

Utica Water & Power Authority
1168 Booster Way Angels Camp, CA 95222
(209)-736-0110
(209)-736-9110



March 6, 2015

Barbara Evoy, Deputy Director
State Water Resources Control Board
PO Box 100
Sacramento, California 95812

Re: Response to Drought Information Order WR 2015-0002-DWR

Dear Ms. Evoy,

The Utica Water and Power Authority (UWPA) submits this letter along with the information sought by the Water Board in its Drought Information Order. UWPA generally supports the Water Board’s efforts to stop illegal diversions of California’s water; however, we feel the Drought Information Order is an overreach of the Water Board’s authority and creates a significant new regulatory compliance burden. This overreach by the Water Board has real consequences for small water agencies, such as UWPA, that are already stretched thin by the drought and are struggling to survive under the weight of regulatory burdens.

The Water Board relies on California Code of Regulations, Title 23, section 879, subdivision (c), for the legal authority to issue the Drought Information Order. The Water Board’s information order authority under section 879(c) is triggered when a “complaint alleging interference with a water right by a riparian or pre-1914 appropriative water right holder” has been submitted to the Water Board. In order to invoke its information order authority under this clause, the complaint must allege interference by a specifically identified riparian or pre-1914 water right holder; it is not enough for it to vaguely allege that unnamed water right holders are interfering with downstream water rights. The Drought Information Order identifies specific allegations against only two upstream diverters - the U.S. Bureau of Reclamation and the California Department of Water Resources - but these diverters are not included in the list of water right holders subject to the new reporting requirements. No specific allegations were brought against any of the 445 water right holders who are subject to the new reporting requirements, including UWPA.

Section 879(c) also permits the Water Board to invoke its information order authority “upon receipt of information that indicates unlawful diversions of stored water by riparian or pre-1914 appropriative

water right holders," but as UWPA does not divert water to storage, that clause does not apply to it. Regardless, we believe information specific to identified rights holders is required in order to trigger the Water Board's authority under this provision, as well.

According to the Water Board's broad interpretation of Section 879(c), the Water Board would have unlimited information order authority upon receipt of a complaint or information alleging that unnamed riparian or pre-1914 water right holders somewhere in the State of California may be interfering with downstream water rights. This interpretation renders the regulation entirely meaningless. If this interpretation were correct, the regulation would simply state without preconditions that the Water Board has information order authority over all riparian and pre-1914 water right holders in the State.

UWPA will comply with the Drought Information Order. Our compliance is strictly on a voluntary basis, however, as the Water Board's asserted authority does not apply in this particular instance. We strongly encourage the Water Board to reconsider its interpretation of section 879(c), or at the very least amend the Drought Information Order by removing UWPA.

We look forward to fully cooperating with the Water Board's future, legitimate efforts to stop illegal water diversions.

Sincerely,



Michael J. Minkler, General Counsel
Utica Water and Power Authority