



CONFERENCE CALL

WITH NEUMILLER & BEARDSLEE

Water Diverters Must Report Use Mandatory July 1 Deadline

If you divert surface water in California you may be required to comply with a new July 1, 2010 deadline to report the amount of water used in 2009. This new requirement applies to all riparian and pre-1914 water rights. Failure to comply can result in a \$1,000 penalty, plus a \$500 penalty for each day the violation continues after notice from the State. All water users need to carefully evaluate if the new law applies to them and, if it does, meet the deadline in order to avoid fines by the State.

Who must report their surface water use?

The water package that was passed by the Legislature in November of 2009 made these reports mandatory and imposes fines for failure to comply. The reporting requirements now apply to all water diverters, with limited exceptions. Previously much of the Delta was exempt from the reporting requirements, which were voluntary. Now all surface water diverters throughout the state utilizing a riparian or pre-1914 appropriative water right must file a Statement of Water Diversion and Use (Statement) with the State Water Resources Control Board (State Board).

Generally speaking, a riparian water right is water used on a parcel adjacent to a natural stream or lake. A pre-1914 water right applies to water that was diverted prior to 1914, the year a permit for an appropriative water right was first required from the State, and continuously used ever since. Technical legal rules apply to the valid creation and continuance of both riparian and pre-1914 water rights.

Riparian and pre-1914 water rights are not based on a permit or license issued by the State Board. Those users receiving water under a permit or license from the State Board, including water received from a water or other district that holds a permit, license or contract for water, do not need to file a Statement. Use based on a license or permit is already required to be reported to the State Board every three years.

Now all of riparian and pre-1914 water right users must comply with the new mandatory July 1 deadline, unless the use has been reported to the State within the last three years. For those who have previously filed a Statement and received a Statement number from the State, reports then must be supplemented every three years thereafter.

What must be filed by July 1, 2010?

Riparian and pre-1914 water right diversion and use for 2009 must be reported to the State Board by July 1, 2010, on a prepared Statement of Water Diversion and Use form available at:

http://www.swrcb.ca.gov/waterrights/water_issues/programs/diversion_use/index.shtml. The information reported must include the monthly rate of diversion and amount of the water diverted. Annual amounts must also be reported. Until 2012, estimates are allowed. After 2012 amounts must be measured.

In addition, the Statement must include a United States Geological Survey (USGS) topographic map, or similar map, identifying the point of diversion and place of use of the water for 2009. Assessor's parcel numbers must also be identified. A separate Statement form must be completed for each diversion point, such as each pump, siphon or gate. Thus users may have to complete multiple Statements for their parcels. Multiple owners served by one diversion point should also coordinate their reports.

All water diverters are encouraged to review their water use and if required file a Statement by July 1, 2010 to avoid penalties from the State. If you are located within the Delta you are encouraged to contact your Delta water agency for assistance. For more information from Neumiller & Beardslee please contact DeeAnne M. Gillick, Mia S. Brown, or Thomas J. Shephard at 209-948-8200 or at 509 W. Weber Avenue, 5th Floor, in Stockton.