



October 15, 2014

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

Via Email

Re: Dry Year Report Comments

Dear Ms. Marcus and Members of the Board:

Thank you for the opportunity to comment on the actions that the State Water Resources Control Board (Board) should take to effectively implement and enforce the water rights priority system in future dry years. The Environmental Defense Center (EDC) submits the following comments for your consideration. EDC protects and enhances the environment through education, advocacy and legal action. Drought conditions pose many challenges to the Board, but the Board must consider that droughts affect wildlife, as well as people. We encourage the Board to continue to protect public trust and wildlife resources and to lead efforts to conserve water resources, especially given the challenges posed by drought conditions.

It is important during such challenging dry years, when water rights decisions can be particularly difficult, that the Board fulfill its duties to protect public trust resources. *See Nat'l Audubon Soc'y v. Superior Court* (1983) 33 Cal. 3d 419, 446 (“The state has an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible.”) The Board must not disregard its trustee duties, even though water rights decisions may be more challenging when water resources are limited in drought conditions. *See Id* at 446-47 (“the state must bear in mind its duty as trustee to consider the effect of the taking on the public trust [CITATION] and to preserve, so far as consistent with the public interest, the uses protected by the trust.”)

In addition to its duty to consider and protect public trust resources, the Board must continue to comply with state laws that protect wildlife. For instance, despite the challenges posed by dry year conditions given limited water resources, the Board must continue to ensure

compliance with Cal. Fish & Game Code § 5937 in its decisions concerning dams. This law requires that sufficient water must be allowed to “pass over, around or through the dam, to keep in good condition any fish that may be planted or exist below the dam.” When circumstances are strained due to limited water resources, it is nonetheless critical that the Board continue to comply with such laws.

Finally, EDC encourages the Board to take into consideration and mandate water conservation strategies in its water rights decisions. Especially given the strain placed on water resources in dry years, water conservation efforts are a crucial part of future water management in the state. The Board should lead efforts to require greater conservation and efficient water use by water rights holders. In testimony before the Board for hearings on the Cachuma Project¹, EDC has identified numerous measures that would conserve water resources. The Pacific Institute identified measures such as cost-effective urban water conservation measures, utilizing alternative water supply sources such as recycled water, rainwater harvesting, and storm water capture; and reducing agricultural water use. The Board should prioritize identification and implementation of such measures in its water rights decisions.

In conclusion, we encourage the Board to use its position to be a leader in protecting public trust and wildlife resources, and in facilitating greater conservation and efficient use of water resources by water rights holders. The Board can play a crucial role in avoiding the tired rhetoric of “wildlife vs. people” in regards to water resources, by leading conservation efforts that protect both public trust and wildlife resources and water rights holders’ interests. Thank you for your consideration of EDC’s comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "Nicole Di Camillo". The signature is fluid and cursive, with a long horizontal stroke at the end.

Nicole Di Camillo,
Staff Attorney

¹ Water Permits 11308 and 11310 (Applications 11331 and 11332).