

April 21, 2015

VIA E-MAIL AND
FIRST CLASS MAIL

Ms. Jessica Bean
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Re: Comments on Proposed Emergency Drought Regulations Developed Per
Executive Order B-29-15

Dear Ms. Bean:

On behalf of the City of San Juan Capistrano (“City”), I write to express the City’s concern with the current draft of the Proposed Emergency Regulations that were released for public review and comment on April 18, 2015 (hereinafter “Emergency Regulations”). With California experiencing a fourth consecutive year of drought, and the possibility that the drought could continue into 2016 and beyond, the City supports the Governor’s call for increased water conservation and has called upon its residents to significantly increase their water conservation efforts. However, the City has serious concerns regarding certain aspects of the State Water Resources Control Board (“State Board”) Emergency Regulations—that the City understands are proposed for Board approval on or about May 5, 2015. The proposed Emergency Regulations would deter development of local water supplies statewide and unnecessarily threaten local water supplies that have already been developed, at great expense, within the City. This comment letter provides recommendations on how the State Board can address the City’s concerns, avoid unintended adverse effects, and achieve the increased savings called for in the Governor’s April 1, 2015 Executive Order (“Executive Order”).

Below are our key concerns and recommendations regarding the proposed Emergency Regulations.

Key Concerns/Recommendations:

1. The proposed Emergency Regulations discourage investment in local water supplies.

The Governor’s California Water Action Plan encourages agencies to increase self-reliance, manage and prepare for dry periods, and reduce dependence on the Bay-Delta. Following prior droughts, and continuing today, the City invested to diversify its water supply and reduce dependence on imported water supplies. In 2004, the City, in concert

Ms. Jessica Bean
April 21, 2015
Page 2

with the San Juan Basin Authority, constructed a groundwater recovery plant (“GWRP”), which at times pumps 60 percent to 70 percent of the City's water supply from the San Juan Valley Groundwater Basin (“San Juan Basin”). The GWRP utilizes an extensive purification process that includes reverse osmosis to remove salinity and other groundwater constituents—thereby producing pure high quality water. The GWRP takes water from the San Juan Basin and turns it into drinking water, thus providing an independent source of reliable drinking water as an alternative to imported water. This diversification strategy was implemented by the City to reduce impacts to customers during water shortages and drought periods—such as the one we see now. The proposed Emergency Regulations penalizes maintenance of the City’s local water supplies by failing to address the fact that debt service remains on the GWRP, notwithstanding that the City will presumably have to significantly curtail water production due to the Emergency Regulations. State action that penalizes the GWRP creates an impediment to the development of local water supplies and hinders reliance on local water resources. Provisions should be added to the Emergency Regulations that eliminate the requirement for local water suppliers to mothball newly created local water supply capacity where the continued use of such local supplies decrease the demand on the balance of the state.

2. The proposed Emergency Regulations do not afford the State Water Board enough flexibility to address unique circumstances.

The proposed Emergency Regulations do not afford the State Board the flexibility to address situations wherein further reductions would serve to harm the public interest. In certain situations, a water supplier may have done all it can to reduce demand but due to circumstances beyond a water supplier's control (such as natural weather fluctuations or the inability of certain types of customers to cut back on required use) reduction targets have not been met. In such circumstances, requiring further reductions would actually be harmful to the public interest. Thus, the best course of action under these circumstances would be for the Emergency Regulations to provide the water supplier the opportunity to apply to the State Board for a variance so that extreme circumstances beyond a water agency's control do not result in non-compliance penalties and liability. Unlike the water conservation ordinances of most cities, the current Emergency Regulations do not provide any mechanism for obtaining such a variance.

3. Higher per capita water use is not always due to inefficient and inappropriate irrigation practices.

Water use is significantly impacted by weather, economy and local land uses. The proposed framework fails to consider average differences in temperature and rainfall, local land uses, such as agriculture, residential ownership of livestock and other urban and rural land uses. The proposed regulation requires more than one third of the State’s water suppliers to require their customers to reduce water use by more than 32%, even where there may be adequate water supplies available. The dramatic reduction mandates fail to account for the significant increases in water use efficiency that already occurred

Ms. Jessica Bean
April 21, 2015
Page 3

at many agencies between 2009 and 2013—with the “low hanging fruit” having already been picked with the hardened demand of the drought that pertained from 2007-2009.

4. The proposed Emergency Regulations do not allow agencies adequate time to enforce water use reduction measures.

The City understands the seriousness of the drought and the important and urgent need to reduce demand statewide. However, in order to achieve long-term results, water suppliers need to have time to educate customers on the water reduction requirements and provide customers with due process. A phased-in approach to reaching the goals will be most effective to create both short-term and permanent long-term water use reductions. Compliance determinations should be based on results of actions taken by water suppliers and their customers, not short-term fluctuations. Water supplier penalties should be reduced if they are aggressively pursuing actions to comply with the goals, but fall short because of factors beyond their control.

5. The proposed Emergency Regulations have the potential to frustrate responsible new growth.

The proposed Emergency Regulations fail to account for growth in the City’s customer base, and they have the potential to stymie previously approved responsible development within the City (and other parts of the state). Higher per capita water use is erroneously assumed to result exclusively from inefficient and inappropriate water use rather than increases in commercial, industrial and institutional activity associated with improved economic conditions and recovery from the recession. The Emergency Regulations should make clear that they are not intended to frustrate responsible development—particularly now that all new residential development is required to utilize drip and low flow spray devices for outdoor irrigation.

6. The proposed Emergency Regulations should include a regional "trading" mechanism to achieve the required reduction targets.

Where one water supplier over-complies but another can achieve required reduction targets only at great expense, the Emergency Regulations should provide a trading mechanism to allow both agencies to partner together in order to achieve the required reduction targets. Such a program should allow regional offsets whereby multiple agencies could “trade” reductions with each other such that an agency who outperforms its reduction requirement can trade its excess reduction with an agency that has come up short—making both agencies compliant when working collaboratively. The State Board has raised this concept in the Fact Sheet accompanying the Emergency Regulations as a potential means of achieving compliance, and the State Board should strongly consider implementing this approach in its final regulatory framework.

Ms. Jessica Bean
April 21, 2015
Page 4

7. The proposed Emergency Regulations should allow agriculture water use to be omitted from gallons per capita per day (“GPCD”) calculations.

The Governor has publicly stated that the current mandatory reduction program is not aimed at California agriculture. The State Board has already proposed that urban water suppliers who make agricultural deliveries of potable water for more than 20% of their total demand be given opportunity to exclude the agricultural deliveries from their GPCD calculations, upon meeting certain criteria and obtaining State Water Board approval. This proposal should not only be adopted, but broadened to allow *all* water suppliers who make significant agricultural deliveries to remove the agricultural deliveries from their GPCD baseline, even if the agricultural use constitutes *less* than 20% of total deliveries. This expansion of the current proposal will allow local agriculture to thrive notwithstanding the Emergency Regulations and avoid penalizing agencies who supply water efficiently to residential and agricultural customers.

8. Incorporation by Reference of MWDOC Comments

In addition, the City concurs with comments submitted by the City’s regional wholesale water supplier, the Municipal Water District of Orange County (“MWDOC”), and incorporates MWDOC’s comments, available on the State Board website at http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/comments041315/robert_hunter.pdf, herein by reference.

As they are currently written, the Emergency Regulations are certainly a start in the right direction in getting a handle on increased water efficiency statewide during a period of severe drought. However, the revisions suggested herein are needed to ensure that reduction targets can be achieved while avoiding unintended consequences that may cause environmental and economic harm. The City hopes these comments will help guide the State Board’s development of a regulatory response that can preserve the State’s water supply, encourage local water supply development, and be readily implementable by water suppliers throughout the state.

We thank you for your consideration. Should you have any questions regarding these comments, please feel free to contact me at the number above or Mr. Keith Van Der Maaten, City Public Works and Utilities Director, at (949) 443-6363.

Respectfully submitted,

RUTAN & TUCKER, LLP



Jeremy N. Jungreis

JNJ