

LOCAL AGENCIES OF THE NORTH DELTA

1010 F Street, Suite 100, Sacramento, CA 95814
(916) 455-7300, osha@semlawyers.com

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SENT VIA EMAIL (commentletters@waterboards.ca.gov)



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

RE: Comment Letter: Delta September 2014 Workshop Agenda Item # 15

Dear Ms. Townsend:

These comments are submitted on behalf of the Local Agencies of the North Delta (“LAND”). LAND is a coalition comprised of reclamation and water districts in the northern geographic area of the Delta.¹ Though the workshop relates specifically to water availability and use in the Central and South Delta, we believe the subjects under discussion at workshop could potentially affect the exercise and regulation of water rights in other parts of the Delta. As such, this letter endeavors to help inform the State Water Resources Control Board’s (“Board”) process as it makes determinations regarding the availability of water for various uses and users in the Delta. To that end, this letter provides responsive information pertaining to questions 1 and 3 posited in the Notice of Public Workshop dated September 5, 2014.

Board Issue for Discussion 1

Is any of the previously stored water in Sacramento River watershed reservoirs that DWR and USBR release from storage (including releases for exports from the Delta or salinity control and public trust protection, or stored water that is transferred through the Delta from purchase points north of the Delta to points of delivery south of the Delta) available for appropriation by diverters in the central and southern Delta?

¹ LAND member agencies cover an approximately 110,000 acre area of the Delta; current LAND participants include Reclamation Districts 3, 150, 307, 317, 349, 407, 501, 551, 554, 556, 744, 755, 813, 999, 1002, 2111, 2067 and the Brannan-Andrus Levee Maintenance District. Some of these agencies provide both water delivery and drainage services, while others only provide drainage services. These districts also assist in the maintenance of the levees that provide flood protection to homes and farms.

LAND believes that some portion of previously stored water released from storage by the Department of Water Resources (“DWR”) and the Bureau of Reclamation (“Reclamation”) is available for diversion by senior and riparian water rights holders in the Delta. As discussed below, it is not reasonable to assume that previously stored water is making up all of the flow in the Sacramento River at this time.² A better understanding of the water conditions, however, would be necessary before any senior or riparian water users in the Delta could properly be curtailed from exercising their rights.

Existing technical tools (and their maintenance), make it difficult to identify the actual hydrologic and hydrogeologic conditions and water availability associated with tributary inflows into the reservoir system, and tributary and groundwater inflows downstream of the reservoirs. The extent of, and accuracy of, flow gauges on the tributaries limits a complete analysis of what water is naturally flowing into the system at any given time, particularly in drought years.³ For instance, several named tributaries to the Sacramento River are ungauged, and gauges may not be maintained and/or data are not reported.

The calibration and relative accuracy (rating shift) of the limited number of existing gauges is also often poorly described, and the system is entirely incapable of identifying hyporheic inflows. These hyporheic inflows can dominate when drought conditions exist⁴ and is not measured by conventional stream gauges. It appears that natural inflows, despite the dry conditions, are still occurring above and below the reservoirs. There is capture of this water into the reservoirs that is being credited to “stored” water even as flows of the Sacramento River are reversed, impairing beneficial uses and reduces water quality and quantity to upstream users. This water is then re-captured at Harvey O. Banks Pumping Plant and C.W. Bill Jones Pumping Plant.⁵

The Board has completed its own technical assessment and determined that to maintain trust resources largely associated with fisheries, Delta flow criteria largely

² Moreover, though not addressed in this letter, portions of stored water may also be subject to diversion by certain water user water users in the Delta under measures to protect areas in which water serving other parts of the states originates. (See, e.g., Wat. Code, §§ 1215.5, 1216, 85031, subd. (a), 11460, 12200 et. seq.)

³ See <http://water.weather.gov/ahps/region.php?wrr=18> and <http://waterdata.usgs.gov/ca/nwis/current/?type=flow>.

⁴ Wood et al. 2010. *Fundamental and Applied Limnology / Archiv für Hydrobiologie*, Volume 176, Number 4, April 2010, pp. 377-390(14).

⁵ See <http://cdec.water.ca.gov/cgi-progs/iodir/wsi>.

reflective of a percentage of unimpaired flow is necessary.⁶ Yet, actions by the Board to protect senior water rights holders and meet Delta flow criteria have been deferred. It is clear that in order to meet any Delta flow criteria, and achieve balancing with existing water rights holders, the Board must act by carefully assessing what unimpaired flow exists and the degree of losses created by the unlawful storage of water that should be available for diversion by riparian and pre-1914 water rights holders.

Also important to any availability analysis is the fact that exports from the Delta are for junior contracted water users, primarily outside of the hydrologic basin. Thus, all water exported out of the basin is effectively lost for legal beneficial uses in the basin. This is in direct contrast to water used within the basin, which is available for other beneficial uses, including protection of the public trust, typically several times, with the only consumptive losses occurring due to crop uptake and evaporation.

Additionally, water provided by DWR and Reclamation for “salinity control” is necessary to comply with water quality standards, North Delta contractual obligations, and to meet export water quality requirements. Salinity control water managed by DWR and Reclamation is necessary to meet obligations that would not exist but for their prior capture of unimpaired flows in the reservoirs and direct hydraulic manipulation of Delta water flows.

For these and other reasons, it would not be reasonable to conclude that all water in the Sacramento River is water stored by DWR and Reclamation that therefore is not available to senior water rights holders in the Delta for diversion and beneficial use. It appears that undammed tributary and groundwater inflows are currently being added to the flows inappropriately credited to the stored water. The whole of the unimpaired flow of the tributary rivers to the Delta therefore must be made available to riparian and pre-1914 diverters in the Delta.

Board Issue for Discussion 3

Will the required diversion information proposed in the attached draft Order [for Additional Information], in conjunction with the information submitted pursuant to the Delta TUCP Order, be sufficient to inform a State Water Board determination on the availability of water for diverters in the central and southern Delta?

⁶ See

http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/deltaflow/docs/final_rpt080310.pdf.

According to the Draft Order, all pre-1914 and riparian water rights holders in the Delta must provide within five days of the order:

The *actual monthly amounts* of water diverted under each separate claim of right from October 1, 2013 to the date of this Order, and the anticipated monthly amount of water to be diverted under each separate claim of right from the date of this Order through December 31, 2014. The diversion information shall include the maximum rate of diversion for each month, and the method used to determine the amounts reported.⁷

The draft Order is inconsistent with the Board's prior guidance on water use reporting and does not provide water users with sufficient time to prepare these new, detailed reports. For statewide water use reporting requirements, the Board allows use of other approaches besides direct measurement, if such measurement is "not locally cost effective."⁸ In many cases within the Delta, estimation based on crop usage, meteorology and other relevant factors *is best available technology* due to unique hydrogeological characteristics within the Delta (e.g., tides, seepage, interconnected channels, etc.). Thus, many water users in the Delta do not have water meters and cannot provide "actual" amounts of water diverted or the maximum rate of diversion. Consistent with the Board's water use reporting requirements, water users within the purview of the Draft Order should be permitted to rely on alternative approaches to water measurement.

In any case, more time than five days would be necessary to compile more than a year of water use data. If more than a year of information is needed by the Board, at least 45 days should be provided to water users, as it will take several days for the water user to even receive notice of the Board's requirement. If the Board would benefit from receiving a more focused water use report in a shorter time period, the temporal breadth of the request should be reduced.

⁷ See http://www.swrcb.ca.gov/waterrights/water_issues/programs/bay_delta/docs/wrkshp092414/draft_order.pdf.

⁸ See SWRCB Supplemental Statement of Water Diversion and Use Form, Item #5 (allowing use of other means of measurement than water meters to determine water use) and Item #3 (stating maximum rates of diversion is optional "if available"), at: http://www.waterboards.ca.gov/water_issues/programs/delta_watermaster/docs/draftsupplementalform.pdf; see also SWRCB Examples of Alternative Measurement Technologies at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/diversion_use/wm_alt_mthds.shtml.

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Conclusion

We hope this letter is helpful in the Board's process of determining a technically sound and equitable approach to managing scarce water supplies. LAND looks forward to working with the Board and other stakeholders as this process unfolds.

Very truly yours,

SOLURI MESERVE
A Law Corporation

By: 
Osha R. Meserve