



PARADISE IRRIGATION DISTRICT

6332 Clark Road, Paradise CA 95969 | Phone (530)877-4971 | Fax (530)876-0483

April 22, 2015

VIA ELECTRONIC MAIL

Jessica Bean
State Water Resources Control Board
I Street, 24th Floor
Sacramento, CA 95814
[Jessica.beam@waterboards.ca.gov](mailto:Jessica.bean@waterboards.ca.gov)

RE: Comment Letter - Mandatory Conservation Proposed Regulatory Framework

Dear Chair Marcus and Board Members:

Paradise Irrigation District appreciates the opportunity to provide comments on the State Water Resources Control Board's proposed emergency regulations concerning mandatory water conservation measures. The District previously submitted comments on April 13, 2015, to the SWRCB's draft regulatory framework. The SWRCB incorporated many of the District's comments and took a good first-step in the draft regulations by adding flexibility and in addressing the District's concerns.

The District encourages the SWRCB to make the following additional changes to the draft regulations:

- 1. The Regulations Should Not Imply that Failure to Achieve the Mandated Conservation Standard is Per Se Waste and Unreasonable Use; Paradise Irrigation District Recommends Striking All References to Waste and Unreasonable Use in the Regulations**

For nearly 90 years, the Constitutional prohibition on waste and unreasonable use has been applied on a fact-specific and case-by-case basis after opportunity to be heard and the presentation of evidence in an adjudicatory or quasi-adjudicatory setting. (E.g., *Tulare Irrigation Dist. v. Lindsay-Strathmore Irrigation. Dist.* (1935) 3 Cal.2d 489 (applying water for the purpose of drowning gophers not reasonable); *Joslin v. Marin Municipal Water Dist.* (1967) 67 Cal.2d 132 (use of water to transport sand and gravel down riverbed for later extraction not reasonable); *Imperial Irrigation Dist. v. SWRCB* (1990) 225 Cal.App.3d 548 (excessive canal spills, tail water, and seepage constituted waste of water.) Specific facts considered in such cases included, but were by no means limited to, the amounts of water needed for the users' beneficial uses, the relative importance of competing uses, the local scarcity of water resources, and local water use customs.

In contrast, the regulations engage in no such analysis and instead imply that failure to meet the applicable conservation tier will necessarily constitute waste and unreasonable use of water. What may be "wasteful" or "unreasonable" will depend on the applicable facts involved and each water supplier ought to be able to present its case for why it believes its water practices are efficient and reasonable, notwithstanding a possible failure to adhere to the SWRCB's conservation mandate. For example, a supplier in Tier 9 (36%) with wise water use requirements in place, relatively abundant stored surface water supplies, and operational projections that provide for adequate end of water year carryover storage should not be labeled as wasteful or unreasonable simply because it failed to achieve the mandated conservation level, despite its best efforts.

The District is deeply troubled with the SWRCB's recent trend to declare water uses and/or practices wasteful and unreasonable without undertaking the requisite case-by-case factual analysis. This trend appeared to start with the emergency

regulations on Mill, Deer, and Antelope Creeks where the SWRCB declared all diversions and uses (except for health and safety) automatically wasteful and unreasonable if such diversions interfered with the proscribed minimum instream flow or pulse flow regime. The current emergency urban conservation regulations are drafted in a similar manner where potential violators, despite best efforts, are branded as unreasonable water wasters.

The SWRCB can satisfy the Governor's April 1st Executive Order and the requisite conservation targets without referencing or improperly expanding the waste and unreasonable use doctrine. The regulations need not specifically refer to waste and unreasonable use for the SWRCB to have that tool available to it in the event of enforcement. The District urges the SWRCB to strike all references to waste and unreasonable use.

2. The Draft Regulations Ignore Past Conservation Successes and Make Conserved Water Partially Unavailable to the District's Customers

Paradise Irrigation District took seriously the Governor's January 17, 2014, call for a voluntary 20% reduction in water use. The District and its customers successfully reduced 2014 water use by 21% as compared to 2013 levels, exceeding the governor's request for voluntary 20% reductions. Unlike many other high-achieving suppliers, the District's conservation efforts result in additional water being left in its reservoirs. Yet, if left unchanged, the District's conserved water from 2014 plus additions to storage from precipitation would be partially unavailable to the District's customers in 2015 (i.e., the District in Tier 9, would only be able to divert 64% of this stored water).

We respectfully suggest that the proposed emergency regulations include a 25% tier for those suppliers that met or exceeded the Governor's January 2014 call for 20% voluntary water use reductions.

3. The SWRCB Should Add Further Flexibility to the Emergency Regulatory Scheme

- a. Section 865, subdivision (c)(2), Should Be Expanded To Include Suppliers With Adequate Surface Water Storage and Projected Adequate Carryover Storage Levels

In addition to the District's recent conservation successes, the District and its ratepayers acquired and perfected senior water rights and have planned, financed, and constructed facilities to manage multiyear droughts, as we are currently experiencing. A one-sized-fits-all regulatory scheme would ignore these prior rights and efforts by the District and its ratepayers to ensure adequate water supplies notwithstanding multiyear droughts. Blunt, inflexible regulations that do not account for local water supply conditions would unjustly penalize ratepayers that have invested huge sums of money ensuring they have a safe, reliable water supply even in extended droughts. Further, in the District's case, water conserved would remain in storage for 2016 and beyond and not benefit other areas of the State. The District recommends expanding Section 865, subdivision (c)(2), to address these realities:

Each urban water supplier whose source of supply does not include groundwater or water imported from outside the hydrologic region, or uses groundwater not relying on groundwater basins shared with others, and that received average annual precipitation in 2014 or has

adequate surface water storage for 2015 and projected adequate carryover storage for the 2015/2016 water year may, notwithstanding its average July-September 2014 R-GPCD, submit for Executive Director approval a request to reduce its total water usage by a lesser percentage than the applicable percentage required in Section 865, subdivisions (c)(3-10) for each month as compared to the amount used in the same month in 2013. Any such request shall be accompanied by sufficient information showing that the supplier meets the criteria of this subsection.

b. The Emergency Regulations Should Acknowledge the Need for Limited Outdoor Watering To Minimize and Potentially Avoid Wildfires

The District's service area is situated in the wooded Sierra foothills and requires special consideration when imposing drastic cuts in water use. Unlike those of many of the urban water suppliers identified in the proposed rulemaking package, the District's service area is characterized by large lots, dense forest, dry grasses, chaparral, and windstorms and, potentially, wildfires. Unlike many of the other suppliers assigned to the highest conservation tier, the District's service area is not characterized by opulent or lush ornamental landscaping.

In the hot, dry summer months, the District's service area is subject to extreme wildfire risk. It is almost entirely within a "Very High Fire Hazard Severity Zone," as classified by Cal Fire pursuant to 14 C.C.R. section 1280, and the portions that are not classified as "Very High" are classified as "High Fire Hazard Severity Zones." (See, also, requirements imposed by Pub. Res. Code §§ 4290 et seq.) Winter storms bring high winds that knock down trees, endangering human lives; just last winter, falling trees caused multiple fatalities in the District's service area. In order to protect human health and safety, the District's customers need to be able to keep their grasslands watered and their tall trees alive. The SWRCB has already acknowledged as much, but

has not incorporated that concern into the draft regulations. (See *Fact Sheet for Draft Regulations Implementing 25% Conservation Standard* at p. 4 [“It will be very important as these provisions are implemented to ensure that existing trees remain healthy and do not present a public safety hazard.”].)

Allowances must be made in the proposed regulations to allow the District and its customers, and similarly situated suppliers, to mitigate the significant risks to human health and safety posed by dry grasslands and dying forests in areas with extreme fire danger and windstorms. The District recommends adding the following as a new subdivision to section 865:

Each urban water supplier whose source of supply does not include groundwater or water imported from outside the hydrologic region and whose service area includes areas classified by the California Department of Forestry and Fire Protection as a Very High Fire Hazard Safety Zone or High Fire Hazard Severity Zone may, notwithstanding its average July-September 2014 R-GPCD, submit for Executive Director approval a request to reduce its total water usage by a lesser percentage than the applicable percentage required in Section 865, subdivisions (c)(3-10) for each month as compared to the amount used in the same month in 2013. Any such request shall be accompanied by sufficient information showing that the supplier meets the criteria of this subsection.

The Paradise Irrigation District thanks you for your consideration of these comments.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'G. Barber', is written over the typed name.

George Barber
General Manager