



July 14, 2014



VIA E-MAIL (commentletters@waterboards.ca.gov)

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
("SWRCB")
1001 I Street, 24th Floor
Sacramento, CA 95814

Re: Comment Letter—July 15, 2014, Board Meeting-Item 10: Emergency Water Conservation Regulations

Dear Ms. Townsend:

I write on behalf of the California Association of Mutual Water Companies ("CAMWC") regarding our concerns with the current draft of the Emergency Water Conservation Regulations ("Emergency Regulations") that the SWRCB released for public review on July 10, 2014. The Emergency Regulations are currently on the agenda for SWRCB approval at the July 15 Meeting—yielding less than two business days for the review of regulatory materials and the preparation of written comments.¹ I also write to provide recommendations that could potentially address the concerns of our member mutual water companies, many of whom—though not Urban Water Suppliers as defined in Water Code 10617—operate public water systems which supply water for both domestic and agricultural purposes to their shareholders.

CAMWC was founded in 2013 to give voice to mutual water companies in California. Mutual Water Companies serve approximately 1.3 million residents in urban and rural areas and for many people our members provide the only source of affordable water. CAMWC enjoys the

¹ CAMWC understands the gravity of the crisis facing California's water supply, and the need for expedient action to ensure available supplies can be sustained through further dry years. That stated, a longer public review process than two business days would likely have been beneficial to crafting of regulatory language that achieves desired policy objectives while avoiding the possible unintended consequences described herein.

² Section X.2(e)(2) of the Emergency Regulations is ambiguously drafted. It can be read to suggest that the "other mandatory conservation measure" option only requires a supplier to demonstrate total outdoor use in 2014 will not exceed total outdoor use in 2013 through implementation of "other mandatory conservation measures." If that is the intent of the SWRCB, then this should be stated clearly. However, if the intent is to mandate small public water suppliers to achieve savings equivalent to that which would be anticipated with a cap on irrigation of two days per week—then again there is ambiguity. A supplier with large agricultural customers that take daily deliveries is not likely to know how much water it would

active support of 120 mutual water companies statewide. In addition to advocacy on key issues and legislation, CAMWC provides quarterly workshops on organizational and management issues as well as drought and water quality regulations.

The Emergency Regulations, if applied broadly to small domestic water suppliers and the businesses that rely on them, have the potential to cause great harm. Notwithstanding that many small systems have already taken steps to issue drought management rules to customers, under Proposed Emergency Regulation § X.2 (e), small water suppliers may be unable to provide sufficient water for their customers to continue operating after the Emergency Regulations take effect—while large water agencies with urban water management plans (who are *not required to impose any specific limitations* on outdoor irrigation) may not ultimately be required to reduce their water usage at all. This does not seem fair—or particularly effective—since presumably mandatory cutbacks for large water agencies could yield far greater total reductions in water use statewide.

Unintended Consequences for Small Water Suppliers:

Under the Proposed Emergency Regulations, small water public water systems including many mutual water companies, will be forced to either: 1) cut back outdoor irrigation to no more than two days per week; or 2) implement “other mandatory water conservation measures” that achieve the same amount of total water use reduction as that which would accompany the two day per week limitation.² While impacts to residential customers would seemingly be manageable with outdoor irrigation two days a week, small public water suppliers also deliver water to farms and businesses *that require daily deliveries* of water for irrigation (e.g., crops, golf courses, gardens, etc.) While *large agencies* with drought contingency plans could theoretically *continue to deliver water to their customers seven days a week, under the Emergency Regulations* (Section X.2 (b) only requires undefined “mandatory restrictions on

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outdoor irrigation”), small public water suppliers appear forced to deliver all of the water their customers require to sustain their livelihoods in two days.

Thus, a mutual water company that operates a public water system, as many mutuals do, would seemingly be required to make all of its agricultural deliveries, which might be 90% of its total demand, during only two days—when previously deliveries were distributed over the course of an entire week. The results could be dire. Crops that must be watered daily would likely die; golf courses, ball fields and gardens could be forced out of business or resort to overwatering on the two days authorized so as to keep plants alive during the three following days where irrigation is forbidden. Meanwhile, small suppliers with large agricultural/institutional customers might have to entirely redesign their water distribution infrastructure, not to mention the excessive stress this will cause on water mains, booster pumps and power costs for keeping up with demand on the designated two days. All of these adverse effects can be anticipated without any guarantee that water will actually be saved.

A better course where a drought contingency plan/conservation policy is not authorized may be for the SWRCB to select a reduction target (applied per capita or based upon total water use), and then allow the small supplier, in consultation with its customers, to determine the way to best reach the target selected. In this manner, the supplier, much like its larger counterparts with drought contingency plans, can tailor its efforts to reduce water use in an effective and fair manner that accounts for the site specific conditions of end users, and the particular constraints of each supplier’s water delivery system.

Clarify Applicability of Emergency Regulations:

Much of the concern raised above may be the result of the lack of clarity on the applicability of the Emergency Regulations. Water Code § 350 does not define which water suppliers are “distributors” of a “public water supply,” so as to trigger a compliance obligation. Water Code § 350 simply *authorizes* (but does not require) the board of a public water supplier to declare a water shortage emergency and then authorizes certain actions as a result of such declaration. The public process for making a declaration under Water Code § 350 includes, among other things, a public hearing, newspaper notice of seven days, opportunity to protest, and opportunity for judicial review, *see* Water Code §§ 351-358. These safeguards, which public water suppliers still must follow, have been omitted from consideration in the Emergency Rulemaking—creating a potential dilemma for small water suppliers who may be forced to choose between non-compliance with the Water Code or non-compliance with the Emergency Regulations. Since Water Code § 350 does not specify which suppliers under 3,000 service connections are required to comply with the Emergency Regulations, what is the trigger for compliance? Is it any water supplier that operates a “public water system” as defined in Health and Safety Code § 116275 (h) (25 or more connections), or is there a different threshold? Do these Emergency Regulations targeting “urban” systems apply to agricultural deliveries at all, or

is it only those agricultural deliveries that are conveyed through a public water system? What of agricultural deliveries that are not potable but which are derived from the same wells as a separate supply that is subsequently treated? Significant clarification is needed.

Recommendations:

Prior to approving the Emergency Regulations, CAMWC recommends that the SWRCB:

1. Clarify which small water suppliers are actually subject to the Emergency Regulations. The current reference to Water Code § 350, which contains no definition of “distributor of a public water supply,” the regulatory trigger under Section X.2(e), raises more questions than it answers.
2. Require the same measurable water efficiency targets for large and small water suppliers alike. It is not fair (or effective policy) to allow large waters suppliers to implement what could amount to minor restrictions on outdoor water use, via implementing the lowest non-voluntary level of a drought contingency plan, while essentially imposing on small suppliers with agricultural customers what could amount, in some cases, to large reductions that may put small suppliers and their customers out of business.
3. Allow small water suppliers to implement their own drought contingency plans/water conservation policies where the governing body of the supplier has previously adopted such an enforceable policy, and the policy includes the ability to enforce mandatory cutbacks on total water use. The supplier could be required to document its adoption and implementation of such an enforceable plan/policy as a condition of availing itself of this option.

Thank you for considering CAMWC’s comments. If you have any questions, please feel free to contact me at 714 449-3397. Very truly yours,

CALIFORNIA ASSOCIATION OF
MUTUAL WATER COMPANIES



Adan Ortega, Executive Director

cc: Board of Directors, CAMWC
Members, CAMWC