

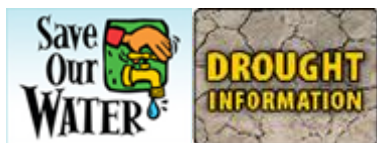
Tauriainen, Andrew@Waterboards

From: Mrowka, Kathy@Waterboards </O=MMS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=MROWKA, KATHY@WATERD1188F18-E359-4DA8-A3F2-FC48F57B907E63A>
Sent: Thursday, July 09, 2015 10:02 AM
To: Wells, Paul@Waterboards
Subject: FW: Curtailments and Voluntary Agreements

Another one for the BBID records.

Katherine Mrowka, Manager
Enforcement Section
Water Rights
P.O. Box 2000
Sacramento, CA 95814

916-341-5363



From: Dan Kelly [mailto:dkelly@somachlaw.com]
Sent: Thursday, May 21, 2015 12:40 PM
To: WB-DWR-deltawatermaster
Cc: Rick Gilmore; Russell Kagehiro; Lauffer, Michael@Waterboards; Howard, Tom; Mrowka, Kathy@Waterboards
Subject: Curtailments and Voluntary Agreements

Michael –

I serve as General Counsel for the Byron-Bethany Irrigation District (BBID). BBID holds pre-1914 water rights in the Delta. Our diversion facilities are located on the intake channel of the State Water Project – relocated to that location because the construction of the SWP (Clifton Court) destroyed our original diversion point. BBID supplies water to the community of Mountain House, provides water to the Mariposa Energy Project (natural gas facility) for emission control, and provides fire protection water to the County Airport – as well as having water on hand for CalFire to use for wildfires in the Altamont Pass areas. Our irrigation customers are nearly all on drip and microsprinkler irrigation – and the District has all but eliminated return flow and runoff.

This morning, BBID's president, Russell Kagehiro, its General Manager, Rick Gilmore, and I met with Kathy Mrowka to talk a bit about curtailments and BBID's efforts to find a practical solution to water supplies for this year. SWRCB Board Member Dee Dee D'Adamo was at BBID last week for a tour, where we explained our desire to work within the water right system and try to participate in solutions to the problem. To that end, we've been working with DWR in trying to develop a back up supply for the remainder of the summer (when and if pre-1914 rights get curtailed) but have not yet found a definitive solution.

A couple of days ago, confirmed by the Workshop yesterday, we learned of an effort underway to reduce riparian water diversions and use in the Delta by 25% as a “voluntary curtailment” of sorts. The purpose of this email is to explore that voluntary effort a bit and see if it has any application to BBID.

We have been monitoring water supply conditions for some time and have some concern over the SWRCB’s plan to curtail pre-1914 rights ahead of riparian rights. Here’s why: riparian rights only attach to natural flow. Riparians are not entitled to return flows or any foreign or abandoned water – including export water that finds its way back to the Delta. Riparians are likely not entitled to wastewater discharges, groundwater flows present in the system, or other developed supply. Appropriators, however, are entitled to appropriate and divert water from those sources. So – with the very limited natural supply in the system, it is highly likely that there is more water available to appropriators than riparian users – which would mean riparians should be curtailed before pre-1914 appropriators.

Rather than raise these issues in the face of curtailments – BBID would rather attempt to participate in the effort to find practical solutions to the problems we’re facing this year and would like to talk with you about the possibility of participating in the effort underway to reduce riparian diversions by 25% in lieu of curtailments.

Here is what BBID is prepared to do. While still not curtailed, BBID is willing to agree to reduce diversions immediately by 25%. Our baseline would be the 2015 demands reported to the SWRCB pursuant to the Informational Order. That number is lower than our recent historic use – but we’re willing to cut an additional 25%. Again – the reduction would be immediate – so BBID would forego water it is otherwise entitled to divert in exchange for the ability to divert the reduced amount through the summer.

Our reporting is very transparent. As we diver off the SWP intake channel – our actual diversions are reported *daily* to DWR and the diversion figures are posted on DWR’s website. We can provide those figures regularly to the SWRCB to confirm actual reductions in diversions of 25% below our reported demand for this year.

So – we hope to avoid the potentially sticky issue of asserting a paramount right to water present in the system (ahead of riparian users) by reaching an agreement with the SWRCB that will result in real, immediate, measurable water savings while preserving some ability to provide water to the District’s customers for the remainder of the summer. If this is something you are interested in discussing – please feel free to contact me or Rick Gilmore.

Regards,
Dan Kelly



Daniel Kelly | *Attorney*

500 Capitol Mall, Suite 1000 | Sacramento, CA 95814
Office 916.446.7979 | **Direct** 916.469-3833 | **Fax** 916.446.8199 | dkelly@somachlaw.com
<http://www.somachlaw.com>

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