



April 21, 2015

VIA E-MAIL AND OVERNIGHT MAIL

Ms. Jessica Bean
Engineering Geologist
State Water Resources Control Board
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Sacramento, CA 95814
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Director of Finance

Re: **Mandatory Conservation Draft Emergency Regulation 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") Draft Emergency Regulation for implementing Governor Brown's Executive Order B-29-15. WKWD is committed to doing its part to successfully implement the Governor's directive to decrease potable water usage statewide by 25%, and appreciates the opportunity to provide input regarding the Water Board's choice of methods to implement the directive.

The Water Board indicated in its Fact Sheet accompanying the Draft Emergency Regulation that water suppliers with a reserve supply of surface water may qualify for placement within a lower conservation tier. This recognition of suppliers who have proactively stored water is a welcome addition. However, it appears that the Draft Emergency Regulation does not provide similar recognition for water suppliers that store their reserve supplies underground rather than in surface reservoirs. As described below, water suppliers that store their reserve supplies underground should be treated the same as water suppliers that store reserves above ground because there is no meaningful distinction between the two forms of conservation.

i. Omitted Language in Regulation. As an initial matter, there is a discrepancy between the Water Board's Fact Sheet and the Proposed Emergency Regulation itself. The Water Board indicates on page 3 of its Fact Sheet that "[t]he draft regulation describes two situations where water suppliers could request to modify their total water use or be placed into a lower conservation tier," including that "[u]rban water suppliers that have a reserve supply of surface water that could last multiple years may be eligible for placement into a lower conservation tier." The actual text of the Proposed Emergency Regulation does not include this exemption and is silent on the treatment of suppliers with a reserve supply of water. It appears that this was an oversight, as the Fact

Sheet indicates that the Proposed Emergency Regulation “describes” the treatment of water suppliers with reserve supplies. WKWD requests that the Board add this language to the text of the Proposed Emergency Regulation as soon as possible, as it is impossible for WKWD to provide meaningful comment on a regulation it cannot review.

ii. Purpose of Water Banking. Several municipal suppliers, including WKWD, store potable water underground through a process generally referred to as “water banking.” The purpose of water banking is to percolate water into underground storage basins during years in which water supply is ample. The “banked” water can then be withdrawn during years of shortage. “Banked” water is stored in naturally occurring underground geological formations.

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 periods of shortage. Since banked water is a form of conservation that allows users to reduce the demand on other water sources during periods of shortage, it is important that the Emergency Regulations are designed in a manner that incentivizes water banking. And, there is no economic benefit to the monetary investment in the stored water and water banking facilities if this “savings account” cannot be used in times of shortage to avoid drastic reductions and adverse impacts to business activities..

iii. Treatment of Water Banking Under Draft Regulation. The Fact Sheet accompanying the regulation indicates that the Water Board intends to make “[u]rban water suppliers that have a reserve supply of surface water that could last multiple years” eligible for placement into a lower conservation tier. While this is a step in the right direction, this language does not go far enough because it excludes urban water suppliers that have a reserve supply of water that is stored underground. Under the Draft Emergency Regulation, residents served by suppliers with water banks would be required to cut their water usage to the same extent as they would if WKWD did not maintain a water bank.

From the standpoint of water conservation, there is no material difference between water stored underground and water stored in above-ground reservoirs. Both storage systems reflect agencies taking proactive steps to create extraordinary supplies of water that are not drawn upon except during severe water shortages. Both systems are developed by agencies to increase water supply reliability, and are, from an accounting standpoint, separate and apart from the normal supplies that the agency draws upon. In WKWD’s case, water is banked in wet years and through water exchanges so that WKWD residents and businesses can have a reliable supply of water during dry years to avoid the depth of the reduction that is being proposed.

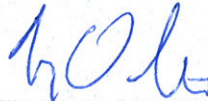
The Draft Emergency Regulation draws an unwarranted distinction between water stored above ground and water stored below ground in a water bank. The Draft Emergency Regulation would reward above-ground storage, but would provide a

disincentive to underground storage. Since the two storage methods have the same net effect on water conservation, such a distinction would be arbitrary and capricious.

There is a simple solution to the manner in which suppliers with water banking operations are currently treated under the Draft Emergency Regulation. The Regulation should be written so that urban water suppliers that have a reserve supply of water that could last multiple years, including water stored in reservoirs and water stored underground, may be eligible for placement into a lower conservation tier.

Thank you for inviting WKWD and other water suppliers to provide comment on the Water Board's Draft Emergency Regulation. We hope these comments are helpful to the Water Board's efforts to implement the Executive Order, and we 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) 763-3151.

Sincerely,



HARRY STARKEY
General Manager

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