



Public Comment
Dry Year Report
Deadline: 10/15/14 by 12:00 noon

October 15, 2014

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
Post Office Box 100
Sacramento, CA 95812-0100



Dear Ms. Townsend:

Subject: Recommendations on Improvements to the Implementation and Enforcement of Water Rights during Drought Conditions

The California Department of Fish and Wildlife (CDFW) would like to thank the State Water Resources Control Board (State Water Board) for the opportunity to provide recommendations on actions that should be taken to most effectively implement and enforce the water rights priority system in future dry years. CDFW offers the following comments and recommendations in our role as a Trustee and Responsible Agency for the State's fish and wildlife resources.

- 1) *What actions, if any, should the State Water Board take to improve the Board's information and analyses to support determinations on water availability relative to water right priority, including, but not limited to, improvements to supply, demand and watershed specific information and water right priority information?*
 - During drought emergencies, require diverters in priority watersheds to provide detailed information on the amount and timing of their water diversions and ensure through enforcement action that Statements have been, or require Statements to be, filed.
 - The State Water Board should initiate installation of stream gauges or evaluate expanding the existing network of gauges in priority watersheds. This will inform the timing of, and provide empirical data to support, future curtailment actions and water availability determinations.
 - Once the drought emergency ends, the State Water Board should evaluate if declaring additional streams fully appropriated is warranted and prioritize streams with listed species and apparent over-allocations. This effort would assist the Board in future drought emergencies.
- 2) *What actions should the Board take to better communicate information about limited water availability relative to water right priorities, including the need and basis for curtailments of water diversions?*

- The State Water Board should hold a series of local public meetings earlier in the year in areas where curtailments are anticipated, pending, or under review. If possible, notify landowners of potential future drought curtailments during the fall and recommend they take action to store water early in the winter to prevent issues later in the summer. If the State Water Board has not done so already, CDFW recommends coordinating with the California Association of Resource Conservation Districts and other entities which are involved with landowner and water issues to request their assistance with providing new, up-to-date information to the public.
- 3) *What, if any, changes should be made to enhance the effectiveness of the State Water Board's curtailment process, including measures to protect the public interest, health and safety and public trust resources?*
- Illegal direct diversions (those without a valid basis of right and/or riparian and pre-1914 claims without a Statement of Diversion and Use on file) are not being accurately accounted for in the State Water Board's Watershed Analyses to determine supply, demand, and availability and are adversely impacting public trust resources. CDFW recommends State Water Board staff coordinate with CDFW Law Enforcement Division to conduct enforcement sweeps of illegal direct diversions that focus on a selection of priority watersheds and streams based on diversions having the greatest adverse impacts to public trust resources. Previous sweeps that occurred by aircraft were effective in identifying illegal reservoirs and bringing these diverters into compliance with the water code. We recommend the State Water Board continue to coordinate with CDFW to identify where enforcement sweeps would produce the maximum benefit to listed species.
 - Similar to the emergency regulation efforts on Mill, Deer, and Antelope creeks, State Water Board staff should coordinate with CDFW regarding potential impacts that curtailments have on mitigation and conservation facilities, such as hatcheries and wildlife areas, in order to maximize planning opportunities and identify options to reduce potential adverse impacts to fish and wildlife resources.
- 4) *What, if any changes should be made to enhance the effectiveness of the State Water Board's complaint process?*
- If possible, increase the number of dedicated staff or redirect existing staff to process complaints, take immediate action to investigate, and make recommendations to the Executive Director for cease and desist orders and fines.
 - CDFW enforcement and permitting staff receive complaints about illegal and

legal diversions that have the potential to dewater streams and impact public trust resources. State Water Board and CDFW staff should continue to coordinate complaint investigation efforts to focus on the highest priority diversions affecting public trust resources.

- Processing of new water right applications should be temporarily suspended during drought emergencies, unless they are drought related.

5) *Should the State Water Board pursue any additional authorities or policies to more effectively implement and enforce the water rights priority system?*

- In order to effectively implement enforcement actions, additional authorities are needed to allow State Water Board staff to promptly access and investigate illegal and unreported water diversions. State Water Board staff should continue to coordinate with CDFW's Law Enforcement Division and other agencies on enforcement activities.
- Evaluate expanding the Emergency Tank Storage program to other areas of the state and for other beneficial uses (in addition to the allowed domestic use) on a limited quantity basis. Similar to the Emergency Tank Storage program, the State Water Board could evaluate other unconventional ways to allow riparian diverters during drought emergencies to store water when first available during high flows in the winter so that water needed during the summer low-flow period would be left instream to protect trust resources. Various restrictions could be adopted to allow this: where riparian users are diverting less than 200 acre feet for irrigation and related activities; only in critical watersheds; and on a case by case determination and approved by a State Water Board order. This summer water could be dedicated to instream flow, protected, and not available for appropriation by post-1914 water right holders. CDFW staff would be available to help identify these critical watersheds and coordinate with State Water Board staff to implement this approach.
- Once the drought emergency ends, the State Water Board should evaluate changes to how Water Availability Analyses (WAA) submitted by water right applicants are used in the permitting and licensing process. WAAs should identify what amount of unappropriated water will be available in all water year types and new permits/licenses should specify maximum amounts that may be diverted in all year types. This could reduce the number of permits/licenses that may need to be curtailed in the future.
- Over-reporting and/or waste and unreasonable use is believed to be common to avoid incurring a reduction in, or loss of, appropriative water rights. The State Water Board should evaluate improving the "use it or lose it" rule, which has the potential to lead to inefficient uses of water.

- CDFW is concerned with the unintended impacts water right curtailments may have on fish, wildlife, and the habitat they depend on. We suggest the State Water Board evaluate the water needs of off-stream public trust resources, such as wetlands, uplands, and other environmental functions, and how these needs can be addressed in future curtailment actions. CDFW is available to work with State Water Board staff to investigate the potential to lift curtailments, or turn them “off and on,” in specific drainages during specific times that will result in minimal impacts to downstream users and provide benefits to fish and wildlife. For example, curtailments can impact recycling and reuse of water that would have provided beneficial public trust uses, such as water for managed wetlands and associated wildlife habitat. Curtailments can also prohibit the use of otherwise available drain water which may be present in local water district conveyance facilities.

6) *How can the Board better assist water users in planning for upcoming dry periods?*

- Conduct and/or assist with local drought-related workshops in highly impacted areas, focusing on water conservation and reuse measures. Local workshops provide the opportunity to educate the public on actions they can do to prepare for drought, partner with local resource conservation entities to support the effort, and educate the public on water rights.

7) *What additional actions, if any, should the Board take to prepare for the next dry year or series of dry years?*

- Encourage and develop a program to incentivize and find ways to subsidize water conservation measures in priority streams (e.g. Emergency Tank Storage Registration program). In cases where conservation is not sufficient, develop programs to address summer low-flow impacts (e.g. purchase or subsidize tanks, water reuse, or groundwater recharge projects for landowners with existing summer riparian direct diversions).

CDFW looks forward to working with the State Water Board to improve the implementation and enforcement of water rights to ensure that impacts to California’s fish and wildlife resources during future dry years are minimized. If you have any questions about these comments and recommendations, please contact me, Scott Cantrell at (916) 445-1272 or Mr. Joshua Grover at (916) 445-1231.

Sincerely,



Scott Cantrell, Branch Chief

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