



January 28, 2016

Chair Felicia Marcus and Board Members
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Sent via electronic mail to: Kathy.Frevert@waterboards.ca.gov



RE: Proposed Regulatory Framework for Extended Emergency Regulation for Urban Water Conservation

Dear Chair Marcus and Board Members:

Thank you for the opportunity to comment on the proposed emergency conservation regulations. San Diego Coastkeeper (Coastkeeper) is a non-profit organization working to protect and restore the San Diego region's fishable, swimmable, drinkable waters.

We appreciate the work done by the State Water Board members and staff in adopting the emergency conservation regulations in the face of our state's worst drought on record. Our opposition to credits, adjustments and exemptions is well-documented in letters submitted on our behalf through the California Coastkeeper Alliance, NRDC, and the Pacific Institute, as well as in presentations before the Board. We write today to highlight a particular issue with respect to the credits as they apply to urban water suppliers in San Diego. We respectfully request that the Board clarify that a water agency is not eligible to receive credits under the emergency regulations until and unless desalinated water is actually part of an individual water agency's portfolio.

Our organization was one of the first to offer comment and support for emergency conservation regulations back in July of 2014. In our brief letter we supported the application of the regulations to urban water wholesalers, stating that, "wholesalers can play an important role in shaping local water use and supply, and can offer incentives-based and other conservation programs on a region-wide basis that individual water suppliers may be unable to offer due to their limited resources."¹ In the end, regional wholesalers were excluded from the definition of urban water supplier after regional wholesalers, including the San Diego County Water Authority, suggested, "that the mandatory water conservation requirements specifically included in the proposed Section X.2(b) not apply to wholesale agencies."² Thus, a bright line was drawn in the emergency regulations between regional wholesalers, who are not covered by these regulations, and urban water supplies, who are covered.

¹ San Diego Coastkeeper's comments on Emergency Drought Regulations, July 14, 2014, found at: http://www.waterboards.ca.gov/board_info/agendas/2014/jul/07151614_10cmts/docs/matt_omalley.pdf

² San Diego County Water Authority comments on Emergency Drought Regulations, July 14, 2014, found at: http://www.waterboards.ca.gov/board_info/agendas/2014/jul/07151614_10cmts/docs/ken_weinberg.pdf

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We expect that many – if not all – water agencies in San Diego will apply for credits based on desalinated water being produced at Poseidon’s Carlsbad facility. However, the plain language of the emergency regulations can apply only to individual urban water suppliers – such as the City of San Diego’s Public Utilities Department or the Santa Fe Irrigation District - and not to regional water wholesalers such as the San Diego County Water Authority. This distinction is important with regard to the emergency regulations because if we assume credit will be sought for desalination, the regulations require that an urban water supplier must supply at least 4 percent of its total potable water production from the new local source in order to qualify for the credit. It stands to reason that this determination would be made on an individual supplier-by-supplier basis.

We also expect that the City of San Diego, as its own urban water supplier, will seek credit for desalinated water. It is our understanding, however, that the City of San Diego does not purchase, use, or sell to its customers water produced at the Carlsbad desalination facility. The City of SD purchases, sells, and uses only raw water due mainly to the fact that it owns and maintains its own water treatment facilities, and the City of San Diego does not, to our knowledge, purchase treated water from the County Water Authority. As desalinated water is treated water, it is also our understanding that the City of San Diego does not purchase, use, or sell to its customers a single drop of water supplied by the Carlsbad desalination facility. Assuming that is true, the urban water supplier that is the City of San Diego purchases, uses, and sells to its customers as much desalinated water produced by the Carlsbad desalination facility as do water agencies in San Francisco and Los Angeles - none. Since the regulations only apply to urban water supplies and not wholesalers, it is clear that the City of San Diego and other agencies who do not purchase, use, or sell to their customers water from a new supply would not be eligible for credits. We respectfully urge the Board to continue the application of these regulations to individual urban water suppliers and their actual water supplies.

Thank you for the opportunity to comment on the emergency conservation regulations. Please feel free to contact me with any questions or for additional feedback. We look forward to continuing working with the Board toward development of a meaningful and effective approach to water supply and conservation in our region.

Sincerely,

A handwritten signature in black ink, appearing to read "M. O'Malley", with a stylized flourish at the end.

Matt O'Malley
Legal & Policy Director
San Diego Coastkeeper