



www.mountaincountieswater.com

Board of Directors
 Bill George (EID) – Treasurer
 Jim Holmes (County of Placer) – Director
 Norm Krizl (GDPUD) – Vice President
 Scott Ratterman (CCWD) - Director
 Art Toy (AWA) – President

Barbara Balen (Past TUD) – Ex Officio
 Lowell Jarvis (Past PCWA) – Ex Officio

[John Kingsbury – Executive Director](#)

April 13, 2015

Executive Members

Amador Water Agency (AWA)

Calaveras County Water District (CCWD)

County of Amador

County of Calaveras

County of Placer

El Dorado County Water Agency (EDCWA)

El Dorado Irrigation District (EID)

Foresthill Public Utility District (FPUD)

Grizzly Flats Community Services District (GFCS)

Georgetown Divide Public Utility District (GDPUD)

Nevada Irrigation District (NID)

Placer County Water Agency (PCWA)

South Tahoe Public Utility District (STPUD)

Tuolumne Utilities District (TUD)

Twain Harte Community Services District (THCSD)

Tom Howard, Executive Director
 State Water Resources Control Board
 P.O. Box 100
 Sacramento, CA 95814

Regarding: Curtailment of Water Right Diversions

Dear Tom Howard;

Mountain Counties Water Resources Association (MCWRA) submits the following comments in response to the State Water Resources Control Board’s (SWRCB) January 23 and April 2, 2015, notices of potential future water rights curtailments. MCWRA appreciates the SWRCB’s leadership in managing the State’s precious water resources during this severe drought crisis, but has significant concerns about the SWRCB’s proposed approach, specifically to the potential curtailment of Pre-1914 water rights.

MCWRA consists of 54 member entities located in all or a portion of 15 counties within the Sierra Nevada and Cascade mountain ranges. These foothill and mountain areas contain the headwaters for 40% of the state’s developed water supply and our members are vigilant stewards of these precious environmental resources.

A primary MCWRA objective and goal is to assist the region in protecting water rights to ensure a reliable, sustainable water supply for our economic and environmental well-being for many future generations.

MCWRA is concerned with the SWRCB’s notices of potential future curtailments, which suggest an intention to take the unprecedented actions of curtailing vested pre-1914 appropriative rights and requiring reductions of riparian water rights. We are fully aware that the severity of the drought requires appropriate regulatory action and we support the SWRCB’s adherence to the water right priority system in curtailing post-1914 water rights for the protection of senior water rights, including previously stored water. However, no regulatory action should be imposed with respect to the long-standing legal rights of pre-1914 senior diverters.

In 1913, the voters approved the Water Commission Act that clearly marked a dividing line in the hierarchy of water rights – “Pre-1914” or “Post-1914.” The Act was the predecessor to Water Code provisions creating the watershed-of-origin and county-of-origin statutes.

Essential to this discussion and your decision is a 1955 opinion written by then Attorney General Edmund G. (Pat) Brown. The first paragraph of the analysis reads:

“Water Code Section 10505 is commonly referred to as the “County of Origin” statute. Water Code Sections 11460 and 11463 are the principal operative provisions of what is commonly known as the “watershed protection” statute. These two statutes were enacted at different times and appear in different parts of the Water Code. However, they have a common purpose, i.e., to reserve for the areas where water originates some sort of right to such water for future needs which is preferential or paramount to the right of outside areas, even though the outside areas may be the areas of greatest need or the areas where the water is first put to use as the result of operations of the Central Valley Project.” Based on this opinion, the long-standing statutes, and the hierarchy of water rights, we encourage the SWRCB to commit to stand firm and uphold pre-1914 water rights, particularly where they serve areas of origin.

The SWRCB has not yet revealed how it proposes to implement curtailments to pre-1914 users, or require reductions of riparian users. If the SWRCB determines to take action to prohibit or reduce diversions by riparian and pre-1914 appropriative water right holders, any such action should clearly be preceded by adherence to all applicable procedural requirements, including factual findings, including a clear showing of necessity, demonstrating that the action is lawful. Even during this unprecedented drought, the above mentioned statutes are fundamental and foundational protections that should be upheld and honored.

If the SWRCB determines that it is lawful to curtail pre-1914 water rights, MCWRA is also concerned that despite the recent Informational Order, the SWRCB does not have sufficient information on the relative priorities of all pre-1914 and riparian water rights, available supply, and demand in the Sacramento San Joaquin Bay-Delta watershed to curtail the exercise of senior water rights in an orderly, defensible manner. In order to honor the relative priority of water rights, the SWRCB should first ensure that diverters with post-1914 water rights are complying with all curtailment orders. SWRCB should not restrict senior water users without first ensuring compliance by junior users, as it would undermine the water rights priority system by forcing senior users to forgo diversions of water while potentially allowing junior users to divert it illegally. With water resources spread so thin this year, enforcing compliance with curtailment orders directed to holders of post-1914 appropriative rights must be the first priority of enforcement personnel.

MCWRA members throughout this region are leaders in water conservation and water use efficiency, and continue to maximize the efficient, beneficial use of water to prepare for this summer’s drought severity and the possibility of drought conditions continuing beyond 2015.

MCWRA appreciates the opportunity to provide comments and stands ready to assist the SWRCB in implementing and enforcing post-1914 curtailments in accordance with the water right priority system for protection of senior water rights.

If you have any questions, or if I can be of any assistance, please contact me directly.

Sincerely,



John Kingsbury, Executive Director
Mountain Counties Water Resources Association

c: Board of Directors, Mountain Counties Water Resources Association

The Honorable:

Governor Jerry Brown
c/o State Capitol, Suite 3173
Sacramento, CA 95814

Congressman Tom McClintock
U.S. House of Representatives
2331 Rayburn House Office Building
Washington, DC 20515

Assembly Member Frank Bigelow
California State Capitol, Room 6027
P.O. Box 942849
Sacramento, CA 94249-0005

Assembly Member Beth Gaines
California State Capitol, Room 2130
P.O. Box 942849
Sacramento, CA 94249-0006

Senator Tom Berryhill
California State Capitol, Room 3076
Sacramento, CA 95814-4900

Senator Jim Neilsen
California State Capitol, Room 2068
P.O. Box 942849
Sacramento, CA 95814-4900

Felicia Marcus, Chair
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Assembly Member Brian Dahle
California State Capitol, Room 2158
P.O. Box 942849
Sacramento, CA 94249-0001

Assembly Member James Gallagher
State Capitol, Room 5128
P.O. Box 942849
Sacramento, CA 94249-0003

Senator Ted Gaines
California State Capitol, Room 3070
P.O. Box 942849
Sacramento, CA 95814-4900