

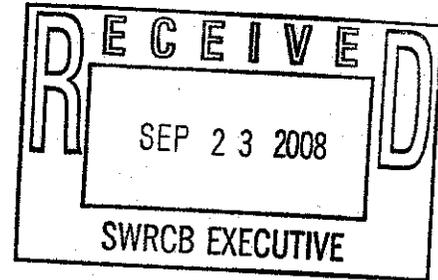


IRVINE RANCH WATER DISTRICT

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September 23, 2008

Ms. Tam Dodoc, Chair
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814
Attention: Jeanine Townsend, Clerk to the Board



RE: Comment letter – Proposal to Mandate Water Conservation Management Practices

Dear Chair Dodoc:

On behalf of the Irvine Ranch Water District (IRWD), thank you for giving us the opportunity to comment on the State Water Resource Control Board's (SWRCB) possible development of a statewide urban water conservation regulatory program.

As a leader in water use efficiency in California, IRWD strongly supports aggressive efforts to increase statewide efficiency. IRWD has aggressively pursued improved water efficiency through legislation, efficiency planning, public messaging and education, support of plumbing and industry efficiency standards, implementation of an extensive recycled water program, rebate programs and most notably, a highly effective conservation water rate structure. We applaud the SWRCB's interest in advancing urban water use efficiency across the state. However, we do not believe there is a need for statewide urban water conservation regulations and have significant concerns about the implementation of such regulations, specifically in the arena of water rates.

IRWD successfully implemented an innovative and highly successful allocation-based, tiered rate structure in the early 1990s. The results have been stunning. Between 1992 and 2005, the average landscape water use within the District decreased from 4.2 acre-feet per acre per year to 1.9 acre-feet per acre per year – *a 61% reduction*. From 2001 to 2006, irrigated area in the District increased 280 %, but total landscape water usage only increased 70 %. Today, the average residential water use in Orange County is 190 gallons per person per day while the average use in IRWD's service area is only 90 gallons per person per day – *more than 52% less*.

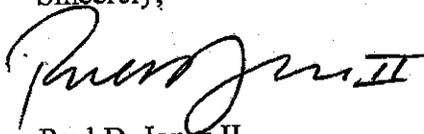
Allocation-based, tiered rate structures have been shown to be highly successful in achieving water use efficiency targets. However, it is not realistic to expect all agencies to implement this type of rate structure due to varying local needs and resources. It is important that the SWRCB preserve the local authority and flexibility of water supply agencies and their ability to implement the type of conservation rate structure that is most appropriate to the needs of the area. The establishment of performance or target based approaches for water use efficiency, rather than narrow regulations would preserve this local flexibility.

In debating regulations related to water rates, it is important that the SWRCB consider water agencies' need to set and maintain their rate structures in compliance with Proposition 218. The California Supreme Court concluded in *Bighorn-Desert View Water Agency v. Verjil* that water is indispensable to the use of property, and water service is therefore property-related. Water rates are thus subject to Proposition 218. Proposition 218's substantive requirements for water rates include that the revenues derived from the rates shall not exceed the cost of providing service nor be used for anything other than the purposes for which they were imposed, and that the charges shall not exceed the proportional cost of service for each parcel (Cal. Const. Article XIII D, Section 6(b)(1), (2) and (3)). In setting a rate structure, these provisions require the agency to be able to demonstrate that its overall water rate revenues do not exceed costs, and may further require a matching of the above-basic commodity revenues in the blocks with conservation and overuse costs incurred by the agency. The ability to keep those revenues and costs properly aligned will require flexibility for the individual agency that most likely makes one-size-fits-all regulatory constraints impractical in the establishment of tiers. Further, under the Proposition 218 requirement of parcel proportionality, it may be necessary to use an allocation-based structure that provides sufficient water for the reasonable use indispensable to the property, so that Article X, Section 2 will legally support the use of pricing signals for water in excess of reasonable use.

Currently, the California Urban Water Conservation Council (CUWCC) provides a voluntary, cooperative framework under which agencies agree to implement 14 best management practices (BMPs), which are periodically revised. IRWD has been a signatory to the Memorandum of Understanding since its inception in 1991, and has made a strong commitment to implement all cost-effective water conservation measures. The CUWCC is currently revising the BMPs to reflect improvements in water efficiency and to offer more flexibility to individual agencies, including performance targets, to further advance water conservation. Under current law all urban agencies with 3,000 or more service connections must already report their BMP compliance in their Urban Water Management Plans. As such, implementation of regulations would be redundant.

In conclusion, while IRWD strongly supports increased water use efficiency throughout California, we do not believe creating a prescriptive regulatory scheme is an effective approach. Implementation of an urban water conservation regulatory program is unnecessary and redundant. Further, a regulatory approach could stifle the creative and successful water use efficiency programs that are being implemented up and down the state in response to local needs and resources. Thank you for the opportunity to provide comments on this important issue. If we can be of further assistance, please do not hesitate to contact me at 949-453-5310. We look forward to the opportunity to provide further comments as the SWRCB moves forward on this important topic.

Sincerely,



Paul D. Jones II
General Manager