

Gearing Up for the Continuing Drought Emergency

With every indication pointing to a fourth year of drought the State Water Resources Control Board ("State Board") is preparing for drought related actions in 2015.

Notice of Potential Curtailment

On January 23, 2015 the State Board issued a Notice of Surface Water Shortages and Potential Curtailment of Water Right Diversions for 2015 ("Notice"). The State Board cautions that in the coming weeks and months, if dry weather conditions persist, it will notify water right holders in critically dry watersheds of the requirement to limit or stop diversions of water under their water right, based on their priority. In 2014, the State Water Board curtailed rights for 5,063 water right holders throughout the state, and this trend is expected to continue in 2015.

The Notice provides that some riparian and pre-1914 water right holders may also receive a notice to stop diverting water if their diversions are downstream of reservoirs releasing stored water and there is no natural flow available for diversion. Curtailment of these senior rights will likely be controversial.^[1] The notice also provides a link to file complaints to report illegal diversions, harm to senior water rights holders or adverse impacts to public trust resources. In 2014, the State Board received approximately 172 complaints between January and October as compared to 54 complaints for the same period in 2013. This number will likely increase with the continued drought

The State Board also cautioned that if you are in a water short area, you should be looking into alternative water supplies; including groundwater wells, purchased water supplies under contractual arrangements, and recycled wastewater. However, many groundwater resources are already significantly depleted in some areas as a result of the drought.

2014 Dry Year Program Report

On January 30, 2015 the State Board released the 2014 Dry Year Program Report ("Report"), which provides a review of its implementation of the water rights system during 2014 and assesses current capabilities and needs to improve the process as the state faces the likelihood of a fourth consecutive drought

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year. The State Water Board anticipates hearing this report as an information item at its February 17, 2015 board meeting.

The Report recommends actions the State Board can take immediately, and highlights other areas that would require legislative action. Below, we highlight a number of recommendations presented in the Report which could impact water right owners if implemented.

- Deployment of compliance inspections within a week of curtailment order and use of aerial imagery services in support of curtailment inspections and complaint investigations.
- Improved coordination with Department of Fish and Wildlife on critical minimum flow requirements.
- Changes to inspection authority to deal with refusal to allow inspections and advanced notice lessening effectiveness of inspections.
- Changes to water diversion and use reporting forms to improve accuracy of water rights demand data.
- Requirement for riparian and pre-1914 water right diverters to file statements annually, consistent with the frequency of reporting by post-1914 water right holders.
- More definitive measuring requirement for riparian and pre-1914 water right diverters.

Conclusion

As we enter the unprecedented fourth year of drought, the State Board is reviewing past drought related actions and setting the stage for potential actions in 2015. All water right owners should evaluate their water usage and supplies. Attention should be paid to the likelihood of curtailment in the system, how water usage has been reported, and how the priority system will impact decreasing supplies. Special attention should be paid to pre-1914 and riparian water rights, which may come under increased scrutiny in 2015.

[1] Last year we analyzed [*Light v. State Water Resources Control Bd. \(2014\) 226 Cal. App. 4th 1463 \(June, 2014\)*](#), which shows the potential legal basis for the State Board to curtail riparian and pre-1914 water rights, and [*Millview County Water Dist. v. State Water Resources Control Bd. \(September, 2014\) 229 Cal. App. 4th 879*](#), which describes State Board's potential jurisdiction and enforcement authority over these rights.

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