



October 15, 2014

State Water Resources Control Board
c/o Jeanine Townsend, Clerk to the Board
P.O. Box 100
Sacramento, CA 95812-0100
commentletters@waterboards.ca.gov

Re: Suggested Improvements to the Implementation and Enforcement of Water Rights During Drought Conditions

Dear Board Members:

Thank you very much for requesting comment from the City of Antioch regarding suggested improvements to the implementation and enforcement of water rights during drought conditions. Antioch's comments are provided from the perspective of a senior water rights holder in the western Delta.

Before providing specific comments, Antioch would like to briefly describe its water rights and its present diversion situation during this drought. Antioch has adjudicated pre-1914 appropriative water rights with a priority of at least 1867 for domestic and municipal uses. Antioch's rights are to the San Joaquin River and to the tributary flow of the Sacramento and Mokelumne Rivers by way of Georgiana and Three-Mile Sloughs. Despite past severe droughts, Antioch was historically able to divert water nearly year around.

This year Antioch's drought "curtailment" did not come in the form of any proposed action from the State Water Resources Control Board ("Board"). Rather, Antioch's curtailment occurred as the result of high levels of salinity due to the lack of freshwater outflow. In other words, Antioch, a city of over 100,000 with senior pre-1914 water rights has not been able to divert water at all this year due to the lack of sufficient freshwater outflow – a condition that did not exist historically (e.g. prior to the 1920's) even during the most severe droughts.¹

With this background in mind, the City submits the following suggestions regarding improvement to the Board's implementation and enforcement of water rights during drought conditions:

1. It is critical that the Board have as accurate information as possible regarding the historic condition and flows of stream systems targeted for drought curtailment. During the drought curtailment hearings this year, certain statements were presented to the Board about the historic condition of the Sacramento River and Delta that simply are not true.

¹ After about 1918 or so, diversions and upstream dams critically impaired natural inflow and outflow in the Delta resulting in the freshwater extent of the Delta to move approximately 20 to 30 miles upstream from its historic western extent.

One of the fundamental “myths” that continues to be perpetuated is that the Delta was historically more saline historically. This is absolutely false. In fact, just the opposite was true, and both Antioch and Contra Costa Water District (“CCWD”) have submitted evidence and studies to the Board over the past two to three years showing the historic condition of the Delta as fresh - extending many miles west of Antioch. The fact that Antioch was able to divert water historically from the Delta since the 1860’s (even during droughts) until the 1920s absolutely dispels the myth of the historic saline delta.

Understanding the historic condition of a stream system is critical to determining natural flow conditions and to understanding the conditions under which pre-1914 and riparian rights arose and operated on a particular stream system. It is also critical to understanding the needs of public trust resources on a particular stream and the historic conditions in which they evolved – and the impacts from upstream storage on the availability of such flows.

In the case of the Sacramento River and the Delta, not understanding that the Delta was naturally fresh and that fresh water extended far west of Antioch historically even during drought conditions will lead incorrect determinations regarding natural flow and the needs of public trust resources.

Therefore, Antioch recommends that with respect to major stream systems, and to the Delta in particular, that the Board begin the process of acquiring information necessary to determine the historic conditions on these systems prior to making any determinations regarding the curtailment of pre-1914 or riparian rights in relation to “natural” flow during drought conditions. The City is very willing to work with the Board regarding the historic conditions in the Delta.

2. The Board must be able to ensure that it is able to acquire reliable information and data regarding present flow conditions on targeted stream systems during drought periods – especially both upstream and within the Sacramento-San Joaquin-Delta system. Prior commenters have questioned some of the flow data presently available. Antioch would note that given the historic conditions certain indications regarding the accuracy of natural flow availability in the Delta appears questionable.
3. The assumption that water in the Sacramento River or the Delta during the present drought condition is solely or even principally water developed from storage is contrary to the historic pre-project conditions in which natural flow was available year around including during most drought conditions (again please refer to the information submitted to the Board by Antioch and CCWD over the past years). It also ignores the complexity and variety of water sources flowing into the Delta. Again, the Board must acquire more accurate and reliable information regarding these issues.
4. As other commenters have previously noted to the Board, the burden of demonstrating the absence of any natural flow and the presence of stored releases in the Delta should not be on pre-1914 and riparian water rights holders.

5. In the Delta, the Board must consider that a certain portion of stored releases are intended for salinity control. See for example Water Code sections 11207, 12202. Salinity control releases are not some new "benefit" to Delta water rights but are intended to replace to some limited extent the natural outflow condition that existed historically and is now impaired by upstream storage. These salinity control releases should not be used for export for junior agricultural uses during severe drought periods.

Thank you again for allowing the City to provide the above comments. If you have any questions or would like any additional information, please contact Ron Bernal at 925-779-6820.

Sincerely,



Ron Bernal, P.E.
Director Public Works/City Engineer

CC: Steve Duran, City Manager
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