

# ELLISON, SCHNEIDER & HARRIS L.L.P.

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April 22, 2015

*Via Electronic Mail*

Jessica Bean

State Water Resources Control Board

[Jessica.Bean@waterboards.ca.gov](mailto:Jessica.Bean@waterboards.ca.gov)

Re: Draft Drought Emergency Water Conservation Regulations

The following comments are submitted on behalf of Ellison, Schneider & Harris, L.L.P. on the State Water Resources Control Board's (SWRCB) proposed Draft Drought Emergency Water Conservation Regulations. This firm represents urban and public water suppliers across the state, as well as a variety of commercial, industrial and institutional water users. Many of those entities will be submitting various comments and suggestions on the draft regulations on their own behalf to address issues that might improve interpretation and implementation of the proposed regulations.

I write separately to comment narrowly and specifically on the SWRCB's reference to "waste and unreasonable use" principles as a basis of authority and justification for the proposed regulations. Reliance on this authority is neither justified nor necessary to implement the proposed water conservation regulations, and perhaps distracts from the SWRCB's and Governor's efforts to deal with an extraordinary drought. We respectfully request that you remove all waste and unreasonable references in the proposed regulations or at a minimum that you qualify and limit such references to this year of extraordinary drought.<sup>1</sup>

The proposed emergency regulations, as currently drafted, could be interpreted as finding, essentially, that all urban and public water use, and all water use by commercial, industrial and institutional water users, is wasteful and unreasonable. There is no evidentiary basis for this finding, which undermines the water rights of all such water users and contradicts existing law that both encourages water conservation and protects the rights to water so conserved. See Water Code section 1011. We do not believe that the SWRCB or the Governor intended such a result from these regulations, particularly at a time when the State needs to encourage water users from every sector to work together to conserve and reduce water use to make it through this unprecedented drought.

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<sup>1</sup> The references are made in the proposed new language in sections 863(a)(6), and 864(a), 865(c)(1), 865(f)(1), and 866(a)(1).

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Again, we respectfully request that you remove all references to “waste and unreasonable use” in the regulations, or appropriately qualify the regulations as limited to this year of extraordinary drought.

Sincerely,



Robert E. Donlan  
ELLISON, SCHNEIDER & HARRIS

Cc: Board members  
Tom Howard  
Caren Trgovcich  
Barbara Evoy  
Michael Lauffer