

# LATE COMMENT

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October 15, 2014

## VIA E-MAIL

Ms. Janine Townsend, Clerk  
State Water Resources Control Board  
[commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)



Re: Comments by Grassland Water District Regarding the Implementation and Enforcement of Water Rights During Drought Conditions

Dear Ms. Townsend,

Thank you for requesting input from stakeholders regarding the Board's drought activities, including water curtailments and associated issues. Grassland Water District (GWD) has repeatedly engaged with the Board this year, in an effort to prevent harm to public trust wildlife resources as a result of the drought and the Board's drought-related actions. GWD submits the following comments:

- Curtailment orders should provide flexibility for water right holders who engage in wildlife management. Managers of habitat areas should be allowed to request an exception from a curtailment order, if the water will be used to satisfy habitat requirements for public trust resources including threatened and endangered species. This year, the wildlife that depend on managed wetlands within the GWD, including the threatened giant garter snake and many other species, were deprived of 1,500 acre-feet of water under the Board's curtailment of GWD's appropriative water right License 10068. Upon making an inquiry to Board staff, GWD was informed that the curtailment order allowed no exceptions for water users trying to exercise

their rights to use water for wildlife management purposes. The Board has a duty to protect public trust resources, and its curtailment orders should allow for flexibility in this regard.

- The Board should not curtail the Bureau of Reclamation's ability to meet federally mandated water deliveries to wildlife refuges. In February 2014, based on reports that Board staff had criticized Reclamation's intention to divert water from the Delta for refuge purposes, GWD was compelled to participate in the Board's TUCP proceedings. This year, Reclamation will not provide GWD with its required (dry year) water supplies, which has forced GWD and other south-of-delta refuges to delay all applications of water for habitat purposes by several months, and to vastly reduce habitat acreage. Migratory birds have now begun to arrive in the San Joaquin Valley, but the available habitat is drastically compromised. Any future curtailment order or Temporary Urgency Change order issued by the Board to Reclamation should not restrict Reclamation's ability to meet its statutory and contractual obligations to the refuges that support California's public trust wildlife resources.
- The Board should better scrutinize water transfers for impacts to public trust resources, including strict enforcement of Water Code § 1018 and consideration of mitigation measures suggested by public trust resource managers. This year GWD submitted two letters to the Board objecting to the proposed temporary transfer of water from 10,000 acres of land in the Delta (Webb Tract and Bouldin Island) that provide a critical food source and habitat area for migratory birds. GWD was very concerned about the impacts of this transfer on wildlife. GWD objected that the transfer would not include wildlife-protective measures on the fallowed land, and that mitigation options existed that could help effectuate the transfer while also benefitting other struggling habitat areas nearby. By order dated May 12, 2014, the Board rejected all of GWD's objections and suggestions, and approved the transfer without disclosing what actions the transferee would be required to take on the fallowed lands.

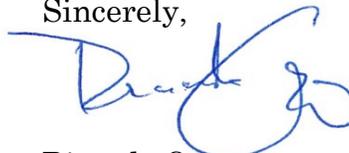
After the Board's curtailment order went into effect, the transfer was cancelled, but the transferee proceeded to apply aerial pesticides to the fallowed land, which drifted onto nearby habitat areas and agricultural lands. The Board must ensure, at the very least, that Water Code § 1018 is implemented in a transparent way that engages interested stakeholders. Section 1018 requires the Board to encourage the cultivation or retention of non-irrigated cover crops or natural vegetation to provide waterfowl, upland game bird, and other wildlife habitat during water transfers. The Board should also make an earnest effort to explore mitigation suggestions from local resources management agencies, to offset the drastic reduction in food

supplies for waterfowl that results from widespread water transfers during drought years.

- The Board should be amenable to creative water management proposals to protect public trust resources during drought. GWD solicited input from four Board staff members on a proposal to make a short-term water storage release from one of Reclamation's local flood control reservoirs, for emergency public trust wildlife habitat use. GWD was repeatedly told that the Board would not approve such a request. As a result, Reclamation reversed its initial decision to provide emergency flows to GWD. The Board should make a concerted effort to work with wildlife resource management agencies who reach out to the Board during extreme drought conditions, in order to better utilize supplies that will otherwise be lost to evaporation.
- The Board should ensure that Basin Plans account for the possibility of multiple dry years to reduce the need for future curtailment orders. GWD believes that the best way to protect public trust resources from the harms caused by curtailment orders is to proactively plan to avoid the need for future curtailments. One step the Board could take to ensure realistic planning is to require that Basin Plans account for the likelihood of multiple, consecutive dry or critically dry years.
- To improve the information the Board uses to support determinations on water availability relative to water right priority, the Board should provide for the reporting of diversion data in a publicly accessible format. Having publicly available information regarding the quantity and timing of diversions will help to ensure that operational decisions are made in light of realistic conditions, and will improve managers' ability to safeguard important public trust resources.

Thank you for considering these comments.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Ricardo Ortega', with a large, stylized flourish at the end.

Ricardo Ortega  
General Manager