

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

DIVISION OF WATER RIGHTS

ORDER WR 2016-0007-DWR

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**ORDER FOR ADDITIONAL INFORMATION**

In the Matter of Diversion of Water by

**MICHAEL S. AND DEANNE K. BOEHLERT**

SOURCE: Unnamed Stream (aka Buckskin Spring), tributary to South Fork Bear Creek, thence Bear Creek, thence Sacramento River.

COUNTY: Shasta

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**BACKGROUND**

1. On January 17, 2014, Governor Edmund G. Brown Jr. issued Proclamation No. 1-17-2014, declaring a State of Emergency to exist in California due to severe drought conditions.
2. On April 25, 2014, Governor Brown issued a Proclamation of a Continued State of Emergency due to drought conditions, to strengthen the state's ability to manage water and habitat effectively in drought conditions.
3. On April 1, 2015, Governor Brown issued Executive Order B-29-15 (Executive Order) to strengthen the state's ability to manage water and habitat effectively in drought conditions and called on all Californians to redouble their efforts to conserve water. The Executive Order finds that the on-going severe drought conditions present urgent challenges across the state including water shortages for municipal use and for agricultural production, increased wildfire activity, degraded habitat for fish and wildlife, threat of saltwater contamination, and additional water scarcity if drought conditions persist. The Executive Order confirms that the orders and provisions in the Governor's previous drought proclamations and orders, the January 17, 2014, Proclamation, April 25, 2014, Proclamation, and Executive Orders B-26-14 and B-28-14, remain in full force and effect.
4. The Executive Order, at Paragraph 10, provides in part that "[t]he Water Board shall require frequent reporting of water diversion and use by water right holders, conduct inspections to determine whether illegal diversions or wasteful and unreasonable use of water are occurring, and bring enforcement actions against illegal diverters and those engaging in the wasteful and unreasonable use of water."
5. On December 1, 2015, the State Water Board amended and re-adopted emergency regulations regarding Informational Order authority during drought (California Code of Regulations, title 23, amending section 879, subdivision (c)). The regulations were reviewed by the Office of Administrative Law and went into effect on December 17, 2015. The Deputy Director of the Division of Water Rights has redelegated the authority under this subdivision to the Assistant Deputy Director for Water Rights.

**BOEHLERT WATER RIGHT**

6. On March 3, 1991, Michael S. and Deanne K. Boehlert (collectively referred to as Boehlert) filed with the State Water Board, Division of Water Rights (Division) an Initial Statement of Water Diversion and Use (Initial Statement) for a pre-1914 claim of right. Boehlert's Initial Statement asserts water diversions from Buckskin Spring (ultimately tributary to the Sacramento River) began in the 1880s. The Division accepted the Initial Statement on March 7, 1991, and assigned it statement number S013557.
7. The Division does not have any record of any other appropriative water right, riparian claim of right, or pre-1914 claim of right for Michael and/or Deanne Boehlert.

**INVESTIGATION**

8. In October 2012, the Division received a complaint alleging excess water diversions are dewatering Buckskin Spring downstream of Boehlert's diversion works. The complaint alleges harm to downstream riparian users and riparian habitat. The complaint included aerial images of Boehlert's property from 1954 to 2010 highlighting an increase in the size of the place of use. The complaint alleges the place of use expanded in about 1998, and in 2001 the stream flow started decreasing in Buckskin Spring. Division staff found merit in the allegations and initiated an investigation to determine the cause and extent of the dewatering of Buckskin Spring and the potential expansion of a pre-1914 claim of right.
9. Boehlert's Initial Statement filed in 1991 reports the date of first use as 1880 to 1890 with a minimum annual diversion of 30-35 acre-feet and a maximum annual diversion of 40-60 acre-feet. The Initial Statement reports the water use as irrigation on 5 acres of apple orchard and pasture for cattle and sheep. From 1991 to 2013, Boehlert filed all the required triennial Supplemental Statement of Water Diversion and Use Reports (Statements) except for years 1999-2001, and 2004-2007.

In the most recent triennial Statements (2011-2013), Boehlert reports 301 acre-feet as the total amount directly diverted or collected to storage. The 2011-2013 Statements report the purpose of use as irrigation for 56 acres, stockwatering for 30 animals, and domestic use purposes. The 2011-2013 Statements indicated two types of measuring devices installed to determine the amount of water directly diverted and/or collected to storage. In review of aerial images, staff identified two reservoirs on properties owned by Boehlert (see Attachment A) that dated back to at least 2004. Staff reviewed the Division's water right files and found no record of the two reservoirs. The 2011 and 2012 Statements report water is diverted and used to supply a 5kw hydroelectric plant.

Boehlert's Initial Statement and subsequent reports show an expansion of the pre-1914 claim of right from 60 acre-feet to 301 acre-feet and the place of use expanding from 5 acres to 56 acres. The Statement reports indicate Boehlert has increased the annual quantity of water diverted, increased the size of the place of use, and added an additional purpose of use in excess of what is reported on the Initial Statement of a pre-1914 water right claim.

10. Division staff determines the complaint merits further investigation of the alleged unauthorized diversion of water and interference with a water right by a water right holder, diverter or user. The Division is requesting additional information to determine the cause and extent of the dewatering of Buckskin Spring. Boehlert's increased diversion from the reported pre-1914 annual amount is a potential unlawful diversion of water.

**LEGAL AUTHORITY**

11. Water Code section 183 authorizes the State Water Board, among other things, to conduct any investigations in any part of the state necessary to carry out the Board's powers.
12. Water Code section 1051 authorizes the State Water Board, among other things, to investigate all streams, stream systems, portions of stream systems, lakes, or other bodies of water to determine whether water is being appropriated in accordance with the laws of the State.
13. Pursuant to California Code of Regulations, title 23, section 879, subdivision (c):

- (1) *The Deputy Director may issue an informational order, as provided in paragraph (2), in any of the following circumstances:*

    - (A) *Upon receipt of a complaint that staff determines to merit investigation alleging interference with a water right by a water right holder, diverter or user;*
    - (B) *Where a water right holder, diverter or user asserts a right to divert under a pre-1914 or riparian right in response to an investigation, curtailment order or any notice of curtailment, and no Statement of Water Diversion and Use for such right was on file with the Board as of January 17, 2014;*
    - (C) *Where a water right holder, diverter or user responds to an investigation, curtailment order or any notice of curtailment by asserting a right to divert under a contract or water transfer for which the Board has not approved a change petition and for which no record had been previously filed with the Board; or*
    - (D) *Upon receipt of information that indicates actual or threatened waste, unreasonable use, unreasonable method of diversion, or unlawful diversions of water by any water right holder, diverter or user.*
  - (2) *The Deputy Director may issue an order under this article requiring a water right holder, diverter or user to provide additional information related to a diversion or use described in (c)(1), including the claim of right; property patent date; the date of initial appropriation; diversions made or anticipated during the current drought year; basis of right and amount of a water transfer not subject to approval of the Board or Department of Water Resources; or any other information relevant to authenticating the right or forecasting use and supplies in the current drought year.*
  - (3) *Any party receiving an order under this subdivision shall provide the requested information within thirty (30) days. The Deputy Director may grant additional time for submission of information supporting the claim of right upon substantial compliance with the 30-day deadline and a showing of good cause.*
  - (4) *The failure to provide the information requested within 30 days or any additional time extension granted is a violation subject to civil liability of up to \$500 per day for each day the violation continues pursuant to Water Code section 1846.*
  - (5) *Orders issued under previous versions of this subdivision shall remain in effect and shall be enforceable as if adopted under this version. The provisions of Article 12 of this Chapter (commencing with section 768) shall govern petitions for reconsideration of orders issued under this subdivision.*
  - (6) *The Deputy Director may delegate the authorities under this subdivision to an Assistant Deputy Director for the Division of Water Rights.*
14. Section 879, subdivision (c), and the Executive Order supplement the State Water Board's general investigatory authority under Water Code sections 183 and 1051.
  15. Section 879, subdivision (c)(1)(D) authorizes the Deputy Director to issue orders requiring additional information upon receipt of information that indicated actual or threatened unlawful diversions of water by any water right holder, diverter or user. This authority has been redelegated to the Assistant Deputy Director of the Division of Water Rights.
  16. The circumstances described above indicate that the Division is in receipt of: 1) a complaint that alleges interference with a water right by a water right holder, diverter or user; and 2) information that indicates actual or threatened waste, unreasonable use, unreasonable method of diversion, or unlawful diversions of water by any water right holder, diverter or user.
  17. To determine the cause and extent of dewatering of Buckskin Spring and if unauthorized diversions have occurred and/or are threatening to occur, the State Water Board needs additional information described below.
  18. Recipients of information orders issued pursuant to Section 879(c) may petition the State Water Board for reconsideration. (Water Code § 1122; 23 CCR §§ 768 et seq., 879(c)(5).)

**IT IS HEREBY ORDERED:**

1. Boehlert is subject to this Order for Additional Information (Order) pursuant to section 879, subdivision (c), and shall provide the following information within 30 days of the date of this Order:
2. Boehlert shall provide the following information for water diversions that are conducted under any basis of right including the pre-1914 claim of right (S013557) on file with the Division:
  - (A) The monthly amounts of water diverted and the basis of right allowing for the diversions for each month from January 2014 through the date of this Order, and the anticipated monthly amount of water to be diverted in 2016 and identify the basis of right for this time period. For direct diversion, the diversion information shall include the total amount of water diverted and the maximum rate of diversion for each month. For water diverted to storage, the diversion information shall include the quantity collected to storage each month, maximum rate of diversion for each month, the monthly quantity beneficially used in each month, and identify the basis of right for such storage and use. For all methods of diversion, you are requested to identify the method used to determine your diversion amounts reported (Wat. Code § 5103(e)), including rating curves, and calibration dates and calculations.
  - (B) Identify by latitude and longitude the location of the point of diversion and place of use for each water right being claimed for each point of diversion, the purpose of use, and the place of use being served with acreage and crop type, if applicable. All documentation supporting the type of water right claimed, including the property patent date and patent map, if riparian right. If pre-1914 right is claimed, a copy of notice filed with the county, copy of property deed, the amount of water that can be diverted under the pre-1914 claim of right, season of diversion, and all other information supporting the pre-1914 claim of right pertaining to initial diversion and continued beneficial use of water. This information is an attachment to the report filed in (A) and must be filed electronically and mailed to:  
  
Kevin.Porzio@waterboards.ca.gov.
3. Boehlert is required to submit the information requested. Failure to comply with this Order subjects the party to enforcement action including, but not limited to, civil liability of up to \$500 per day for each day the violation continues pursuant to Water Code section 1846.
4. Reservation of Enforcement Authority and Discretion: 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.

STATE WATER RESOURCES CONTROL BOARD



John O'Hagan, Assistant Deputy Director  
Division of Water Rights

Dated: **FEB 24 2016**

ATTACHMENT B

INFORMATIONAL ORDER FORM

Please return within 30 days of receipt of the Informational Order to:

State Water Resources Control Board  
Division of Water Rights  
ATTN: Kevin Porzio  
1001 I Street, 14<sup>th</sup> Floor  
Sacramento, CA 95814

Email or fax completed Informational Order form to:  
Kevin.Porzio@WaterBoards.ca.gov  
Fax: (916) 341-5400

WATER RIGHT SUBJECT TO INFORMATIONAL ORDER:

Please update Water Right Owner information (if different from addressed):

Application or Statement No(s) (If none, state "none"): \_\_\_\_\_  
Owner of Property: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_ Email Address: \_\_\_\_\_

INFORMATIONAL ORDER

Are you currently experiencing any water shortages from this source?

- No
- Yes, explain: \_\_\_\_\_  
\_\_\_\_\_

Please check applicable boxes below:

- NO DIVERSION-** I hereby certify that I will not be diverting any water from unnamed stream (aka Buckskin Spring) or its tributaries during the 2016 season.
- ALTERNATIVE SOURCE-** I hereby certify that I will not be diverting any water from unnamed stream (aka Buckskin Spring) or its tributaries during the remaining 2016 season. However, I will be serving all or a portion of its place of use with my alternative source(s) of water, as specified below:
  - Ground (well) water
  - Contract (purchased) water from \_\_\_\_\_
  - Rely on stored water
  - Other source(s) (specify) \_\_\_\_\_
- CONTINUED DIVERTING FROM UNNAMED STREAM (AKA BUCKSKIN SPRING)-** I hereby certify that I am continuing to divert water from Buckskin Springs for:
  - Domestic Health and Safety Needs
  - Irrigation & acres irrigated \_\_\_\_\_
  - Other: provide explanation: \_\_\_\_\_

**Please provide actual statement of diversion for 2014 and 2015 from Buckskin Spring:**

\*submit units of measure in **acre-feet** for each month

\*\*The monthly diversion reports submitted herein will be incorporated in your annual reports. However, annual reporting requirements will need to be completed separately from these reports.

2014 Actual Diversion*	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2014 Actual Diversion to Storage*	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec

2015 Actual Diversion*	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2015 Actual Diversion to Storage*	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec

**Please provide projected diversion for 2016:**

2016 Projected Diversion*	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2016 Projected Diversion to Storage*	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec

***I declare that the information in this form is true to the best of my knowledge.***

Name: _____	Date: _____
Signature: _____	

ATTACHMENT A

PROPERTY OWNED BY BOEHLERT

https://pqweb.parcelquest.com/#home



Lat: 40.522575° Zoom  
 Lon: -121.951193° 16

Results Print

Display Type: **List View** Page Layout: **Show Map** Total Pages: 1 [page: 1]

<a href="#">all</a> <a href="#">none</a>	ID	Owner	S Street Address	S City State Zip	Mail Name	M City S
<input checked="" type="checkbox"/>	1	BOEHLERT MICHAEL & DEANNE FAMILY TR		SHINGLETOWN CA 96088	MICHAEL & DEANNE BOEHLERT	SHINGLE
<input checked="" type="checkbox"/>	2	BOEHLERT MICHAEL & DEANNE FAMILY TR	7876 OAK LN	SHINGLETOWN CA 96088-9616	MICHAEL & DEANNE BOEHLERT	SHINGLE
<input checked="" type="checkbox"/>	3	BOEHLERT MICHAEL & DEANNE FAMILY TR	7878 OAK LN	SHINGLETOWN CA 96088-9616	MICHAEL & DEANNE BOEHLERT	SHINGLE
<input checked="" type="checkbox"/>	4	BOEHLERT MICHAEL & DEANNE FAMILY TR		SHINGLETOWN CA 96088	MICHAEL & DEANNE BOEHLERT	SHINGLE