



Linda S. Adams
Secretary for
Environmental Protection

State Water Resources Control Board

Division of Water Rights

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Arnold Schwarzenegger
Governor

REVISED NOTICE OF PUBLIC WORKSHOP

Workshop to Receive Information Regarding Policy Direction on Water Right Enforcement

Tuesday, June 19, 2007

at the conclusion of the regularly scheduled
Board Meeting and no sooner than 1:00 p.m.

Joe Serna, Jr./Cal-EPA Building
Coastal Hearing Room
1001 I Street
Sacramento, California

SUBJECT OF WORKSHOP

The State Water Resources Control Board (State Water Board) will hear comments that will inform its policy direction on water right enforcement, including enforcement for violation of water right permit terms and conditions and for unauthorized diversion or use of water.

BACKGROUND

Water Code section 1825 states: "It is the intent of the Legislature that the state should take vigorous action to enforce the terms and conditions of permits, licenses, certifications, and registrations to appropriate water, to enforce state board orders and decisions, and to prevent the unlawful diversion of water." The Strategic Plans for both Cal/EPA and the State Water Board identify as a priority improvement in enforcement programs.

Additionally, the Legislature enacted Water Code section 1259.4 (AB 2121), which requires the State Water Board to adopt a policy for principles and guidelines to maintain instream flows in coastal streams within the counties of Marin, Sonoma, Napa, Mendocino and Humboldt by January 2008. The State Water Board will consider whether to include enforcement provisions in the AB 2121 streamflow protection policy. AB 2121 also authorizes the State Water Board to adopt principles and guidelines to maintain instream flows for other parts of the state as part of a state policy for water quality control for the purposes of water right administration. The State Water Board will consider whether or not any enforcement provisions it considers for inclusion in the AB 2121 streamflow protection policy should also apply to parts of the state outside the geographic scope of AB 2121.

California Environmental Protection Agency

The State Water Board has an Enforcement Policy for its Water Quality Program, but it has not adopted a policy for the Water Rights Program. Due to the time and costs associated with securing or amending a water right permit, an economic incentive to violate water right laws exists. Predictable, consistent and fair enforcement is required to ensure compliance with water right laws.

MATTERS FOR DISCUSSION IN THE WORKSHOP

The purpose of the workshop is to receive comments from water right stakeholders concerning the Division's water right enforcement program. The following issues are identified to focus comments and discussions on water right enforcement.

- **Should the State Water Board adopt enforcement provisions in its AB 2121 policy?**
- **Should the State Water Board adopt an enforcement policy for areas of the state that are outside the mandated geographic scope of the AB 2121 policy? If the State Water Board adopts an enforcement policy that applies to other areas of the state, should it contain the same enforcement provisions as the AB 2121 policy?**
- **How should the State Water Board set enforcement priorities? What factors should it consider in setting enforcement priorities?**
- **Currently the State Water Board's Division of Water Rights (Division) identifies one or more watersheds per year in which it will conduct compliance inspections. In the past, watersheds have been selected after consultation with the Regional Water Quality Control Boards, the California Department of Fish and Game, and federal fishery agencies. The Division selects the watershed(s) on which it will focus its enforcement resources based on potential impacts to water quality and aquatic resources. The Division then conducts both investigations of unauthorized diversions and compliance inspections of permitted and licensed water supply projects within the selected watershed(s). Should the State Water Board continue to focus its water right enforcement resources on specific watersheds? If so, how should those watersheds be selected? If not, what other basis should be used?**
- **Should the State Water Board provide an opportunity for voluntary compliance or corrective actions before initiating formal enforcement actions and, if so, under what circumstances? How long a time should the State Water Board allow for voluntary compliance?**
- **The State Water Board has pending over 500 water right applications. Many of these applications were filed to seek authorization for existing, but unauthorized, water supply projects. Should the State Water Board initiate enforcement against existing applicants that are diverting water without authorization? Under what conditions should the State Water Board initiate enforcement actions against these applicants?**
- **The State Water Board has pending over 600 petitions to change existing water right permits or licenses. Many of these petitions were filed to seek**

authorization for changes in place or purpose of use or point of diversion that have already taken place without seeking the required prior approval of the change from the State Water Board. Should the State Water Board initiate enforcement against existing petitioners that are diverting water in violation of the conditions of their water right permits or licenses? Under what conditions should the State Water Board initiate enforcement actions against these petitioners?

- The State Water Board has four potential formal enforcement options available: (1) issuance of a Cease and Desist Order, (2) issuance of an Administrative Civil Liability (monetary penalty), (3) referral of the matter to the Attorney General for fines or injunction or both, and (4) revocation of a permit or license. In some cases, a violation may result in only one type of action, and in other cases, a violation could result in more than one type of action. What conditions should be present before the State Water Board considers imposing each of the potential enforcement options?
- If a Cease and Desist Order is determined to be appropriate, should the State Water Board provide an opportunity in the Cease and Desist Order for the recipient of the order to continue to divert water while coming into compliance? If so, what conditions and time schedule for compliance should the State Water Board impose? What other factors should the State Water Board consider in determining a reasonable time schedule for compliance to be included in any Cease and Desist Order?
- Under what circumstances, if any, should a Cease and Desist Order require the permanent removal of an illegal diversion facility?
- The State Water Board has the authority to issue Administrative Civil Liability (ACL) of up to \$500 per day of unauthorized diversion and use or up to \$1000 per day for violation of a Cease and Desist Order. If an ACL complaint is deemed appropriate, how should the monetary penalty be calculated in order to ensure that the monetary penalty is effective in compelling compliance with water right law? What factors should the State Water Board consider in setting the amount of the monetary penalty?
- What factors should the State Water Board consider when determining whether to refer a violation to the Office of the Attorney General for prosecution?
- What factors should the State Water Board consider when determining whether to revoke a water right permit or license as a result of violation of permit or license terms?
- The State Water Board has the authority to revoke water right permits and licenses if the water right fees due on the permit or license are not paid for five or more years. Should the State Water Board consider revoking water right permits and licenses for failure to pay water right fees? If so, under what conditions should the permit or license be revoked?

- **The State Water Board has authority to cancel a pending application if the applicant does not diligently act to acquire a permit. Should the State Water Board cancel an illegal water supply project for lack of diligence by the applicant? Under what conditions should the State Water Board cancel a pending application for an illegal water supply project?**
- **Are there any other factors that the State Water Board should consider in regard to water right enforcement?**

PROCEDURAL MATTERS

The workshop will be informal. There will be no sworn testimony or cross-examination of participants, but the State Water Board and its staff may ask clarifying questions.

Participants should submit written comments prior to the workshop. At the workshop, participants will be given an opportunity to summarize and supplement their written materials with oral presentations. To ensure a productive and efficient workshop, and to ensure that all participants have an opportunity to participate, oral presentations may be given time limits. Participants with similar comments are requested to make joint presentations.

Participants are requested to provide written comments **by 12:00 noon on Wednesday, June 6, 2007**. When submitting preliminary comments, the State Water Board requests that an original and ten hard copies, plus one electronic copy be sent to:

Song Her, Clerk to the Board
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Written comments and electronic presentations are to be submitted to the Clerk to the Board via email at commentletters@waterboards.ca.gov. Please indicate in the subject line: "**Water Right Enforcement Workshop**."

Hand and special deliveries should also be addressed to the Clerk to the Board at the address above.

Couriers delivering comments must check in with lobby security and have them contact Song Her at (916) 341-5600 or Jeanine Townsend at (916) 341-5602.

INFORMATION REGARDING WORKSHOP

Questions concerning this notice may be directed to John O'Hagan, Chief of Enforcement Section, Division of Water Rights, at (916) 341-5368.

PARKING AND ACCESSIBILITY

The enclosed map shows the location of the Joe Serna, Jr. (Cal/EPA) Building and public parking sites in Sacramento. The Joe Serna, Jr. (Cal/EPA) Building Coastal Hearing Room is accessible to persons with disabilities.

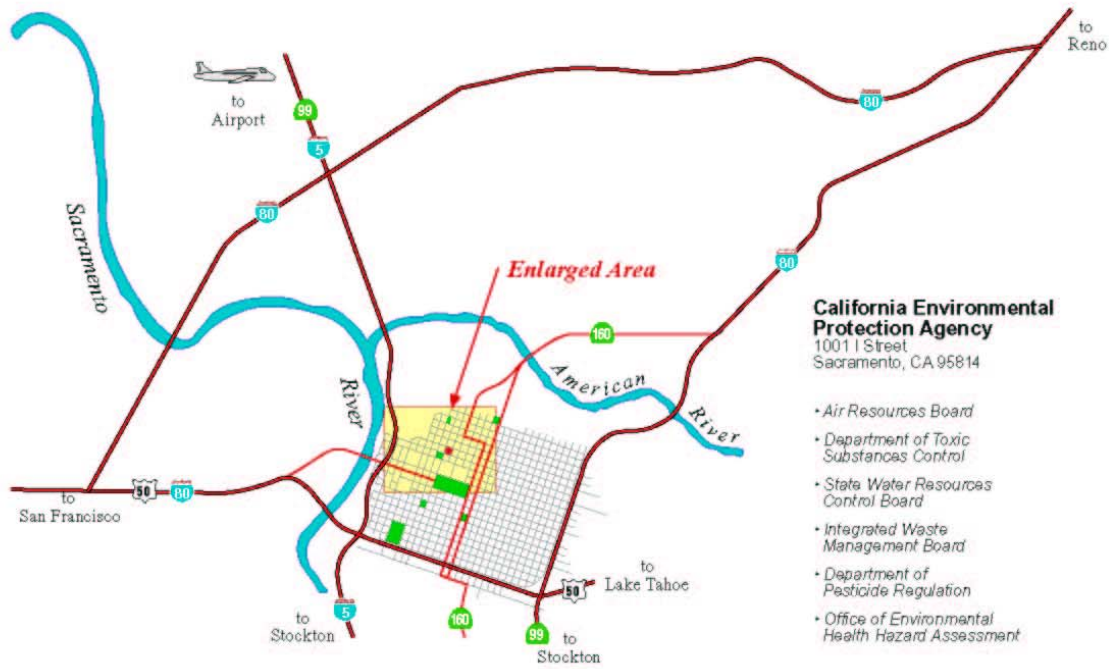
Due to enhanced security precautions at the Joe Serna, Jr. (Cal/EPA) Building, all visitors are required to sign in prior to attending any meeting. Visitors can sign in and obtain badges in the Visitor and Environmental Services Center, which is just inside and to the left of the building's public entrance. Visitors may be asked to show valid picture identification. Valid identification can take the form of a current driver's license, military identification card, or state and federal identification cards. Depending on the size and number of meetings scheduled on any given day, the security check-in could take from three to fifteen minutes. Please allow adequate time to sign in before being directed to your meeting.



Song Her
Clerk to the Board

Date: May 3, 2007

Enclosure



Parking Lot Locations



Parking Lot Locations

- Lot 1 (7th & G St.)
- Lot 2 (7th & G St.)
- Lot A (7th & Capitol)
- Lot C (14th & H St.)
- Lot G (3rd & L)
- Lot H (10th & L)
- Lot I (10th & I, 11th & I)
- Lot K (6th & J/L, 7th & K)
- Lot P (2nd & I)
- Lot U (5th & J)
- Lot W (2nd & I St.)