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October 14, 2014



Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812-0100

commentletters@waterboards.ca.gov

COMMENTS BY THE COUNTY OF PLUMAS BOARD OF SUPERVISORS

Re: NOTICE OF SOLICITATION REGARDING IMPROVEMENTS TO THE IMPLEMENTATION AND ENFORCEMENT OF WATER RIGHTS DURING DROUGHT CONDITIONS

GENERAL COMMENTS:

Program Goals and Milestones for 2015

There is no mention of further curtailments to junior water rights holders in 2015 in the Solicitation Notice. Is the Water Board assuming that junior water rights holders have “done enough” or done their “fair share” in curtailing water uses in 2014? Focusing solely on senior water rights holders for additional supply curtailments in 2015 does not appear to support existing water rights law- which is the stated purpose and goal of the Emergency Water Curtailment Program. If targeted solely at senior water rights holders, the Curtailment Program in 2015 starts drifting dangerously close to “equitable apportionment” as the defacto water rights system for water rights emergencies.

The continued drought should not be used to invent new mechanisms for addressing either chronic or urgent water shortages where existing water rights law and Board authorities are in place. If the hydrology in 2015 is again abnormally dry, the Board should examine if another 10% reduction in urban demand from areas that import water from the Bay Delta could provide real relief for senior water rights holders. Urban water users averaged 10% reduction in urban demand by September of 2014. Conservation compliance would need to double early in 2015 to reach the 20% reduction target by spring of 2015.

Through an analysis of Urban Water Management Plans and through informational workshops, Water Board staff can obtain information about how retail urban water agencies are planning to meet their conservation targets of 20% in 2015. Urban water purveyors that are planning to request deliveries of surface water from the SWP or CVP Delta diversions in 2015 or planning to receive State Water Project (SWP) or Central Valley Project (CVP) imported water that was stored in local reservoirs in 2014 should anticipate curtailments in order to protect senior water rights holders if winter rains are not sufficient to fill reservoirs and recharge streams. The Water Board staff should be prepared by January of 2015 to provide performance milestones for working more aggressively with urban water suppliers of over 3,000 connections in order to ensure that effective urban water conservation is achieved by junior water rights holders by spring of 2015.

Recommendations:

Beginning in January of 2015, in a public meeting, staff should provide the Water Board with an analysis of the effectiveness of the 2014 curtailment program in protecting senior water rights holders.

Staff should include in the 2014 curtailment program review, recommendations on a suite of further enforceable actions for junior water rights holders in 2015 such as for urban areas that import water from the Bay Delta and that have failed to achieve a 20% reduction in urban water demand.

Or the Water Board staff needs to make specific findings in January that further curtailments of urban water use by junior water rights holders in the import areas will not provide real protections for senior water rights holders in the Bay Delta and in Bay Delta watershed in 2015.

COMMENTS ON QUESTIONS POSED BY SWRCB STAFF:

- 1) What actions, if any, should the State Water Board take to improve the Board's information and analyses to support determinations on water availability relative to water right priority, including, but not limited to, improvements to supply, demand and watershed specific information and water right priority information?*

Water Availability and Senior Water Rights Protections:

The continued drought provides the impetus for the Water Board to address the chronic mis-match between regional supplies and excessive demands- especially in regions that import water as junior water rights holders from the Bay-Delta. Over-reliance on increasingly uncertain imported surface water and on critically overdrafted local and regional groundwater basins may be better addressed as **chronic water supply shortage conditions** requiring evidentiary hearings and the Water Board's use of other existing authorities under current water rights law such as surface and groundwater adjudications or water rights hearings for Basin Plan amendments.

Recommendations:

Emergency Curtailment Program revisions in 2015 should include discussion and recommendations by Water Board staff (and others) about the process that the Water Board will use to differentiate short-term drought-driven water scarcity from chronic water supply shortage conditions.

The Water Board should in 2015, begin to notice regions characterized by long-term ground water overdraft and surface water shortages, that a water rights hearing process or adjudication process will commence.

Urban regions relying on imported surface or overdrafted groundwater basins should face water rights reviews of Urban Water Management Plans if conservation measures continue to be ineffective.

Curtailments for tributary streams (above dams and on coastal rivers) to protect senior water rights.

The Water Board needs to consider different strategies for drought emergency curtailments above the large rim dams in the Central Valley and for coastal streams. Cascade-Sierra and Coastal streams may be experiencing acute but short-term drought emergencies. Or the drought is magnifying chronic water shortages in these areas. Streams should be prioritized for watershed-specific investigations and curtailment programs in 2015 based on threats to senior water rights holders in those areas.

Protection of public trust and senior water rights below Dams:

Reservoir operations for California's large "rim dams" escaped precautionary curtailments by the Water Board, the EPA, and the state and federal fishery agencies in 2013 and until May of 2014. As this next precipitation season commences, the Water Board and the other public trust entities must be extra vigilant over maintaining sufficient reservoir levels and reservoir releases for instream flows downstream that are sufficient to support flows over multiple dry years including surface water for senior water rights diverters upstream of the Delta and within the Delta for 2015.

It is the continuing responsibility of junior water rights purveying agencies such as the Department of Water Resources (DWR) and the Bureau of Reclamation (BOR) to maintain sufficient cold water in dams to sustain public trust resources from below the rim dams through the Delta and the Bay to the ocean- even in a drought. Tributary curtailments for senior water rights holders should not be used to replace existing water rights law and regulatory requirements by the DWR and the BOR for maintaining reservoir capacity for water quality and fish flows in 2015.

Recommendations:

The Water Board should discuss and determine how to apply the instream flow recommendations developed during the 2013 Delta Flows workshops for regulating drought carry-over reservoir storage requirements in 2015. The Water Board should propose and enforce reservoir storage volumes and releases to sustain needed flows downstream of the Central Valley's "Rim" Dams in early January of 2015. Some recommendations from the Water Board's Report are quoted below:

"In order to preserve the attributes of a natural variable system to which native fish species are adapted, many of the criteria developed by the State Water Board are crafted as percentages of natural or unimpaired flows. These criteria include:

- 75% of unimpaired Delta outflow from January through June;*
- 75% of unimpaired Sacramento River inflow from November through June; and*
- 60% of unimpaired San Joaquin River inflow from February through June.*

It is not the State Water Board's intent that these criteria be interpreted as precise flow requirements for fish under current conditions, but rather they reflect the general timing and magnitude of flows under the narrow circumstances analyzed in this report.

In comparison, historic flows over the last 18 to 22 years have been:

approximately 30% in drier years to almost 100% of unimpaired flows in wetter years for Delta outflows;

about 50% on average from April through June for Sacramento River inflows; and

approximately 20% in drier years to almost 50% in wetter years for San Joaquin River inflows."

Connection between down-stream water availability and upper watershed management

The Water Board is urged to invest in upper watershed management as a means to increase water availability to downstream users. Curtailment of water use is a far too reactionary way to deal with California's water diversion shortages when a primary cause for the shortage is poor vegetation management on state and federal lands in the upper watershed. Evapotranspiration from poorly managed, un-harvested federal forests consumes a disproportionate amount of water that would otherwise be available to downstream users. Far greater amounts of water could be made available to downstream users through responsible thinning and good forest stewardship than will even be achieved by curtailing the de minimis users in the upper watershed.

Recommendation: Proactively invest in upper watershed management, forest thinning and responsible timber harvesting as a means to increase surface and groundwater runoff from federal lands.

And finally, **drought "hot spots"** flared in 2014, with surprising urgency around the state including in some truly surprising places.

The Water Board should strive to benefit from "lessons learned" by the 25 Counties, 13 cities, 8 tribes, and 12 special districts that declared states of water and fire emergency in 2014. The Water Board staff should accomplish this by reviewing the factors that precipitated the declarations and by evaluating the actions that were undertaken in response to drought emergencies. Case studies in how drought-related water shortages were or were not addressed for the variety of water shortage crises offer opportunities for real improvements for the 2015 Curtailment Exemption Program. Through staff analysis and other recommendations, successful strategies employed by the entities that did overcome their drought water curtailment emergencies can be shared more broadly. For example, some ambiguities in authorities were clarified, as were specific criteria for some curtailment exemptions in the Plumas County area. These are accomplishments that could benefit other areas.

Recommendation: Direct staff to develop and present "lessons learned" from the 2014 Curtailment Program in a webcast workshop in January.

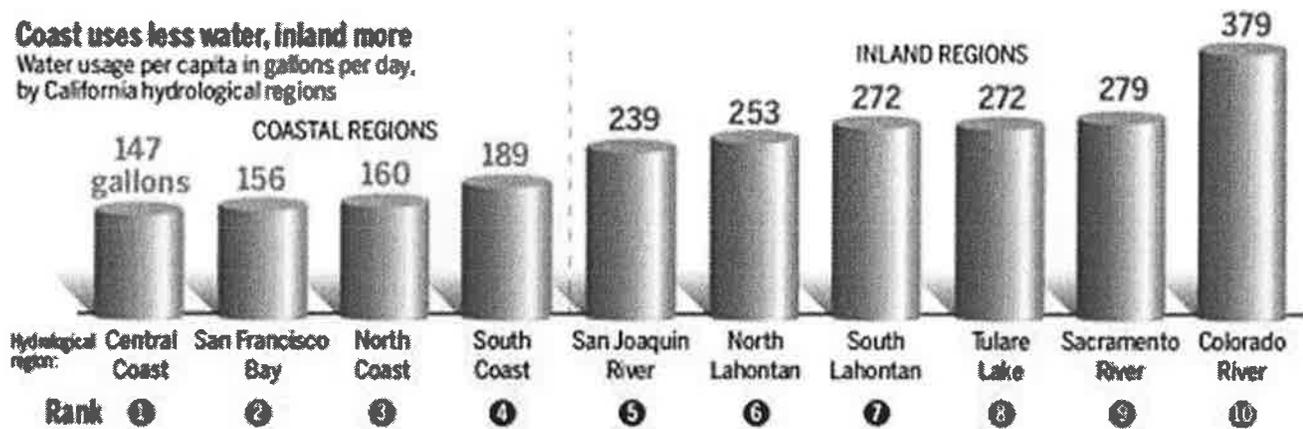
- 2) *What actions should the Board take to better communicate information about limited water availability relative to water right priorities, including the need and basis for curtailments of water diversions?*

It is important that the Water Board take advantage of this unusual opportunity to educate Californians about where their water comes from, (by region and by watershed where possible) and how the drought is affecting their 2015 water supplies. For example, the annual consumer confidence report on drinking water quality is already required for public systems. Adding a section on drinking water availability and source could be an important public education tool.

Californians are listening right now and education by the Water Board really can support actions at the local level. Local shortages crises tied to specific regulatory responses by the Water Board both locally and in other places to which a locality is tied by nature or infrastructure will build understanding of those linkages. It is also important for the Water Board to help all Californian to understand how widely shortages are felt and how dire the circumstances are for many places and communities in rural California, whether drought crises are “newsworthy” for local media or not. For example, this graphic could be updated during 2015. It is very compelling and indicates that 50 gallon per day (gpd) curtailments impose excessive burdens on communities apparently because they have no other choices.

Coast uses less water, inland more

Water usage per capita in gallons per day, by California hydrological regions



Where the water sippers and guzzlers are

Californians use 196 gallons of water per capita per day, including all businesses except agriculture. But there are wide differences by community, and the moist coast uses less water than the arid inland. A sampling:

Usage by selected cities

Water usage per capita in gallons per day

183 Contra Costa Water District
Conservation and rebate programs have kept usage below average.

98 San Francisco
Small lawns, foggy weather keep water consumption down.

76 Westborough Water District (South San Francisco)
The state's smallest water user.

334 Hillsborough Bay Area's largest user, with its big, thirsty lawns.

152 Los Angeles
Despite its reputation as a desert water guzzler, decades of conservation have made the City of Angels a water miser.

144 San Jose (S.J. Water Co.)
Conservation is working here and in almost every big city in California.

279

Sacramento
When 58 percent of residents don't have water meters, there's little incentive to conserve.

313 Fresno

Is typical of dry cities inland that need more water and suffer more when water is scarce.

736

Palm Springs
Usage is among the highest in the state because of hot weather, lawns, pools.

The worst?

94,111 gallons a day

Vernon

The state's highest usage by far is in the "exclusively industrial" city of Vernon, which boasts 1,800 businesses but only 112 inhabitants.

Source: California Department of Water Resources

KARL KAHLER/BAY AREA NEWS GROUP

3) *What, if any, changes should be made to enhance the effectiveness of the State Water Board's curtailment process, including measures to protect the public interest, health and safety and public trust resources?*

The Water Board's disregard for public health and safety for small rural communities with no other available sources of water has been the appalling failure of this year's program. The existing emergency curtailment regulations make no provisions for the hardships and the extreme vulnerability to water supply curtailments faced by drought stricken remote rural households and small rural communities- as we have all by now seen either in the media or first-hand.

Water for firefighting in rural areas was not even considered in the Water Board's 2014 curtailment exemption process. Many rural areas do not have separate water supplies for fire fighting and for other domestic health and safety needs. In areas without access to deep pools in nearby stream or to nearby reservoirs, this is a critical health and safety oversight that needs to be remedied in 2015.

There is no excuse or any factual basis for continuing the Water Board's 2014 process of soliciting curtailment exemption letters and then offering no practical regulatory relief except "discretionary" enforcement for communities facing draconian choices between excessive fines or prohibitively expensive and/or unreliable emergency water supplies. The result of no effective curtailment exemption program was that rural areas suffered disproportionate curtailment burdens of 50 gallons/day or complete loss of surface water supplies beginning in May while urban areas managed to reduce domestic water consumption by an average of 10% by September of 2014- a mere inconvenience by comparison.

In mid-September the Governor's office issued a declaration to begin the process of addressing "dire" water curtailments for some of the poorest communities in the state.

The order "makes funding available through the California Disaster Assistance Act to provide water for drinking and sanitation to households currently without running water. The executive order also extends the state's prohibition on price gouging during emergencies to the current stage of the drought, recognizing the on-going nature of the drought emergency. Additionally, it directs the State Water Resources Control Board, the Department of Water Resources and the Governor's Offices of Emergency Services and Planning and Research to work together to identify acute drinking water shortages in domestic supplies and to work with counties and local agencies to implement solutions for those water shortages." (Press release, Office of the Governor)

We applaud the Governor for his recent order and hope that finally the Water Board, Office of Emergency Services (OES), and the Office of Planning and Research (OPR) have the direction that they need to develop the water curtailment health and safety exemption program that will be desperately needed in 2015 if the current drought continues.

A “Case Study” example: The City of Portola’s eventual success story:

Chronology of total Curtailment to interim exemptions, by milestones:

- 5/27 SWRCB issues Curtailment Notice.
- 7/1 The impact of the Curtailment on the City is presented at a Water Board hearing and in subsequent discussions with two Water Board members and staff.
- 8/6 Water Board staff reviews the City’s curtailed water sources (and the City’s compliance with the Curtailment)
- 8/14 The City applies for an emergency permit to the Division of Drinking Water-response pending.
- 8/29 The DWR issues an interim exemption for its State Water Project water supply.
- 9/12 The SWRCB lifts the curtailment of Willow Springs based on criteria for lateral wells.

Lessons learned:

- (1) Connections matter and cooperative actions matter. Portola’s General Manager has had decades of experience in California water policy. The City Mayor has a lifetime of experience with the City’s water history and infrastructure. The County Flood District Operations Manager and the City were working on cooperative water management options for one of the City’s water sources when the Curtailment crisis hit in May.
- (2) Commitment Matters. Everyone involved, without exception, tried their best to find solutions. And it still took over 3 months of non-stop effort by the City “electeds” and staff to get half of the system back on line in September. Thank God we had no fires.
- (3) This drought has brought home to many water users in Plumas County the cold hard fact that one water supply source is no longer enough. With the new groundwater regulations, will even groundwater sources be reliable and affordable? Surface water policy and groundwater policy needs to be better connected and more cognizant of rural vulnerability issues.
- (4) Should the City be thinking about a water crisis reserve fund? This year cost the City over \$35,000 in staff overtime and consultant and legal fees- so far. And nearly \$200,000 in unexpected operational costs. All of the state staff that the City became involved with were professional and responsive. They were clearly overwhelmed by the statewide need in combination with the case-by-case exemption approach utilized in 2014.
- (5) Even with four or more potential sources of water, where should a low-income municipality invest its scarce resources in order to achieve a long-term solution? The uncertainties of treating contaminated well water need to be evaluated against the uncertainties of groundwater and surface water supply enhancements and upgrades. These cost and reliability factors are determined by state and federal agencies and are largely beyond local control. And once we figure out the best course of action we must then compete for funding with large urban areas. The Sierra rural regions have fared poorly in receiving Integrated Regional Water Management (IRWM) implementation funds. They also fare poorly in the proposed water bond. And, were virtually eliminated from the Cap and Trade funding. Small water and sanitation systems just do not have the economies of scale and technical resources to compete with larger urban areas.

Recommendations from Plumas County drought experiences in 2014:

Regarding unresolved issues associated with isolated springs wholly on USFS (federal) property or private property: The Water Board needs to make findings and publish a decision before the next diversion season.

Regarding all domestic springs, that by drinking water program definition that do not require bacteriological treatment and are not under the influent of surface water, should be recognized as groundwater sources. Such sources should not be subject to surface water curtailment.

Regarding unresolved issues associated with surface stream diversions wholly on USFS (federal) property or private property: The Water Board needs to make findings and publish a decision before the next irrigation season.

A curtailment exemption for health and safety needs to be developed specifically for remote rural areas in 2015. It is unknown if the Water Board needs new authorities to implement an effective and equitable health and safety curtailment exemption process for rural areas in 2015 now that the Governor has issued the emergency drinking water relief proclamation. If new authorities are needed they should be based on the Governors proclamation and provide health and safety assistance and curtailment exemptions on the basis of hardship and lack of other reasonable or affordable water supply options. A Curtailment Exemption “strike team” of Water Board drinking water and water rights program staff, Office of Planning and Research (OPR), and OES staff should be authorized to develop preliminary findings and recommendations for the Water Board by January, 2015.

(No comments on the Water Board Questions #4 & #5)

6) How can the Board better assist water users in planning for upcoming dry periods?

Recommendation:

The Water Board has to provide far earlier notice of impending actions in 2015.

Notices should be timed to inform major decision-making windows for urban and agricultural water purveyors and customers. For example, March 1st is the customary deadline for SWP and CVP contractors to request their 2015 deliveries. Curtailment notices for agricultural water users should reflect “real time” operations in the state’s different agricultural regions such as planting, fallowing, crop rotations, livestock stocking or destocking, etc.

7) *What additional actions, if any, should the Board take to prepare for the next dry year or series of dry years?*

Recommendations:

Consider 2015 another drought year unless reservoir storage and unimpaired stream flows for Delta watersheds meet specific criteria in January and February. Undertake recommended actions earlier rather than later in 2015.

In 2015, the Water Board should begin to notice regions characterized by long-term ground water overdraft and recurring imported water surface water shortages, which a water rights hearing process or adjudication process will commence in 2016(?).

In 2015 urban areas relying on imported surface waters or on critically overdrafted groundwater basins should face water rights reviews of water supplies identified in their Urban Water Management Plans. If urban conservations measures continue to be ineffective in those areas, commensurate curtailments of imported supplies to non-complying urban areas should be ordered to ensure compliance. Moratoriums on new hook-ups in areas wasting water should be available to urban water retail agencies along with tiered rates, fines, irrigation scheduling, etc.

For drought “hot spots” the Water Board should issues guidance on watershed specific investigations and solicit public comments on priority watersheds for investigation in 2015.

The Water Board should develop place-specific or circumstance-specific curtailment exemptions for drought “hot spots” based on lessons learned from 2014. The Water Board should consider affordability and availability of bottled drinking water supplies and non-potable trucked-in water in designing curtailment exemptions. . Another Plumas County community found that at \$800/week for bottled drinking water for 13 hook ups, families could be paying approximately \$3,200/year. For some families, up to 20% of their 2015 household income would be needed for drinking water (not including buying non-potable water for basic sanitation). This level of economic burden appears to exceed state, federal and international standards for drinking water affordability.

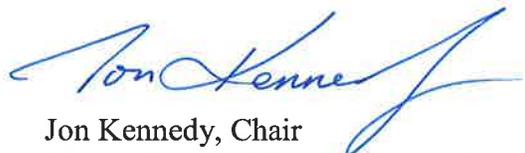
(From Pacific Institute’s Water Rates Affordability study, 2013)

Table 1. Measures of affordability as a percentage of median household income

Affordability Threshold	Organization
1.5%	California Department of Public Health
2%-2.5%	US Environmental Protection Agency (USEPA)*
3%	United Nations Development Program (UNDP)

Note: * The EPA’s affordability threshold is for water and wastewater bills combined, and would therefore be lower for water alone.

Thank you for the opportunity to provide comments.

A handwritten signature in blue ink that reads "Jon Kennedy". The signature is fluid and cursive, with a long horizontal stroke at the end.

Jon Kennedy, Chair
Plumas County Board of Supervisors