

May 1, 2015



Via email to commentletters@waterboards.ca.gov

Ms. Felicia Marcus, Chair
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Re: Comments on April 28, 2015 Draft Urban Water Conservation Regulations by
Sacramento Suburban Water District and Related Rulemaking Materials

Dear Ms. Marcus:

Sacramento Suburban Water District (SSWD) appreciates the opportunity to comment on the State Water Resources Control Board's (SWRCB) potential adoption of its April 28, 2015 draft of urban water conservation regulations. In particular, SSWD appreciates the SWRCB's openness to establishing a specific tier where an agency has intentionally banked groundwater under a sustainable conjunctive use plan and has a multi-year supply of groundwater under its control and available during this drought. As discussed in more detail below, SSWD believes that the final regulations should include such an allowance, which would enable SSWD to provide its ratepayers with the drought-proofing that their over-\$100,000,000 investment in conjunctive use has enabled. SSWD also believes that the regulations should allow a water supplier to subtract from its conservation obligations water that a state agency draws from the supplier's potable water system to fight forest fires and wildfires. As also explained below, SSWD continues to believe that the current draft regulations have serious problems, problems that have only been highlighted by the rulemaking materials that the SWRCB released on April 29, 2015.

1. Exception For Available And Sustainable Drought-Proof Supplies

The SWRCB's April 28 fact sheet includes the following request for feedback:

Feedback is specifically requested on whether the regulation should allow water suppliers whose supplies include groundwater to apply for inclusion the 4% reserve tier if it can be demonstrated that they have a minimum of 4 years of supply, do not rely upon imported water, and their groundwater supplies recharge naturally.

SSWD believes that this request reflects a good intention, but requires minor modification to be appropriate for inclusion in the SWRCB's final regulations. As discussed in SSWD's April 22,

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2015 comment letter, SSWD has invested over \$100,000,000 in the facilities and water supplies necessary to implement a conjunctive use program that has been the major factor in the improvement of the northern Sacramento County groundwater basin over the last 15 years and that has resulted in SSWD having banked 187,880 acre-feet (through December 2014) of water in excess of SSWD's obligations to the sustainable yield of the basin, through its use of water from the American River – which is the main local surface water source. SSWD conducted this program and banked this water under the applicable California laws, including Water Code section 1005.1.

Based on this experience, SSWD believes that the SWRCB's request for feedback appropriately would require a water supplier to show that its available groundwater supply would provide a minimum of four years of supply and would not rely on continued imports from other hydrologic regions. SSWD believes, however, that the idea that a water supplier would have to show that its groundwater supplies "recharge naturally" could cause much confusion and have significant unintended consequences. For example, while in-lieu conjunctive use programs rely on natural recharge, the language of the SWRCB's request for feedback suggests that a water supplier that overlies a major groundwater basin, but that has taken no steps to ensure that the basin is being managed sustainably, would be able to qualify for a 4% conservation standard. Even critically overdrafted groundwater basins probably contain a four-year supply that recharges naturally.

SSWD therefore proposes that the SWRCB clarify the standard for being placed in a lower conservation tier be so that the necessary groundwater supply would be based on the conjunctive use of surface water during years prior to the drought. The eligible supplies also should include recycled water, which has been a major source of recharge in some areas of the state. In addition, SSWD proposes that the SWRCB require that a water supplier that seeks to use this exception be required to show that its conjunctive use program is consistent with a previously adopted groundwater management plan.

Finally, SSWD believes that the available exception should not be strictly limited to a 4% tier, but rather should be expanded to a possible 10% and lower tier. The Executive Director would have discretion to set the tier for a particular water supplier at 10% or lower, based on the applicable facts. SSWD believes that the regulation should state that the Executive Director should consider whether the water supplier's withdrawal of water from its groundwater bank actually would increase the amount of water available for downstream users and resources, with those programs that produce such a result receiving a conservation standard lower than 10%. SSWD believes that its program would produce such a benefit in this drought year.

We propose edits to the SWRCB's draft regulations to reflect the above comments below:

865(c)(2)(A) Each urban water supplier that has a minimum of four years' reserved supply available and under its control may submit to the Executive Director for approval a request that, in lieu of the reduction that would otherwise be required under paragraphs (3) through (10), the urban water supplier may

reduce its total potable water use by no more than 10 percent for each month as compared to the amount used in the same month in 2013.

(B) Any such request shall be accompanied by information showing that the urban water supplier has a minimum of four years' reserved supply available and under its control. If the urban water supplier relies on available groundwater, the request shall demonstrate that the groundwater supply is available as a result of the conjunctive use of surface water or recycled water in prior, non-drought years and would be pumped consistently with a previously adopted groundwater management plan. An urban water supplier's request may not rely on water imported after the Governor's January 17, 2014 declaration of a drought state of emergency from outside of the hydrologic region in which the urban water supplier is located.

(C) The Executive Director shall approve the urban water supplier's request if it meets subdivision (c)(2)(B)'s requirements. The Executive Director shall not set the resulting required conservation percentage higher than 4% if the urban water supplier's service area has received at least average rainfall since October 1, 2013. If the urban water supplier's submission demonstrates that the supplier's use of the supply on which that submission relies would increase the amount of water available for downstream uses or resources, then the Executive Director shall approve a conservation percentage for that supplier that is lower than 10% at a level he or she determines is reasonable, based on the supplier's submission.

2. Subtraction Of Water Used By State Agencies To Address Statewide Emergencies From A Water Supplier's Conservation Obligation

SSWD serves the California Department of Fire and Forestry (CalFire) which operates fire-fighting aerial operations from McClellan Park, located in SSWD's service area. CalFire draws water from SSWD's potable water system at McClellan to use in its aerial tankers to fight forest fires and wildfires throughout northern California. SSWD has no control over CalFire's draw of water from SSWD's system and, given the importance of CalFire's mission, does not believe it would be appropriate to curtail that use. CalFire's operation nonetheless imposes a significant burden on SSWD.

SSWD should not have to suffer a significant conservation burden because its water system provides a statewide fire-fighting benefit. We propose edits to the SWRCB's draft regulations that would allow SSWD and any other water suppliers whose potable water systems provide the water for emergency responses by the state to subtract the relevant state agency's water use from the water supplier's R-GPCD below:

Sec. 865. Mandatory Actions by Water Suppliers.

(a) As used in this section:

(1) "Distributor of a public water supply" has the same meaning as under section 350 of the Water Code

(2) "R-GPCD" means residential gallons per capita per day.

(3) "Total potable water production" means all potable water that enters into a water supplier's distribution system, excluding: (A) water placed into storage and not withdrawn for use during the reporting period; (B) water exported outside the supplier's service area; and (C) water that a state agency draws from the supplier's potable water system to fight a forest fire or wildfire or to address another emergency.

(4) "Urban water supplier" means a supplier that meets the definition set forth in Water Code section 10617, except it does not refer to suppliers when they are functioning solely in a wholesale capacity, but does apply to suppliers when they are functioning in a retail capacity.

3. The SWRCB Has Underestimated the Costs of Implementing the Proposed Regulations By At Least Tens Of Millions Of Dollars And Has Overestimated Water Suppliers' Ability To Recoup Those Costs

The Notice of Proposed Rulemaking and Emergency Regulations Digest that the SWRCB released on April 29, 2015 contain estimates of the costs that water suppliers will incur in order to implement those regulations. Those estimates underestimate the costs of implementing the proposed regulations by at least tens of millions of dollars because they do not include the increased costs that water suppliers will incur in staff time, advertising and other measures that will be necessary to achieve the regulations' conservation standards. This is particularly true for inland agencies that the SWRCB's proposed regulations target for higher levels of conservation because we are located in warmer climates. Instead, the SWRCB's estimate of costs focuses solely on the revenues that water suppliers will lose as a result of lower customer demand – that revenue loss will be significant – and the costs to comply with the SWRCB's proposed heightened reporting requirements.

The SWRCB's failure to even acknowledge the significant additional costs associated with the customer outreach, advertising, monitoring of customers' use and enforcement that will be necessary to achieve such ambitious reductions in water use is a glaring omission in the SWRCB's analysis. Water agencies like SSWD will need to incur tens of thousands, if not hundreds of thousands, of dollars in additional costs to implement these activities. Multiplied across the hundreds of agencies that would be subject to the proposed regulations, it becomes

clear that the SWRCB has underestimated the costs of implementing those regulations by at least ten of millions of dollars.

The SWRCB's April 29, 2015 documents then compound this problem by overstating water suppliers' ability to recoup the additional costs that the proposed regulations would compel them to incur. Those documents appear to assume that water suppliers simply would be able to raise their rates to recoup whatever costs the proposed regulations would force them to incur. The Court of Appeal's April 20, 2015 decision in *Capistrano Taxpayers Association v. City of San Juan Capistrano* indicates that Proposition 218 does not allow public water suppliers to simply set their water rates to drive their customers to achieve higher levels of conservation, but rather requires that tiered rates be tied to the cost of service. In light of the *San Juan Capistrano* decision, it is at best uncertain whether public water suppliers are simply free to pass on to their customers the costs of complying with state conservation mandates that not only are not tied to the costs of any particular water supply, but in fact mandate that those suppliers not use supplies that are available to them.

The SWRCB's analysis of the costs associated with the proposed regulations contains numerous flaws and ignores crucial information. It would be arbitrary and capricious for the SWRCB to adopt the proposed regulations based on that financial analysis.

4. The SWRCB's Rationale For Its Proposed Conservation Tiers Is Arbitrary And Capricious Because It Relies On Warm-Weather Water Use To Justify Year-Round Regulations

The SWRCB's fact sheet states the following rationale for putting inland water suppliers into the higher conservation tiers:

Everyone must do more, but the greatest opportunities to meet the statewide 25% conservation standard exist in those areas with higher water use. Often, but not always, these water suppliers are located in areas where the majority of the water use is directed at outdoor irrigation due to lot size, climate and other factors. As temperatures are forecast to climb to above average for the summer months, it will become even more important to take aggressive actions to reduce outdoor water use. The emergency regulation establishes tiers of required water reductions that emphasize the opportunities to reduce outdoor water use.

Despite focusing solely on outdoor water use as the primary basis for the proposed regulations' tiers that would impose much more significant burdens on inland water suppliers, the regulations themselves would apply for the entire 270-day duration of the regulations, which would extend until February 2016. In other words, the SWRCB has stated no justification at all for imposing much higher conservation burdens on inland water agencies during at least the three months from November 2015 to February 2016. It would be arbitrary and capricious for the SWRCB to adopt regulations whose stated rationale does not even apply through the entire period that the regulations would apply.

5. The SWRCB's Statements That The Proposed Regulations Would Safeguard And Maintain Urban Water Supplies Does Not Reflect Actual Water Management

The SWRCB's Notice of Proposed Rulemaking and Emergency Regulations Digest state that the proposed regulations would "safeguard" and "maintain" urban water supplies. These statements simply do not reflect the reality of water management. While long-term conservation programs can effectively "safeguard" a water supplier's supplies by reducing overall demand so that those supplies can stretch farther, short-term conservation programs such as those that the proposed regulations would require water suppliers to implement generally do not actually save molecules of water for later use. Water suppliers that depend on direct diversions of water obviously cannot recapture the water to which they have rights, but that would flow past them unused while the regulations are in effect. Water suppliers that depend on reservoir storage generally will not be able to hold the water in that storage while the regulations apply because most reservoirs are controlled by the Central Valley Project (CVP) and the State Water Project, which will use the water available to them for their own purposes if water suppliers are not able to take deliveries of it. For example, the federal Bureau of Reclamation has not adopted rescheduling guidelines for the use of water stored in reservoirs upstream of the Delta because such rescheduling would constrain the CVP's operational flexibility. It is the rare water supplier that has full control over its reservoir storage and can save the actual molecules of conserved water as the SWRCB's documents appear to assume would be possible statewide. Even water suppliers like SSWD that have water banked in groundwater storage may not be able to reserve conserved water for future use because the SWRCB's draft regulations demonstrate that the SWRCB apparently may be willing to prohibit SSWD from using that water during this drought – which embodies the risk against which SSWD's ratepayers invested over \$100,000,000 to guard.

SSWD incorporates its prior comments concerning the SWRCB's previous drafts of its emergency urban water conservation regulations. As noted in our previous comments, we believe the SWRCB must include the following factors in setting conservation mandates:

1. ***Climate.*** A single family home in inland California may have a "textbook" water efficient landscape with drought tolerant plantings which requires more water than a similar sized water-wasting landscape in a coastal zone with lower evapotranspiration requirements. The regulations must consider climate differences.
2. ***Development Density.*** People choose to live in suburban and rural setting to afford larger lot sizes. Even with water-efficient landscapes, these larger lots require more water than high-rise dense urban settings when comparing R-GPCD.
3. ***Transmission losses.*** Groundwater is measured at the well head. Surface waters should be measured at the point of diversion. Ignoring transmission losses is wholly improper and illogical if the purpose of mandatory reduction in human use is to allow more water to be left in storage and in the natural environment.
4. ***Return Flows.*** The conservation mandates ignore the fact that in many parts of the state, water that is put to a beneficial, "consumptive" use is not completely consumed. In the Sacramento region, roughly 40% of the water removed from the natural environment is returned to the watershed of origin to meet stream flow requirements, delta water quality

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objectives and downstream diversion needs. In other regions, water removed from the natural environment is wholly exported out of the watershed with no resulting benefit of in-basin return flows. These differences must be addressed.

5. ***The energy-water nexus.*** SWRCB proposed emergency regulations completely ignore the greenhouse gas effects of transmission and distribution of water. Given the Governor's recent acceleration of greenhouse gas reduction targets, the SWRCB must consider AB 32 and the opportunities to leverage "more pop for the drop". Urban water suppliers statewide can easily calculate the carbon footprint associated with each unit of water delivered given the total energy bills for pumping (from the original point of diversion) and readily available information from their energy utility on the carbon footprint per kilowatt-hour consumed. It would be unconscionable for the SWRCB to adopt massive statewide regulations ignoring state law, AB 32.

Conclusion

SSWD believes that the revised draft regulations continue to have significant problems, as does the SWRCB's new analysis of those regulations' financial impacts. In SSWD's relatively unique case, those problems can be addressed by defining the exception to the standard conservation tiers that would account for water suppliers that have developed sustainable supplies through pre-drought investments in conjunctive use and by allowing water suppliers to subtract water that state agencies draw from their systems to address emergencies from their conservation obligations.

Very truly yours,

Original signed by:

Robert Roscoe
General Manager

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Enclosures

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