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April 13, 2015

## VIA E-MAIL AND U.S. MAIL

Jessica Bean  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814

**Re: Comments of City of Bakersfield Regarding Proposed Regulatory Framework for Implementation of Executive Order B-29-15**

Dear Ms. Bean:

I am special water counsel to the City of Bakersfield (“Bakersfield” or “City”). On behalf of Bakersfield, I submit the following comments to the Proposed Regulatory Framework for Implementation of Executive Order B-29-15, issued by the State Water Resources Control Board (“SWRCB”) on April 7, 2015.

Bakersfield recognizes that the current severe drought conditions present significant threats and challenges to the entire State of California, which threats and challenges require substantial and significant action at the State and local level. Bakersfield has adopted and implemented a number of new, additional conservation measures in response to drought conditions and the orders and proclamations from the State of California and the Governor’s Office calling for significant reductions in water use. As a result of these recent measures, Bakersfield’s residential gallons per capita daily usage (R-GPCD) has been consistently reduced, month by month. Bakersfield is committed to implementing additional measures and taking further steps to reduce consumptive water use and combat drought conditions.

Bakersfield therefore understands and supports the necessity of further significant action at the State level, including through Order B-29-15. Bakersfield, however, still has significant concerns with and objections to the SWRCB’s proposal to require Bakersfield to reduce water use by 35%, while other water suppliers are only obligated to reduce water use by as little as 10%.

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The SWRCB's proposed categorization methodology fails to take into account a number of critical factors that impact R-GPCD water use, including climate, precipitation, environmental factors, location of the urban water supplier, cloud cover, and prior and on-going local conservation efforts.

Bakersfield is located in the southern portion of the San Joaquin Valley, in a very dry and warm environment. Average daily temperatures in Bakersfield in September range from 86 to 94 degrees, and the City's averages less than seven inches of rain per year. It is not reasonable or equitable for Bakersfield to be required to reduce water use by 35% when certain cities in much cooler areas of the State, with more rainfall, only have to reduce their use of water by 10%. The City of Arcata, for example, which is in the 10% reduction tier, has an average temperature of 55 degrees in September, and receives 42 inches of rain per year on average.

It is not reasonable for Bakersfield to be penalized for being located in a drier climate, with less precipitation. Differences in climate, rainfall, cloud cover, and location have an inevitable and direct impact on water consumption. Cities in warmer, drier climates will necessarily use more water, per R-GPCD, than cities in cooler, wetter climates, for reasons unrelated to the policies, pricing structure, and conservation efforts of the cities. Residents of cities in wetter, cooler environments will necessarily need to use less water to maintain a comparable level of outdoor vegetation.

The "Conservation Reporting" requirements for Urban Water Supplier's monthly reports to the SWRCB, as posted on the SWRCB's web site at [http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/drought/conservation\\_reporting\\_info.shtml#urban\\_ws\\_rpt](http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/conservation_reporting_info.shtml#urban_ws_rpt), states that "[i]t 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." The SWRCB web site further indicates that among the factors that can affect per capita water use are "rainfall, temperature, and evaporation rates," "population density," and "socio-economic measures such as lot size and income." The SWRCB's proposal for implementation of Order B-29-15 contradicts those policies by improperly using R-GPCD for "comparisons across water suppliers," and the proposal fails to take into account all "relevant factors" that affect per capita water use.

In addition, based on its prior and on-going conservation measures, Bakersfield currently devotes a higher percentage of its water supply to drinking water and other human health and safety purposes than most cities in California. Bakersfield also utilizes increasing quantities of tertiary treated, or recycled, water for outdoor irrigation, pursuant to the California Water Plan, the SWRCB's April 25, 2013 Recycled Water Policy, and the SWRCB's mandate to increase the use of recycled water. The current "Urban Water Supplier Reporting Tool" utilized by the SWRCB, and the methodology and equation used to estimate R-GPCD, do not sufficiently account for and recognize the use of recycled water for outdoor irrigation.

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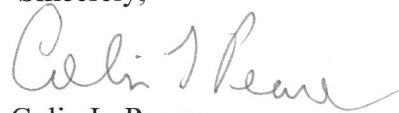
Forcing Bakersfield to reduce all of its water use by 35% would therefore unreasonably and inequitably place a larger burden on the drinking water supply for the residents of Bakersfield. A 35% reduction in water use would additionally not account or allow for Bakersfield's current and ongoing efforts to reduce pumping from an already overdrafted groundwater basin through, among other things, the use of recycled water, as well as Bakersfield's continued efforts to recharge and replenish the basin.

Bakersfield is not attempting to excuse or justify increased or excess water consumption, or avoid sharing the burden of addressing the current critical drought situation. Bakersfield does believe that all water purveyors should bear the same burden, and be treated equitably and equally. Order B-29-15, moreover, does not authorize or justify a 35% reduction in water use by water suppliers in drier parts of the State, and the Order does not expressly authorize the SWRCB to require any water supplier to reduce water consumption by more than 25%.

At the very least, the State should wait to see if water suppliers are successful in reducing water consumption statewide by 25% before adopting more extreme and inequitable water use restrictions. Bakersfield, along with other California cities, is committed to working with the State to achieve significant and necessary reductions in water consumption. Given the proposed regulations and limits in Order B-29-15, and the SWRCB's existing Emergency Regulations, it is very possible, if not likely, that the State will see a significant 25% reduction in water consumption. With the increased reporting requirements, the SWRCB will also be well positioned to monitor and determine in the future whether additional restrictions are necessary.

We thank you and the SWRCB for considering these comments. Please let us know if you have any questions or require any further information on these matters.

Sincerely,



Colin L. Pearce

CLP:jc

cc: Alan Tandy, City Manager, City of Bakersfield  
Virginia Gennaro, City Attorney, City of Bakersfield  
Art Chianello, Water Resources Manager, City of Bakersfield