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May 19, 2015

Felicia Marcus, Chair
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95814

Electronic Transmittal

Regarding: Water Right Diversion Curtailments

Dear Felicia Marcus;

MCWRA appreciates the State Water Resources Control Board’s (SWRCB) leadership in managing the State’s precious water resources during this severe drought crisis, but has concerns over the prospect that the SWRCB may notice most or all pre-1914 and riparian water right holders to curtail diversions in the Sacramento and San Joaquin watersheds. We submit the following comments for the Board’s workshop on curtailments, scheduled for the afternoon of May 20.

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 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.

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 does take action to curtail pre-1914 appropriative and riparian diversions, our expectation is that any such action should clearly be preceded by adherence to all applicable procedural requirements, including factual findings that make a clear showing of necessity and demonstrate that the action is indeed lawful. Before taking further curtailment

actions, the SWRCB must make readily available to the public and affected agencies, for a reasonable review and comment period, all information upon which it calculates available natural flows, projects bona fide demands, assesses hydrologic continuity, and determines specific curtailment actions. The SWRCB must ensure full compliance with its post-1914 water rights curtailments before curtailing more senior rights. To date, both the data made available and the SWRCB's curtailment actions have been predominantly "broad brush" in character, frustrating third-party efforts to verify the validity, reasonableness and necessity of the SWRCB's decisions. Given the present circumstances and the many months the SWRCB has had to prepare for 2015 curtailments, this approach is no longer acceptable. The SWRCB is duty-bound to "show its work" on the necessity for additional curtailments and ensure full compliance with post-1914 curtailments before venturing into actions affecting pre-1914 and riparian water rights.

We also expect the SWRCB to demonstrate that the water from the curtailed diversion can actually reach the intended water right holder that is senior in priority, and we believe California law requires this showing. It is not reasonable to curtail a diverter on the American River to satisfy a senior water right on the Feather River, for example, or to curtail an upstream diverter when hydrologic continuity no longer exists between that point and a senior downstream diversion.

Particularly for pre-1914 rights, we believe the SWRCB's curtailment decisions should be complaint-driven. If no senior downstream water rights holder is complaining of shortage, there is no legal basis for the SWRCB to assert authority over upstream pre-1914 appropriations. Further, a senior diverter's shortage may be caused by post-1914 water rights holders' failure to comply with their prior curtailment notices. MCWRA encourages the SWRCB to continue to honor the water right priority system and ensure that diverters with post-1914 water rights are in full compliance with curtailment notices before taking any further curtailment actions.

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,

A handwritten signature in blue ink, appearing to read "John Kingsbury".

John Kingsbury, Executive Director
Mountain Counties Water Resources Association

c: Board of Directors, Mountain Counties Water Resources Association
State Water Resources Control Board Members
Tom Howard, SWRCB Executive Director

The Honorable:

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