

SUBMITTED VIA E-MAIL (commentletters@waterboards.ca.gov)

June 30, 2014

Felicia Marcus, Chair
c/o Jeanine Townsend, Clerk of the Board
State Water Resources Control Board
PO Box 100
Sacramento, CA 95812-0100



Subject: 7/1/14 Board Meeting Item No. 5 (Consideration of a proposed Resolution regarding drought related emergency regulations for curtailment of diversions to protect senior water rights)

Chair Marcus and other esteemed Board Members:

Turlock Irrigation District is grateful for the opportunity to comment on the above-referenced agenda item and the draft emergency curtailment regulation as circulated by the State Water Board on June 20, 2014.

Antecedents

TID was formed in 1887 as the first publicly owned irrigation district in California. Today, TID serves water to approximately 5,800 growers who irrigate approximately 150,000 acres within TID's irrigation boundary. TID also provides electric service to nearly 100,000 homes and businesses. TID is a special district governed by a five-member, locally-elected Board of Directors.

In addition to its responsibilities to supply irrigation water and electric service throughout its service territory, TID shares with the Modesto Irrigation District (MID) responsibility for managing fish and wildlife as well as and recreation resources at Lake Don Pedro and the lower Tuolumne River. It also coordinates operations with those of the City and County of San Francisco (CCSF) to ensure that the Tuolumne's water resources are put to the fullest and best possible uses.

As a senior water rights holder on the Tuolumne River, TID appreciates the State Water Board's intention of protecting senior water rights during these drought conditions. TID is a member of the San Joaquin Tributaries Authority (SJTA) and endorses the comments submitted by SJTA to the Board on this agenda item. Additionally, TID has longstanding relationships with MID and CCSF as stewards of the Tuolumne River, and generally agrees with many of the concerns and principles outlined in both agencies' comments on this matter.

Planning efforts and environmental releases

TID has taken efforts to respond to the drought, many of which are outlined in a March 6 letter previously submitted to the Board.¹ Included in these efforts were planning actions taken in an attempt to meet or exceed public trust responsibilities for instream flows in both 2014 and 2015. It is important

¹ *Turlock Irrigation District Drought Actions* letter; submitted via e-mail to SWRCB on March 6, 2014

to note that our planning decisions for environmental releases were made prior to the current post-1914 curtailment notice and this draft emergency regulation.

San Joaquin River status

While TID acknowledges California's drought conditions and the Governor's drought emergency declaration, the District believes the existing conditions of the lower San Joaquin River watershed are not at a level that this emergency regulation is aimed to address. To support this claim, TID directs you to a coalition letter submitted to the Division of Water Rights.² In the letter, 10 senior water right holders on the San Joaquin River system requested, "the State Water Board withhold taking any curtailment action until it receives a complaint from a valid senior water right holder" primarily because the letter's signatories (including TID) "have developed operations plans that do not require and would not benefit from the State Water Board taking curtailment action." In addition to TID, MID and CCSF were signatories to this letter, indicating that the claims made on behalf of water users on the San Joaquin River system referenced in the letter are also valid when looking specifically at the senior water rights holders on the Tuolumne River. A letter filed by CCSF with the Board's Division of Water Rights discusses in some detail the matter of curtailments and the "physical solutions" undertaken on the Tuolumne River.³

The curtailment process

TID completed and submitted the State Water Board's Compliance Certification Form following our receipt of the May 27, 2014 post-1914 curtailment notice. It bears noting that some of our post-1914 rights are shared with MID. It is relevant that TID and MID were included in the 21 percent⁴ of water rights holders demonstrating compliance by submitting a completed certification form in accordance the State Water Board's deadline. In that form and related attachments in our submittal, you will note that TID and MID plan to comply with post-1914 curtailment by planning to divert approximately 165,000 acre-feet of water via legally authorized diversions pursuant to TID's and MID's (collectively the Districts) senior water rights and an existing agreement with CCSF. To this end, TID requests that any actions considered or taken by the Board related to this draft emergency regulation or its subsequent curtailment orders take into account, and offer deference to, the existing contractual relationship and physical solutions between the Districts and CCSF.

Additionally, it would seem prudent for the Board to seek out information from the 79 percent of water rights holders not in compliance with the current post-1914 curtailment order prior to advancing further with this emergency regulation and its subsequent curtailment orders that could affect water rights holders such as TID who are indeed in compliance with the current order.

As a matter of policy guidance for possible Board action on this matter, TID would like to reiterate its general stance on the curtailment process. Some of the statements below were stated to the Board at its May 20, 2014 curtailment workshop.

² Letter to Caren Trgovcich, Chief Deputy Director; from a 10-member caucus of senior water rights holders within the lower San Joaquin River watershed; dated May 2, 2014

³ *Re: Potential Curtailment of San Francisco's Diversions to the San Francisco Bay Area from the Hetch Hetchy Project on the Tuolumne River*; letter to Barbara Evoy, Deputy Director of Water Rights; from the San Francisco Public Utilities Commission; dated April 28, 2014

⁴ Staff Report to SWRCB, Item 6 of the June 17, 2014 regular meeting of the SWRCB

- California as a whole is operating in an emergency state, but it must be acknowledged that specific regions of the state, depending on individual watershed hydrological conditions, reservoir storage levels within those watersheds, and degree of prudent planning, have varying amounts of concern. The Board's deliberations and decisions on the matter of water resources management must be based on the foundational premise that specific regions possess varying levels of resources to respond to the drought.
- TID believes curtailment efforts should not be implemented hastily. Solutions must come from robust stakeholder involvement and a fact-based, transparent and procedurally-driven process. Operating in an orderly and prudent manner is paramount.
- TID believes any curtailments should be founded in water right priority if they are to achieve the stated purpose of protecting senior water rights.
- Curtailment actions taken by the Board shall not redirect the drought's impacts, albeit directly or indirectly.

Technical comments specific to draft emergency regulation and digest

As stated generally above, TID has overarching concerns with the draft emergency regulation. Relative to the reference in Section 875 (b) to "water right priority", many water rights holders could benefit from a better level of certainty regarding their water rights priority status as administered by the State Water Board. In this vein, it would be prudent of State Water Board staff to develop a comprehensive and accurate listing of water rights priority and make such a list readily available on the State Water Board's Notice of Water Availability (Curtailment) web page. This list could also be distributed via the newly established e-mail distribution list to be created as outlined in Section 875 (e) of the draft emergency regulation.

The draft emergency regulation outlines "other data"⁵ that the Deputy Director for the Division of Water Rights may deem appropriate in projecting water availability in a river system. TID would hope that this data may include reliable, accurate and timely information on water availability and demand furnished by TID related to the Tuolumne River. This same comment holds true regarding language related to "additional pertinent and reliable information."⁶ The impetus behind this comment is that TID staff began working with State Water Board staff earlier this year to correct flaws and errors with analyses conducted in preparation for curtailment action. More recently, a technical memorandum submitted to the Board via CCSF outlines many of these flaws in State Board staff's water availability analysis related to this curtailment process.⁷

Because of the potential effects of possible curtailment actions taken by the State Water Board, TID appreciates the opportunity to work with your staff further regarding the data your staff will provide you to aid future decision making processes on this topic.

⁵ Proposed Emergency Regulations; JUNE 20, 2014 DRAFT; Section 875 (c)(3) iv.

⁶ Id., at Section 875 (c) (4)

⁷ *Analysis of SWRCB Depiction of Flow Availability Tuolumne River*, Daniel B. Steiner, June 25, 2014

Additionally, the accompanying Emergency Regulations Digest published as part of this agenda item cites Water Code 1058.5 and states, the emergency regulation will remain in effect for up to 270 days.⁸ It would be prudent to insert language in the draft emergency regulation indicating the development of a Board process so as to be available to quickly implement when appropriate to rescind the emergency regulation earlier than 270 days following adoption. Such an action should be transparent to any curtailed party and be based on the best information the Board can obtain regarding the improvement of existing conditions. The State Board is urged to include significant stakeholder involvement in crafting such a repeal process.

The claim that reductions in available water via curtailment orders will likely be offset by groundwater pumping⁹ is incorrect. It fails to not only consider groundwater challenges facing various groundwater subbasins, but it fails to acknowledge (and is direct conflict with) well-known and ongoing efforts by the Governor's Administration, the State Legislature, local groundwater management agencies and various counties to better manage groundwater and achieve groundwater sustainability statewide.

Both the draft emergency regulation and the Emergency Regulations Digest are unclear as to which specific types of water rights the draft emergency regulation would aim to curtail upon the issuance of curtailment orders. Would the regulation possibly be used to supersede the existing post-1914 curtailment order and its associated processes? Is the draft emergency regulation's intent to focus more on possible curtailment of pre-1914 appropriative rights and/or riparian rights? The State Water Board's intention behind the draft emergency regulation, specific to this clarification of types of water rights, needs to be a key component of the emergency regulation process.

Conclusion

TID supports the State Water Board's stated overall goals of water rights enforcement against unlawful diverters and protection of senior rights holders which is its duty under existing statute. However, TID also urges the Board to consider these comments as the Board judiciously weighs its decision regarding the proposed emergency regulations. These emergency regulations would establish procedures that are likely unworkable and could result in jeopardizing critical water rights that belong to TID's constituents and many others. This result would be in stark contrast to the Board's stated purpose of protecting senior water rights.

Again, Turlock Irrigation District is thankful for the opportunity to comment on the draft emergency curtailment regulation and looks forward to working with the State Water Board on this important issue.

Sincerely,



Casey Hashimoto, P.E.
General Manager

⁸ Emergency Regulations Digest, pg. 2

⁹ Id., at pg. A10-6