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**VIA EMAIL TO [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)**

July 14, 2014

Felicia Marcus, Chair  
State Water Resource Control Board  
1001 I Street  
Sacramento, CA 95814



Re: July 15-16, 2014 Board Meeting  
Agenda Item #10: Consideration of a proposed Resolution for drought-related Emergency Regulations pertaining to urban water conservation

Dear Chair Marcus and Board Members:

Modesto Irrigation District (“MID”) appreciates the opportunity to comment on the State Water Resource Control Board’s (“Board”) proposed Resolution for drought-related Emergency Regulations pertaining to urban water conservation (“Proposed Regulations”). While MID supports the Board’s efforts to promote water conservation during this drought by limiting urban outdoor irrigation practices, we are concerned that additional clarification is required to ensure the regulations can be effectively enforced.

As brief background, MID is a special district established in 1887 under the California Irrigation Law to serve irrigation water to approximately 60,000 acres of land in Stanislaus County. MID has been participating in a conjunctive use program with the City of Modesto (“City”) since 1994. As part of the conjunctive use program, MID owns and operates a 30 mgd water treatment plant where MID treats its surface water for wholesale to the City to augment the City’s groundwater supplies. The City, in turn, serves approximately 265,000 municipal and industrial retail customers within its potable water service area that is within MID’s irrigation service territory. MID’s wholesaler relationship with the City has been governed by the Amended and Restated Treatment and Delivery Agreement since 2005 (“ARTDA”).

MID supports the Board’s proposed action, if the Proposed Regulations are modified as described below.

The Proposed Regulation should be modified to clearly identify the agencies that have enforcement responsibility with respect to violations of the new water use prohibitions. The Proposed Regulations define an “infraction” and authorize “punishment by a fine” for a “violation.” Yet the Proposed Regulation is silent as to how the infraction will be cited, by whom, with what appeal/review process, and with what collection procedures. Moreover, the Proposed Regulation does not specify what the collecting agency should do with the fine proceeds. Because most water agencies lack civil penalty enforcement capability (“police power”), this aspect of the Proposed

Regulation clearly requires more practical consideration by the Board. MID recommends the most practical course of action, which also seems to be implied by the Proposed Regulation – that retail agencies will enforce the Proposed Regulation against the retail customers.

In that same vein, the Proposed Regulations cannot apply to parties when it is impossible or redundant for a party to comply with them. MID is included in the definition of “urban water supplier” (WC§ 10617) based on its supplying treated water to the City’s water enterprise. However, the provisions of Section X.2 should not apply to water wholesalers because, as in MID’s case, water wholesalers do not have the authority (legal or contractual) to effectuate the Proposed Regulations.

As stated above, MID’s relationship with the City is strictly governed by the ARTDA, which does not provide MID with any authority to direct the City or the City’s retail customers as contemplated by the Proposed Regulations. Also, a retail service territory is established through, and governed by, a complex web of statutes, regulations, case law and contracts that resist encroachment or interference with the retail agency’s relationship with its customers. In light of these existing considerations and an inability to modify them in a manner timely enough to effectuate the Proposed Regulations, the Board should remove water wholesalers from the obligations of Section X.2.

Removing water wholesalers from the obligations of Section X.2 does not diminish or defeat the Board’s purpose in enacting the Proposed Regulations.

In fact, MID and the City have developed a Joint Urban Water Management Plan (“JUWMP”), including Appendix K: Water Shortage Contingency. The JUWMP is available at <http://www.mid.org/water/uwmp/Appendices/AppendixK-WaterShortageContingency.pdf>. Under the JUWMP, the City has strictly limited outdoor watering, prohibited car washing except with a shut-off nozzle, restricted hardscape water use, and adopted other water conservation measures generally in line with the Proposed Regulation. The City adopted its Drought Contingency Plan via section 11-1.14 of the Modesto Municipal Code, which states that “these (drought contingency) provisions shall apply to all persons using water in the City.” Pursuant to the Board’s Proposed Regulation, the City is the natural entity to carry out the “Mandatory Actions by Water Suppliers” and, in fact, has been and is doing so. It would be redundant for the Board to require water wholesalers to create the necessary legal relationships and internal policies and procedures to accomplish what the retail agencies are already accomplishing.

It should be noted, however, that MID has already imposed severe restrictions on irrigation water use within its service area in light of the limited water resources available on account of the drought conditions.<sup>1</sup> However, such irrigation restrictions are aside from the urban outdoor water use restrictions contemplated by the Proposed Regulation.

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<sup>1</sup> V. Kincaid (SJTA) email to C. Trgovcich (SWRCB) dated March 3, 2014; and V. Kincaid (SJTA) email and memo to C. Trgovcich (SWRCB) dated April 29, 2014.

As noted above, MID does not anticipate preparing and filing monthly reports called for in the Proposed Regulation. Nonetheless, MID respectfully requests that the Board reconsider the reporting requirements in Section X.2(d) in light of the burden, uncertainty and usefulness of such reports. The Emergency Regulation Digest states, “[t]he maximum amount of time to prepare and submit the water production data is estimated to be 4 hours per urban water supplier per month, and that the task can be completed at a cost of ‘\$65 per hour.’” There is no basis for either estimate. So far as MID is aware, the “forms provided by the Board” for the monthly reports have not yet been released for review, so it is impossible to estimate the burden associated with compiling and reporting the information required by the Proposed Regulation. However, in light of the Board’s history of demanding information in its preferred “one size fits all” format, it is likely that at least some agencies required to submit such reports will need to gather, cross-check and verify information in order to accurately report its activities. Without knowing how such reports may be used or misused it is also likely that most agencies will require significant internal review and approval of the reports prior to filing.

Beyond the unknown burden of preparing monthly reports, there is no recognition within the Proposed Regulation of the significant burden for the Board itself to receive, file, review or otherwise use the estimated 440 reports to be filed each month. Although MID recognizes that the data compiled in the proposed monthly reports could be valuable for retrospective review and future planning, there is no indication that the Board is prepared to review much less compile and publish the monthly data to synthesize into real-time decision making. Unless the Board is committed to such timely use, there is no justification for monthly reporting. The Proposed Regulations should be modified to require any periodic reporting of water production and per capita use to be consistent with the requesting party’s intent to actually use such data.

MID is a member of the San Joaquin Tributary Authorities (“SJTA”) and the California Municipal Utilities Association (“CMUA”). MID joins in and supports the SJTA comment and the CMUA comment submitted for this Agenda Item #10.

MID appreciates the opportunity to comment and respectfully requests the Board to modify the Proposed Regulations so they do not apply to parties, like water wholesalers, where it would be impossible or redundant for them to comply.