

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER WR 2015-0036-DWR

CURTAILMENT ORDER

In the Matter of Diversion of Water from

DEER CREEK TRIBUTARY TO THE SACRAMENTO RIVER

IN

TEHAMA COUNTY

BACKGROUND

1. On April 25, 2014, Governor Edmund G. Brown Jr. issued a Proclamation of a Continued State of Emergency (April 2014 Proclamation) to strengthen the state's ability to manage water and habitat effectively in drought conditions and called on all Californians to redouble their efforts to conserve water. The April 2014 Proclamation finds that the continuous severe drought conditions present urgent challenges across the state, including water shortages in communities and for agricultural production, increased wildfire activity, degraded habitat for fish and wildlife, threat of saltwater contamination, and additional water scarcity if drought conditions continue into 2015. The April 2014 Proclamation also suspends the environmental review required by the California Environmental Quality Act to allow drought emergency regulations and other actions to take place as quickly as possible.
2. The April 2014 Proclamation refers to the Governor's Proclamation No. 1-17-2014, issued on January 17, 2014, declaring a drought State of Emergency (January 2014 Proclamation) to exist in California due to severe drought conditions. The January Proclamation finds that dry conditions and lack of precipitation present urgent problems to drinking water supplies and cultivation of crops, which put farmer's long-term investments at risk. The conditions also threaten the survival of animals and plants that rely on California's rivers, including many species in danger of extinction. The January Proclamation also calls on all Californians to reduce their water usage by 20 percent.
3. On December 22, 2014, in light of the continued lack of rain, Governor Brown issued Executive Order B-28-14, which extends the California Environmental Quality Act suspension through May 31, 2016 for issuance of drought emergency regulations, among other actions.
4. On April 1, 2015, Governor Edmund G. Brown Jr. issued Executive Order B-29-15 to require a statewide reduction in potable urban water usage and other water conservation measures, increased enforcement against water waste, investment in new water management technologies, and streamlining government response to the severe drought conditions. The Executive Order finds California's water supplies continue to be severely depleted and the current drought, which has the distinct possibility to stretch into a fifth straight year in 2016 and beyond, continues to present urgent challenges including: drinking water shortages, diminished water for agricultural production, degraded habitat for fish and wildlife species, increased wildfire risk, and the threat of saltwater contamination to fresh water supplies in the Sacramento-San Joaquin Bay Delta.

5. On March 17, 2015, the State Water Board adopted an emergency regulation for Curtailment of Diversions due to Insufficient Flow for Specific Fisheries for Mill, Deer, and Antelope Creeks (California Code of Regulations, title 23, sections 877 through 879.2¹) (Regulation). The Office of Administrative Law reviewed and approved the Regulation on March 30, 2015. The Regulation is effective March 30, 2015 to December 29, 2015. The Regulation establishes drought emergency minimum flow requirements for the protection of specific runs of federal- and state-listed anadromous fish in Mill Creek, Deer Creek, and Antelope Creek. The Regulation provides that diversions from Mill Creek, Deer Creek, and Antelope Creek are unreasonable if those diversions will cause flows to drop below specified minimum flows. Under the Regulation, diversions will be curtailed as appropriate to maintain those minimum flows, with the exception of diversions necessary for minimum health and safety needs. The diversion or use of water in violation of the Regulation is an unreasonable diversion or use and a violation of Water Code section 100.
6. Pursuant to section 877, the State Water Board has determined that it is a waste and unreasonable use under Article X, section 2 of the California Constitution to continue diversions that would cause or threaten to cause flows to fall beneath the drought emergency minimum flows provided in subdivision (c) of section 877, except as provided for minimum health and safety needs in accordance with section 878.1.
7. The Deer Creek Irrigation District entered into voluntary cooperative agreements with the California Department of Fish and Wildlife (CDFW) on March 16, 2015 and the National Marine Fisheries Service (NMFS) on April 16, 2015 to voluntarily curtail some diversions from Deer Creek. Such agreements would have the potential to provide comparable protection to the fisheries as the flows in section 877 if the agreements cover a significant percentage of the water diverted in the watershed.
8. Pursuant to section 877, subdivision (c), the requirements of the section shall only go into effect if the Executive Director determines that any agreements in any applicable watersheds entered into by diverters, NMFS and CDFW either does not cover substantially all of the water diverted in the watershed or that the agreements are no longer in effect. On April 17, 2015, the Executive Director of the State Water Board determined that the voluntary cooperative agreements entered into by the Deer Creek Irrigation District do not cover substantially all of the water diverted in the watershed, as provided in section 877, subdivision (c).
9. Pursuant to section 877, subdivision (b), the Deputy Director for the Division of Water Rights (Deputy Director) has delegated authority to issue a Curtailment Order upon a determination that without curtailment of diversions flows are likely to be reduced below the drought emergency minimum flows specified in section 877, subdivision (c).
10. Central Valley spring-run Chinook salmon (*Oncorhynchus tshawytscha*) (CV SR salmon) are listed as threatened under the state and federal Endangered Species Acts, and California Central Valley steelhead (*Oncorhynchus mykiss*) (CCV steelhead) are listed as threatened under the federal Endangered Species Act (16 U.S.C. § 1531 et seq.).
11. On October 9, 2015, the CDFW submitted a memorandum to the Deputy Director confirming the presence of adult CCV steelhead in the Upper Sacramento River Basin, and the presence of juvenile CV SR salmon and juvenile CCV steelhead in Deer and Antelope Creeks. The memorandum also confirms that current agricultural diversions on Deer and Antelope Creeks have resulted in dewatering of stream sections in the lower reaches of these creeks between

¹ All further section references are to California Code of Regulations, title 23, unless otherwise indicated.

the confluence with the Sacramento River and diversion dams. The conditions created by reduced flows from diversions in Deer Creek prohibit adult CCV steelhead currently migrating in the Sacramento River from entering Deer Creek and gaining access to spawning habitat upstream of diversion dams. Juvenile CV SR salmon and juvenile CCV steelhead are prevented from reaching the Sacramento River. The memorandum notes that historical data and trapping data show that steelhead migration begins in July and peaks in late September and early October. Pursuant to section 877, subdivision (a), for the protection of threatened and endangered fish and due to the ongoing drought and environmental conditions, the CDFW and NMFS request that the State Water Board curtail Deer Creek diversions no later than 8:00 AM on October 23, 2015.

12. Pursuant to section 877, subdivision (c)(2)(C)(i), base flows from October 15 through March 31 of 50 cubic feet per second (cfs) or full flow without diversions, whichever is less, are required in Deer Creek when adult CCV steelhead are present.
13. Pursuant to section 877, subdivision (c)(2)(D)(i), base flows from October 15 through June 30 of 20 cfs or full flow without diversions, whichever is less, are required in Deer Creek when juvenile CV SR salmon or juvenile CCV steelhead are present and adult CV SR salmon or adult CCV steelhead are not present.
14. The State Water Board reviews the flow measured at the California Data Exchange Center (CDEC) Deer Creek below Stanford Vina Dam gauge (DVD Gauge) to determine compliance with the drought emergency minimum flows required under section 877, subdivision (c)(2). There are no known points of diversion located on Deer Creek between the DVD gauge and the confluence of Deer Creek with the Sacramento River.
15. On October 21, 2015, the flow measured at the DVD Gauge reached minimum flow levels of 28 cfs.
16. On November 27, 1923 the Superior Court of Tehama County entered a judgment (Adjudication) granting 100 percent of the flow in Deer Creek (as measured at United States Geological Survey [USGS] gauge 11383500) to the predecessors in interest of the Stanford Vina Ranch Irrigation Company (approximately 65 percent) and Deer Creek Irrigation District (approximately 35 percent). The Adjudication designated that the average amount of water naturally flowing in Deer Creek, during the irrigation season, as 150 second feet or 6,000 miner's inches and allocated 100 percent of that flow as previously provided. At times when the natural flow in Deer Creek is less than, or more than, 150 second feet or 6,000 miner's inches, then the Adjudication diminishes, or augments the flow allocations proportionally. (Adjudication, Articles XI and XIII, pp. 10, 11.) Stanford Vina Ranch Irrigation Company's points of diversion are downstream of the point of diversion for Deer Creek Irrigation District. (Adjudication, Articles XI and XIII, pp. 10, 11.) The Adjudication was amended in 1926 to grant approximately 66 percent of the Deer Creek flows below USGS gauge 11383500 to Stanford Vina Ranch Irrigation Company, 33 percent of the Deer Creek flows to Deer Creek Irrigation District and one percent of the Deer Creek flows to Sheep Camp Ditch for stock watering.
17. Attachment A attached hereto is a summary of available water rights data on Deer Creek that was assembled from the State Water Board's electronic water rights information management system (eWRIMS) and Report Management System (RMS) queries.
18. Pursuant to section 877, subdivision (d)(2), the State Water Board has established an e-mail distribution list that water right holders may join to receive drought notices and updates regarding curtailments. Notices provided by e-mail or by posting on the State Water Board's drought web page shall be sufficient for all purposes related to drought notices and updates regarding curtailments.

FINDINGS

1. Section 877, subdivision (c)(2) of title 23 of the California Code of Regulations establishes drought emergency minimum flows for Deer Creek under certain conditions.
2. The conditions under which the drought emergency minimum flows identified in section 877, subdivision (c) apply are now in effect and threatened species, such as adult and juvenile CCV steelhead and juvenile CV SR salmon, are present at this time.
3. The Deputy Director has determined that without curtailment of diversions from Deer Creek the flows in Deer Creek have been, and are likely to continue to be, reduced below the drought emergency minimum flows specified in section 877 subdivision (c)(2).

IT IS HEREBY ORDERED

1. All water rights holders in the Deer Creek watershed, including but not limited to those identified in Attachment A, are subject to curtailment pursuant to California Code of Regulations, title 23, sections 877 through 879.2 and shall immediately cease or reduce their diversions from Deer Creek to ensure the drought emergency minimum flows specified in section 877, subdivision (c)(2) are satisfied no later than 8:00 AM on October 23, 2015 through March 31, 2016 or until the Deputy Director suspends the Curtailment Order under section 877, subdivision (c)(2)(E), as follows:
 - (A) All post-1914 appropriative rights holders are curtailed under this Order except as provided in sections 878 (non-consumptive uses), 878.1 (minimum health and safety needs), and 878.2 (local cooperative solutions).
 - (B) All diverters on Deer Creek shall bypass 50 cfs or full natural flow without diversion, whichever is less, in order to obtain/maintain base flows for adult CCV steelhead salmon migration. Flows in excess of the 50 cfs base flow can be taken in accordance with priority and basis of right, except for those post-1914 appropriative right holders referenced in paragraph 1(A), above. The base flows for adult CCV steelhead migration shall be satisfied through March 31, 2016 unless the Deputy Director suspends the Curtailment Order or the Deputy Director receives notification from the CDFW or NMFS that adult CCV steelhead migration has ended.
 - (C) Upon notification to the Deputy Director from the CDFW or NMFS that adult CCV steelhead migration has ended but that juvenile CV SR salmon or juvenile CCV steelhead are present, base flow requirements will be reduced to 20 cfs pursuant to section 877, subdivision (c)(2)(D). At that time, all diverters on Deer Creek shall bypass 20 cfs or full natural flow without diversion, whichever is less, in order to maintain base flows for juvenile CV SR salmon or juvenile CCV steelhead migration. Flows in excess of the 20 cfs base flow can be diverted by water rights holders in accordance with priority and basis of right, except for those post-1914 appropriative right holders referenced in paragraph 1(A) above.
2. This Order shall be effective beginning on October 23, 2015 at 8:00 AM.
3. In accordance with section 877 subdivision (d), water rights holders or agents of record who receive this Order are responsible for immediately providing notice of this Order to all diverters exercising a water right on Deer Creek. Stanford Vina Ranch Irrigation Company and Deer Creek Irrigation District are responsible for immediately providing notice of this Order to all water rights holders to which they provide water under the curtailed water rights.

4. All water users or water right holders receiving this Order are required, within five days of issuance of this Order, to submit under penalty of perjury a certification in accordance with section 879.
5. In accordance with section 879.2, diversion or use in violation of this Order constitutes an unauthorized diversion or use. Violations of this Order shall be subject to further enforcement and any applicable penalties pursuant to Water Code sections 1052, 1831, 1845 and 1846. To the extent of any conflict between the requirements of this Order and any other applicable orders, notices of curtailment or conditions of approval, the diverter must comply with the requirements that are most stringent.
6. **Reservation of Enforcement Authority and Discretion:** Nothing in this Order is intended to or shall be construed to limit or preclude the State Water Board from exercising its authority under any statute, regulation, ordinance, or other law, including but not limited to, the authority to bring enforcement against diverters for unauthorized diversion or use in violation of Water Code section 1052.
7. **Regulatory Changes:** Nothing in this Order shall excuse individual water right holders from meeting any more stringent requirements that may be imposed by applicable legally binding legislation, regulations or water right permit requirements. This Order does not authorize any act which results in the taking of a threatened, endangered, or candidate species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this Order, the diverter shall obtain any required incidental take authorization prior to undertaking the activity for which the authorization is required.

STATE WATER RESOURCES CONTROL BOARD



Barbara Evoy, Deputy Director
Division of Water Rights

Dated: October 22, 2015

ATTACHMENT A
ORDER WR 2015-0036-DWR

DEER CREEK WATER RIGHTS

eWRIMS Application Search Results: 2/20/2015

Riparian Rights and Federal Filings

Application ID	License ID	Status	Primary Owner	Face Value	2010-2014 Average Reported Demand (acre-ft)	Season	Year of First Use	Beneficial Use	Acres Irrigated
F003439S		Claimed	U S LASSEN NATL FOREST	0	NR	year-round		D,FP,R	
F003440S		Claimed	U S LASSEN NATL FOREST	0	NR			D,FP,R	
S001308		Claimed	SIERRA PACIFIC INDUSTRIES	0	0.03	year-round	1900	DA	
S001309		Claimed	SIERRA PACIFIC INDUSTRIES	0	0	year-round	1900	DA	
S001310		Claimed	SIERRA PACIFIC INDUSTRIES	0	0	year-round	1900	DA	
S001311		Claimed	SIERRA PACIFIC INDUSTRIES	0	0	year-round	1900	DA	
S001312		Claimed	SIERRA PACIFIC INDUSTRIES	0	0	year-round	1900	DA	
S001313		Claimed	SIERRA PACIFIC INDUSTRIES	0	0.68	year-round	1900	DA	
S001314		Claimed	SIERRA PACIFIC INDUSTRIES	0	0	year-round	1900	DA	
S007869		Claimed	JOSEPH A BENATAR	0	60	year-round	1893	I,D,O	40
S010775	pre-1914	Claimed	Grant Leininger	0	56	year-round	1893	I,S	192
S012359		Claimed	SIERRA PACIFIC INDUSTRIES	0	0	year-round	1945	FP	
S012360		Claimed	SIERRA PACIFIC INDUSTRIES	0	0	year-round	1945	FP	
S012361		Claimed	SIERRA PACIFIC INDUSTRIES	0	0	year-round	1945	FP	
S012374		Claimed	SIERRA PACIFIC INDUSTRIES	0	0	year-round	1945	FP	
S012375		Claimed	SIERRA PACIFIC INDUSTRIES	0	0	year-round	1945	FP	
S012376		Claimed	SIERRA PACIFIC INDUSTRIES	0	0	year-round	1945	FP	
S012377		Claimed	SIERRA PACIFIC INDUSTRIES	0	0	year-round	1945	FP	
S012396		Claimed	SIERRA PACIFIC INDUSTRIES	0	0	year-round	1945	FP	
S013587		Claimed	DIAMOND LANDS CORPORATION	0	0.00	April-Nov	1900	FP	
S013594		Claimed	DIAMOND LANDS CORPORATION	0	0	April-Nov	1900	FP	
S013595		Claimed	DIAMOND LANDS CORPORATION	0	0.6905	year-round	1905	DA	
S013596		Claimed	DIAMOND LANDS CORPORATION	0	0.0460	April-Nov	1990	FP	
S013597		Claimed	DIAMOND LANDS CORPORATION	0	0.0460	April-Nov	1900	DA	
S013598		Claimed	DIAMOND LANDS CORPORATION	0	0.0000	April-Nov	1900	DA	
S013599		Claimed	DIAMOND LANDS CORPORATION	0	0.0767	April-Nov	1900	FP	
S013600		Claimed	DIAMOND LANDS CORPORATION	0	0	April-Nov	1900	DA	
S013601		Claimed	DIAMOND LANDS CORPORATION	0	0	April-Nov	1900	FP	
S013602		Claimed	SIERRA PACIFIC INDUSTRIES	0	0	April-Nov	1900	DA	
S013603		Claimed	DIAMOND LANDS CORPORATION	0	0	April-Nov	1900	DA	
S016163		Claimed	U S LASSEN NATL FOREST	4,300	4044	year-round	1905	RAH	
S016808		Claimed	SIERRA PACIFIC INDUSTRIES	0.95	0			DA	
S018670		Claimed	Rumiano Farms	0	NR			D	
S019663		Claimed	SIERRA PACIFIC INDUSTRIES	0.92	0			FP	
S023166		Claimed	Rumiano Farms	0	NR			O	

Adjudicated pre-1914 Appropriative Rights

Application ID	License ID	Status	Primary Owner	Face Value	2010-2014 Average Reported Demand (acre-ft)	Season	Year of First Use	Beneficial Use	Acres Irrigated
S000729		Claimed	STANFORD VINA RANCH IRRIGATION CO	0	16779	04/01-10/31	1900	I,S	5700
S000730		Claimed	STANFORD VINA RANCH IRRIGATION CO	0	900	04/01-10/31	1900	I,S	5700
S000731		Claimed	DEER CREEK IRRIGATION DISTRICT	0	11201	year-round	1923	I,S	1900

Post-1914 Appropriative Rights

Application ID	License ID	Status	Primary Owner	Face Value	2010-2014 Average Reported Demand (acre-ft)	Season	Filing Date	Beneficial Use	Acres Irrigated
A001041	485	Licensed	STANFORD VINA RANCH IRRIGATION CO	4,582	3612	05/01-10/01	8/5/1918	I,S	5700
A008469	2385	Licensed	U S LASSEN NATL FOREST	1	0.49	06/61-10/15	10/11/1935	R	
A012096	4976	Licensed	KEN C WILLIS	2,172	NR	year-round	9/19/1947	D,P	
A015933	5462	Licensed	DEER CREEK LODGE INC	2,896	0	year round	6/29/1954	P	
A016224	6088	Licensed	JOSEPH JAMES TREMARI	0.8	0.10	04/01-12/31	1/31/1955	D	
A016223	5702	Licensed	THOMAS T DENNEY	0.1	0.5524	year round	1/31/1955	D	
A016238	7247	Licensed	WALTER ALBERT	2.6	1.15	year round	2/15/1955	D	
A018477	7356	Licensed	DOROTHY ANNE TREMARI	1.7	1.18	04/01-12/31	1/19/1959	D	
A020250	9007	Licensed	DEER CREEK LODGE INC	9	0.15	year-round	6/6/1961	D	
C003886	3886	Certified	EDWIN L GAULT	0	NR	11/01-5/01	8/8/1985	S	
C005299	5299	Certified	RICHARD D SUMMERS	1.5	NR	year-round	1/5/1988	S	

I= Irrigation
S= Stockwatering
RAH= Riparian and Aquatic Habitat
D= Domestic
O= Other
DA= Dust Abatement
FP= Fire Protection
R= Recreational
P= Power