

April 13, 2015

DELIVERED VIA E-MAIL

Ms. Jessica Bean
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814
Jessica.Bean@waterboards.ca.gov

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Director of Finance

Re: Mandatory Conservation Proposed Regulatory Framework Implementing Executive Order B-29-15

Dear Ms. Bean:

I am the General Manager of West Kern Water District ("WKWD") and write this letter on behalf of WKWD in regards to the State Water Resources Control Board's ("Water Board") Proposed Regulatory Framework for implementing Governor Brown's Executive Order B-29-15. WKWD appreciates the Water Board's efforts to involve municipal water suppliers and other regulated entities in the process of implementing the Executive Order.

WKWD is committed to doing its part to successfully implement the Governor's directive to decrease potable water usage statewide by 25%. WKWD has several concerns, however, regarding the methods that the Water Board has proposed for implementing the Governor's directive. We are hopeful that the Water Board will consider these concerns and address them through appropriate changes in the Proposed Regulatory Framework. WKWD is confident that a regulatory system that addresses each of these concerns can achieve the Governor's 25% reduction mandate while also treating suppliers such as WKWD equitably.

Disparate Impact on Impoverished Counties

California is economically divided between wealthy areas along the Pacific Ocean and more impoverished inland areas. The wealthy areas near the Pacific Ocean generally have a mild climate, while California's inland areas are characterized by hot summers. Due to the hot summers in inland California, inland residents are forced to use more water than their coastal counterparts to conduct the same activities. To state an obvious example, maintaining a 1,000 square foot lawn in Bakersfield in July requires more water than maintaining a 1,000 square foot lawn in San Francisco in July. But the differences in water needs between inland and coastal residents are not limited to landscaping. For example, it also takes more water to operate an evaporative cooler in an inland environment than it does to run the same cooler in a coastal environment.

The difference in water needs between coastal and inland areas is aptly illustrated by the tiers in the Water Board's Proposed Regulatory Framework. As you know, the Proposed Regulatory Framework groups the suppliers whose residents have the lowest per capita water use into Tier 1. Tier 1 suppliers are subject to the least harsh reduction requirements under the Proposed Regulatory Framework. Not surprisingly, every water supplier listed in Tier 1 is located within a county that abuts the Pacific Ocean. Meanwhile, water suppliers in inland areas are largely grouped into Tier 4.

Under the Proposed Regulatory Framework, climate factors are not considered when determining how the brunt of the 25 percent aggregate reduction should be allocated. Rather, the Proposed Regulatory Framework singles out inland suppliers and their residents for harsher treatment due to the fact that residents in these areas, by necessity, consume more water. This is particularly concerning in light of the fact that California's inland communities are by far its most impoverished communities. Thus, the current Proposed Regulatory Framework unfairly places the burden of the most drastic cutbacks on Californians that cannot afford to live in the temperate coastal areas.

Accounting for Industrial Process Water

WKWD serves numerous industrial customers, including oilfield operators and power generation facilities. These facilities are a mainstay of California's economy, and fall outside the Governor's intended conservation targets for the Executive Order. The Governor's intention to exclude from the Executive Order facilities that have a substantial impact on the California economy is evidenced by the fact that the Governor excluded agricultural water supply from the mandatory reduction requirement under the Executive Order.

During the meeting that the Water Board hosted on April 9, 2015, it appeared that the Water Board shared this understanding of the Executive Order. In particular, Water Board staff indicated in response to at least one question that Paragraph 5 of the Executive Order—which requires reduction of water usage at “commercial, industrial, and institutional” (“CII”) facilities—is concerned primarily with landscaping and other external uses of water. Water Board staff and at least one commenter noted the distinction between internal “process” water, which is used by industry for manufacturing and production, and “outdoor” water that is used by CII for landscaping and other non-essential purposes. The outdoor water is indisputably an appropriate target for the conservation regulations, while mandatory conservation of process water would interfere with industrial operations and, ultimately, jobs.

WKWD is concerned that the Proposed Regulatory Framework is currently designed in a manner that will require suppliers to substantially reduce the amount of process water they supply to their industrial constituents. As written, the Proposed Regulatory Framework does not distinguish between suppliers that provide substantial amounts of industrial process water and suppliers that serve predominantly residential customers. In the case of industry-heavy suppliers, the suppliers will not be able to reduce supplies of industrial process water because doing so will result in economic repercussions that will have a detrimental impact on the economy in their communities and, ultimately, in California at large. For example, WKWD serves several power plants that require a

particular amount of process water in order to generate enough power to satisfy their contractual obligations. WKWD doubts that the Governor intends for WKWD to imperil these power plants' viability by cutting their process water supply to the point that they cannot fulfill their obligations, and WKWD does not intend to do so.

Because WKWD cannot reduce its supply of industrial process water without causing dire economic consequences, WKWD and other suppliers with large industrial constituents will be forced to make particularly onerous cuts to the water supply available to residents. As a result, residents served by suppliers who provide substantial amounts of industrial process water will face more aggressive restrictions than residents that are served by all-residential suppliers.

There is a simple solution to this inequitable result: water that is supplied for industrial processes should not be considered for purposes of calculating a supplier's baseline water usage and required reductions. A supplier with a 25 percent reduction target should be required to reduce the consumption of potable water for residential and non-process water CII by 25 percent, but should not be required to reduce process water consumption. Any framework that fails to account for process water usage would conflict with the Governor's intent, cause disastrous economic consequences, and unfairly penalize residents served by suppliers that also serve industrial facilities that require large amounts of process water.

Disparate Impact on Suppliers with CII Constituents

The methodology of the Proposed Regulatory Framework is to calculate each supplier's average water usage by dividing the amount of water the supplier provides by the number of residents in the supplier's jurisdiction. Suppliers with lower ratios between the number of residents and the amount of water used are treated more favorably under the Proposed Regulatory Framework as a result of their being grouped into a lower tier.

This approach fails to consider that many suppliers, including WKWD, provide water to large numbers of CII users. The CII users—particularly industrial users—consume potable water, but are not counted as residents for purposes of dividing the total amount consumed by the total population. This means that, all else being equal, suppliers with more CII water consumers will have a higher per capita water usage rate than suppliers with predominantly residential consumers. The Water Board should consider *all* water users within a supplier's jurisdiction, including CII users, rather than relying on an overly simplistic "per capita" system for purposes of calculating a supplier's baseline water usage.

Health and Safety Considerations

In hot climates such as the area served by WKWD, it is often necessary to use potable water for purposes of preserving the health and safety of residents. For example, institutional users within WKWD cannot safely reduce the amount of water they apply to sports playing fields. If they were to do so, the playing surface would become so hard and dry that users of the playing fields would be at serious risk of injury.

The Proposed Regulatory Framework does not exempt water use that is necessary for preserving health and safety from its across-the-board water reduction requirements.

Therefore, WKWD and other suppliers will need to reduce the water supplies to all users regardless of whether the reduction will cause an impact on health and safety. Going back to the playing field example described above, the result will be that youth will continue to be able to use sports fields in affluent coastal areas where not as much water is needed to maintain turf. But youth in the hot inland areas will be forced to stop using parched fields or risk injury. The Water Board can prevent this inequitable result by excluding from the total reduction requirements potable water that is necessary to preserve the health and safety of residents.

Water Banking Operations

WKWD stores potable water underground through a process generally referred to as "water banking." The purpose of water banking is to percolate water into underground storage during years in which water supply is ample. The "banked" water can then be withdrawn during years of shortage. Water banking is a form of conservation that is the hydrological equivalent of maintaining an emergency fund in a savings account. Like an emergency savings account, the purpose of a water bank is to enable its owner to draw on the account during difficult times. From a water supply standpoint, WKWD has fallen on difficult times, as has every other supplier in California. Therefore, WKWD intends to withdraw potable water from its water banking operations.

As written, the Proposed Regulatory Framework impedes WKWD's ability to access its water banks. The Proposed Regulatory Framework treats all potable water use equally. If WKWD supplies its residents with potable water from its water banking operations, the banked water would be counted towards WKWD's total potable water use in the same manner as water taken from the ground water table, the California Aqueduct, or any other source.

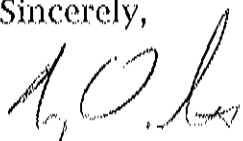
Banked water is fundamentally different than other potable water, and should be treated as such under the regulatory framework that the Water Board enacts in response to the Governor's April 1, 2015 Executive Order. If banked water is counted towards WKWD's total potable water use, then WKWD and other suppliers would have no incentive to bank water because the purpose of banking water is to have adequate water available in times of shortage so that residents serviced by the water bank do not need to drastically cut their quality of life. Under the Proposed Regulatory Framework, residents within WKWD would be required to cut their water usage to the same extent as they would if WKWD did not maintain a water bank.

The Proposed Regulatory Framework's failure to account for water banking is a result that the Governor almost certainly did not intend. Water banking is a precautionary measure that enables suppliers to proactively conserve water *before* a drought occurs rather than simply reacting *after* a drought occurs. The Proposed Regulatory Framework completely ignores this proactive form of conservation, and instead rewards only after-the-fact reductions in water usage. Because the Governor almost certainly intended to reward all forms of water conservation, the Proposed Regulatory Framework should instead account for total conservation. The Water Board could account for total conservation, including water banking, simply by offsetting potable water that is taken from a water bank from a water supplier's total use. For example, if a supplier's targeted reduction in potable water use is 20 percent, the Water Board should consider this target met if total usage

declines by 10 percent with an additional 10 percent of the supply coming from the supplier's water bank.

Thank you for inviting WKWD and other water suppliers to provide comment on the Water Board's Proposed Regulatory Framework. WKWD appreciates the tremendous pressure that the Water Board is under to implement the Governor's Executive Order on a short timeframe, and understands that the challenges the Water Board faces. I hope that these comments are helpful to the Water Board's efforts to implement the Executive Order, and I welcome the opportunity to further speak with the Water Board regarding these comments. If you have questions or concerns about these comments, please feel free to contact me at harry@wkwd.org or (661) 747-5983.

Sincerely,



HARRY STARKEY
General Manager

cc: Members of the State Water Resources Control Board
Joseph D. Hughes, Esq.