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THE STATE WATER RESOURCES CONTROL BOARD IS TAKING A HARD LOOK AT SENIOR WATER RIGHT HOLDERS.

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By: Craig A. Tristao

Today the State Water Resources Control Board (“Board”) issued an “Order for Additional Information In the Matter of Diversion of Water from Sacramento and San Joaquin Watershed and Delta”. The order follows a May 2014 curtailment order to post-1914 appropriative water right holders in the region and emergency regulations that were adopted in July 2014. It comes in response to a complaint to the Board by the Department of Water Resources and the U.S. Bureau of Reclamation that south and central riparian and pre-1914 diverters are illegally diverting water from the State Water Project and the Central Valley Project. Westlands Water District and the State Water Contractors presented letters to the Board in support of the complaint

The order identifies 445 different parties who the Board desires additional information from in order to determine if they have engaged in unauthorized diversions of water, despite their holding a riparian or pre-1914 appropriative water right. It requires these parties to submit information concerning diversions they made in 2014 and the right under which they made the diversion, and information for expected 2015 diversions and the right that will allow those diversions. More importantly, it requires the parties to provide documentation in support of the water rights that the parties claim to hold. Riparian water rights holders are being required to provide patent dates and patent maps, while pre-1914 appropriative rights holders must provide copies of notices, property deeds and all other information pertaining to their initial diversion of water and “continued beneficial use”.

The requirement that water rights holders provide information that water they are diverting is being used for a “continued beneficial use” indicates that the Board is taking a “hard look” at water right holders whose rights are superior to other diverters. It may not just be looking to see which holders of these rights are diverting more water than they are entitled to use, it could be attempting to hinder or even eliminate their rights by invoking California’s constitutional requirement that waters of the state be used for a beneficial purpose.



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Craig A. Tristao is a Partner in the litigation and transactions departments of the firm's Fresno office. He provides representation to clients in litigation matters involving agricultural law, environmental law, construction law, land use and natural resource law, water law, probate and estates, and eminent domain matters that involve the California High-Speed Rail Authority. Craig also assists clients with regulatory compliance issues concerning the Clean Water Act (CWA), the Porter-Cologne Act, and the Clean Air Act (CAA). In addition to litigation, Craig also represents clients before the Regional Water Quality Control Boards and the State Water Resources Control Board, air districts, and the Contractors State License Board (CSLB). He has also been named a Super Lawyers' "Rising Star" for 2015-2018 (2.5% of lawyers practicing under 10 years). You can contact Craig at (559) 248-4820 or ctristao@ch-law.com.