

## State Water Resources Control Board

July 15, 2015

BYRON-BETHANY IRRIGATION DISTRICT  
C/O RICK GILMORE, GENERAL MANAGER  
7995 BRUNS ROAD  
BYRON, CA 94514

### **PARTIAL RESCISSION OF APRIL, MAY AND JUNE 2015 CURTAILMENT NOTICES AND CLARIFICATION OF STATE WATER BOARD POSITION RE: NOTICES OF UNAVAILABILITY OF WATER FOR THOSE DIVERTING WATER IN THE SACRAMENTO RIVER WATERSHED, SAN JOAQUIN RIVER WATERSHED AND DELTA, AND SCOTT RIVER**

The State Water Resources Control Board (State Water Board) issued two letters earlier this year (January 23, 2015 and April 2, 2015) advising persons of the drought and the resulting lack of surface water availability. These letters were issued to facilitate planning for diversions during critical water supply shortages.

In addition to the planning letters, the State Water Board staff has issued notices to specific water diverters alerting categories of users that information available to the State Water Board staff indicates there is insufficient water available to divert under the priority of their water rights. These notices were issued as follows:

#### **Sacramento River and Delta**

- May 1, 2015: All post-1914 rights (concurrent with term 91 curtailment); and
- June 12, 2015: All appropriative water rights with a priority date between 1903 and 1914.

#### **San Joaquin River**

- April 23, 2015: All post-1914 appropriative rights; and
- June 12, 2015: All appropriative water rights with a priority date between 1903 and 1914.

#### **Additional San Joaquin River Sub-watersheds**

- June 26, 2015: Appropriative rights in the Upper San Joaquin watershed with a priority date senior to 1903;
- June 26, 2015: Appropriative rights in the Merced watershed with a priority date between 1858 and 1902; and
- June 26, 2015: Four appropriative rights in the Tuolumne River watershed.

#### **Scott River**

- April 23, 2015: All Decreed Surplus Class Rights, Post-1914 rights, and Priority class 2 water rights in Schedule D4.

You received one of the above notices because information available to the State Water Board, of which you may not be aware, indicates there is insufficient water to divert under the priority of your right. The notice was provided to ensure that diverters: (a) are aware of the severity of the situation; (b) have reliable information regarding the amount of water available for their diversion; and (c) have information on whether water that may appear to be available instead is only available to serve senior rights (expressed in the notices as priority of rights).

The purpose of this notice is to rescind the "curtailment" portions of the unavailability notices you received. To the extent that any of the notices described above contain language that may be construed as an order requiring you to stop diversions under your affected water right, that language is hereby rescinded. Similarly, any language that may be construed as requiring affected water right holders to submit curtailment certification forms is hereby rescinded.

Please note that information available to the State Water Board continues to indicate that there is insufficient water available for the categories of junior water users identified in the State Water Board's prior correspondence, identified above. If you believe you received this notice in error, or have information that you want to provide in response to this notice, or have information you believe the State Water Board staff should otherwise consider, you may submit that information via email to: [SWRCB-Drought-Availability@waterboards.ca.gov](mailto:SWRCB-Drought-Availability@waterboards.ca.gov)

Diversion is always subject to water availability limitations, and diversions under your affected water right may be subject to enforcement should the State Water Board find such diversions are or were unauthorized. The State Water Board is continuing its drought-year inspections to determine whether diverters are using water to which they are not entitled.

**Diversion when there is no available water under the priority of your right is an unauthorized diversion and use and is subject to enforcement by the State Water Board.** Those who are found to be diverting water beyond what is legally available to them may be subject to administrative penalties, cease and desist orders, or prosecution in court. If the State Water Board finds following an adjudicative proceeding that a person or entity has diverted or used water unlawfully, the State Water Board may assess penalties of up to \$1,000 per day of violation and \$2,500 for each acre-foot diverted or used in excess of a valid water right. (See Water Code, §§ 1052, 1055.) Additionally, if the State Water Board issues a Cease and Desist Order against an unauthorized diversion, violation of any such order can result in penalties of up to \$10,000 per day. (See Water Code, §§ 1831, 1845.) Any State Water Board enforcement action will be based upon the availability of water and be consistent with the reasonable and beneficial use requirement contained in article X, section 2 of the California Constitution. This notice does not establish or impose any new compliance responsibilities. Non-compliance with this notice shall not constitute a basis for the State Water Board's initiation of any enforcement action.

Consistent with the partial rescission of the prior notices, you are not required to complete and file the Curtailment Certification Form (Form) attached to the prior notices. The prior notices stated that there are no exceptions to curtailment, but provided opportunity for persons to inform the State Water Board, through the Form, whether they were under directives issued by the Division of Drinking Water or local health or drinking water regulation to provide continued water service to meet minimum health and safety standards. Although you are not required to complete the Form, you can voluntarily advise the State Water Board of directives regarding your domestic water system operation to facilitate the State Water Board's response to the drought conditions.

The State Water Board also encourages water right holders to assist in the prevention of unlawful diversion of water and in discouraging any waste or unreasonable use of water. To assist the State Water Board, you may file a complaint at: [http://www.dtsc.ca.gov/database/CalEPA\\_Complaint/index.cfm](http://www.dtsc.ca.gov/database/CalEPA_Complaint/index.cfm).

We recognize the burden and loss that California's historic drought is causing, and want to assure that others do not illegally benefit from your compliance with the Water Code.

Sincerely,



Thomas Howard  
Executive Director