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March 29, 2019

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The Honorable Henry Stern
California Senate
State Capitol, Room 5080
Sacramento, California 95814

Electronic Transmission

RE: Senate Bill No. 474—Oppose

Dear Senator Stern:

I am writing on behalf of the Mountain Counties Water Resources Association (MCWRA) to express opposition to SB 474, relating to the appropriation of water.

Under existing law, the Department of Water Resources is required to make and file with the State Water Resources Control Board applications for the appropriation of any water that, in the department’s judgment, is or may be required in the development and completion of all or part of a general or coordinated plan for the development, utilization, or conservation of the water resources of the state. Existing law gives those applications priority, as of the date of filing the application, over any subsequent application and exempts certain water rights diligence provisions from generally applying to the applications. SB 474 would eliminate the exemption from the application of the diligence provisions as of January 1, 2021.

MCWRA advocates for the water interests of its 66 members in 12 of the mountain counties within the Wildland-Urban Interface (WUI) of woodland and forested lands in the Sierra Nevada. These foothill and mountain areas contain the headwaters for 40% of the state’s developed water supply, which also provides for hydropower production, recreation, tourism, and instream flows that fuel the engine of our State’s economy.

The Mountain Counties region is considered an ‘area of origin’ for purposes of California water right laws. The area of origin laws are a set of legislative enactments that are intended to provide assurances to areas where water originates that their water supply needs will be protected from impacts of exporting water out of the area of origin. These laws include (1) The County of Origin Law (1931), codified at Water Code Sections 10500 – 10506; (2) The Watershed Protection Statute (1933), codified at Water Code Sections 11460 – 11465; and (3) The Delta Protection Act (1959), codified at Water Code Sections 12200 – 12205.

SB 474 would unnecessarily create significant uncertainty in the law regarding area of origin protections under the County of Origin Law of 1931. That law was enacted in response to the passage of legislation in 1927 that authorized the State of California to file applications to use unappropriated water as part of general water resources developments—later the Central Valley Project and the State Water Project. Such developments were being planned to export major amounts of water from areas of abundance in Northern California and the Sierra Nevada Mountain Range to the San Joaquin Valley and Southern California. The purpose of the 1931 law and the others cited herein was to reserve to areas of origin an undefined preferential right to future water needs.

The 1931 law is tied to so-called ‘state filings’ that in as early as 1927 reserved significant amounts of unappropriated water for the development of major statewide projects. The purpose of the County of Origin Law was to ensure that the use of the state filings would not deprive the county of origin of water necessary for the development of the county. Section 10505 of the Water Code only applies to applications filed by the State of California; the county of origin provisions do not apply to water rights that are not based on the assignment or release of a state filing.

In a seminal legal analysis of these area of origin laws, then Attorney General Edmund G. Brown explained, specific to the County of Origin Law and the Watershed Protection Statute referenced above, that:

“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 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”.

By eliminating the due diligence exemption provided under Section 10500, SB 474 would create significant uncertainty as to the appropriate mechanism by which applicants in the counties of origin could realize the promises of County of Origin Law—to preserve and give priority to local agencies’ ability to use water resources for present and future economic and environmental well-being. This would occur due to the potential lapse of the state filings and the resulting loss of the senior position provided by the state filings, the first of which carry a 1927 priority date, under the state’s appropriative rights system (first in time, first in use).

Eliminating the due diligence exemption for state filings will not automatically eliminate the County of Origin priorities that allow an entity within a county of origin to obtain a senior priority over export water rights holders, it just unnecessarily creates more uncertainty by requiring a water rights applicant in the County of Origin to file a new water rights application rather than one that relies on a state-filed assignment. MCWRA must therefore oppose SB 474.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read 'JKingsbury', with a long, sweeping tail stroke.

John Kingsbury, Executive Director
Mountain Counties Water Resources Association

c: Senator Andreas Borgeas
Senator Jim Nielsen
Assembly Member Frank Bigelow
Assembly Member Brian Dahle
Assembly Member James Gallagher
Assembly Member Kevin Kiley
Board of Directors, Mountain Counties Water Resources Association