

State Water Resources Control Board

AUG 18 2011

TO: Property Owners within Napa River Watershed in Napa County

NOTICE OF POTENTIAL UNAUTHORIZED DIVERSION AND USE OF WATER, AND FAILURE TO FILE A STATEMENT OF WATER DIVERSION AND USE FOR DIVERSION OF WATER IN NAPA COUNTY

The State Water Resources Control Board's (State Water Board) Division of Water Rights (Division) is investigating the water rights for existing reservoirs in Marin, Mendocino, Napa, Sonoma, and portions of Humboldt counties. The Division is responsible for the administration of appropriative water rights in California initiated after 1914; commonly referred to as "post-1914 appropriative water rights." In most cases, any reservoir constructed after 1914 that collects surface water for storage requires an appropriative water right issued by the State Water Board. This investigation is being conducted as part of the State Water Board's continuing authority to protect public trust resources such as the threatened salmon and steelhead fisheries. The diversion of water to storage can lead to dewatering of stream channels and loss of gravel and woody debris critical to fishery habitat. The Division is trying to protect the fishery resources from unauthorized diversions by ensuring that all storage facilities are operating legally.

Marin, Mendocino, Napa, Sonoma and Humboldt Counties are within the area subject to the State Water Board's Policy for Maintaining Instream Flows in Northern California Coastal Streams (Policy), adopted May 4, 2010. Implementation of this Policy guides the processing of applications for new water rights within the Policy area. There are three stream class types identified in the Policy area. Class I streams are streams where fish are always or seasonally present. Class II streams are streams where fish are not present, but aquatic non-fish vertebrates (frogs, salamanders, etc.) and/or aquatic benthic macro-invertebrates (insects) exist. Class III streams do not support aquatic life. The Policy states that the State Water Board, after May 5, 2011, will no longer approve water right applications for reservoirs built with an onstream dam on streams designated as a class I or class II stream. Reservoirs built on class III streams may still file a water right application.

You are being contacted because Napa County records indicate you own property in the Policy area, identified by the assessor parcel number listed on the envelope, on which a reservoir has been identified that appears to be on either a class I, class II, or class III stream. Division staff has determined there is no record of an appropriative water right on file authorizing this water diversion facility. An unauthorized diversion of water constitutes a trespass against the State and the State Water Board may impose a civil liability in an amount not to exceed \$500 for each day that a trespass occurs. (Wat. Code, § 1052, et seq).

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In addition, Water Code section 5101 requires, with minor exceptions, that a person who diverts water from a stream in the absence of a permit, license or registration must file a Statement of Water Diversion and Use (Statement) with the State Water Board. The State Water Board may administratively impose a civil liability in the amount of \$1,000 for the failure to file a Statement for diversions that have occurred since 2009, plus \$500 per day for each additional day on which the violation continues if the person fails to file a Statement within 30 days after the State Water Board has called the violation to the attention of that person. (Wat. Code, § 5107, subd. (c)(1)).

This matter requires your immediate attention, and the State Water Board will consider your prompt cooperation and corrective actions taken in response to this notice in determining whether and what civil liability is appropriate for any violations. Your response may be one of the following:

1. If you believe you have been contacted in error, recently sold the above listed property, or do not have a pond or reservoir on the identified property, please immediately contact Division staff at the number below to rectify Division records accordingly.
2. If a pond or reservoir exists on your property, but you have or are claiming an existing basis of water right, or have been filling the facility with purchased water, groundwater or other water not subject to the State Water Board's permitting authority, you should submit any information that supports these facts to the State Water Board within 30 days of the date of this letter. Division staff may schedule an inspection of the reservoir site to confirm these facts before closing the matter. For a list of frequently asked questions and additional information about water subject to the State Water Board's permitting authorities please see http://www.waterboards.ca.gov/waterrights/board_info/.
3. If the pond or reservoir on your property does collect water subject to the State Water Board's water right permitting authority, you will need to take corrective actions to prevent continued unauthorized diversions. Corrective actions may vary, depending on site location, reservoir size and use of water, stream classification and State laws and regulations. Normally, an unauthorized diversion can be stopped, removed, rendered incapable of storing water, or legalized through the appropriate water right permit process. Please note that the filing of a water right application to appropriate water does not authorize diversion of water unless and until the State Water Board issues a permit for that application. Additionally, an application for water right is subject to filing and annual fees, public notice and environmental review under the California Environmental Quality Act (CEQA). The option to file an application to appropriate water in this case may be restricted if the Policy analysis estimating the stream classification is correct. Within 60 days of the date of this letter, you should submit a corrective action that identifies the action to be taken to correct the unauthorized diversion, and a schedule for completion of the corrective actions.

You may want to consult with an attorney or consultant familiar with water right laws before selecting a corrective action or providing a response. The State Water Board maintains a list of attorneys and consultants on its website at:

http://www.waterboards.ca.gov/waterrights/board_info/contacts.shtml.

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Additionally, if you have diverted water in 2009 or 2010, you should immediately file a Statement using the form available at:

http://www.waterboards.ca.gov/waterrights/water_issues/programs/diversion_use/docs/intl_stmnt_for_m.pdf. Information relating to the filing of a Statement, a discussion of the various types of water rights that exist in California and the associated procedures for either obtaining a water right or documenting that a water right already exists is available on our website at: www.waterboards.ca.gov/waterrights/.

If you have any questions, please refer to our website for general water right information, or contact the Division Enforcement Section at (916) 341-5342. Written correspondences should be addressed as follows:

State Water Resources Control Board
Division of Water Rights
Attention: Aaron Miller
P.O. Box 2000
Sacramento, CA 95812-2000.

Please note that if your diversion is unauthorized, the State Water Board can initiate enforcement action at its discretion and without further notice, so timely responses are important.

Sincerely,



Aaron Miller, Chief
Enforcement Unit 4

cc: San Francisco Bay
Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Department of Fish and Game
Bay Delta Region
7329 Silverado Trail
Napa, CA 94558

National Marine Fishery Service
Attention PRD Division
777 Sonoma Avenue, Room 325
Santa Rosa CA 95404