
State Water Resources Control Board

June 3, 2022

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

This notice is intended for water right holders whose Permit or License contains Standard Water Right Term 91 (Term 91). Holders of water rights containing Term 91 (Term 91 water right holders) are prohibited from diverting water within the Sacramento-San Joaquin River Delta (Delta) watershed under such rights 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 SPW releases are being made by the Projects.

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

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.

Please note that future notices related to Term 91, 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/

Term 91 water right holders 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 Term 91 Curtailment Certification (2022) 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 used when filing 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 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

Term 91 water right holders 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 for Term 91 water right holders during the irrigation season, 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, a complaint may be filed 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.)

Any questions concerning this notice may be directed by email to Bay-Delta@waterboards.ca.gov.

Sincerely,



Erik Ekdahl, Deputy Director
Division of Water Rights

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

This notice applies to the following water rights (application numbers):

A012842
A014858B
A016186
A017001
A020957
A021162
A022061
A022189
A022219
A022598
A022638
A022946
A023201
A023343
A023344
A023345
A023673
A023757
A023810
A023838
A023945
A023946
A024016
A024383
A024439
A024440
A024523
A024590
A024620
A024637
A024638
A024639
A024806
A024961
A024971
A025114
A025248
A025616
A025690
A025715
A025727
A025751
A025792
A025793

A025883
A025985
A025999
A026088
A026121
A026141
A026162
A026164
A026386
A026422
A026521
A026571
A026594
A026595
A026604
A026651
A026676
A026695
A026709
A026875
A026931
A027007
A027166
A027183
A027184
A027546
A027555
A027559
A027566
A027586
A027636A
A027636B
A027647
A027781
A027880
A027893
A028192
A028238
A028243
A028453
A028539
A028616
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A028685
A028992
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A029471
A029550
A029867
A030062
A030074
A030151
A030177
A030314
A030332
A030358
A030359
A030410
A030453
A030573
A030613
A030657
A030812
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A030838
A030852
A031176
A031436
A031572
A031859
A031919