



Fact Sheet

Frequently Asked Questions About Water Unavailability in the Sacramento-San Joaquin Delta (Delta) Watershed

What is a notice of water unavailability?

Notices of water unavailability inform diverters that, based on data and analysis by State Water Resources Control Board (State Water Board or Board) staff, there appears to be insufficient water available to divert under specified water rights. Notices of water unavailability are not orders to stop diverting. Rather, notices of water unavailability inform water right holders and claimants that water is estimated to be unavailable for their priority of right or will be unavailable soon. Water right holders and claimants should use the information made available by the Board to inform their water diversion and use decisions within the context of California's water rights system and current drought conditions.

Diversions that occur when there is insufficient water to meet the conditions (including priority) of a right are unlawful. Unlawful diversions are subject to enforcement actions initiated at the informed discretion of the Board or upon receipt and investigation of a complaint. Subject to notice and the opportunity for an evidentiary hearing, those found to have diverted unlawfully face fines of up to \$1,000 per day and \$2,500 per acre-foot. So, while notices of water unavailability do not constitute a direct order to stop diversions, they do provide warning that diversion in excess of what is allowed by their water right could result in enforcement actions, fines, and penalties.

Who has the State Water Board issued notices of water unavailability to during the 2021 Water Year?

The State Water Board has issued notices of water unavailability to all post-1914 appropriative water right holders in the Delta watershed, all pre-1914 appropriative claimants in the San Joaquin River watershed, and many pre-1914 appropriative claimants in the Sacramento River watershed. The Board has also notified riparian claimants in the San Joaquin River watershed that there are limited supplies for those users.

On June 15, 2021, the State Water Board issued [notices of water unavailability](#) to all post-1914 appropriative water right holders in the Delta watershed to inform them that the best available information indicates that, as of June 15, 2021, water supply in the Delta watershed is insufficient to support lawful diversion under any post-1914 appropriative water right. The letter was also sent to pre-1914 appropriative and



riparian claimants to warn them that water could become unavailable at their claimed priority of right in the near future. For post-1914 appropriative water right holders, including holders of registrations and stockpond certificates, the June 15 letters serve as notices of water unavailability. In total, the Board sent notices of water unavailability, via postal mail, to approximately 4,300 water right holders for approximately 9,150 post-1914 appropriative rights (some water users hold or claim more than one right). The June 15 notices of water unavailability applicable to all post-1914 appropriative water rights in the Delta watershed remain effective.

On July 23, 2021, the State Water Board issued [notices of water unavailability](#) to more senior claims of right indicating that water supply is currently insufficient to support lawful diversions for:

- All post-1914 appropriative water rights in the Delta watershed (inclusive of the Sacramento River and San Joaquin River watersheds);
- All pre-1914 appropriative water right claims in the San Joaquin River watershed;
- All pre-1914 appropriative water right claims in the Sacramento River watershed with a priority date of 1883 or later; and
- Some pre-1914 appropriative water right claims in specific Sacramento River tributary sub-watersheds with a priority date earlier than 1883. These claims face water unavailability either due to limited local supplies or the need to bypass natural flows so that more senior rights downstream can be met.

All of the pre-1914 appropriative water right claims affected by the July 23 notices can be found on the [List of Noticed Pre-1914 Appropriative Water Right Claims](#).

In total, the July 23 notices were issued to approximately 1,400 pre-1914 appropriative water right claimants covering about 3,300 pre-1914 appropriative water right claims. The July 23 notices were sent via postal mail to all water right holders and claimants in the Delta watershed to alert them of the water rights and claims for which the best information available to the Board indicates that water is unavailable.

Is water unavailable to any riparian claimants?

The best information available to the Board, indicates that, as of July 23, water supply is insufficient to meet the demands of all riparian claims of right in the following watersheds and sub-watersheds:

- San Joaquin River watershed: In the months of July, August, and September 2021, demands under riparian water right claims are expected to face a total deficit of approximately 197,000 acre-feet, 170,000 acre-feet, and 73,000 acre-feet, respectively. This amounts to a deficit of supply compared to riparian

demand in the San Joaquin River watershed of approximately 82 percent in July, 91 percent in August, and 85 percent in September.

- Bear River sub-watershed: In the months of July and August 2021, demands under riparian water right claims are expected to face a total deficit of approximately 79 acre-feet and 370 acre-feet, respectively. This amounts to a deficit of supply compared to riparian demand in the Bear River sub-watershed of approximately 9 percent in July and 42 percent in August.
- Upper American River sub-watershed: In the month of September 2021, demands under riparian water right claims are expected to face a total deficit of approximately 687 acre-feet. This amounts to a deficit of supply compared to riparian demand in the Upper American River sub-watershed of approximately 100 percent in September.
- Putah Creek sub-watershed: In the month of July 2021, demands under riparian water right claims are expected to face a total deficit of approximately 177 acre-feet. This amounts to a deficit of supply compared to riparian demand in the Putah Creek sub-watershed of approximately 7 percent in July.

In times of such supply shortage, riparian users are required to share the shortage on a correlative basis. Accordingly, riparian claims are not individually listed. These numbers include projections through September 2021 and may be updated as new information becomes available.

Why is the State Water Board issuing notices of water unavailability?

Due to critically dry hydrologic conditions in the Delta watershed this year, there is not enough water available to serve many water right holders. Therefore, the State Water Board is issuing notices of water unavailability based on California's water rights priority system of "first in time, first in right." Generally, this means that when water is limited, the most recently permitted ("junior") water right holders are required to stop diverting before restrictions are imposed on more senior water right holders. These more senior water right holders include appropriative water right holders with more senior water right priority dates and riparian water right holders that generally have the most senior right to natural flows.

The Board's action follows the [Governor's May 10, 2021 Proclamation of a State of Emergency](#) that expanded a previous drought proclamation to include the entire Delta watershed and directs the State Water Board and other agencies to consider a number of actions to implement the priority system and to protect water needed for health, safety, and protection of water quality in the Delta watershed.

How long will the notices remain in effect?

Water is likely to remain unavailable to many users until winter precipitation restores flows. The Board's current analyses extend through the end of the 2021 Water Year in

September and are planned to be extended into the next water year based on updated data. The State Water Board will continue to monitor conditions through September and beyond and plans to provide updated information on water unavailability for the Delta watershed through the State Water Board's [Delta Drought email list](#) and the Board's [Delta Watershed Drought Information webpage](#). Please subscribe to this list and regularly check this webpage to stay informed and receive information regarding future water unavailability in the Delta watershed.

The letter sent on June 15, 2021 advises all known water right holders and claimants in the Delta watershed of their responsibilities under California water law, including their responsibility to access updated information affecting their right to divert water either by subscribing to the [Delta Drought email list](#) to receive future updates or by regularly checking the [Delta Watershed Drought Information webpage](#).

If I received a notice of water unavailability, can I continue to divert for non-consumptive use?

If your diversion is for a non-consumptive use (e.g., hydroelectric generation) and you return all water you divert to the originating stream on a time step that does not affect availability for other users, then you may continue diverting water for non-consumptive purposes only.

Why is water unavailable if I can see it flowing in a river or stream?

Although recipients of a notice of water unavailability may observe water flowing past their points of diversion, that water is expected to be needed to meet a more senior water right, is being released from storage to meet contractual water supplies and is not available to users without a contract, or is previously stored water being released to repel salt water from the ocean or to meet other requirements. Releases of water from reservoirs are critical for managing water quality in the Delta—specifically, to prevent salt water from the ocean from intruding into the interior of the Delta where it could make water diverted in the Delta unusable for human uses and agriculture, as well as causing impacts to sensitive ecosystems. Water from the Delta provides a portion of the supply to two-thirds of Californians in the Delta, Bay-area, and southern California and millions of acres of agriculture in the Central Valley.

Can I use water stored in a reservoir?

Water stored in reservoirs in the Delta's upper watersheds is released to help meet downstream water quality needs and to supply those who have contracted for the water. During dry periods such as 2021, these storage releases can account for almost all the water in the rivers below the reservoirs. The released water also protects multiple species under the State and federal Endangered Species Acts. If you have a right that allows for water storage, or have a contract to access stored water, you may be able to

continue to divert and use previously stored water, depending on the specifics of that right or contract.

Diverting water when it is unavailable for a given priority of water right violates California water law, can injure other water right holders, and harms fish and wildlife. In accordance with California law, regulations, and the Governor's proclamation, the State Water Board will pursue actions necessary to protect water right holders, public health and safety, and the environment.

How does a notice of water unavailability differ from a curtailment order?

Curtailment orders are directives to stop diverting. For instance, Standard Water Right Term 91 requires specific water right permit and license holders to curtail their diversions upon notice by the State Water Board that triggering water supply conditions are in effect.¹ Diversions under licenses containing Term 91 have been curtailed since April 29, 2021, and until further notice. Curtailment orders may also be issued pursuant to investigation of complaints, identification of unlawful diversions, and Board-adopted regulations.

Will the State Water Board adopt an emergency curtailment regulation for the Delta watershed or issue curtailment orders?

On July 23, 2021, the State Water Board released the text of a [draft emergency water right curtailment and reporting regulation](#) for public review and comment. If adopted, the proposed emergency regulation would require water right holders and claimants in the Delta watershed to curtail their diversions when the State Water Board determines, based on the best information available to the Board, that water is not available to serve certain priorities of water rights. The emergency regulation would also allow the Board to require water right holders and claimants to provide additional information related to their diversion and use of water.

The proposed emergency regulation was developed in accordance with the [Governor's May 10, 2021 Proclamation of a State of Emergency](#), which directs the State Water Board to consider an emergency regulation to curtail water diversions in the Delta watershed when water is not available at water right holders' priority of right or to protect releases of stored water.

The proposed emergency regulation is tentatively scheduled to be considered at the State Water Board's regularly scheduled Board meeting on August 3, 2021. Interested parties will have an opportunity to provide comments in writing before the Board meeting and orally at the Board meeting. If adopted by the State Water Board, the

¹ Additional information about Term 91 is available on the State Water Board's [Term 91 Curtailment Information webpage](#).

emergency regulation would be submitted to the Office of Administrative Law (OAL) for an additional public comment period, as well as OAL review and approval. If adopted by the Board and approved by OAL, it is expected that the emergency regulation would become effective upon submittal to the Secretary of State as early as mid to late August. Following which, curtailment orders could be issued to water right holders and claimants. The orders would provide for initiation and suspension of any curtailments based on current information regarding supplies and demands. The emergency regulation would remain in effect for up to one year but could be repealed if hydrologic conditions improve, or readopted if drought conditions continue through next year.

What is a Water Unavailability Certification Form and who should complete it?

The June 15 notice requests all post-1914 appropriative water right holders affected by the notices of water unavailability to submit information on their water use via an online certification form provided by the State Water Board. Through the certification form, right holders inform the Board whether they plan to cease diversions, if they have alternative sources of water, or if they have a critical need to divert water unavailable at their priority of right for human health and safety, fire suppression (as required by the California Department of Forestry and Fire Protection or another authority), critical air quality control (as required by California Air Resources Board or another authority), or a non-consumptive use, such as hydroelectric power generation.

All post-1914 appropriative water right holders were asked to respond through the online [Water Unavailability Certification Form](#) as soon as possible to help the Board better manage limited water supplies. State Water Board staff may reach out to respondents if additional information is needed. At this time, senior water right claimants are not being asked to complete the form, but may be in the future, including as part of an order pursuant to the proposed emergency regulation.

How can right holders submit a Water Unavailability Certification Form?

Post-1914 appropriative water right holders should respond via the State Water Board's [Water Right Form and Survey Submittal Portal](#). To log in, right holders should use the Water Right ID login and password provided in the upper right of the first page of the June 15 letter they received in the mail. Right holders should submit a separate form for each of their water rights, using the Water Right ID login and password provided in each letter they received.

How can affected right holders access needed water supplies?

California's water rights priority system requires right holders to cease diversions when water is unavailable to serve their priority of right. Water users who are notified that water is unavailable at their priority of right may be able to access needed water supplies, including use of water they have previously stored under a valid storage right,

water transfers, water purchases from others, and production of groundwater in conformance with any local requirements. All water users, regardless of their priority, should also implement available conservation plans and strategies. Stored water released to meet water quality standards and to supply senior right holders or contractors is not available for other diverters.

Right holders that need to provide water to meet minimum health and safety needs but do not have alternative supplies should inform the State Water Board immediately via the [Water Unavailability Certification Form](#), so that they may work with Board staff to explore options to ensure minimum health and safety needs are met.

Can I pursue an alternative compliance plan or cooperative agreement to gain access to needed water supplies?

Diverters are encouraged to pursue alternative compliance plans or cooperative agreements to respond proactively to the shortage conditions in the Delta watershed. An alternative compliance plan or cooperative agreement must not result in injury to other water right holders or cause harm to fish and wildlife, and must be approved by the State Water Board prior to implementation if the plan seeks to avoid curtailment under the proposed emergency regulation. Such agreements are expected to substantially achieve the overall objectives that would otherwise be served by curtailments.

If you have developed a proposed alternative compliance plan or cooperative agreement, contact State Water Board staff at Bay-Delta@waterboards.ca.gov. Please note that proposed plans and cooperative agreements that rely on senior water rights may be impacted by water unavailability and may not provide for reliable, authorized continuation of diversions.

How was water unavailability determined for the Delta watershed?

The State Water Board is using its updated Water Unavailability Methodology for the Delta Watershed (methodology) to identify which water rights in the Delta watershed face insufficient supplies for diversion. For further information regarding the methodology, please visit the State Water Board's [Water Unavailability Methodology for the Delta Watershed webpage](#) where a report describing the methodology is available along with visualizations of the supply-demand comparison and other supporting materials (e.g., data spreadsheet, technical appendices, and frequently asked questions).

Refinements to the Water Unavailability Methodology have been made since the initial draft was released in response to updated information as well as public comments. On July 23, 2021, the State Water Board released its most recent update to its Water Unavailability Methodology. For more information about the updates that have been

made since the methodology was released, see the Summary Report that is available under the Available Methodology Resources section on the [Water Unavailability Methodology webpage](#). State Water Board staff may further update the methodology to reflect best available information. Notice of any such updates will be provided through the State Water Board's [Delta Drought email distribution list](#) and posting on the Board's [Delta Watershed Drought Information webpage](#).

How are water quality standards and public trust resources being protected?

The Water Unavailability Methodology for the Delta Watershed does not allocate natural or abandoned streamflow to meet water quality requirements or to protect public trust resources. The Water Unavailability Methodology allocates all natural and abandoned streamflow to water rights and claims, according to their priorities; it assumes water needed to meet water quality requirements and to protect public trust resources, such as endangered fish, will be provided by stored water released from reservoirs. That is one critical reason the Governor's drought proclamation directs the State Water Board to consider emergency regulations to protect releases of stored water.

How can I report an unauthorized diversion?

You can report an apparently illegal or unauthorized diversion through the [CalEPA Environmental Complaint website](#). Please submit as much supporting information (specific location, apparent use and user, pictures, etc.) as possible. Additional information on the complaints and enforcement process is available on the [Complaints Program webpage](#).

How can I contact the State Water Board?

Questions regarding the [Water Unavailability Certification Form](#) or information from these Frequently Asked Questions can be submitted via email to Bay-Delta@waterboards.ca.gov. You may also contact State Water Board staff at the Delta Drought phone line at (916) 319-0960.

Where can I find more information?

Additional information related to the drought, notices of water unavailability, and emergency regulations is available on the Board's website at:

- [Delta Watershed Drought Information](#)
- [Water Unavailability Methodology for the Delta Watershed](#)
- [Drought Information and Updates](#)
- [Water Board's Role in Drought](#)

These frequently asked questions were last updated July 26, 2021.