

Commentary: Water board ramps up its water rights enforcement work

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By Jack Rice



Stockponds or reservoirs constructed after 1914 must have a permit, license or registration from the state water board if they divert water from a stream.

A recent water rights enforcement effort by the State Water Resources Control Board has revealed that many reservoirs, including stockponds, may be out of compliance with the state Water Code. During the past month, the water board sent hundreds of letters to landowners in Humboldt, Marin, Mendocino, Napa and Sonoma counties, informing them that reservoirs have been identified on their property for which the board has no record. Although this enforcement effort currently focuses on these five counties, it likely will move quickly to other parts of the state.

Even though the enforcement effort is new, the laws being enforced have been on the books for decades. This has led many to wonder why the water board is ramping up enforcement now. While there are likely many reasons, especially concerns for protected fish and the overall increased pressure on all water resources, two recent changes are particularly pivotal to understanding the origin of this enforcement effort and what it means for water users throughout California.

The first change was that the Legislature, as part of a 2009 package of water legislation, added significant penalties for failing to file a Statement of Water Diversion and Use, and authorized the addition of 25 new enforcement personnel to enforce this and other requirements of the Water Code. Second, technological advancements in mapping aerial imagery made it relatively simple to find reservoirs, determine the owner of the parcel where they are located, and then determine whether the water board has a record of that diversion. Any member of the public can conduct a similar investigation, using Google Earth and reviewing the Electronic Water Rights Information Management System, eWRIMS, available on the water board website.

These changes contributed to increased water rights enforcement efforts, such as the letters sent to landowners. The letters explain how, under California law, the water board should have a record of every surface water diversion. For surface water diversions

initiated after 1914, there must be a permit, license or registration obtained from the water board. This applies to all reservoirs that collect water from a stream, including stockponds. All other diversions, with a few minor exceptions, are required to file a Statement of Water Diversion and Use. Working together, these two requirements mean that the water board should have a record for nearly every surface water diversion. If there is no such record, that diversion may be violating longstanding provisions of the Water Code and the landowner could be subject to significant penalties.

The letters explain that any surface water diversion initiated after 1914 that does not have a permit, license or registration is unauthorized. Under the Water Code, failure to have such authorization is considered a trespass against the state and is subject to a \$500 fine for each day the unauthorized diversion or use occurs. Because the vast majority of reservoirs and stockponds were constructed after 1914, each must have the appropriate permit, license or registration if it diverts water from a stream. Based upon the board's letter and information learned from landowners in the five counties, it appears that there are a significant number of reservoirs and stockponds that may not have the proper authorization. This is probably true for other parts of California as well.

Failure to file a Statement of Water Diversion and Use with the state water board could result in a \$1,000 fine. Failure to file a statement within 30 days of notification by the board subjects the water user to fines of \$500 for each day the notice is late.

Anyone with a reservoir or stockpond subject to water board jurisdiction must make certain to comply with both requirements. While there are circumstances where a reservoir or stockpond may not be subject to water board jurisdiction—for example, sheet flow ponds, groundwater storage or wastewater ponds—these are the exceptions, not the rule. According to the letters, the process for bringing reservoirs or stockponds into compliance is to submit a Statement of Water Diversion and Use within 30 days of the date of the letter. Then, within 60 days, the landowner should inform the water board of what actions will be taken to correct any unauthorized diversion of water. Both steps must be taken to bring a pond into compliance with the Water Code.

It is very important that anyone receiving a letter regarding water diversion and use from the State Water Resources Control Board take the letter seriously and respond appropriately. Because there are potentially very significant penalties, anyone who believes they may be out of compliance should consider contacting an attorney or engineer familiar with water rights to assist them in the process. Additional information on this issue is available on the California Farm Bureau Federation website at www.cfbf.com/issues/; look under the Water subheading for information on reporting requirements for surface water diversions.

(Jack Rice is associate counsel for the California Farm Bureau Federation. He may be contacted at jrice@cfbf.com.)

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