
State Water Resources Control Board

TO: Eileen Sobeck
Executive Director
State Water Resources Control Board

FROM: Erik Ekdahl 
Deputy Director
DIVISION OF WATER RIGHTS

DATE: August 3, 2021

SUBJECT: WILDLIFE CONSERVATION BOARD INQUIRY REGARDING PRE-1914
APPROPRIATIVE WATER RIGHT CLAIMS OF THE TOMPKINS FAMILY
TRUST IN THE BATTLE CREEK WATERSHED

The Division of Water Rights (Division) proposes that you request the Administrative Hearings Office (AHO) to investigate, pursuant to Water Code section 1112, subdivision (c)(3), the issues raised by the inquiry from the Wildlife Conservation Board (WCB) about the above pre-1914 appropriative water right claims.

Background

Wildlife Conservation Board Inquiry

On May 25, 2021, John Donnelly, Executive Director of the WCB, contacted the Division to inquire about the potential for Division staff to conduct a review of the transferability of a water right claim. This contact followed his May 21 e-mail to me. His e-mail asked the Division to prepare a summary of findings relative to: (a) the validity of the water right claims, (b) the amounts of water that may be available for diversion under the right, and (c) the amounts of water that could potentially be dedicated to instream flows.

The WCB awarded funding to Trout Unlimited to support the acquisition of a pre-1914 appropriative water right, the dedication of that water right to instream flow in lower Battle Creek, and changes to the right's point of diversion, purpose and place of use to provide for downstream diversions and use to enhance wetlands on lands managed as part of the Sacramento National Wildlife Refuge (Refuge) complex.

By enhancing flows within lower Battle Creek and providing additional water for use on the Refuge complex, the project has the potential to provide a number of important benefits, particularly in drought years. This voluntary action to reduce water diversions

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

and leave water instream to support instream resources aligns with actions described in the Governor's May 10, 2021 Proclamation of a State of Emergency.

Pre-1914 Appropriative Water Right Claims

The Tompkins Family Trust (Tompkins) owns a portion of a claimed pre-1914 appropriative water right to divert and use water from Battle Creek pursuant to a 1913 Notice of Appropriation filed with Tehama County. The claimed right is for diversions from Battle Creek, which is a tributary to the Sacramento River in Tehama County (north of Red Bluff). The former Tompkins Ranch was one of several properties served by a 50-cfs diversion from Battle Creek into the Battle Creek Diversion Ditch. The 50-cfs diversion is reported by Charles Orwick pursuant to Statement S025803.

The California Department of Fish and Wildlife (CDFW) purchased the former Tompkins Ranch in 1993, and it now is part of the Battle Creek Wildlife Area. The water right for Tompkins Ranch remained with Tompkins but was temporarily loaned to CDFW for development of new wetlands and enhancement of existing wetlands on the former Tompkins Ranch and elsewhere within the Battle Creek Wildlife Area. CDFW used the water right until 2016, when it notified Tompkins that the water right was no longer required at the Battle Creek Wildlife Area. CDFW has exercised the claim by receiving water from the diversion ditch at two locations (Statement S015630, Statement S015631).

The WCB funding proposal is for the purchase of the Tompkins claimed water right and the transfer and dedication of the claimed right to instream flow in Battle Creek and a portion of the Sacramento River down to a point where the water will be diverted for wetland enhancement. The Division has not yet received a petition for the transfer and instream flow dedication.

Issues to be Considered by the Administrative Hearings Office

Water Code section 1112, subdivision (c)(3), authorizes the State Water Board to request that AHO hearing officers perform various types of work in addition to the adjudicative hearings specified in subdivisions (a), (c)(1) and (c)(2). The types of additional work described in subdivision (c)(3) include "overseeing investigations."

Considering this specific statutory language, AHO hearing officers could be authorized, upon receiving a request from the Water Board's Executive Director, to conduct an investigation of the Tompkins Battle Creek water-right claim and to prepare a report of investigation that would address the three questions raised in Mr. Donnelly's e-mail. The AHO would not conduct an adjudicative hearing or prepare a proposed order as part of this investigation.

Current other priorities of Division of Water Rights staffing do not provide sufficient resources for the Division to focus on this request over other higher priority matters, including drought response. Given the public interest benefit of assisting another State

agency in its efforts to effectively allocate grant funding to enhance streamflows, this matter would be aided by the AHO's expertise and ability to process requests under Water Code section 1112, subdivision (c)(3) in a timely manner.

Therefore, the Division proposes that the AHO investigate the following issues and prepare a report of investigation:

1. Validity of the pre-1914 appropriative water right claims associated with Tompkins claimed right (Statements S025803, S015630, and S015631).
2. To assist with the intent to file a Water Code 1707 petition for dedication of instream flows and related water transfer, determinations of: (a) the amounts of water that may be available for diversion under the Tompkins claimed water right, (b) the amounts of water that could be dedicated to instream flows in Battle Creek and the Sacramento River, and (c) the amounts of water that could be diverted at a new point of diversion downstream.

The AHO would prepare the final report of investigation and transmit it to the Wildlife Conservation Board. If the petition for dedication to instream flows and related water transfer is filed, then the Board would not assign that petition to the AHO for hearing.

Conclusion and Recommendation

Given the complexity and controversial nature of the issues associated with the Wildlife Conservation Board's inquiry, the inquiry would be most effectively addressed through an investigation and preparation of a report of investigation by the AHO. Therefore, I am recommending that you request, pursuant to Water Code section 1112, subdivision (c)(3), that the AHO conduct an investigation and prepare a report of investigation on the issues described in this memorandum.