



# Mendocino County Farm Bureau

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Affiliated with the California Farm Bureau Federation and the American Farm Bureau Federation

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

Via Email: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)  
Facsimile (916) 341-5620

**RE: 7/1-2 2014 BOARD MEETING Item 5.Consideration of a proposed Resolution regarding drought related emergency regulations for curtailment of diversions to protect senior water rights.**

Dear Chair Marcus and Members of the Board,

The Mendocino County Farm Bureau (MCFB) is a non-governmental, non-profit, voluntary membership, advocacy group whose purpose is to protect and promote agricultural interests throughout the county and to find solutions to the problems facing agricultural businesses and the rural community. MCFB currently represents approximately 1300 members. MCFB wishes to submit comment on the July 1-2, 2014 State Water Resources Control Board (SWRCB) meeting Item 5.Consideration of a proposed Resolution regarding drought related emergency regulations for curtailment of diversions to protect senior water rights.

On May 27, 2014 the State Water Resources Control Board sent curtailment notices to appropriative water rights holders within the upper Russian River watershed (upstream of the confluence with Dry Creek in Sonoma County) that hold water rights dated after February 19, 1954. In Mendocino County, there are approximately 100 license holders on the main stem of the Russian River that will no longer be able to use water under their rights until further notice by the State Water Resources Control Board. This number was estimated from the eWRIMS system and does not include the additional curtailment notices sent to non main stem appropriative right holders in the upper Russian River watershed.

In the Russian River curtailments in Mendocino County, there was a willingness to respond to the request for the "Compliance Certification" for fear of the potential enforcement action and threat of fines that was described in the above mentioned May 27, 2014 notice. In fact, a number of MCFB members submitted the requested information plus additional information on riparian rights and pre-1954 senior rights that were not subjected to the curtailment. This was done out of confusion since the SWRCB sent the curtailment notices to the majority of water rights holders, both appropriative and riparian, in the watershed.

At the same time that water rights holders were receiving curtailment notices, during the last week of May and into the beginning of June, the Sonoma County Water Agency increased the

flows being released out of Lake Mendocino from approximately 35 Cubic Feet per Second (CFS) to roughly 125 CFS. Due to the increased out flows the lake level has dropped from 50,930 Acre Feet on June 1<sup>st</sup> to 46, 345 Acre Feet as of June 26<sup>th</sup> which is a decrease of 4,585 Acre Feet. It has been quite difficult for those water rights holders that have been subjected to curtailment, under the guise of lack of water availability, to see an increase in water being released out of Lake Mendocino and have it flow by their properties at the same rate as previous years.

Due to the late spring rains, and additional inflow from the East Fork Russian River from Potter Valley, Lake Mendocino storage was at over 50,000 Acre Feet of storage on June 1<sup>st</sup>. By doing so, under Decision 1610 (which dictates the minimum flows that have to be maintained in the river by the Sonoma County Water Agency) the Russian River was declared to be operated under dry year criteria versus the critically dry year criteria that it had been operated under since January 2014.

In the "Finding of Emergency" document (Document) for this agenda item it is mentioned that , *"Due to the dry hydrologic conditions, the State Water Board has issued Water Diversion Curtailment Notices to water rights holders within some critically dry watersheds, and plans to issue more. However, without the proposed emergency regulations, the State Water Board will have difficulty effectively and efficiently ensuring compliance with these curtailments and enforcing for noncompliance on a large scale needed due to the drought. Without the proposed emergency regulations, senior water rights holders may be injured because of the lengthy process involved in enforcing curtailments and the lack of sufficient reporting information."* (P. 1)

There are two things in the above excerpt that MCFB would like to highlight that question the overall need of this emergency regulation. 1) It is mentioned that the SWRCB issued curtailment notices to water rights holders within some critically dry watersheds. The Russian River is currently being operated under Dry year instead of Critically Dry conditions (with the change occurring concurrently with the distribution of curtailment notices), so there is a question as to the need for the current curtailments and justification for additional curtailments on the Russian River. 2) On Thursday June 26, 2014 water rights holders in the upper Russian River in Mendocino County started to receive phone calls from the SWRCB enforcement division to request inspections to verify curtailment and alternative water sources as reported on the Curtailment Certification Forms that were sent in earlier in the month. With this action, it seems like the SWRCB is first targeting those individuals that responded to the required reporting information versus performing inspections on those individuals that did not file the Curtailment Certification Forms. It is also apparent that the SWRCB, with current enforcement mechanisms, has the capability to ensure compliance with the request for curtailment and therefore additional enforcement mechanisms as requested by this emergency regulation are not necessary.

MCFB is concerned with the request within the Document for a shortened process for enforcement based on the claim that the current system of individualized enforcement is simply too, *"cumbersome and time and resource intensive."* (Document P. 7). MCFB believes that vested water rights are entitled to a full range of due process when a regulator intends to curtail them. Water rights holders should be given an opportunity to be heard and to present their own evidence in defense so that they are innocent until proven guilty and not vice versa.



The SWRCB's efforts to protect senior water rights holders are appreciated. However, if there is a purported violation, the SWRCB currently has the authority to move forward with violation procedures. This process is moving forward currently with the inspections that are occurring in the Russian River and other water sheds throughout the state on curtailed water rights holders. If inspections can occur for those individuals who submitted the Curtailment Certification Forms, then it is reasonable to assume that the SWRCB should proceed with inspections of those water rights holders that did not submit the required documentation. Based on the discussion on page eight of the Document, it would appear that the SWRCB has the data base capabilities to know who did not submit the requested information. It is also mentioned that there is no penalty for not reporting. For those individuals that did report and are now being inspected, it would seem that there is a current penalty process in place.

There is also significant concern with future curtailment of riparian and pre-1914 water rights. The SWRCB has limited authorities in the context of investigating and stopping unauthorized diversions. This is not a broad regulatory authority that allows for system-wide curtailment actions with respect to pre-1914 and riparian rights. MCFB recommends that the Board's action on July 1<sup>st</sup> remain consistent with the scope of its overall authority and that it avoid unnecessary controversy with broad classes of senior water users over which the Board has not previously asserted jurisdiction.

In regards to the health and safety aspect of this proposed regulation, MCFB would like to see improved planning and management of urban water supplies. It is difficult to see a large number of agricultural water rights holders being cut off 100% on a mandated basis from their water supply through curtailment while the majority of urban water purveyors are only being subjected to a 20% voluntary conservation requirement. MCFB understands the need for basic human water uses (consumption/ sanitation) in an emergency context, but it is difficult to watch water running down the sidewalks in urban neighborhoods to maintain landscaping or golf courses when farmers and ranchers have made significant decisions to push out orchards or sell off livestock due to lack of water supply.

MCFB appreciates the opportunity to submit comments on the proposed Resolution regarding drought related emergency regulations for curtailment of diversions to protect senior water rights. MCFB encourages the Board to consider the comments above prior to taking any action on this agenda item.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael J. Braught", with a long, sweeping horizontal line extending to the right.

Michael J. Braught  
President

CC:  
Assemblyman Wesley Chesbro  
Senator Noreen Evans