

**From:** Montgomery, Amanda@Waterboards Amanda.Montgomery@waterboards.ca.gov  
**Subject:** RE: Water Code section 1485  
**Date:** June 3, 2015 at 8:47 AM  
**To:** Aaron Ferguson aferguson@somachlaw.com  
**Cc:** O'Hagan, John@Waterboards John.O'Hagan@waterboards.ca.gov, McFarland, Scott@Waterboards Scott.McFarland@waterboards.ca.gov

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Hi Aaron,

Yesterday, we explored the steps to pursue a temporary permit for Mountain House to capture treated wastewater downstream of where it is currently discharged into Old River. I looked through my files, as I remembered the issue of Water Code Section 1485 coming up for this party in the past. Please see the attached email.

Thus, use of water code 1485 is not an option in this situation as the discharge is not into the San Joaquin River. In light of that, the party would need to pursue a temporary permit relying on unappropriated water (Water Code 1202), however we would not be able to issue a temporary permit as the watershed is curtailed.

Note that in the case of City of Stockton, they were in the geographic area applicable to Water Code 1485. The priority date of their water right permit did not change due to curtailment. I have attached the relevant letter for City of Stockton.

Best Regards, Amanda

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**From:** Aaron Ferguson [mailto:aferguson@somachlaw.com]  
**Sent:** Tuesday, June 02, 2015 6:43 PM  
**To:** Montgomery, Amanda@Waterboards  
**Subject:** Water Code section 1485

Amanda:

I think I found the code section and City of Stockton decision you were referring to on our call today. Perhaps we can talk further about these tomorrow. The code section is 1485. The decision is WR 89-9, a decision issued (during the drought) allowing the City of Stockton to divert treated wastewater under WC 1485. I'm assuming this gets the applicant around the priority date issue, correct? I believe the discharge/diversion scenario BBID has in mind would fit within this code section. I will check into that further.

Thanks,  
Aaron



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Section 1485 email.pdf



**State Water Resources Control Board**

June 19, 2014

Mr. Daniel Kelly, Esq.  
Somach Simmons & Dunn  
500 Capitol Mall, Suite 1000  
Sacramento, CA 95814

Re: Curtailments – Permit 21176 (Application 30531A)

Dear Mr. Kelly:

I am responding to your letter, dated June 6, 2014, regarding the applicability of water curtailments to City of Stockton's (City) Permit 21176. On May 27, 2014, the State Water Resources Control Board (State Water Board) issued a notice of unavailability of water and immediate curtailment to holders of post-1914 appropriative water right holders in the Sacramento and San Joaquin River watersheds, including the City. According to your letter, the City believes that its Permit 21176 should not be curtailed for lack of available water supply because the permit was issued pursuant to Water Code section 1485, which authorizes the appropriation of water discharged from waste disposal plants.

In light of the unique nature of Permit 21176, as issued under Water Code section 1485, the diversion of water as authorized under the permit will not be subject to the State Water Board's May 27, 2014, curtailment notice.

Please contact me at 916-341-5187 or [Erin.Mahaney@waterboards.ca.gov](mailto:Erin.Mahaney@waterboards.ca.gov) if you have any questions about this letter.

Sincerely,

A handwritten signature in black ink that reads 'Erin K.L. Mahaney'.

Erin K.L. Mahaney

cc: Michael Lauffer, Chief Counsel

State Water Resources Control Board  
Office of Chief Counsel  
1001 I Street  
Sacramento, CA 95814  
[Michael.teuffer@waterboards.ca.gov](mailto:Michael.teuffer@waterboards.ca.gov)

Frank Mendez, Clerk | Teresa Hawkins, Credit and Auction

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