

State Water Resources Control Board

August 20, 2021

<<MAIL_RECEIVER_NAME>>
<<ATTN_C/O_LINE>>
<<BOTTOM_ADDRESS_LINE>>
<<CITY>>, <<STATE>> <<ZIP>>

INITIAL ORDER IMPOSING WATER RIGHT CURTAILMENT AND REPORTING REQUIREMENTS IN THE SACRAMENTO-SAN JOAQUIN DELTA WATERSHED

This letter and the enclosed Order contain important information regarding the curtailment status for the <<WATER RIGHT TYPE>> owned by <<PRIMARY OWNER NAME>>, associated with Water Right ID <<WATER RIGHT ID>>. This letter also describes a certification that is required to be submitted by **September 3, 2021**.

Enclosed with this letter is an Order imposing water diversion curtailment and reporting requirements issued pursuant to an emergency regulation adopted by the State Water Resources Control Board (State Water Board or Board) that became effective on August 19, 2021. The enclosed Order specifies the steps that you, or your agent of record, must follow to curtail water diversions when water is determined to be unavailable for this water right or claim of right and to comply with reporting requirements. You or your agent of record are responsible for immediately notifying all parties that divert water under the Water Right ID <<WATER RIGHT ID>> of the enclosed Order.

Please note that you will receive a similar letter and Order for each water right or claim of right in the Sacramento-San Joaquin Delta (Delta) watershed for which you are the designated mail receiver.

Emergency Regulation

In response to ongoing drought conditions and associated water supply shortages in the Delta watershed, on August 3, 2021, the State Water Board adopted an emergency regulation authorizing the curtailment of diversions when water is determined to be unavailable at a water right holder's or claimant's priority of right. (Cal. Code Regs., tit. 23, §§ 876–879.2.) The regulation was approved by the Office of Administrative Law and went into effect upon filing with the Secretary of State on August 19, 2021. The regulation will remain in effect for up to one year but could be repealed if water supply conditions improve. The State Water Board may readopt the regulation if drought conditions continue through next year. The regulation is available on the State Water Board's Delta Drought webpage at: www.waterboards.ca.gov/drought/delta/

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

<<MAIL_RECEIVER_NAME>>

WATER RIGHT ID: <<WATER RIGHT ID>>

Curtailed Water Rights and Claims of Right in the Delta Watershed

The following priorities of water rights and claims of right are curtailed, meaning water diversions are required to cease under these rights and claims, **for the remainder of August 2021**:

1. All post-1914 appropriative water rights in the Delta watershed (including the Sacramento River and San Joaquin River watersheds and the Legal Delta);
2. All pre-1914 appropriative water right claims in the San Joaquin River watershed;
3. All pre-1914 appropriative water right claims in the Sacramento River watershed and in the Legal Delta with a priority date of 1883 or later; and
4. Some pre-1914 appropriative water right claims on specific tributaries to the Sacramento River with a priority date earlier than 1883.

Due to changes in available water supplies and demands following the irrigation season, the curtailments listed above change in the month of September. In the Sacramento River watershed, drainage from rice fields temporarily increases available water supplies and results in the suspension of curtailments for rights and claims on the Sacramento Valley floor in September. However, water rights and claims on some Sacramento River tributaries will remain curtailed, and some rights and claims that were not curtailed in August are curtailed in September due to limited local supplies. In the San Joaquin River watershed where no increase in available water supplies occurs in September, curtailments implemented in August will remain in effect unless water supply conditions improve (precipitation events occur) and the State Water Board changes its curtailment determinations accordingly. The following priorities of water rights and claims are curtailed **for the month of September 2021, unless the State Water Board advises that this determination has been updated**:

1. All post-1914 appropriative water rights in the San Joaquin River watershed;
2. All pre-1914 appropriative water right claims in the San Joaquin River watershed;
3. All riparian water right claims in the American River watershed upstream of Folsom Reservoir;
4. A subset of Central Valley Project and State Water Project water rights in the Sacramento River watershed and in the Legal Delta; and
5. Some pre-1914 appropriative water right claims and post-1914 appropriative rights on specific tributaries to the Sacramento River.

On a weekly basis, or more frequently if warranted due to precipitation and runoff events, updates will be provided regarding applicable curtailments, including any curtailments that may apply after September 2021 as discussed further below.

Action Required: Monitoring of Curtailment Status

Water right holders and claimants are required to monitor for changes in curtailments by signing up for email updates or frequently visiting the State Water Board's website where regular updates will be posted. **All future curtailment orders, including the suspension or reimposition of curtailment, will be issued electronically.** Hard copy notices will not be provided. Notice of new or changed curtailment orders and the

<<MAIL_RECEIVER_NAME>>
WATER RIGHT ID: <<WATER RIGHT ID>>

bases for curtailment decisions will be provided through updates to the Board's Delta Watershed Curtailment Status List (Status List) and through notices issued electronically using the Delta Drought email subscription list. The Status List will be updated at least weekly and more often if needed as hydrologic conditions evolve to reflect changes to water availability.

It is the responsibility of the water right holder, claimant, or agent of record to:

1. Determine if Water Right ID <<WATER RIGHT ID>> is currently curtailed by regularly checking the Status List posted on the State Water Board's Delta Drought webpage at: www.waterboards.ca.gov/drought/delta/ or
2. Subscribe to the Delta Drought email subscription list at: www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.html

Response Required: Compliance Certification Form and Monthly Reporting

Water right holders, claimants, or agents of record who receive the enclosed Order are required to submit, under penalty of perjury, an online Compliance Certification Form for each water right or claim of right by **September 3, 2021**. Your online submittal will be used to assess compliance with the enclosed Order and relevant provisions of the emergency regulation, as well as inform the Board whether you plan to seek an exception to curtailment. The Compliance Certification Form must be accessed on the State Water Board's Survey Portal at: <https://public.waterboards.ca.gov/>

In addition, the regulation includes provisions for requiring enhanced reporting of water diversion information to inform future curtailment decisions. For water rights and claims with a face value or reported annual diversion amount of 5,000 acre-feet or greater in 2018 and/or 2019, the enclosed Order requires: 1) monthly reporting of water diversion and use information for prior months, and 2) monthly reporting of projected demand data. As the right holder, claimant, or agent of record, you must submit the form titled "Delta Watershed Enhanced Reporting of Actual Diversions and Projected Demand" on the Board's Survey Portal by **September 10, 2021**. A new version of this form will be made available every month and must be submitted no later than the 10th of each month.

The following credentials are needed to access the Survey Portal:

Login: <<WATER RIGHT ID>>
Password: <<REPORTING IDENTIFIER>>

State Water Board staff will hold a webinar to explain the reporting requirements associated with the enclosed Order. Notice of this webinar will be posted on the Delta Drought webpage and sent via the Delta Drought email list.

Exceptions to Curtailment

An exception to curtailment may be authorized if: (1) the water right or claim is used only for a non-consumptive use (i.e., all water is returned to the stream) as described in

<<MAIL_RECEIVER_NAME>>
WATER RIGHT ID: <<WATER RIGHT ID>>

section 878 of the emergency regulation; or (2) water diverted under the water right or claim is the diverter's only source of water and it is needed for minimum human health and safety needs, as described in section 878.1 of the regulation.

If you wish to seek an exception to curtailment now or possibly in the future in order to continue diversions for non-consumptive uses or to meet minimum human health and safety needs, you must submit your request by **September 10, 2021**, regardless of the current curtailment status of this right. Submit your exception request(s) using the form(s) available on the Board's Survey Portal at: <https://public.waterboards.ca.gov/> (Login credentials are provided above.)

Consideration of Additional Information

You may submit additional information if you believe that: (1) a correction to the water right priority date for this water right or claim should be made; or (2) curtailment of this water right or claim is not appropriate as demonstrated by verifiable circumstances, such as the right authorizes diversion from a stream system that has been adjudicated and is disconnected, and therefore curtailment would not make water available to serve senior downstream water rights and claims (see section 876.1, subdivision (e) of the regulation). Proposals and supporting information should be submitted to the Deputy Director as specified below within **14 days of receipt of the enclosed Order**.

Water users may also propose alternative water sharing agreements that would achieve the purposes of the curtailment process pursuant to section 878.2 of the regulation. Proposed alternative agreements may be submitted to the Deputy Director at any time, but they may not be implemented instead of complying with a curtailment order unless all potentially affected water right holders and claimants concur with the proposal, or it has been approved by the Deputy Director.

Proposals and supporting information for changes to water right priorities, applicability of curtailments, and alternative water sharing agreements should be submitted to the Deputy Director at Bay-Delta@waterboards.ca.gov. The Deputy Director and Delta Watermaster as appropriate will review timely submitted information as soon as practicable and inform the affected water right holder or claimant of the determination or decision.

Potential Enforcement

The enclosed Order includes enforceable requirements regarding a water right or claim of right that require your immediate attention due to current and possible future limitations in water supplies.

A water right holder or claimant who diverts water that is not legally available, or violates the enclosed Order or the regulation, may be subject to administrative fines, a cease and desist order, or prosecution in court. The State Water Board has enforcement discretion and decisions related to enforcement and associated penalties are based on the specific circumstances of the violation. Fines may be up to \$1,000 per day of

<<MAIL_RECEIVER_NAME>>
WATER RIGHT ID: <<WATER RIGHT ID>>

violation and up to \$2,500 for each acre-foot diverted or used in excess of a valid water right. (Wat. Code, §§ 1052, 1055, 1846.)

Request for Reconsideration

You may submit a petition within 30 days to request that the State Water Board reconsider the enclosed Order. The process and grounds for reconsideration are provided by California Code of Regulations, title 23, sections 768 through 771. Any petition requesting reconsideration of an order that requires enhanced reporting or curtailment must be filed with the State Water Board no later than **September 20, 2021**. To ensure timely consideration, any petition for reconsideration should be sent by email to Bay-Delta@waterboards.ca.gov.

If you have any questions, please review the Frequently Asked Questions (FAQs) on the Delta Drought webpage (www.waterboards.ca.gov/drought/delta/). You may also contact staff at Bay-Delta@waterboards.ca.gov or (916) 319-0960. Please be aware that calls and emails will be answered as soon as possible in the order received. Depending on volume, responses may take a day or longer.

Sincerely,

ORIGINAL SIGNED BY

Erik Ekdahl, Deputy Director
State Water Resources Control Board

Enclosure: Order Imposing Water Right Curtailment and Reporting Requirements in the Sacramento-San Joaquin Delta Watershed for Water Right ID <<WATER RIGHT ID>>

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

DIVISION OF WATER RIGHTS

**IN THE MATTER OF WATER RIGHT ID <<WATER RIGHT ID>> OF <<PRIMARY
OWNER NAME>>**

**ORDER IMPOSING WATER RIGHT CURTAILMENT AND REPORTING
REQUIREMENTS IN THE SACRAMENTO-SAN JOAQUIN DELTA WATERSHED**

ISSUED AUGUST 20, 2021

FINDINGS:

1. On May 10, 2021, Governor Gavin Newsom issued a Proclamation of a State of Emergency (Proclamation) for 41 counties, including those within the Sacramento-San Joaquin Delta (Delta) watershed in response to drought conditions. The Proclamation finds that it is necessary to act expeditiously to mitigate the effects of drought conditions in the Delta watershed, both to ensure the protection of health, safety, and the environment and to prepare for potential sustained drought conditions.
2. On June 15, 2021, the State Water Resources Control Board (State Water Board or Board) issued a Notice of Water Unavailability (June 15 Notice) to all post-1914 appropriative water right holders in the Delta watershed. The June 15 Notice advised that water appeared to be unavailable for diversion as of at least June 15, 2021, for all post-1914 appropriative water right holders in the Delta watershed. The June 15 Notice also warned water users with more senior water right claims that information indicated that water was expected to be unavailable this summer for some pre-1914 appropriative and riparian claimants and that the State Water Board planned to issue further notices of water unavailability. The June 15 Notice also informed water right holders and claimants that development of an emergency curtailment regulation was under consideration.
3. On July 23, 2021, the State Water Board issued a Notice of Water Unavailability (July 23 Notice) for senior water right claims in the Delta watershed, which advised diverters that, based on the best information available to the Board, water supply appeared to be insufficient to support lawful diversion under some pre-1914 appropriative water right claims and to support full diversions by some riparian claims in the Delta watershed. The July 23 Notice also notified water right holders and claimants that a draft emergency regulation was available for public review and comment.
4. On August 3, 2021, the State Water Board adopted an emergency curtailment and reporting regulation in response to ongoing drought conditions and

associated water supply shortages in the Delta watershed. (Cal. Code Regs., tit. 23, §§ 876–879.2.) State Water Board Resolution No. 2021-0028¹ adopting the emergency regulation describes the need for the regulation and its intent and is incorporated by reference into this Order. The regulation was approved by the Office of Administrative Law and became effective upon filing with the Secretary of State on August 19, 2021.

5. Section 879, subdivision (d)(1) of the regulation requires all recipients of initial curtailment or reporting orders to submit a certification regarding actions needed to comply with section 876.1.
6. Section 879, subdivision (d)(2) of the regulation authorizes the Deputy Director for the Division of Water Rights or authorized designee (Deputy Director) to require water right holders and claimants who have been issued an initial order under section 876.1 and whose water right or claim has a total authorized face value or recent annual reported diversion amount of one thousand acre-feet or more to report the following information by the date specified: (1) prior diversions, including direct diversions and diversions to storage, and (2) demand projections for subsequent months through October 1, 2022, including direct diversions and diversions to storage.

In order to refine projections of demands for use in curtailment decisions, this Order imposes enhanced reporting requirements on water right holders or claimants whose water right or claim has a total authorized face value or recent annual reported diversion amount of five thousand acre-feet or more. This information is not currently in the State Water Board's possession. These water rights and claims encompass the majority of water demand and use in the Delta watershed. Having up-to-date, refined demand data for these rights will improve curtailment decisions. With respect to the requirements imposed by this Order on water right holders and claimants in the Legal Delta, the Deputy Director has consulted with and obtained the concurrence of the Delta Watermaster, as required by the regulation. In addition, the Deputy Director and the Delta Watermaster have considered the need for the information to inform curtailment decisions and the burden of producing it.

7. Section 876.1 of the regulation establishes the process by which curtailment of water rights and claims of right in the Delta watershed may take place. When natural and abandoned flows are insufficient to support all diversions, the Deputy Director or authorized designee may issue curtailment orders to water right holders and claimants in the Delta watershed, requiring the curtailment of water diversion under designated water rights and claims in order of water right priority,

¹ Resolution 2021-0028 is available at:

www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2021/rs2021_0028_regs.pdf

except as provided in sections 878, 878.1, and 878.2. Before issuing curtailment orders in the Legal Delta, as defined by the regulation, the Deputy Director must consult with and obtain the concurrence of the Delta Watermaster.

8. Section 876.1, subdivision (d) of the regulation specifies the information that the Deputy Director must consider in determining whether water is unavailable under a water right holder's or claimant's priority of right, and whether to order curtailment of water diversions under specific rights or claims. The regulation also authorizes the Deputy Director to evaluate water unavailability using the Water Unavailability Methodology for the Delta Watershed (Methodology), which was developed by the State Water Board for this purpose, or a comparable tool. Demand data used in the Methodology is based on annual water use reports submitted to the Division of Water Rights for 2018 and 2019 as described in the Methodology. Supply data used in the Methodology is derived from estimates of full natural flow, which were then adjusted to account for abandoned instream flows as described in the Methodology. Evaluation of available supplies against demands is performed at the Sacramento and San Joaquin River watershed scale and at the subwatershed scale.
9. This curtailment is based on consideration of the information described in section 876.1, subdivision (d) of the regulation and evaluation of available supply and demand data using the most recent version of the Methodology, documented by a summary report dated August 20, 2021.

The most recent version of the Methodology includes updates to the treatment of the San Joaquin River Exchange Contractors within the Methodology's spreadsheet in keeping with the description of their treatment within the summary report, and the removal of demand from the disconnected Goose Lake watershed, in accordance with section 876.1, subdivision (d) of the regulation. The summary report has also been updated to address certain comments received on the Methodology, including comments concerning the unique hydrology of the Legal Delta. The results of the Methodology that are used to inform these curtailments are available in both spreadsheet and graphical form on the Board's Water Unavailability Methodology for the Delta Watershed webpage at:

www.waterboards.ca.gov/drought/drought_tools_methods/delta_method.html

The Delta Watershed Curtailment Status List (Status List) reflects the water rights and claims for which natural and abandoned flows have been determined to be currently unavailable as a result of this evaluation.

10. In accordance with section 876.1 of the regulation, the Deputy Director has determined that natural and abandoned flows are insufficient to satisfy the needs of all diverters in the Delta watershed. The Deputy Director has determined that water is unavailable for direct diversions and diversions to storage in the Delta watershed for those water rights and claims specified on the Status List, except

<<PRIMARY OWNER NAME>>

Water Right ID: <<WATER RIGHT ID>>

Page 4 of 5

to the extent that water released from storage is rediverted as authorized by a water right or contract. With respect to the curtailment orders issued to water right holders and claimants in the Legal Delta, the Deputy Director has consulted with and obtained the concurrence of the Delta Watermaster. Therefore, the Deputy Director has concluded that issuance of curtailment orders pursuant to the regulation is necessary and appropriate.

IT IS HEREBY ORDERED:

1. In accordance with section 876.1, subdivision (c) of the regulation, water right holders or agents of record who receive this Order are responsible for immediately providing notice of this Order to all diverters exercising the water right or claim covered by this Order.
2. <<PRIMARY OWNER NAME>> or agent is required, by September 3, 2021, to submit under penalty of perjury an online Compliance Certification Form in accordance with section 879, subsection (d)(1) of the regulation. The online Compliance Certification Form must be accessed using the Login: <<WATER RIGHT ID>> and Password: <<REPORTING IDENTIFIER>> on the Water Right Form and Survey Submittal Portal located at: <https://public.waterboards.ca.gov>
3. Effective August 20, 2021, diversion of water pursuant to water rights and claims specified as curtailed on the Status List shall cease unless the diversion is subject to an authorized exception to curtailment as described by section 878, section 878.1, or section 878.2 of the regulation.
4. <PRIMARY OWNER NAME>> or agent is required, by the 10th day of every month commencing in September 2021, to submit an online form titled "Delta Watershed Enhanced Reporting of Actual Diversions and Projected Demand" in accordance with section 879, subsection (d)(2) of the Regulation. The "Delta Watershed Enhanced Reporting of Actual Diversions and Projected Demand" form must be accessed using the Login: <<WATER RIGHT ID>> and Password: <<REPORTING IDENTIFIER>> on the Water Right Form and Survey Submittal Portal located at: <https://public.waterboards.ca.gov>
5. <<PRIMARY OWNER NAME>> shall receive all subsequent modifications to this Order, including communications that may change the curtailment status of <<WATER RIGHT TYPE>> <<WATER RIGHT ID>>, through electronic notification via the State Water Board's Delta Drought email distribution list or as posted on the Status List on the State Water Board's Delta Drought website at: www.waterboards.ca.gov/drought/delta/
6. Pursuant to section 879.2 of the regulation, failure to comply with the regulation or this Order, including diversion or use in violation of curtailment, is subject to enforcement action, including the imposition of any applicable penalties pursuant to Water Code sections 1052, 1058.5, 1831, 1845, and 1846. To the extent of any conflict between the requirements of this Order and any other applicable

<<PRIMARY OWNER NAME>>

Water Right ID: <<WATER RIGHT ID>>

Page 5 of 5

orders or conditions of approval, the diverter must comply with the requirements that are most stringent.

7. 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.
8. Nothing in this Order shall excuse individual water right holders and claimants from meeting any more stringent requirements that may be imposed by applicable legally binding legislation, regulations, or a water right permit requirement. This Order does not authorize any act which results in the taking of a threatened, endangered, or candidate species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, §§ 2050-2097) or the federal Endangered Species Act (16 U.S.C. §§ 1531-1544). If a “take” will result from any act authorized under this Order, the diverter shall obtain authorization for an incidental take. Diverter shall be responsible for meeting all requirements of the applicable Endangered Species Act(s) for actions authorized under this Order.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY

Erik Ekdahl, Deputy Director
Division of Water Rights

Dated: August 20, 2021