



February 12, 2015

State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Re: Drought Informational Order

The San Joaquin Tributaries Authority (SJTA) received and reviewed the Drought Informational Order (Order) the State Water Resources Control Board (State Water Board) released on February 4, 2015. The SJTA and its members worked collaboratively with the State Water Board on drought-related matters in 2014, and certainly look forward to continuing increased collaboration, communication and cooperation in 2015.

The SJTA and its members support transparency and, as evidenced last year during the drought, disclosed water right information and operations information to the State Water Board staff. The SJTA, however, is concerned with the request for information in the Order. The SJTA does not believe its members have been the subject of a complaint. Further, the SJTA does not wish to imply, through responding to the Order, that its members are the subject of a complaint, or that any of its members are included in the group of water rights holders that lack verification of water rights, or that SJTA members were or are somehow diverting project water.

The Order requests information based on the authority provided in California Code of Regulations, Title 23, section 879, subdivision (c). Section 879 allows the Deputy Director to issue an order for information specific to water right holders that are subject to a complaint. The SJTA members are not aware of any complaint to which they are subject.

The SJTA understands the Order's request for information is based on a complaint from California Sport Fishing Alliance (CSPA) and a letter from the California Department of Water Resources (DWR) and the United States Bureau of Reclamation (Reclamation) filed in 2014.

The CSPA Complaint makes specific allegations regarding illegal diversion by the DWR and Reclamation:

“However, CSPA wished to bring to the State Board's attention the continuing illegal diversion of water from the San Joaquin, Mokelumne, Cosumnes and Calaveras Rivers and Delta agricultural return flow by DWR and USBR at their Delta pumping facilities and the illegal diversion of San Joaquin River riparian flow by the USBR at its Friant Project. CSPA urges the State Board to use its statutory authority to investigate these illegal diversions, require DWR and USBR to furnish proof of their right to divert water from these sources and to curtail these illegal diversions.”

State Water Resources Control Board
Re: Drought Informational Order
February 12, 2015
Page 2

The CSPA complaint does not allege any SJTA member is diverting water unlawfully or that water on the San Joaquin River tributaries is being diverted unlawfully.

The DWR and Reclamation ("Project Agencies") submitted a letter to the State Water Board that was specifically disclaimed as a complaint. However, the Project Agencies letter did request the Deputy Director "use the authority pursuant to Title 23 to the California Code of Regulations, section 879(c) to order south and central Delta diverters claiming riparian and pre-1914 water rights to provide the State Water Board with information that (1) supports the basis of any asserted right or rights, and (2) reflects the quantity of water diverted and expected to be diverted. The Project Agencies suggested that water acquired by the Project Agencies' contractors through transfer and exchange agreements was being diverted by south and/or central Delta diverters asserting riparian and pre-1914 water rights."

The Project Agencies did not make any allegations involving the SJTA members and the letter did not request information be gathered from SJTA members.

Around the time of the CSPA complaint and Project Agencies' letter, the Division of Water Rights' staff made site visits to most of the SJTA members' water diversion and conveyance facilities. After the inspections and up to the date of this letter, SJTA members have not been provided with any alleged violation(s), follow-up inspection, orders, enforcement action, or any other related communication from Division of Water Right's staff, or other SWRCB staff. Hence, at the time of the alleged violation, the Division of Water Rights found no improper diversion.

CONCLUSION

For these reasons, the SJTA believes there is no basis upon which to order SJTA members to provide information pursuant to section 879. The SJTA requests the State Water Board amend the Informational Order to delete the San Joaquin River and its tributaries upstream of Vernalis.

Very truly yours,

O'LAUGHLIN & PARIS LLP


TIM O'LAUGHLIN

TO/llw