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April 22, 2015

Ms. Jessica Bean  
State Water Resources Control Board  
Jessica.bean@waterboards.ca.gov

Dear Ms. Bean,

Carmichael Water District (District) disagrees with the SWRCB's proposed draft emergency regulations implementing the Governor's April 1, 2015 Executive Order (Proposed Regulations) issued on Saturday April 18, 2015. The Proposed Regulations violate state law as well as the State's regional self-reliance mandate, punishing those entities who rely upon local water sources by investing "*in water use efficiency, water recycling, advanced water technologies, local and regional water supply projects, and improved regional coordination of local and regional water supply efforts.*"<sup>1</sup>

### **"No Good Deed Goes Unpunished"**<sup>2</sup>

The District has invested millions of ratepayer dollars to carefully plan and implement water management measures that have positioned the District to continue reasonable water service to its ratepayers during periods of drought or other water supply disruptions. In other words, the District has planned for its water supply reliability for 2015 and beyond through sound management and sound investments so that its ratepayers' needs are met.

The District also continues to help Californian's during the prolonged drought by voluntarily reducing its water use to assist those in need – achieving an average monthly savings since July 2014 of 20%. Yet the reduction mandates included in the Proposed Regulations disproportionately punish the District for its regional self-

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<sup>1</sup> Water Code Section 85021 (developed as part of the Sacramento-San Joaquin Delta Reform Act of 2009).

<sup>2</sup> Clare Boothe Luce (1956).

reliant planning by illegally taking the District's water without compensation for use by those who have not planned for drought in accordance with California law.<sup>3</sup>

The District's primary investment for drought protection has been its conjunctive use facilities and prudent management of regional surface and groundwater with its regional partners. Our regional surface water and groundwater conditions have been managed expressly for drought mitigation – after years of extensive regional water supply planning. Yet these investments must now remain idle as SWRCB forces the District's ratepayers – that made the drought-savvy investments – to take extraordinary conservation measures to benefit other areas in the state. Why is the SWRCB forcing the District's ratepayers to forego our own locally-available resources to meet the needs of those that have failed to plan at significant cost and expense to the District?

### **Who Benefits from the 1.3 MAF Savings?**

The SWRCB states that the tiered reductions will save approximately 1.3 million acre-feet (MAF) over the next nine months, equating to a little more than 1.7 MAF annually. With one acre-foot able to meet the needs of between 1 and 5 homes for a year<sup>4</sup>, and using 3-people per home as an average, 1.7 MAF would be enough to serve 5 million to 25 million people. Who are the intended beneficiaries of the District's conserved water? The District does not need SWRCB protection or planning because it has responsibly managed its water assets for 2015 and beyond. But if the SWRCB is protecting others that have not planned for their future then the uncompensated reallocation of water resources based upon vague notions of waste and unreasonable use is simply illegal. All water conserved by the District belongs exclusively to the District under Water Code Section 1011 and cannot be reallocated to others without the consent of the District.

We fully understand that some regions of the state face significant groundwater declines and other regions are solely dependent on surface water resources that are significantly depleted. But the District has planned for these circumstances in its local region based upon the availability of local resources – the District is regionally self-reliant. The perceived “equity” in taking water from those who have planned for drought conditions to help those that have not is not only illegal under California Water Law, it is the most inequitable solution available.<sup>5</sup>

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<sup>3</sup> The California Supreme Court has been very clear on the doctrine of prior appropriation as the primary component in California Water Rights law. *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224.

<sup>4</sup> The range is dependent on the factors noted by the SWRCB on their urban water use reporting website:

[http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/drought/conservation\\_reporting\\_info.shtml](http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/conservation_reporting_info.shtml)

<sup>5</sup> *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224

## The Regulations are Unworkable

The Emergency Regulations state: “Each urban supplier...shall reduce its total water usage by [*some identified percentage*] compared to the amount used in the same month in 2013.” Our District’s reduction target is 36%. Though we understand the attraction of mathematical simplicity used by the SWRCB to develop these targets, the methodology ignores the complexity of water management and use in this region and is contrary to SWRCB’s own policy for addressing conservation savings.<sup>6</sup>

The current Emergency Regulations state: “*These three months reflect the amount of water used for summer outdoor irrigation, which provides the greatest opportunity for conservation savings.*”<sup>7</sup> From this premise, a 36% reduction is imposed on our ratepayers for all months – whether or not outdoor irrigation is actually occurring. The solution posed is completely unworkable and grossly inequitable during the winter months for District ratepayers.

SWRCB’s proposed regulations mandate that the District’s ratepayers reduce their **indoor use** by over 30% during the winter months – a rate far more punitive than the rates imposed on other purveyors who live in cooler climates and more dense communities (where those locations 2014 summer baseline R-GPCD value reflects indoor use). Our ratepayers cannot be expected to reduce indoor use by over 30% when others with the same indoor use have significantly lower mandates, most of which rely almost exclusively on imported water supplies.

Solution: The reduction targets must be adjusted so that indoor conservation objectives are more equitable and achievable. At a minimum, the Proposed Regulations should be modified to reflect a second period of average R-GPCD when landscape irrigation is minimal or even non-existent. We suggest this period would be the average of use during November 2014 through February 2015.

As an example, the District’s July-September 2014 R-GPCD averaged 274. In contrast, the November-February average R-GPCD was 91.

Under this framework, a November-February required reduction target would be 16%, as represented by the proposed Section 865(c)(5). This target has a much greater equity and opportunity for success than applying the summertime target of 36% to our significantly lower winter-month R-GPCD.

## Summary

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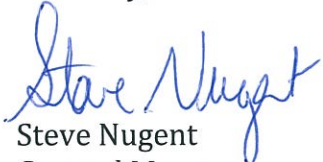
<sup>6</sup> The SWRCB lists several factors as part of a “Important Note” that clearly states: “*It is not appropriate to use Residential Gallons Per Capita Day (R-GPCD) water use data for comparisons across water suppliers, unless all relevant factors are accounted for.*” ([http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/drought/conservation\\_reporting\\_info.shtml](http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/conservation_reporting_info.shtml))

<sup>7</sup> April 18, 2015 Fact Sheet, p. 2.

The SWRCB's self-declared "equitable, achievable, and enforceable" emergency regulations are truly just the opposite – the proposed regulations reward those who failed to plan for drought by punishing those that did plan. SWRCB is punishing the District's ratepayers for their foresight and drought-planning investments and actions. Moreover, the proposed regulations ignore accepted principles of California Water Law and ignore the state's policy of "regional self-reliance" by placing the drought mitigation burden on the District – a District that has prepared for these exact drought circumstances with local resources and local planning.

The mandated target of 36% for the responsible Carmichael Water District ratepayers is illegal and inequitable.

Sincerely,



Steve Nugent  
General Manager  
Carmichael Water District

Cc: State Water Resources Control Board Members  
John Woodling, Regional Water Authority