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Via e-mail to: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

May 4, 2015

Ms. Jeanine Townsend, Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24th Floor  
Sacramento, CA 95814

RE: Comment Letter – Emergency Conservation Regulation

Dear Ms. Townsend:

I appreciate the opportunity to comment on the proposed emergency conservation regulation. The State Board should not approve the regulation because I believe it exceeds the state's authority under the police power. I am an attorney, but my principal occupation is farming oranges, and I am submitting this comment solely on behalf of myself as a farmer and member of the general public.

Section 865(e) of the proposed regulation includes an alternative compliance option for certain urban water suppliers. Urban water suppliers that provide 20% or more of their potable water production for commercial agriculture may elect to exclude commercial agriculture from their water production totals, those that provide less than 20% may not.

There is no reason to single out suppliers who are under the 20% threshold and deny them the alternative compliance option. The 20% threshold does not satisfy basic due process requirements. To satisfy due process, the regulatory scheme must bear a reasonable relationship to a proper and legitimate public goal. (*Perez v. City of San Bruno* (1980) 27 Cal.3d 875, 889-890 [168 Cal.Rptr. 114, 616 P.2d 1287]; U.S. Const., Amend. XIV, § 1.) The prevention of waste and unreasonable use of water is a legitimate public goal. However, I cannot imagine how the 20% threshold is rationally related to that goal. To satisfy due process, the alternative compliance option should be available to all urban water suppliers.

The right of utility customers to water service is a common law right and a constitutionally protected property interest. (*Memphis Light, Gas & Water Division v. Craft* (1978) 436 U.S. 1, 9-13 [56 L.Ed.2d 30, 98 S.Ct. 1554]; *Perez v. City of San Bruno, supra*, 27 Cal.3d 875, 893-894.) It is foreseeable that the proposed regulation will interfere with sales between urban water suppliers and their retail customers. The State Board, under the guise of the police power, cannot adopt regulations that place an unreasonable or oppressive burden on the water service provided to ordinary citizens. Retail customers harmed by unconstitutional regulations may recover damages under the federal civil rights statutes. (42 U.S.C. § 1983.) I respectfully urge the State Board not to approve the regulation. Thank you for considering this matter.

Sincerely,

Andrew C. Wilson