



CITY OF SOUTH PASADENA

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April 13, 2015

VIA EMAIL Jessica.Bean@waterboards.ca.gov

Ms. Jessica Bean
State Water Resources Control Board
1001 I Street
Sacramento CA 95812-0100

Dear Ms. Bean:

The City of South Pasadena ("City") is pleased to submit the following comments on the State Water Resources Control Board's ("SWRCB") Proposed Regulatory Framework to implement the Governor's April 1, 2015 Executive Order, No. B-29-15, directing the SWRCB to impose regulations to achieve a statewide 25% reduction in potable urban water use. The City remains committed to reducing its water usage as part of its response to the continuing historic drought facing California. The proposed regulatory framework is a good step forward in responding to this drought.

However, the City is concerned that the proposed regulations appear to simultaneously place a greater conservation burden on those cities and urban water providers which have already demonstrated responsibility in the statewide need to conserve water, while rewarding those who have conserved little or even increased water consumption. Additionally, the City notes that it has submitted corrected water consumption data and anticipates will be assigned to a lower conservation "tier" determination.

The City appreciates this opportunity to provide comments on the proposed framework and looks forward to reviewing and commenting on the draft regulations once released.

I. Cities Should Be Credited With Water Use Reductions Already Achieved.

Governor Brown's order requires the SWRCB to impose restrictions intended to achieve a 25% reduction statewide in domestic water use since 2013. The proposed regulatory framework imposes a graduated tier of required reduction levels on urban water suppliers, ranging from 10% to 35%, depending on per capita water usage in September 2014, and imposes a 25% reduction on small water providers. The proposed regulatory framework does not appear to account for reductions already achieved as of February 2013, even though this data exists. This penalizes those retail water suppliers who have conserved the most and rewards those who have done the least (some of whom have even increased consumption). To illustrate this flaw, one need only compare two agencies within the same proposed "tier," here, the 25% tier:

- the City of Brawley has already reduced its total water consumption by 41% since 2013, but has a further conservation target of 25%, thus requiring that Brawley bear a net total conservation burden of 66%;
- Phelan Pinon Hills Community Service District has actually increased its water consumption by 6% since 2013, and with the same conservation target of 25%, its net total conservation burden is 19%.

The City proposes that the SWRCB clarify the draft framework to require a cumulative conservation standard on urban water providers, taking into account the amounts already conserved within the target years. Thus, agencies would have to meet a specified net conservation standard by 2016, relative to their use in 2013, measured monthly and at the end of February, 2016 as sought by the Governor. For example, South Pasadena has already achieved a reduction of 11% relative to 2013¹, thus its new target under the proposed tiers, using the correct data for the City as discussed below, would be **an additional reduction of 14% relative to 2013, for a total 25% reduction.**

Imposing a cumulative conservation standard on urban water providers is consistent with the Governor's order to achieve a statewide reduction in aggregate domestic water use since 2013 of 25%. His order did **not** require a 25% reduction on top of the reductions relative to 2013 already achieved by some providers.

Giving credit to the water providers who have already conserved some water will reward those efforts and incentivize further conservation. South Pasadena is serious about water conservation. Our small city of 26,000 employs a full-time water conservation analyst to assist residents in reducing water consumption. In the past twelve months, she has provided over a dozen water wise landscaping workshops focusing on turf removal, use of water wise plants and efficient irrigation; conducted fifty water audits at homes, businesses, schools and City facilities; and conducted over one hundred on-site, turf removal/water wise landscaping audits. Conservation education via PowerPoint presentations has been provided to schools, community groups and to City staff. Many cities, including South Pasadena, have imposed a number of water conservation restrictions over the last few years as the drought intensified. South Pasadena imposed a 10% conservation target as of August 20, 2014 and has already achieved an 11% reduction in its water usage relative to its use in 2013. Additionally, the City has implemented numerous technological and behavior restrictions, such as outdoor watering restrictions targeting time of day and number of days for irrigation and prohibiting irrigation run-off, a requirement to fix leaks within 24 hours of notification from the City's water department, and a comprehensive rebate program for turf removal accompanied with educational water-wise landscaping workshops, as well as incentives for replacement of inefficient appliance, in partnership with the Metropolitan Water District.² The City offers and has performed water audits for residential, commercial and institutional customers and distributes free low-flow showerheads and low-flow

¹ Cumulative conservation amount reported on SWRCB website at:

http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/docs/emergency_regulations/urban_water_supplier_tiers.pdf

² The City's Water Conservation website details these measures, and is itself part of the City's drought response efforts, providing tips to residents. <<http://www.ci.south-pasadena.ca.us/index.aspx?page=366>>

hose nozzles with auto shut-off, along with dozens of water conservation outreach flyers, articles, ads and newsletters to the community on an ongoing basis. Subjecting the City to additional conservation targets without accounting for the 11% reduction already achieved ignores these efforts and penalizes the City and its residents for having undertaken them.

A regulatory scheme which does not credit conservation already achieved since 2013 will reward users who have increased their consumption during this critical period of drought, as their mandatory "reduction" target is now reset at their higher consumption level. Sadly, this is exactly the strategy many users have vocally advanced—one should use more water in order to set their "base" as high as possible in anticipation of mandatory conservation efforts. These users should have their increased water use (negative conservation numbers) since 2013 added to their required conservation target. Good, sound public policy requires that retail water suppliers who have achieved consumption since 2013 receive appropriate credit and recognition for such efforts, while those who have increased consumption have the amount of increase added to their tier conservation requirement.

II. SWRCB Must Base its Proposed Regulatory Framework on Accurate Water Usage Data

The proposed regulatory framework divides providers into four reduction tiers based on residential per capita daily usage for September 2014. South Pasadena's listed R-GPCD for is 166.1 according to the SWRCB website June 2014 to February 2015 Urban Water Supplier Report. However, due to inadvertent error, South Pasadena incorrectly reported its R-GPCD data for September 2014. The correct R-GPCD for September 2014 for South Pasadena is 111.3, as demonstrated by the attached revised monitoring report. Thus, applying the proposed reduction tiers set forth in the draft regulatory framework, South Pasadena should be subject to a 25% reduction.

South Pasadena respectfully requests that the SWRCB confirm its appropriate assignment to the 25% tier. The proposed regulatory scheme must be based on accurate data and provide a meaningful opportunity for any agency to correct the data upon which its tier determination is made.

III. Conservation Tiers Should be Revised to Include a Lower Tier for Very Low Users and a Higher Tier for Water Wasters.

The nationwide average R-GPCD water usage is 88 gallons per day.³ The average R-GPCD in California for September 2014 varied by hydrologic region from 85 gallons per day in the San Francisco Bay region to 252 gallons per day in the Colorado River region. South Pasadena is in the South Coast region, which averaged 119 gallons per day according to the September 2014 snapshot. South Pasadena itself used less than the average for the South Coast region, using only 111.3 gallons per day for September 2014.

The proposed regulations impose mandatory reductions on all California water providers, even those with a R-GPCD of less than 55, a little more than half the national average, and 30 gallons per day lower than the lowest basin-wide average R-GPCD. This is inequitable. Cities

³ American Water Works Association, Water Use Statistics, <<http://www.drinktap.org/home/water-information/conservation/water-use-statistics.aspx>>.

and agencies with an R-GPCD of 55 or less are already more than 25% below the national average use. Conversely, other communities who use more than 400 or 500 gallons per day (10 times the lowest tier) should not be subject to the same mandatory reduction standard as communities which use around 100 gallons per day.

To combat these two problems, the City proposes that the SWRCB revise the regulations to expand the number of tiers from four to six. On the low end, there should be a zero reduction tier, solely for communities with 66 R-GPCD or less (25% less than the national average and 25% less than the average for the San Francisco hydrologic region, the lowest average user.) On the other end of the spectrum, providers with an R-GPCD higher than 400 gallons per day should be subject to a minimum conservation reduction of 45%. The tiers in between should be adjusted accordingly, moving the trigger for each tier upward slightly, reflecting the addition of a new lowest tier. These proposed modifications would be reasonable and more equitable (rewarding better conservation efforts), and still would enable the state to meet the Governor's average 25% reduction goal.

IV. Conservation Tiers Should Encourage Providers on the Cusp of a Lower Tier to Quickly Conserve Significantly In Return For Being Reclassified to that Lower Tier.

A City that is on the cusp of a lower tier should be offered the chance to move to a lower tier of required reductions, in return for rapid progress on increased conservation. If a provider is within 5 gallons per day of a lower tier of required reductions, then it should be allowed to move to that lower tier if it accomplishes 25% of its required additional reduction with a three month period (one quarter of the year). For example, South Pasadena's correct R-GPCD of 111.3 for September 2014 is only 1.3 gallons per day higher than the next lower tier of 20%. Having already conserved 11% relative to 2013, South Pasadena should only need an additional 14% conservation to reach the tier three goal of 25%. Under this proposal, if South Pasadena achieves 25% of the additional 14% required, i.e. a 3.5% reduction, within the first three months after the regulations are adopted in early May, then it would be placed in the next lowest tier and required to achieve a cumulative reduction of 20% by February 2016. This approach provides a powerful incentive for any agency similarly situated on the cusp to move quickly to implement conservation measures during the coming summer, when demand will be high and supplies stressed.

V. Proposed Regulations Should Clarify that Prohibition on Watering Turf in Medians Does Not Prohibit Watering Trees.

The Governor's order prohibits the use of potable water for watering turf in public medians. In the final regulations, the SWRCB should clarify that this prohibition does not extend to watering trees in public medians. Trees provide multiple public health benefits, take a number of years to grow, and should not be lost due to the drought.

VI. The Governor's Order and the Proposed Regulations Are Fundamentally Inadequate Because There Are No Mandatory Reductions or Other Regulations Required for Agricultural Users.

The Governor's order and the proposed regulatory framework do not impose any mandatory water use reduction targets on agricultural water use in California. Agricultural

production accounts for only 2% of California's gross state product⁴, yet uses 80% of the consumed potable water in the state.⁵ If all cities and other domestic use suppliers achieve the demanded 25% reduction in water use, this will only be a total reduction in statewide consumptive water use of 5%, because cities account for only 20% of consumptive water use. The same total reduction in consumptive water use can be achieved if agricultural users conserve only 6.25%. If agricultural users were subjected to the same 25% reduction imposed on cities, then an amount of water equal to the entire state's domestic use would be saved. Leaving this level of potential water saving on the table is simply unacceptable.

Imposing a conservation requirement on agricultural water use would not destroy the state's farm industry. Rather, the goals could be met by implementing more responsible irrigation methods, such as drip irrigation or shifting water use away from high-water use crops such as rice, cotton, or alfalfa. The use of flood irrigation in an arid climate during a severe drought should be restricted or prohibited, favoring more water efficient means of irrigation. The state has already mandated landscape irrigation restrictions on urban water users—the same should be mandated of agricultural users.

The SWRCB has the power to impose mandatory conservation restrictions on agricultural water users. All water rights in California, including riparian rights and pre-1914 appropriators' rights are subject to the constitutional reasonable use doctrine. Article X, section 2 of the California Constitution prohibits any water use that is unreasonable. The SWRCB has the power to take all appropriate actions to enforce this requirement.⁶ As the Court of Appeal recently stated in upholding regulations prohibiting use of water by any water right holder, regardless of water right type, for frost protection during certain seasons on the Russian River:

“It is now recognized that, since enactment of Article X, Section 2, ‘there can no longer be any property right in the unreasonable use of water.’”⁷

Given the historic nature of this drought, the time has come for the SWRCB to enact regulations imposing reasonable mandatory reductions on agricultural use.

VII. Conclusion

For the foregoing reasons, the City requests the Board revise its proposed regulatory framework to:

- Credit cities with conservation reductions already achieved and add increased water usage to those who have not conserved since 2013, to the tiered conservation targets ;

⁴ California's gross state product is about \$2.2 trillion, while agricultural sales total about \$45 billion, 2% of the gross state product. See Legislative Analyst's Office, CAL FACTS, December 2014, <<http://www.lao.ca.gov/reports/2014/calfacts/calfacts-2014.pdf>>.

⁵ Overall, 40% of California's water is used by agriculture, 10% by cities and other domestic users, and 50% is used for environmental uses, including flows in the northern wild and scenic rivers. Thus, 20% of the consumed water is used by cities while 80% of the consumed water is used by agriculture. See Public Policy Institute of California, PPIC Water Policy Center, California's Water, Water For Farms, April 2015, <http://www.ppic.org/content/pubs/report/R_415WPCBKR.pdf>.

⁶ Water Code, § 275.

⁷ *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463, 1482 [quoting *In re Waters of Long Valley Creek Stream System* (1979) 25 Cal.3d 339, 354].

- Use the correct data to determine tier placement and provide an opportunity for agencies to correct such data for tier placement;
- Include a zero reduction tier for communities with a residential per capita daily use less than 66 gallons per day;
- Include a 45% reduction tier for communities with a residential per capita daily use higher than 400 gallons per day;
- Allow a city within 5 gallons per day of a lower tier to move to the lower tier if it accomplishes 25% of its required reduction within the first three months after the regulations take effect;
- Clarify that median watering regulation does not prohibit watering trees in medians;
- Impose mandatory conservation restrictions on agricultural water users.

The City seeks these amendments to ensure that the proposed regulations are reasonable, feasible, and will accomplish the Governor's stated goal of a 25% statewide water use reduction. The City recognizes that this historic drought requires an aggressive response. It has already conserved 11% of water since 2013 and will work to achieve its cumulative goal of 25% conservation by February 2016, but wants to ensure that its efforts will be matched by appropriate efforts by other communities in the state and by the agricultural community as well, which uses the vast majority of the State's consumed water.

Sincerely,



Robert S. Joe
Mayor

Attachment

cc: Honorable Carol Liu, Senator, 25th District
Honorable Chris Holden, Assembly Member, 41st District
South Pasadena City Council
Sergio Gonzalez, City Manager
Teresa L. Highsmith, City Attorney



Applications > Public Water Systems > [Monitoring Report](#)

You have successfully navigated to the **Urban Water Supplier Reporting Tool**. Registration and login are required before having access to the reporting tool. If you have not registered, please click on [Register](#). If you have registered on the DRINC Portal but do not see the tool below, please click [Login](#) and log into the portal.

The Reporting Tool is designed to accept your **Monitoring Report** on the amount of potable water you have produced, including water provided by a wholesaler, in the preceding calendar month, and beginning in October, your estimate of the gallons of water per person per day used by your residential customers. Your report is required under emergency regulations adopted by the State Water Resources Control Board July 15th, 2014. For the complete text of these emergency regulations and the Resolution, please click [HERE](#).

Reporting is simple. Help is available to explain each question by clicking on the  icon.

- Select the water supplier from the list. If the supplier is not listed, please send a message to the [DRINC Administrator](#). An urban water supplier is defined as a water provider that produces 3000 acre-feet of water per year for urban consumption, or which has greater than 3000 services connections.
- Let us know the stage of water use restrictions imposed upon residential usage
- Select the month for which you are reporting
- Enter the total amount of potable water produced and/or purchased from a wholesaler for that month. This includes water used for all uses (industrial, residential, commercial, agricultural, and institutional). Next, enter your 2013 production figure for the same month. 2013 is the baseline figure being used to calculate your percent reduction.
- Select the reporting units of the total amount of water (G = gallons, CCF = 100 cubic feet, AF = acre-feet, MG = million gallons).
- Enter your percentage estimate on how much went for **residential use** including water used in landscape irrigation and any "qualifier" explanation that may impact on your total monthly production figure. You may also enter a non-revenue water estimate such as the amount that is lost due to system leakage.
- If a population value is blank or in error, enter the total number of residents to which you supply potable water for the reporting month. For guidance, please click [HERE](#).
- Beginning in October, please enter your calculated residential gallons-per-capita-day (R-GPCD) value for the month reported. For guidance, please click [HERE](#).
- We have optional questions that are not required but would provide useful information to the Board

If after submitting your report you realize there has been an error, just re-submit the report with the correct information; we take the most recently submitted report for our calculations. Upon submission, you will receive an email acknowledging receipt of your Monitoring Report. And you're done! Thank you and we'll see you next month...

The following are Monitoring Reports that you have submitted over the course of these emergency regulations. You may view the report by clicking the  icon to the left. We estimated your **GPCD** numbers based upon what you submitted for production, percentage residential, non-revenue water, etc., not the **R-GPCD** figure that you entered in the report. The **Delta** is the percentage change from last year. A  beside

your **R-GPCD** figure signifies that there is an apparent greater than 5% difference between what you submitted and the R-GPCD that we estimated in our calculations for that month. You may want to re-check your figures. Only you can view this table.

Please click [HERE](#) to view our Urban Water R-GPCD page.

Report Date	Supplier Name	Reporting Month	Population	Submitted R-GPCD	Calculated 2013 R-GPCD	Reporting Month R-GPCD	Delta (Reduction)
 Dec 15 2014 12:46PM	South Pasadena City of	11/2014	25899	115	102	93	9%
 Nov 13 2014 2:41PM	South Pasadena City of	10/2014	25899	130	134	122	9%
 Apr 10 2015 9:26AM	South Pasadena City of	09/2014	25899	111.3	129	111	14%
 Apr 10 2015 9:24AM	South Pasadena City of	08/2014	25899	135	148	135	9%
 Apr 10 2015 9:21AM	South Pasadena City of	07/2014	25899	144	155	145	6%
 Apr 10 2015 9:17AM	South Pasadena City of	06/2014	25899	129.7	132	129	2%
 Mar 18 2015 8:24AM	South Pasadena City of	02/2015	25899	81 	97	88	9%
 Feb 12 2015 10:53AM	South Pasadena City of	01/2015	25899	71	99	70	29%