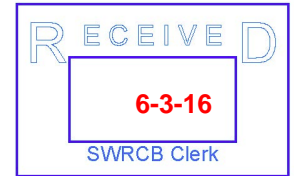




NCWA
Northern California Water Association



*To advance the economic, social and environmental sustainability of Northern California
by enhancing and preserving the water rights, supplies and water quality.*

June 3, 2016

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

Re: Implementing the Water Right System (June 7 Agenda, Item 9)

Dear Chair Marcus and Members of the Board:

The Northern California Water Association (NCWA) offers the following general comments as the State Water Resources Control Board (SWRCB) considers the draft orders dismissing previous actions against certain diverters in the Delta.

While NCWA understands and appreciates that the SWRCB is dismissing these Delta actions based on insufficient evidence, it is important to recognize in this process that the water right system has generally worked in the Sacramento Valley over the past several years primarily because water suppliers and their consultants have worked extensively with your staff to develop and refine the water availability analyses. In fact, these efforts have been instrumental in providing limited water supplies the past several years for various beneficial purposes in the Sacramento Valley--including cities and rural communities, farms, fish and birds--based on available water supplies and through implementing the water right priority system (see the attached *Planning for a Dry Year in the North State*). As a result, Sacramento Valley water suppliers have not been a party to these proceedings.

NCWA urges the SWRCB and others to consider these specific cases in the appropriate context and use this process as an opportunity to work even harder and smarter to further improve the water supply and demand analyses so that future curtailments can be implemented in a transparent and technically supported manner. In this context, NCWA offers the following observations:

Implementing the Priority System. NCWA supports the SWRCB's commitment to the water right priority system, and to making curtailment decisions based on water right priorities and water availability. The priority system is the foundation of California's economy and the environment, is backed by 150 plus years of legal jurisprudence, and is necessary to implement the California Water Action Plan. The priority system was designed to provide an orderly curtailment process during dry years such as 2015. Basing curtailments on water right priorities and water availability is orderly, will avoid chaos and significant dispute associated with other approaches, and is supported by NCWA and its membership in the Sacramento Valley.¹

¹ NCWA restates its concern regarding the SWRCB's reliance on waste and unreasonable use concepts in developing emergency regulations. This includes the curtailment regulations on Deer, Mill and Antelope Creeks, as well as references to waste and unreasonable use throughout the SWRCB's urban conservation emergency regulations. In our view, this approach is neither an appropriate, effective nor a particularly thoughtful way to proceed with water allocations in the Sacramento Valley. NCWA provided comments on these regulations on March 16, 2015 and April 22, 2015, respectively.

The Need for More Precision: Refine the Water Availability Analysis. Over the past several years MBK Engineers and Steve Grinnell have been working with SWRCB staff to align the water availability curves with actual and projected water supplies and demands in the Sacramento Valley. This alignment is central to an effective curtailment process. Many improvements and refinements have been made through the hard work mentioned above. As the SWRCB looks forward, it will be important that the SWRCB continue to develop and ensure a level of accuracy and transparency in its water availability analysis. We also believe the SWRCB needs to identify and better explain the conservative assumptions used with the curtailment process.

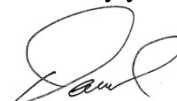
As you stated in 2014, “the primary objective is to improve the State Water Board’s and the water users’ confidence in the technical tools and analysis that will be used for making determinations on water availability relative to water rights priority.” (Resolution 2014-0031, paragraph 22.) Water right holders need to be able to review the SWRCB’s analysis and fully understand when certain water rights will be curtailed and the technical basis for that curtailment. Curtailment decisions are significant actions that affect the economy and the environment in local areas, which will require more accountability from the SWRCB. Our mutual objective is to have data and information at a level of accuracy and transparency commensurate with these weighty decisions.

Appropriately Define the Sacramento River Basin. With respect to the SWRCB’s water availability analysis, we again reiterate that the San Joaquin portion of the Delta should not be included in the Sacramento River Basin supply and demand analysis. The Department of Water Resources (DWR), under its contract with the North Delta Water Agency (NDWA), is meeting the obligations for various water users in the North Delta. The SWRCB has consistently found that water rights on the Sacramento River system should not be curtailed for other Delta water users south of the NDWA as determined in previous SWRCB decisions. (Order WR 89-9 [“to the extent it {Sacramento River water} reaches the southern Delta, it is unlikely to flow there under natural conditions, and consequently would not be natural flow to that geographic location.”]; *See also* Water Right Decision No. 1641 at p. 21; *The State Water Resources Control Board Cases* (2006) 136 Cal.App.4th 674, 736-737; *Phelps v. State Water Resources Control Board* (2007) 157 Cal.App.4th 89, 111.)

Taken together, these authorities conclusively show that, in a year like 2015, the SWRCB may not order curtailment of water diversions from the Sacramento River system to satisfy demands in the central and south Delta. As part of the SWRCB’s continuing effort to enhance its water supply and demand analyses and make its curtailment decisions more transparent and technically sound, NCWA urges the SWRCB to remove the San Joaquin portion of the Delta from the Sacramento River Basin supply and demand analysis.

We look forward to further discussions and working with your staff to improve the water availability and curtailment process.

Sincerely yours,



David J. Guy
President

cc: Tom Howard
Michael Lauffer
Michael George
Barbara Evoy
John O’Hagan

Planning for a Dry Year in the North State

Water suppliers throughout the North State have planned for dry years in California like 2015.

2015 Reduction in Sacramento Valley Water Supplies (in %)

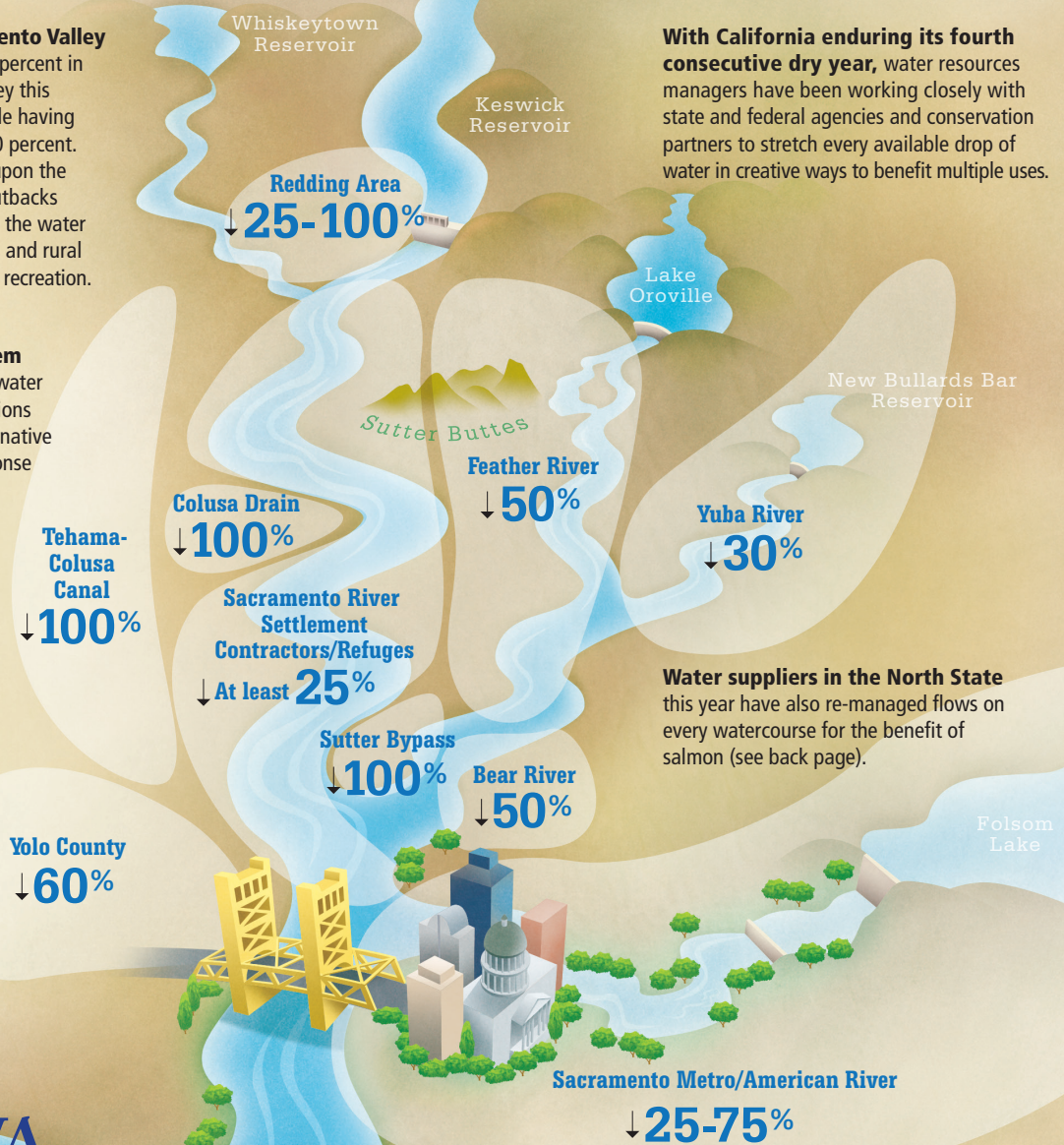
Water supplies in the Sacramento Valley have been reduced more than 25 percent in every part of the Sacramento Valley this year—with many areas and people having their surface supplies reduced 100 percent. The severity of the cuts depends upon the water rights or contract. These cutbacks will have a negative impact on all the water uses in the region, including cities and rural communities, farms, fish, birds and recreation.

California's water right system works—in a dry year like 2015, water suppliers have planned for reductions and they are able to develop alternative water management plans in response to the lack of surface water.

Water rights and contracts are the foundation for water operations throughout California. The orderly implementation of the water rights system provides economic and environmental stability to address the current dry year challenges and prepare for future droughts.

With California enduring its fourth consecutive dry year, water resources managers have been working closely with state and federal agencies and conservation partners to stretch every available drop of water in creative ways to benefit multiple uses.

Water suppliers in the North State this year have also re-managed flows on every watercourse for the benefit of salmon (see back page).



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For more details visit <http://www.norcalwater.org>

Re-managing the Flow

The major rivers and streams of the Sacramento Valley provide essential pathways for spawning salmon and steelhead. Flow agreements to benefit these fish are on every major watercourse in the Sacramento Valley.



Trinity and **Shasta Lakes** are important sources of cold water storage. Timing the release of this cold water into the rivers is vital if spawning fish are to thrive.

Trinity Lake

Shasta Lake

Whiskeytown Reservoir

Keswick Reservoir

Sacramento River Tributaries

Various flow agreements benefit spring run salmon.

Clear Creek

In May and June, water is pulsed into Clear Creek to attract Spring-run salmon from the Sacramento River. From June through October, water released from Whiskeytown Reservoir keeps water temperatures cool.

Feather River

A water quality certification adopted in 2010 provides for specific flow and temperature requirements to accommodate spawning salmon and steelhead.

Sacramento River below Keswick Dam

In 1960, flow objectives were established for the protection of fish and wildlife. In 1990 and 1991 this policy was modified requiring more cold water when warmer temperatures would be harmful to fish.

Yuba River

In 2008, the Yuba River Accord increased the streamflow requirements over previous levels, which benefits fish while insuring sufficient water supplies for irrigation and municipal uses.

Sacramento River at Wilkins Slough

The Rivers and Harbors Act of 1935 mandated a specific flow rate at Wilkins Slough be maintained. The primary goals at that time were navigation and flood control. In 1992, Congress made protection of fish and wildlife a secondary goal and this requirement was updated in 2009.

Sutter Buttes

New Bullards Bar Reservoir

Folsom Lake

American River below Nimbus Dam

In 2000, the Flow Management Standard was developed, which established minimum flow standards to improve the conditions for fall-run Chinook salmon and steelhead. Additionally, releases are adjusted to maintain sufficiently low water temperatures for steelhead rearing in summer and Chinook spawning in the fall.

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For more details visit www.norcalwater.org/efficient-water-management/instream-flows/