curtailments are based on the water right priority system, with the limited water supply allocated to the most senior priority diverters. Curtailment is not a tool to provide water to specific areas. The purpose is orderly administration of the water right system.

- Why are you notifying senior rights of insufficiency of supply? No one has filed a complaint stating that they are injured due to drought water use.

The State Water Board administers the California water right system. While fairly and effectively responding to complaints is a significant part of our enforcement role, it is not an efficient way to deal with large scale water shortage during drought on a timely basis. Information must be updated and evaluated on a tributary and watershed basis to give the water users information on projected water availability by priority. Examination of supply/demand data shows that significant water deficits are occurring in multiple watersheds. Thousands of water rights occur in these basins. In order to maintain an orderly system of use, the State Water Board implements curtailments as needed. In the Sacramento/San Joaquin basins, Post-1914 water rights were curtailed first. Now certain pre-1914 water rights are being notified. If supply and demand continues to follow expected patterns, additional (older) pre-1914 water rights will be notified of insufficient water.

- I have a pre-1914 right. Why should I curtail my use when my water right is senior to some riparian diverters?

Riparian rights attach to parcels of lands that meet specific criteria and only apply to the natural flow of the source. Riparian right holders generally have the most senior priority to natural flows in a stream. There is an exception where an appropriation has a priority date before the date the land which is the basis for the riparian right passed into private ownership, but only to the extent the appropriative right has been preserved and is not subject to forfeiture for non-use. Also, an appropriator may make use of abandoned flows while a riparian right holder cannot. Water that has been stored or imported is not available to either riparian or appropriative right holders.

Although the pre-1914 right may be senior to riparian use on a specific parcel of land, it may concurrently be junior to other riparian diverters. The pre-1914 water right cannot be exercised to divert natural flow when there is insufficient natural flow available to serve other riparian rights.