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## State Water Resources Control Board

**\*\*\*\*\* NOTICE \*\*\*\*\***

**Please read the following information carefully.** The staff of the State Water Resources Control Board (State Water Board or Board) is proposing an emergency regulation that, if adopted and approved, may affect the ability of water right holders in the Sacramento-San Joaquin Delta (Delta) watershed to divert water. This notice includes information on how to participate in public discussion and provide comments regarding the proposed emergency regulation. The notice also includes an update on water availability for pre-1914 appropriative and certain riparian water right claimants. The emergency regulation will be presented for review and possible adoption at the State Water Board's August 3, 2021 public meeting. Information on how to participate in or view that meeting is also included in this notice.

**NOTICE OF AVAILABILITY OF DRAFT EMERGENCY CURTAILMENT  
AND REPORTING REGULATION FOR THE SACRAMENTO-  
SAN JOAQUIN DELTA (DELTA) WATERSHED  
FOR PUBLIC REVIEW AND COMMENT  
AND  
NOTICE OF WATER UNAVAILABILITY FOR  
SENIOR WATER RIGHT CLAIMS IN THE DELTA WATERSHED**

**NOTICE IS HEREBY GIVEN** that due to extreme water shortage conditions in the Delta watershed, the State Water Board has developed and released for public review and comment the text of a draft emergency water right curtailment and reporting regulation which, if adopted, may directly affect the exercise of water rights in the Delta watershed.

**NOTICE IS ADDITIONALLY HEREBY GIVEN** that, as described further below, the State Water Board has determined, based on the best information available to the Board, that water supply is currently insufficient to support lawful diversion of any water under some pre-1914 appropriative water right claims and similarly insufficient to support full diversions by some riparian claims in the Delta watershed.

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

## **BACKGROUND**

On May 10, 2021, Governor Newsom issued a Proclamation of a State of Emergency due to drought in 41 counties, including those in the Delta watershed. On July 8, 2021, the Governor issued an expanded Proclamation of a State of Emergency for 9 additional counties and called upon Californians to voluntarily reduce their water use by 15 percent compared to the same period in 2020.

To ensure protection of water needed for health, safety, and the environment, the May 10, 2021 Proclamation directs the State Water Board to consider adoption of an emergency regulation to curtail water diversions in the Delta watershed when water is not available at water right holders' priority of right and to protect releases of previously stored water.

On June 15, 2021, the State Water Board sent Notices of Water Unavailability to all water right holders in the Delta watershed, alerting all post-1914 appropriative water right holders that the Board had determined, based on the best information available to the Board, that water was not available to serve their priorities. The June 15 notice also warned all pre-1914 appropriative and riparian water right claimants in the Delta watershed of impending water unavailability based on worsening drought conditions and the resulting likelihood of consideration of an emergency regulation to curtail water use throughout the Delta watershed.

The draft emergency regulation is scheduled to be considered by the State Water Board at its **August 3, 2021** meeting. If adopted by the State Water Board, the emergency regulation will be submitted to the Office of Administrative Law for a public comment period, review, and requested approval. If approved, the emergency regulation would become effective upon submittal to the Secretary of State as early as mid to late August 2021. The emergency regulation would remain in effect for up to one year but could be repealed if hydrologic conditions improve, or readopted if drought conditions continue through next year.

## **DRAFT EMERGENCY REGULATION TEXT AVAILABILITY, STAFF WORKSHOP, AND PUBLIC COMMENT**

The draft text of the proposed emergency regulation is posted under the Emergency Curtailment Regulations section of the Delta Watershed Drought Information webpage at: <https://www.waterboards.ca.gov/drought/delta/>

The proposed emergency regulation would require water right holders in the Delta watershed to curtail their diversions when the State Water Board determines, based on the best information available to the Board, that water is not available to serve certain priorities of water rights. The emergency regulation would also allow the Board to require water right holders to provide additional information related to their diversion and use of water.

State Water Board staff will hold a public workshop on **July 27, 2021 from 1:00 p.m. to 5:00 p.m.** to provide information and to receive public input on the proposed emergency regulation. For more information and instructions to participate, please see the Notice of Staff Workshop available under the Announcements section on the Delta Watershed Drought Information webpage at: <https://www.waterboards.ca.gov/drought/delta/>

Written comments related to the draft emergency regulation text must be submitted to [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov), with a **copy** to [Bay-Delta@waterboards.ca.gov](mailto:Bay-Delta@waterboards.ca.gov) by **12:00 noon on July 29, 2021**, to be considered before the August 3, 2021 Board Meeting.

Interested parties will have the opportunity to provide oral comment at the July 27, 2021 staff workshop and at the August 3, 2021 Board meeting. For instructions to participate in the August 3, 2021 Board Meeting, please see the Board's Remote Meeting webpage at: [https://www.waterboards.ca.gov/board\\_info/remote\\_meeting/](https://www.waterboards.ca.gov/board_info/remote_meeting/)

### **WATER UNAVAILABILITY FOR SENIOR WATER RIGHT CLAIMS**

The June 15, 2021 Notices of Water Unavailability applicable to all post-1914 appropriative water rights in the Delta watershed remain effective. In addition, updated information available to the Board, evaluated through the Water Unavailability Methodology (described below), indicates that water supply is currently insufficient to support lawful diversions under most senior claims of right (claims identified in Initial Statements of Water Diversion and Use). Specifically, as of the date of this notice, the best information available to the Board indicates that water is **not available** for:

- All post-1914 appropriative water rights in the Delta watershed (inclusive of the Sacramento River and San Joaquin River watersheds);
- All pre-1914 appropriative water right claims in the San Joaquin River watershed;
- All pre-1914 appropriative water right claims in the Sacramento River watershed with a priority date of 1883 or later; and
- Some pre-1914 appropriative water right claims in specific Sacramento River tributary sub-watersheds with a priority date earlier than 1883. These claims face water unavailability either due to limited local supplies or the need to bypass natural flows so that more senior rights downstream can be met.

All of the pre-1914 appropriative water right claims for which current information indicates that water is unavailable are identified on a **List of Noticed Pre-1914 Appropriative Water Right Claims**, which can be found under the Notices of Water Unavailability section on the Delta Watershed Drought Information webpage at: <https://www.waterboards.ca.gov/drought/delta/>

The best information available to the Board, evaluated using the Water Unavailability Methodology, indicates that, as of the date of this notice, water supply is insufficient to meet the demands of all riparian claims of right in the following watersheds and sub-watersheds:

- San Joaquin River watershed: In the months of July, August, and September 2021, demands under riparian water right claims will face a total deficit of approximately 197,000 acre-feet, 170,000 acre-feet, and 73,000 acre-feet, respectively. This amounts to a deficit of supply compared to riparian demand in the San Joaquin River watershed of approximately 82 percent in July, 91 percent in August, and 85 percent in September.

- Bear River sub-watershed: In the months of July and August 2021, demands under riparian water right claims will face a total deficit of approximately 79 acre-feet and 370 acre-feet, respectively. This amounts to a deficit of supply compared to riparian demand in the Bear River sub-watershed of approximately 9 percent in July and 42 percent in August.
- Upper American River sub-watershed: In the month of September 2021, demands under riparian water right claims will face a total deficit of approximately 687 acre-feet. This amounts to a deficit of supply compared to riparian demand in the Upper American River sub-watershed of approximately 100 percent in September.
- Putah Creek sub-watershed: In the month of July 2021, demands under riparian water right claims will face a total deficit of approximately 177 acre-feet. This amounts to a deficit of supply compared to riparian demand in the Putah Creek sub-watershed of approximately 7 percent in July.

In times of such supply shortage, riparian users are required to share the shortage on a correlative basis. Accordingly, riparian claims are not individually listed. These numbers include projections through September 2021 and may be updated as new information becomes available.

The State Water Board is using its updated Water Unavailability Methodology for the Delta Watershed (Methodology) to identify which water rights in the Delta watershed face insufficient supplies to support diversion. For further information regarding the Methodology, please visit the Methodology webpage at:

[https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/drought/drought\\_to\\_ols\\_methods/delta\\_method.html](https://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/drought_to_ols_methods/delta_method.html)

#### **FUTURE COMMUNICATIONS REGARDING WATER SUPPLY CONDITIONS**

If the State Water Board adopts and the Office of Administrative Law approves an emergency curtailment and reporting regulation, the emergency regulation will update the method of communicating with water right holders, including for when curtailments are imposed and lifted based on evolving water supply and demand conditions. Under the proposed emergency regulation, such communication will be exclusively by electronic means.

For further information regarding drought in the Delta watershed, you are strongly encouraged to subscribe to the Delta Drought list on the State Water Board's Email Lists webpage at:

[https://www.waterboards.ca.gov/resources/email\\_subscriptions/swrcb\\_subscribe.html](https://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.html)

Additionally, the State Water Board urges you to frequently visit the Delta Watershed Drought Information webpage, where additional information will also be posted:

<https://www.waterboards.ca.gov/drought/delta/>

Please note that, if adopted and approved, the draft emergency regulation will require water users to subscribe to the Delta Drought list or to frequently visit the Board's Delta Watershed Drought Information webpage for updates.

### **POTENTIAL ENFORCEMENT**

This Notice of Water Unavailability is solely informational. It alerts water users that the best information available to the Board, evaluated through the Methodology, indicates that water is not available to serve the water right claims listed on the Delta Watershed Drought Information webpage at: <https://www.waterboards.ca.gov/drought/delta/>

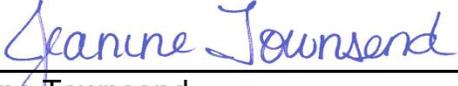
This notice also reminds water users of their obligations under California's water rights system. However, this notice is not an order or directive from the State Water Board to stop diverting.

California water law provides that it is unlawful to divert when water is unavailable under a priority of right or according to the nature of a right/claim. Diverting water that is not lawfully available under your water right may subject you to an enforcement proceeding in which you will have the opportunity to present evidence but through which you could be ordered to cease such diversion and/or to pay administrative fines as high as \$1,000 per day of violation and \$2,500 for each acre-foot of water unlawfully diverted. You could also face prosecution in court. (See Wat. Code, §§ 1052, 1055.)

### **CONTACT AND RESOURCES**

If you have any questions regarding this notice or related efforts, you may send an email to [Bay-Delta@waterboards.ca.gov](mailto:Bay-Delta@waterboards.ca.gov), or call the Delta Drought phone line at (916) 319-0960.

July 23, 2021  
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Date

  
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Jeanine Townsend  
Clerk to the Board