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December 31, 2015

Ms. Felicia Marcus, Chair, and
Honorable Members of the State Water Resources Control Board
1001 "I" Street, 25th Floor
Sacramento, CA 95814

Via E-mail to Kathy Frevert, SWRCB

Subject: Comments on Proposed Regulatory Framework

Dear Ms. Marcus and Honorable Members of the State Water Resources Control Bd;

As always, we appreciate the opportunity to make timely comments on the currently proposed Framework for the Extended Regulations ("Framework") for Urban Water Conservation. We also appreciate the effort by the State Board and its staff to make this ongoing regulatory process as open and inclusive as practically possible. Finally, we much appreciate the personal time which has been taken by the individual State Board Members and staff to meet with members of the water community on these issues.

After review, it is clear that the proposed Framework reflects the fact that the State Board staff has heard and considered the comments from the water community. It is also clear that the comments from the water community have been mixed with an abundance of caution and conservatism about what the next several months will bring in terms of an improved water supply. It is in that context that we offer the following comments to be considered in the formulation of the draft Extended Regulations:

I. April 1, 2016 and Beyond

Prior to providing detailed comments on the contents of the December 21, 2015 document, we would like to provide comments concerning an issue on which the Framework is silent, and that is: *what will be done if the next several months produce normal or above normal precipitation and snowpack.*

It seems prudent to address this eventuality given the fact it was confirmed at the December 7, 2015 workshop that the current Emergency Regulation is only about the drought, and not about long-term water use efficiency standards. Further, the Governor's recent Executive Order clearly acknowledged the need for the SWRCB to evaluate water supply conditions at the end of January as it considers extension of the Emergency Regulations. With the predictions for a strong El Niño, and the snow water content levels above normal as this is being written, it would seem timely to establish a water supply data driven protocol in the extended regulation which further adjusts the

overall conservation requirement going forward, based upon recognized water supply availability standards.

Finally, if it is desired to use our experiences over the last several months to ultimately perfect an effective regulatory mechanism to deal with this and future droughts, then there needs to be established a predictable way into and then back out of a drought response scenario that has a basis in actual water supply conditions.

(Note: While the following proposal is focused on unwinding from the current drought response scenario, a similar stepped approach could be utilized for transitioning from normal water supplies into a drought response scenario. There are several existing and long-established water supply management plans which could serve as models for a comprehensive protocol.)

Given the current conditions and circumstances, we recommend that the following water supply data driven drought response protocol be considered for inclusion by State Water Board in any Extended Regulation:

On February 1, 2016:

If the:

- CDEC Measurement of Snow Water Content is at or above normal;
- DWR Run-off projections are at or above normal; and
- Based upon the above parameters, DWR estimates a 75% chance of 3 MAF or more in SWP Table "A" Deliveries (which is an indication of the high level of confidence that reservoirs across the state will be full by the end of the runoff season).

Then the SWRCB:

- Reduces the mandatory 25% state wide conservation order to 10%, effective May 1, 2016; and
- Maintains statewide mandatory water waste restrictions (adopted July 15, 2014).

Note: This scenario assumes regional and/or local mandatory conservation levels would be sustained by the appropriate agency(ies) at necessary levels based upon regional or local supply conditions.

If these conditions do not exist by February 1, 2016, then existing drought response measures remain static, with no changes beyond what is implemented with adoption of

the Extended Regulation. Water supply conditions are then re-examined on April 1, 2016. If...

On April 1, 2016:

The:

- CDEC Measurement of Snow Water Content is at or above normal;
- DWR Run-off projections are at or above normal;
- Storage levels in SWP Reservoirs are at or above seasonal normal; and
- Based upon the above parameters, DWR SWP Table "A" deliveries are at a long term average of 2.25 MAF (DWR will have all the water supply data needed to make the final contract allocations for the coming water year)

Then the SWRCB:

- Reduces the mandatory 25% state wide conservation order to 10% effective May 1, 2016; and
- Maintains statewide mandatory water waste restrictions (adopted July 15, 2014).

Note: This scenario assumes regional and/or local mandatory conservation levels would be sustained by the appropriate agency(ies) at necessary levels based upon regional or local supply conditions.

Or if...

On April 1, 2016:

The:

- DWR, based upon available water supply data, establishes SWP Table A deliveries equal to or greater than 3.0 MAF.

Then the SWRCB:

- Lifts the mandatory 25% state wide conservation order effective May 1, 2016;
- Maintains statewide mandatory water waste restrictions (adopted July 15, 2014);

- Governor's voluntary call for conservation is resumed without a specific percentage.

Note: This scenario assumes regional and/or local mandatory conservation levels would be sustained by the appropriate agency(ies) at necessary levels based upon regional or local supply conditions.

It is also assumed that between April 2016 and January 2017, the SWRCB will monitor pertinent water supply data and consult with DWR on current and projected water supply conditions for the water year beginning in April, 2017.

April 1, 2017 - Based upon recognized water supply availability standards, the SWRCB determines that:

- Maintaining mandatory water waste restrictions (adopted July 5, 2014) and the Governor's call for voluntary water conservation are sufficient measures; or
- SWRCB would start the protocol of resuming an appropriate level of Mandatory Water Conservation orders effective June 1, 2017.

Finally, short of approving this or another specific protocol, language should be formally adopted to require the State Water Board to revisit the Extended Regulations no later than April 1, 2016 to ensure that there is still a data-driven nexus between drought conditions and the required reduction mandate and supply conditions both statewide and regionally. Further, the SWRCB should commit to then implement the appropriate adjustment or rescission of the mandated reductions.

As a final thought, having managed retail water agencies through four drought responses (76'-77', 90'91', 2009'-2011,' and 2012), the importance of maintaining credibility with residents and businesses by recognizing actual water supply conditions when asking for customers to reduce water use in response to drought conditions is extremely critical. If we are experiencing a very wet year the regulations need to recognize that or we will lose credibility with the public we serve.

II. Comments on the Proposed Extended Regulation Framework

We would now like to comment on aspects for the December 21, 2015 Extended Regulatory Framework. These comments are provided in the context advancing the development of, as stated above, an effective regulatory mechanism to rationally deal with this and future droughts. Further, these comments are provided with the conviction that how the SWRCB deals with regulating short-term drought scenarios will affect the critical decisions on whether or not to make long-term investments in regional and local supplies; the very supply investment California will need to deal with the next drought.

▪Adjustments to the Conservation Requirements –

We certainly support the concept that the individual agency conservation mandates be adjusted for climate, growth and the development of drought resistant supplies. However, we also offer the following comments for modification to be reflected in the draft regulations:

1. Adjustments for weather and growth should be considered separately from the adjustment for drought resilient supply development, which is reflective of overt and positive action in conformance with the state policy and the Governor's Water Action Plan.

Further, in the proposed framework, adjustments for climate, growth, and development of drought resilient supplies are all weighted equally. While growth and climate are something that is circumstantial, development of drought resilient local supplies reflect a region's or agency's commitment to and magnitude of investment in alternative supply development in pursuit of the state's overall water supply resiliency. It would make sense that climate and growth would be weighted less or counted separately from drought resilient supply development. In effect, a region that happened to have a hotter climate or population growth would be regarded equally to a region that had actively invested billions in drought resistant water supplies; a region like San Diego.

2. The 4 percentage point conservation reduction contained in the proposed Supply Credit is helpful, but does not appropriately acknowledge the investment in drought resilient supplies that regions have made; nor does it reflect the importance and full value of these supplies to California's economy. Further, it sets a very troublesome precedent for future state actions during drought. Such a precedent will likely deter local agencies from making future investments in drought resilient supplies that they will not benefit from during imported water shortages.
3. The proposed Supply Credit excludes drought-resilient sources of supply such as desalinated brackish groundwater and conserved water from long-term transfers. These supplies should be included as they are reliable during sustained shortages which can certainly be demonstrated during the next 270 day period contemplated in an extended Emergency Regulation.
4. To equitably reflect the investments communities have made in drought-resilient supplies, the Emergency Regulations should provide credit for supplies developed prior to 2013. Pre-2013 supplies have better prepared California for this drought and future droughts by helping to reduce, forestall, or in some cases eliminate shortage impacts. In addition, these early investments in supplies reflect billions of local ratepayer investments. Within the Metropolitan Water District's service area alone, literally hundreds of millions of dollars in financial incentives have been paid to local agencies producing recycled water and

brackish groundwater over the last 20+ years to reduce demand on imported water sources like the State Water Project to improve the water supply reliability of 18 million Californians during droughts and imported water shortages. As noted previously, these investments are consistent with the Governor's Water Action Plan.

5. Imposing an overall reduction cap on credits and adjustments would negate the ability to fully utilize those credits and adjustments that are intended to recognize supply conditions, local characteristics, and investments in drought resilient supplies that are unique to each community.

Further, an overall reduction cap for a region that received an adjustment for climate and growth but had also invested significantly in local potable supplies (like many areas of urban Southern California and specifically in San Diego with desal representing 8% - 10% of its supply) would, in effect, get no credit for its other investments in supply reliability. Again, as pointed out above, this precedent could inhibit future local investments by ratepayers in supplies that might ultimately provide no dry year benefit.

6. The conservation reduction should be directly linked to urban water suppliers' drought resilient supply investments. For example, the urban water suppliers in San Diego County should receive a benefit commensurate with the Carlsbad Desalination Project supplying up to 10% of the total potable water demand for the San Diego region.

Modification of Commercial Agricultural Exemption Requirements

In response to input from the environmental community, State Board staff has proposed that the Commercial Agricultural Exemption provisions be modified to require a minimum of \$1,000 a year in transactions related to the commercial agricultural crop. To our understanding, there has been no plausible reason or data submitted by the environmental stakeholders to document or even indicate misuse or abuse of the current commercial agricultural exemption. A few aerial photos of large homes with swimming pools surrounded by a few citrus trees does not document abuse or misuse of the exemption and is certainly not the basis for a policy change.

The \$1,000 threshold (or any threshold) is arbitrary, is not the state standard; one which wisely contains no dollar threshold. The question must be asked: Is a crop worth \$999.00 any less a commercial crop than one worth \$1,001.00? Finally, an arbitrary threshold ignores the reality that crop volumes and prices vary, and due to no fault or overt act of the grower, the value in a given year could fall below the threshold.

We strongly urge that the current provisions for the Commercial Agricultural Exemption should be retained in the extended regulation.

III. Conclusion

Again, we want to thank you for the opportunity to comment on the Proposed Regulatory Framework for Extended Emergency Regulation for Urban Water Conservation. Please feel free to contact me at 760-735-4515 or garant@valleycenterwater.org if you have any questions or require clarification to our comments.

Sincerely;

A handwritten signature in blue ink, appearing to read 'Gary Arant', is written over the printed name.

Gary Arant
General Manager