



Hydro Sierra Energy



Dear State Water Resources Control Board:

I work for an independent power producer named Hydro Sierra Energy, which owns a small hydroelectric power plant in Yuba County, CA and holds a non-consumptive water right to divert 30 cubic feet per second above a minimum in-stream flow.

Our primary comment on the draft regulations is on the equal treatment of consumptive and non-consumptive uses for direct diversion permit holders. In previous regulations, such as the curtailment guidelines we received in May 2015 (see Exhibit 1 and separate attachment), there was an exception for hydroelectric generation by direct diversion where all water was returned to the same stream system.

Exhibit 1

Exceptions to Curtailment:

If your diversion is for hydroelectric generation by direct diversion only and all water diverted is returned to the same stream system, you may continue to divert under your post-1914 permit or license. If you continue to divert under the above circumstances, you must identify that on the Form and provide the information requested. If you have previously collected water to storage in a reservoir covered by a post-1914 right prior to this curtailment notice, you still may beneficially use that previous stored water consistent with the terms and conditions of your post-1914 water right. However, you must bypass all inflow into the reservoir at all times during the curtailment.

The emergency regulations under SB 88 should take a similar approach, providing an exception for direct diversion permit holders who divert water for hydroelectric generation and return it to the same stream system. Requiring these users to abide by the same reporting standards as consumptive use holders is de facto unreasonably expensive and burdensome, since those reports would not advance the state of California's understanding of real-time water consumption patterns.

A separate category should be included in the emergency regulations for permit holders who divert water for hydroelectric generation and return it to the same stream system. These holders, such as Hydro Sierra, already report annually on their diversions using widely accepted methods. Language should be included in the regulations allowing these users (identified and certified by the appropriate body), to continue with the current reporting practices they have been using for years.

Again, requiring non-consumptive permit holders to report at the same standards as consumptive would be unreasonably expensive for no additional benefit to the goal of the regulations. I would be happy to provide further input on specific provisions.

Best regards,
Andy

Hydro Sierra Energy LLC
P.O. Box 6978
Redwood City, CA, 94063



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

May 1, 2015

HYDRO SIERRA ENERGY LLC
P.O. BOX 6978, JB STRAUBEL
REDWOOD CITY, CA 94063

In Regards to Water Right(s) [ID (password)]: A029837 (417926)

NOTICE OF UNAVAILABILITY OF WATER AND IMMEDIATE CURTAILMENT FOR THOSE DIVERTING WATER IN THE SACRAMENTO RIVER WATERSHED WITH A POST-1914 APPROPRIATIVE RIGHT

On January 23, 2015 and again on April 2, 2015, the State Water Resources Control Board (State Water Board) issued a Notice of Surface Water Shortage and Potential for Curtailment due to dry conditions throughout the State. On April 1, 2015, the Governor issued an executive order, order B-29-15, continuing the state of emergency, initially enacted on January 17, 2014, due to drinking water shortages, diminished water for agriculture production, degraded habitat for fish and wildlife, increased wildfire risk and the threat of saltwater contamination to fresh water supplies in the Sacramento-San Joaquin Delta.

Curtailment of Post-1914 Water Rights:

Based upon the most recent reservoir storage and inflow projections, along with forecasts for future precipitation events, the State Water Board has determined that the existing water supply in the Sacramento River watershed is insufficient to meet the needs of all water rights holders. With this notice, the State Water Board is notifying 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 the exceptions discussed below. Please be advised that, if you continue to divert under a claim of pre-1914 right, most or all pre-1914 rights in the Sacramento River watershed are likely to be curtailed later this year due to the extreme dry conditions. This condition of curtailment will continue until water conditions improve. Even if there is water physically available at your point of diversion, that water is necessary to meet senior water right holders' needs or is water released from storage that you are not entitled to divert. If precipitation occurs in the following weeks or months, you should not commence diversion before being notified by the State Water Board that water is legally available for diversion under your priority of right.

Permission to initiate diversions during or following significant rainfall events may be posted at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/index.shtml#notices. You can get immediate email updates from the State Water Board about these notices by subscribing to "Drought Updates" at: http://www.waterboards.ca.gov/resources/email_subscriptions/

Compliance Certification Required:

Curtailed post-1914 diverters are required to document receipt of this notice by completing an online Curtailment Certification Form (Form) within seven days. The Form confirms your cessation of diversion under the specific post-1914 water right, and, if applicable, identifies the alternate water supply you will use in lieu of the curtailed water right. Completion of the Form is mandatory to avoid unnecessary potential enforcement proceedings. You are required to complete the Form for each post-1914 water right identified through this curtailment at:

http://www.waterboards.ca.gov/waterrights/water_issues/programs/ewrims/curtailment/2015curt_form.php

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, Ca 95812-0100 | www.waterboards.ca.gov

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No Exception for Health and Safety:

There is no exception to the curtailment notice for health and safety needs. However, we are aware that some water users must comply with directives issued by the Division of Drinking Water (DDW), or local health or drinking water regulation to provide continued water service to meet minimum health and safety standards. Should you continue to divert water under a curtailed water right to meet human health and safety needs, you must complete the Form identifying your health and safety needs, whether there is an applicable DDW, state or local regulation and your attempts at securing an alternate water supply. The State Water Board will carefully analyze the non-exempted continued diversions for minimum health and safety needs on a case-by-case basis.

Potential Enforcement:

Those who are found to be diverting water beyond what is legally available to them may be subject to administrative fines, cease and desist orders, or prosecution in court. The State Water Board may levy fines of \$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 a fine of \$10,000 per day. (See Water Code, §§ 1831, 1845.)

The State Water Board is encouraging diverters to work together to reach local voluntary agreements that not only provide solutions that help local communities with water shortages, but also prevent impacts to other legal users of water and do not cause unreasonable effects on fish and wildlife. If you have any questions, please call our Curtailment Hotline at (916) 341-5342, contact us by email at: SWRCB-Curtailment-Certification@waterboards.ca.gov, or review our drought year webpage at:

http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/index.shtml

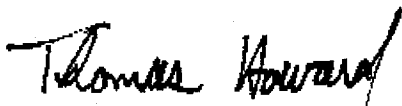
The State Water Board also encourages water right holders to assist in the prevention of unlawful diversion of water and in discouraging any waste or unreasonable use of water.

To assist the State Water Board, you may file a complaint at:

http://www.dtsc.ca.gov/database/CalEPA_Complaint/index.cfm.

We recognize the burden and loss this notice creates for you during the drought, and want to assure that others do not illegally benefit from your curtailments.

Sincerely,



Thomas Howard
Executive Director