

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

DIVISION OF WATER RIGHTS

ORDER WR 2014 –00XX-DWR

ORDER FOR ADDITIONAL INFORMATION

In the Matter of Diversion of Water from

**USERS WITHIN THE
SACRAMENTO-SAN JOAQUIN DELTA**

BACKGROUND

1. On April 25, 2014, Governor Edmund G. Brown Jr. issued an executive order 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 executive order finds that the continuous severe drought conditions present urgent challenges across the state including water shortages for municipal water use 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;
2. The executive order refers to the Governor's Proclamation No. 1 -17-2014, issued on January 17, 2014, declaring a drought State of Emergency to exist in California due to severe drought conditions. The January Proclamation notes that the state is experiencing record dry conditions, with 2014 projected to become the driest year on record. These conditions also threaten the survival and recovery of fish, wildlife, and plant that rely on California's rivers, including many species in danger of, or threatened with, extinction. The January Proclamation also calls on all Californians to reduce their water usage by 20%.
3. On May 27, 2014, the State Water Resources Control Board (State Water Board) issued a "Notice of Unavailability of Water and Immediate Curtailment for Those Diverting Water in the Sacramento and San Joaquin River Watershed with a Post-1914 Appropriative Right." Based upon the most recent reservoir storage and inflow projections, along with forecasts for future precipitation events, the State Water Board determined the existing water supply in the Sacramento and San Joaquin River watershed is insufficient to meet the needs of all water rights holders. With the notice, the State Water Board notified all holders of post-1914 appropriative water rights within the Sacramento River watershed of the need to immediately stop diverting under their post-1914 water rights, with some minor exceptions for non-consumptive diversions. The condition of curtailment will continue until water conditions improve. Approximately 5,435 junior water-rights in the Sacramento River watershed and 3,116 water rights in the San Joaquin watershed received curtailment notices.

4. On July 2, 2014, the State Water Board adopted emergency regulations for Curtailment of Water diversions to Protect Senior Water Rights (California Code of Regulations, title 23, adding section 875 and 878.3, and amending Section 878.1 and 879¹)(Regulations). The Regulations were reviewed by the Office of Administrative Law and went into effect on July 16, 2014. The Regulations establish a drought emergency curtailment method for post-1914 water right holders and requirements for riparian and pre-1914 rights holders to provide additional information in specific circumstances.
5. Pursuant to section 879, subdivision (c), the Deputy Director for the Division of Water Rights has delegated authority to issue an order requiring riparian or pre-1914 water right holders to provide additional information. Section 879, subdivision (c), states:

Upon receipt of a complaint alleging interference with a water right by a riparian or pre-1914 appropriative water right holder or upon receipt of information that indicates unlawful diversions of stored water by riparians or pre-1914 appropriative water right holders, the Deputy Director may issue an order under this article requiring such water right holders to provide additional information regarding the property patent date, the date of initial appropriation, and diversions made or anticipated during the current drought year. Any water right holder receiving an order under this subdivision shall provide the requested information within five (5) days.

6. The Deputy Director of Water Rights received a letter dated July 23, 2014 from the Department of Water Resources and the United States Department of the Interior, Bureau of Reclamations alleging that southern and central Delta diverters claiming riparian and pre-1914 water rights are diverting water beyond a valid water right, inclusive of storage releases of the Central Valley Project (CVP) and State Water Project (SW).
7. Attachment A is a summary of the riparian and pre-1914 appropriative water right claimants within the southern and central Sacramento –San Joaquin Delta that was assembled from the State Water Board’s electronic water rights information management system (eWRIMS) and Report Management System (RMS).
8. Attachment B is a summary of the riparian and pre-1914 appropriative water right claimants within the remainder of the Legal Delta that was assembled from the State Water Board’s electronic water rights information management system (eWRIMS) and Report Management System (RMS).

FINDINGS:

1. Section 879, subdivision (c), authorizes the Deputy Director for the Division of Water Rights to require parties claiming a riparian or pre-1914 right to divert water to submit certain information concerning the water rights claimed and concerning the past and future anticipated diversions under the claimed right.

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

2. The Deputy Director for the Division of Water Rights has received letters alleging interference with the water rights of the United States Bureau of Reclamation, California Department of Water Resources and others from riparian and/or pre-1914 appropriative water right holders in the central and southern Sacramento-San Joaquin Delta.
3. To determine the merits of the allegations made in the letters, the State Water Board needs additional information on the diversions made under a riparian or pre-1914 basis-of-right for users in the central and southern Sacramento-San Joaquin Delta, as well as other portions of the Delta.

IT IS HEREBY ORDERED:

1. All pre-1914 and riparian water rights holders in the Sacramento–San Joaquin Delta, including but not limited to those identified in Attachment A and Attachment B, are subject to this order for additional information pursuant to section 879, subdivision (c), and shall provide the following information within 5 days:
 - (A) The type of water right being claimed for each point of diversion and place of use for that water;
 - (B) The actual monthly amounts of water diverted under each separate claim of right from October 1, 2013 to the date of this Order, and the anticipated monthly amount of water to be diverted under each separate claim of right from the date of this Order through December 31, 2014. The diversion information shall include the maximum rate of diversion for each month, and the method used to determine the amounts reported.
4. This order shall be effective beginning on the date signed below.
5. All water users or water right holders receiving this order are required, within five days, to supply the information requested in item 1. Failure to comply with this order subjects the party to enforcement action.
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.

STATE WATER RESOURCES CONTROL BOARD

Barbara Evoy, Deputy Director for Division of Water Rights

Dated: