

George Osborne – *President*  
Division 1

Alan Day – *Director*  
Division 5

Greg Prada – *Director*  
Division 2



## El Dorado Irrigation District

Michael Raffety – *Vice President*  
Division 3

Dale Coco, MD – *Director*  
Division 4

Jim Abercrombie  
*General Manager*

Thomas D. Cumpston

2-7-17 Board Meeting-Item 9  
Urban Water Conservation to Implement EO B-29-15  
Deadline: 2/6/17 12 noon

In reply refer to: LBP2017-002 and M0217-003

February 6, 2016



**VIA EMAIL TO: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)**

Felicia Marcus, Chair  
and State Water Resources Control Board (SWRCB)  
1001 I Street  
Sacramento, CA 95814  
Attn: Jeanine Townsend, Clerk to the Board

Re: Proposed Resolution Amending and Re-adopting Drought-Related Emergency Regulations for Urban Water Conservation

Dear Chair Marcus and Board Members D'Adamo, Doduc, Moore, and Spivey-Weber:

This letter responds to Item 9 on the State Water Resources Control Board's ("SWRCB") posted agenda for its February 8, 2017 board meeting: consideration of a proposed resolution amending and readopting drought related emergency regulations for urban water conservation to implement Executive Order B-29-15, B-36-15, and B-37-16. For the reasons discussed below, El Dorado Irrigation District does not accept staff's recommendation to extend the emergency regulation for 270 days and implores the SWRCB to rescind the regulation or simply let it expire in February.

**Conditions throughout the State require the immediate termination of the Governor's declared emergency, and the emergency regulations adopted thereunder.**

The SWRCB's proposed resolution readopting its emergency regulations states that the SWRCB is readopting the emergency regulation "because the Governor's proclamation remains in effect, [and] because the drought conditions that formed the basis of the Governor's emergency proclamations continue to exist in portions of the state . . ." This justification for readopting the emergency regulation (1) fails to recognize that existing law imposes a mandatory duty on the Governor to terminate the drought emergency at the earliest possible date that conditions warrant, and (2) mistakes conditions in parts of the state as sufficient justification for maintaining a statewide emergency regulation. Neither of these positions are supported by law.



Felicia Marcus  
SWRCB  
February 6, 2017  
LBP2017-002

Page | 2

**1. The Governor has a mandatory duty to end the state of emergency declaration at the earliest possible date that conditions warrant.**

Under the Emergency Services Act (Gov. Code §§ 8550 et seq.), the Governor is empowered to declare a state of emergency in limited and statutorily defined circumstances. (Gov. Code § 8625.) A state of emergency is defined as the “duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property” within the State caused by such conditions as drought which, “require the combined forces of a mutual aid region or regions to combat.” (Government Code § 8558(b).) In order to exercise the power of an emergency declaration, the Gov. must find that “local authority is inadequate to cope with the emergency.” (Gov. Code § 8625(c).) Finally, and more importantly, the Emergency Services Act declares that “The Governor shall proclaim the termination of a state of emergency at the earliest possible date that conditions warrant.” (Gov. Code § 8629 emphasis added.)

Under this authority, the Governor is required to terminate the emergency as soon as conditions warrant. Based upon the testimony and written comments from the many water supply providers throughout all portions of the State, the conditions necessary to maintain a state of emergency declaration no longer exist. Indeed, the vast majority of water supply agencies throughout the State have self-certified that they had sufficient water supplies for another three years should drought conditions continue, resulting in a 0% conservation standard under the adopted emergency regulation. Accordingly, the Governor is under a mandatory duty to proclaim the termination of the state of emergency.

**2. Conditions of local drought are not sufficient to maintain a statewide emergency regulation.**

As noted above, the Emergency Services Act defines a state of emergency as the existence of conditions of disaster or of extreme peril to the safety of persons and property that exceed the capacity of local government to respond and require the combined forces of mutual aid. (Gov. Code § 8558(b).) As of February 2017, and probably long-before, there are no longer conditions of disaster or extreme peril to the safety of persons and property as a result of drought conditions.

So far this winter, El Dorado County has been deluged with large amounts of precipitation. Our water supply reservoirs are full and spilling. All reservoirs in our combined water supply/hydroelectric project, FERC Project 184, are projected to fill and spill this year. Recently we have had to implement various flood control measures at our facilities, including increased releases of water from storage to make room for additional inflow and snowmelt. The drought emergency has long been over for El Dorado Irrigation District. We believe the same can be said for the 84% of the water suppliers in the State who submitted self-certification results with a 0% conservation standard.





Felicia Marcus  
SWRCB  
February 6, 2017  
LBP2017-002

Page | 3

We recognize that there remain limited areas in California where drought conditions are still in effect. The evidence of local drought conditions, however, is not sufficient to justify a statewide emergency. We therefore advocate that the SWRCB focus its assistance on those areas in meeting their water needs and conservation requirements. Because there is no longer a statewide emergency, however, we urge the SWRCB to rescind the emergency conservation regulation completely or let it expire in February, and restore local control, as required under existing law.

Because the Governor's authority to short-circuit the legislative process and order the SWRCB to adopt emergency regulations has expired with the expiration of circumstances that justify a state of emergency, so too has the SWRCB's authority to adopt emergency regulations pursuant to the Governor's Executive Orders expired. Re-adoption of emergency regulations pursuant to the Governor's Executive Orders will constitute an overreach of the SWRCB's administrative authority, and an unlawful violation of the due process rights of those subject to such regulations.

We, therefore, respectfully encourage the SWRCB to rescind the emergency regulation, or let it expire.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Abercrombie".

Jim Abercrombie  
General Manager

JA:BDP:pj

cc: Brian D. Poulsen, EID General Counsel  
Brian Mueller, EID Engineering Director  
Dave Bolland, ACWA, Director of State Regulatory Relations  
John Woodling, Regional Water Authority, Executive Director  
John Kingsbury, Mountain Counties Water Resources Association, Executive Director

