

To: SWRCB **Re: “Comment Letter – “Mandatory Conservation Proposed Regulatory Framework” proposed April 7, 2015, Comment due date Monday, April 13, 2015**

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April 13, 2015

Ms. Felicia Marcus, Chairperson, California State Water Resources Control Board, and Members, California State Water Resources Control Board
% Ms. Jeanine Townsend, Clerk of the State Water Resources Control Board
State Water Resources Control Board, Jeanine.Townsend@waterboards.ca.gov
% Jessica Bean, Engineering Geologist, California State Water Resources Control Board staff at Jessica.Bean@waterboards.ca.gov
1001 “I” Street, 24th Floor
Sacramento, CA 95814
Direct phone: (916) 341-6904; Fax phone: (916) 341-5620
Filed via email to: commentletters@waterboards.ca.gov, Jessica.Bean@waterboards.ca.gov

**ATTENTION: Ms. Jessica Bean, Engineering Geologist
Jessica.Bean@waterboards.ca.gov.**

Re: “Comment Letter – “Mandatory Conservation Proposed Regulatory Framework” proposed by the California State Water Resources Control Board, notice delivered on Tuesday, April 7, 2015, by email at 5:16:13 P.M. PDT; Comment due date Monday, April 13, 2015

TO CHAIRPERSON FELICIA MARCUS AND TO BOARD MEMBERS OF THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD:

TO CALIFORNIA STATE WATER RESOURCES CONTROL BOARD DESIGNATED STAFF ENGINEERING GEOLOGIST JESSICA BEAN:

Dear SWRCB Chairperson Marcus, SWRCB Board Members, and Ms. Bean:

I hereby respectfully submit my comments and objections to the California State Water Resources Control Board, to Chairman of the SWRCB Felicia Marcus, and to the SWRCB Board Members regarding the proposed **““Mandatory Conservation Proposed Regulatory Framework” proposed by the California State Water Resources Control Board, notice delivered on Tuesday, April 7, 2015, by email at 5:16:13 P.M. PDT; Comment due date Monday, April 13, 2015.**

I hereby oppose and object to the above referenced proposed **“Mandatory Conservation Proposed Regulatory Framework” proposed by the California State Water Resources Control Board, notice delivered on Tuesday, April 7, 2015, by email at 5:16:13 P.M. PDT; Comment due date Monday, April 13, 2015.** It fails to focus on, address and

seek to implement and resolve the water limitations currently present in California. Restricting use will not cure our water shortage. It fails to seek to obtain a broad coalition between the State of California, the local water users and suppliers and others such as the federal government to INCREASE water supplies. In, short fails to resolve the water drought water supply shortages.

I recommend and urge that you vote AGAINST the adoption of this proposed “Mandatory Conservation Proposed Regulatory Framework”. I recommend you vote “NO” and AGAINST the adoption of the proposal as a whole.

I recommend you re-direct your energies, attention and focus on the development of consistent, stable expansion of water supplies. I suggest:

1. Emergency construction of an extensive network of desalination plants.
2. Importation of water supplies from areas with an overabundance of water, such as the U.S. Northwest areas and Canada, and the laying of waterlines off the California Coastline to do so
3. Develop adequate storage for potable water with adequate means of collecting rainwater.
4. Develop recycling systems and adequate storage for it.
5. Apply to the federal agencies supplying water for increased allowances and their transmission of water from water abundant areas.
6. Develop of consumer-friendly, practical means of conserving water that consumers can do individually and can easily and quickly be put into use. Authorize and encourage (by grants, credits, and funding) individual use of gray water, recycling systems, individual water storage.
7. Consider seeding clouds. Consider collecting and directing rainfall over the Pacific Ocean to California.
8. Set clear use conservation targets for consumers that are achievable. Permit water use to that level without fines, fee increases or cost increases.
9. State clear, simple means of water use reduction. If improvements that save at least five or ten percent of a previous year’s usage are implemented, reward the consumer – pay for the improvement, give a tax credit, lower the water rate use.
10. Engage water experts in engineering and water rights expert attorneys, as well as marketing experts, to put together a can-do team to get California back to a safe level of water supplies.
11. This proposal fails to support our agricultural and commercial sectors.

I object that this proposal is overbroad, too vague, duplicative, arbitrary, capricious, harsh and punitive, uneven-handed, unenforceable and too costly. The proposed restrictions are overbroad, too vague, arbitrary, unreasonable, exceed statutory and constitutional limits of Board’s authority, and are unenforceable. They interfere with and constitute regulatory revocation and “taking” of vested property rights involved with issued permits and licenses.

I object that the proposal lacks provisions for grandfathering in issued permits and licenses.

I object that the proposal lacks procedure for and granting exemptions.

I object that the proposal fails to comply with federal Clean Water Act regulatory requirements for adequate written, mailed notice to interested parties under Title 40 CFR, Sec. 25.5, and Due Process of Law reasonable notice and reasonable opportunity to *be heard requirements of the 5th and 14th Amendments, U.S Constitution.

I object that this proceeding does not comply with the rulemaking requirements of the applicable APA provisions. SWRCB v. OAL, 12 cal.app.4th 697, 16 cr2d 25 (1993, 1st dist.). Adoption of this proposal by the SWRCB is a form of a rulemaking proceeding. It does not comply with minimum standards of either procedural or substantive Due Process of Law. Mullane v. Central Hanover Bank, 339 U.S. 306; 70 S. Ct. 652; 94 L. Ed. 865; 1950 U.S. LEXIS 2070 (1950); 5th and 14th Amendments, U.S. Constitution; California Constitution, Article I, Sections 7, 11, 13 and 19, Article 13B, Section 6.

Fundamental administrative law and constitutional law place limits on the authority of an administrative agency, as well as the California State Legislature, county, municipal and other government rulemaking entities with (quasi)-legislative authority, by limiting the legislative enactments only to those assertions of legislative authority that are necessary. So where a governmental entity can curb or prevent an evil or activity by regulation, it exceeds its jurisdiction by entirely prohibiting it. San Diego TB Assn. v. East San Diego, 186 Cal. 252; 200 P. 393 (1921); Jones v. City of Los Angeles, 211 Cal. 304, 295 P.14 (1930); 13 Cal. Jur. 3d Constitutional Law § 141.

In California, administrative agency water regulations purporting to establish different and more punitive regulatory action and punishment, particularly by use of regulatory prohibitions, are likely to be confiscatory regulatory takings and regulatory confiscations.

This proposal would conflict with local ordinances, regulations, and laws which have been enacted to avoid adverse environmental hazards, harms and problems.

It lacks a provision for compliance with the State Constitution, Article 13B, Section 6, funding requirements required by the State for its mandates, and for complying with these proposed regulatory mandates. It conflicts with and has the potential to conflict with already-enacted local land use and environmental laws implemented to protect the environment in violation of California Constitution, Art. 13B, Section 6, and Article 1, Section 19.

I object to the scheduling of comment deadlines and proceedings noticed in the later afternoon, April 7, 2015, and due the following Monday, April 7, 2015, just before year 2014 tax

returns are due, as same is fundamentally unfair. This has the practical effort of deterring, discouraging, limiting and preventing public participation by scheduling so that this Board’s activities and proceedings conflict with other legal obligations. This scheduling of the comment period deadline sabotages public participation, and thus violates the requirement that this agency facilitate, encourage and promote public participation, as required by Title 40 CFR, Sec. 25.5.

This proposal fails to provide for grandfathering in permitted or licensed activities on which permittees have relied to construct, use and operate. Fails to authorize and allow continued use under validly issued permits, licenses and other authorized activities.

It is harsh, punitive, cruel, and seeks to prohibit rather than regulate.

It seeks to shift burden for failure of state officials, including the SWRCB, to establish means of maintaining adequate water supplies from the governor and the SWRCB over a long period of time. Seeks to punish water users, particularly individual residential water users, for state officials’ inabilities and failures to maintain and manage our water supplies.

Instead of developing water supplies, it impairs, disrupts and destroys ways of accessing water supplies and permitting the use of owned water rights.

This proposal exceeds administrative agency authority and SWRCB would act without authority to set policy. Unconstitutional under California Constitution. An administrative agency cannot establish policy. Only the State Legislature and the electorate by direct voter participation can set policy.

It lacks sufficient specificity to be fair notice in order to be able to comply with it.

Seeks to vacate the California water rights laws established and in effect for many years, specifically and generally.

Appears to attempt to override federal, state and local laws and regulations for ownership, use, development and regulation of water and water rights.

Instead of proposing a supportive team approach to assist individual water users who are the victims of this water crisis, the California State government seeks to lay the “blame” on the consumers and end uses, and to punish them with impossible-to-comply-with demands.

To the extent that it seeks to prohibit water users from using water rights and water supplies they own and have contracted for and purchased, it is confiscatory. It interferes with the Contract Clause of the U.S. Constitution.

To the extent that it has the effect of revoking permitted, in-use water, it is confiscatory.

If the State of California officials and/or the federal government fail to provide the wherewithal, means, funding and system and actually to put into effect the transport of adequate water supplies from areas with water supplies for sale, then private and municipal government consortiums should be licensed and green-lighted to do so. The Pacific Ocean appears to this commenter to be a splendid and FREE “highway” for laying waterlines. These supplies

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obtained through these means should be entirely exempted from any restrictions.

If the State of California officials and/or the federal government fails to provide the wherewithal, means, funding and system and actually to put into effect a system of desalination, both through plants and individual desalination systems, to obtain adequate water supplies, then private and municipal government consortiums should be licensed and green-lighted to do so. The Pacific Ocean appears to this commenter to be a splendid and FREE water resource. These supplies obtained through these means should be entirely exempted from any restrictions.

Alternative means of protecting endangered species, rather than cutting off water supplies to farmers and residential users, must be implemented. We humans are in the process of becoming “endangered” ourselves.

The proposed drought water policy lacks sufficient specificity to provide water user with specific ways they can reduce and control water usage and become more efficient and more thrifty.

Authority for establishment of public policy regarding water rights and water usage is constitutionally vested in the State Legislature and the electorate under the California Constitution, and is not an executive branch authorized activity.

California Constitution, Art 13B, Sec. 6 requires the State to fund what it mandates. No provisions for State of California to do so are in the proposal.

Consider, instead, a positive approach that will be supported by California’s constituents, rather than this harsh, heavy-handed, uneven-handed, cruel and over-controlling, exorbitantly costly, ultimately grossly unpopular and unenforceable approach.

Bring in a team of experts with the correct skill sets: water supply engineering experts, attorneys trained in legislative drafting and democratic implementation, by fair and even-handed means, and marketing experts for a positive, supportive campaign.

Thank you for considering my legal analysis, whether or not you agree with me.

Respectfully submitted,

JOAN C. LAVINE
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Property Owner in Los Angeles County, California