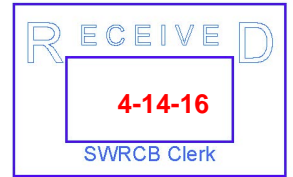




NEVADA IRRIGATION DISTRICT

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April 14, 2016



VIA ELECTRONIC MAIL

Jeanine Townsend
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State Water Resources Control Board
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commentletters@waterboards.ca.gov

Re: Comment Letter – Urban Water Conservation Workshop

Dear Chair Marcus and Members of the State Board:

Nevada Irrigation District (NID) appreciates this opportunity to comment on the potential modification of the mandatory urban water conservation emergency regulations. NID previously commented on the mandatory urban conservation emergency regulations on January 27, 2016, and on December 7, May 4, April 22, and April 13, 2015. The comments previously submitted remain relevant, and are incorporated herein by this reference.

As of March 31, total District storage was at 134% of average and nearly all District reservoirs are full and spilling (and those that are not currently full are expected to fill with snowmelt runoff). There is no drought emergency affecting NID that would necessitate draconian conservation targets. If NID's constituents know that their reservoirs are full, how can the District or the state possibly explain and justify the need for mandatory 33% reductions in use? Imposing obviously unnecessary "emergency" restrictions when the District is not experiencing drought conditions is arbitrary and capricious and will do nothing but confuse and anger ratepayers. This would cause a credibility problem for the District and the state, potentially hamstringing future conservation efforts at times when extreme cutbacks are actually needed.

The blanket imposition of “emergency” regulations in areas that are demonstrably not experiencing an emergency, preventing the exercise and use of vested usufructory water rights, could amount to an unjustified and uncompensated taking by the state. Although the regulations refer to the doctrine of waste and unreasonable use, which the State Water Board believes can prevent takings liability, there is nothing wasteful or unreasonable about using water for beneficial purposes where there is a full supply of water and no other legal user would benefit from extended, unnecessary conservation mandates. Any water that NID’s customers conserve under the current emergency regulation will remain in NID’s storage reservoirs and will not be available for use by any other legal users of water.

ND’s response to the questions posed in the recent Workshop Notice are below. Generally, NID suggests that urban water suppliers that have received normal precipitation and whose projected supplies are sufficient to meet normal demands should be exempted from the mandatory percentage conservation goals. The end-user conservation requirements should remain in place statewide until the emergency regulations expire.

1. **What elements of the existing February 2016 Emergency Regulation, if any, should be modified and how so?**

§ 863

(a)

(5) The drought conditions that formed the basis of the Governor’s emergency proclamations continue to exist in some portions of the state; and

(6) The drought conditions in some portions of the state may will likely continue for the foreseeable future and additional action by both the State Water Resources Control Board and local water suppliers may will likely be necessary in such areas to prevent waste and unreasonable use of water and to further promote conservation.

§ 864

(a) ~~To prevent the waste and unreasonable use of water and to promote water conservation, each of the following actions is prohibited, except where necessary to address an immediate health and safety need or to comply with a term or condition in a permit issued by a state or federal agency:~~

. . . .

- (e) (1) ~~To prevent the waste and unreasonable use of water and to promote water conservation, any homeowners' association or community service organization or similar entity is prohibited from:~~

.....

§ 865

- (a) As used in this section:

.....

(3) "Total potable water production" means all potable water that enters into a water supplier's distribution system, excluding water placed into storage and not withdrawn for use during the reporting period, or water exported outside the supplier's service area.

... (b) In furtherance of the promotion of water conservation each urban water supplier shall:

.....

(2) Prepare and submit to the State Water Resources Control Board by the 15th of each month a monitoring report on forms provided by the Board. The monitoring report shall include the amount of potable water the urban water supplier produced, including water provided by a wholesaler, in the preceding calendar month and shall compare that amount to the amount produced in the same calendar month in 2013. The monitoring report shall specify the population served by the urban water supplier, the percentage of water produced that is used for the residential sector, descriptive statistics on water conservation compliance and enforcement efforts, the number of days that outdoor irrigation is allowed, and monthly commercial, industrial and institutional sector use. The monitoring report shall also estimate the gallons of water per person per day used by the residential customers it serves. This subdivision (b)(2) shall not apply to any urban water supplier that qualifies under subdivision (c)(2), below.

- (c) (1) ~~To prevent the waste and unreasonable use of water and to meet the requirements of the Governor's November 13, 2015 Executive Order, each urban water supplier shall reduce its total potable water production by the percentage identified as its conservation standard in this subdivision. Each urban water supplier's conservation standard considers its service area's relative per capita water usage.~~

(2) (A) Each urban water supplier whose source of supply does not include groundwater or water imported from outside the hydrologic region in which the water supplier is located, and that has a minimum of four years' reserved supply available, may ~~submit to the Executive Director for approval a request that~~, in lieu of the reduction that would otherwise be

required under paragraphs (3) through (10), ~~the urban water supplier shall elect to~~ reduce its total potable water production by 4 percent for each month as compared to the amount used in the same month in 2013. Any such request shall be accompanied by information showing that the supplier's sources of supply do not include groundwater or water imported from outside the hydrologic region and that the supplier has a minimum of four years' reserved supply available.

(B) Each urban water supplier whose source watershed(s) have received normal amounts of precipitation during the 2015 / 2016 winter and whose projected water supply for 2016 exceeds normal demand levels may submit to the Executive Director for approval a request for exemption from the reduction that would otherwise be required under paragraphs (3) through (10) of this subdivision (c). Any such request shall be accompanied by information showing that the supplier's source watershed(s) have received at least normal precipitation during the 2015 / 2016 winter and that the supplier's projected supply for 2016 is sufficient to supply normal demands.

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- (g) (1) ~~To prevent waste and unreasonable use of water and to promote water conservation,~~ each distributor of a public water supply that is not an urban water supplier shall take one or more of the following actions:

.....

2. How should the State Water Board account for regional differences in precipitation and lingering drought impacts, and what would be the methods of doing so?

The State Water Board should account for regional differences in precipitation and drought impacts by considering whether each urban water supplier's source watershed(s) have received normal precipitation and whether each urban water supplier's projected supply is sufficient to satisfy normal water demands.

3. To what extent should the State Water Board consider the reliability of urban water supplier supply portfolios in this emergency regulation?

The State Water Board should consider the reliability of urban water suppliers' supply portfolios to the extent such reliability analysis informs whether a supplier's projected supply is sufficient to satisfy normal water demands.

Conclusion

Nevada Irrigation District urges the State Water Board to exempt urban water suppliers from the mandatory conservation targets in 23 C.C.R. § 865(c)(3)-(10) if a supplier has received normal precipitation and has a projected supply to sufficient to meet all demands. The winter of 2015-2016 has created significant disparities between the supplies available to various urban water suppliers across the state, such that some urban water suppliers have full reservoirs and more-than-sufficient supplies, while others do not. It is not justifiable to require customers of urban water suppliers to comply with mandatory conservation standards that bear no relation to the supplier's water supply. Each supplier's unique supply portfolio must be considered in relation to the specific demands on its supply. This is best accomplished through local control over water management decisions. Mandatory conservation should be required only where supply shortfalls require it, and should be conducted at a local level. Where there is no supply shortfall, mandatory conservation should not be required.

Respectfully submitted,

NEVADA IRRIGATION DISTRICT



Remleh Scherzinger, P.E.
General Manager