



December 2, 2015

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



RE: Extension of Emergency Regulations and Regulatory Framework—Modification

Dear Chair Marcus and Honorable Members of the Board:

I hereby request that the following be included in the record of the proceedings of the Workshop of December 7, 2015.

Mission Springs Water District (MSWD) serves a predominantly low-income community. The bulk of our customers live in the City of Desert Hot Springs—the lowest median income city in Riverside County. MSWD believes that the current drought mandate is regressive, even oppressive, to certain communities and must be changed.

For calendar 2015, MSWD is averaging only 114 GPCD for residential customers yet is still falling short of the SWRCB drought order by a cumulative average of 12%. Our service area is located in the inland California Desert where the average summer temperature for 2015 was 105.5 degrees with numerous days reaching over 110 degrees. Not only are temperatures extremely high in the summer and shoulder months—which were used to determine our baseline for GPCD reductions—but also, development patterns for inland areas differ vastly from coastal or mountain regions. We also experience significant population increases between the months of October and May.

The approach employed to set GPCD reductions through the regulatory framework does not appear to consider these factors, especially as it pertains to environmental justice and natural resource discrimination against members of one of the poorest communities in the state.

**Natural Resource Discrimination:** As MSWD has pressed for greater and greater conservation under a SWRCB-issued conservation order, those who used conservation as a response to the great recession (from late 2007 to the present) have no room to further cut water use. These represent a considerable portion of our service area population. While MSWD has only achieved a 16% reduction from its 2013 baseline against a 28% mandate, the cost of each unit of water must, notwithstanding, be increased to cover ongoing, and in many cases increasing costs. Those with nowhere else to cut are now being forced to forego a reasonable water budget for quality of life and health due to the increases in cost driven by the state's demand for more conservation from this community. Wealthier communities continue to enjoy access to water tempered only by conscience. As an example of the disparity, water accessibility should not come down to a decision between electricity or groceries, and weather one is able to use an evaporative cooler due to its water demand (between 3 and 10 gallons per hour at one tenth the cost of central air conditioning)!

**For this reason, along with those outlined below, MSWD hereby requests a modification in the drought order that changes the discriminatory, one-size-fits-all *Regulatory Framework* approach to a geographic/demographic-based GPCD allocation.**



The following issues further outline our perception of the disproportionate impact on the severely disadvantaged communities (DACs) we serve.

- **Proposed Regulatory Framework Disregards Previous Gains and Rewards Historic Water Wasters:**

MSWD contends that the state did not consider gains made by “**early conservation adopters**” since establishing their baseline GPCD as outlined in their respective 2010 Urban Water Management Plans (UWMP). Further, MSWD asserts that agencies that were not proactive in GPCD reduction, or which did not experience economic impact that drove down water use, are being rewarded under the proposed framework while proactive agencies and disadvantaged communities (DAC) are being penalized, even discriminated against.

In 2008, the state implemented the 20x2020 goal for reducing urban water demand in the face of drought conditions. The means by which suppliers proposed to meet this mark were spelled out in the respective agency’s Urban Water Management Plans for 2010. The state provided various approved “methods” that each supplier had the choice to employ. MSWD chose Method 4: the “BMP” (best management Practices) option.

Throughout the seven years between the baseline year and 2013, MSWD has increased awareness of the need to use water wisely—a message at the center of MSWD’s public outreach programs since the early 1990’s. In 2005, MSWD, in partnership with the City of Desert Hot Springs, adopted a landscape ordinance for **all** new construction that required desert landscaping. Water use in the district went from a RGPCD baseline annual average of 207 to the 2014 average of 135.5—a 35% reduction.

When the Governor decided to use the baseline year of 2013 for further conservation measurement, the **significant** progress made under the 2010 UWMP was apparently not considered. Conversely, agencies which had been less proactive have been given a buffer from which to implement conservation measures. This “buffer” not only safeguards their customer base from significant impact on actual water use reductions, but also on the fiscal constraints caused by reductions in commodity revenue.

MSWD believes that the State Board should modify its **Proposed Regulatory Framework** to consider the state’s long-term conservation strategy as defined through the Urban Water Management Planning structure. The State Board should review GPCD gains from the 2010 baseline to measure cumulative GPCD reduction based upon the 20x2020 requirement.

MSWD customers have reduced GPCD usage by about 35% from the UWMP baseline and are now required to come down an additional 28%. If MSWD were to achieve the proposed 28% reduction, the net decrease in GPCD from our UWMP baseline, **along with** consumption revenue, would be nearly 63%! No agency can reduce revenue by this amount and reasonably expect to recover that loss through rate actions, particularly those which serve DACs. This is not only unreasonable, but also unachievable even on a temporary scale. If MSWD had been slower in reducing its GPCD from the 2010 UWMP baseline, like many were, even a 36% reduction today would be more manageable than the 28% being required. 36% off of fat is a far more achievable than 28% off of bone.

- **The proposed framework creates a negative Environmental Justice/Natural Resource Discrimination Condition on Disadvantaged Communities (DACs):**

MSWD believes that the impact of the proposed framework disproportionately impacts the DAC communities it serves. This impact negatively affects the community from both a financial perspective as well as with proportional and equitable access to water. MSWD believes that the proposed Framework will translate into DACs being priced out of the basic necessity of a reasonable domestic water budget. Many MSWD customers live on the usage set out in the District’s lowest tier. Pricing must increase if an

additional 28% is enforced which will disproportionately impact those who live at or below the poverty level.

As stated in the previous argument, the GPCD reductions in MSWD's service area over the past seven years have been significant and the accompanying reduction in consumption sales revenue has reflected this trend. MSWD, in accordance with Water Code Section 31007, has been forced to increase rates to cover the commodity sales reduction due to conservation and economic conditions.

Some customers have been able to reduce consumption as a response to increases in pricing. This response negates, to a great extent, the purpose of the rate increase forcing the District to again consider additional increases. Many residents in this DAC have reduced use to a minimum based upon household needs and severe climate conditions that require increased water use in the summer months when temperatures can run in the 110 range for weeks on end. Additional sustained reduction requirements would create additional revenue losses for an undetermined period, thereby jeopardizing the fiscal stability of both the District as well as the DAC it serves. Simply stated, the additional reductions recommended in the Regulatory Framework are disproportionately impacting DAC customers and limiting access to water. **This unintended consequence is the essence of Natural Resource Discrimination and an Environmental Justice violation.**

Though the Governor and State Board have made the statement that agencies should simply raise rates to cover revenue losses and to implement conservation programs, the reality of the impact of this policy suggestion on this severely disadvantaged community renders such statements as callous and out of touch with the constraints of DACs in desert regions.

- **Geographic Inconsistency (Coastal -vs- desert land use and climate models, seasonal population):**

MSWD believes that the proposed Regulatory Framework disproportionately impacts desert regions where climate extremes, historic land use patterns and seasonal population increases are not being considered.

The simple reality is that the inland desert communities are unlike any regions in the state in land use patterns, climate and economy. The proposed Regulatory Framework appears to have been developed in a one-size-fits-all manner by applying a formula based upon total production divided by population to arrive at a GPCD figure. This broad-brush approach does not consider the following variables and creates a disproportionate and unfair mandate on inland desert communities and exacerbates impact on DACs.

**Variable 1) Inland desert communities climate variable.**

Temperatures in inland desert communities, as previously stated, can exceed 110 degrees for weeks at a time, with average temperatures generally at 105 degrees for four to five months during the year. The water demand in inland desert communities is, by necessity, higher than coastal and non-desert communities. Though high water demand landscaping in MSWD's service area has been significantly diminished in the past decade, summer GPCD water demand is still comparatively higher than in areas of the state with more moderate climate. Evaporation and transpiration rates—both from plants as well as mammals—are significantly higher than non-desert communities. The Regulatory Framework disproportionately penalizes inland desert communities for climate conditions that cannot be controlled.

**Variable 2) Land Use Patterns.**

Most inland desert communities are suburban areas of burgeoning coastal communities, such as Los Angeles. As development moved inland over the past century, the vast amounts and lower

costs of land permitted land use planning that accommodated larger lots and more open space. This is in direct contrast to coastal communities where scarcity of land and high costs drove land use toward small lots and less open space. MSWD believes that the Regulatory Framework does not consider land use patterns and disproportionately impacts inland desert communities that have been developed in a manner that cannot be changed under the Governor's order. Comparing the desert communities' water usage to the usage of other areas of the state is simply not representative of the demands driven by, among other factors, land use patterns.

**Variable 3) Part-time resident and tourism economy.**

MSWD's service area, as is common among many inland desert communities, experiences season population bubbles that increase water use in the cooler months. Since the GPCD calculation is based upon total pumping divided by full time population (census data), the GPCD number is artificially high. MSWD believes that the proposed Regulatory Framework does not consider the impact of tourism and "snow birds" in calculating GPCD, thereby disproportionately penalizing communities—and to a greater extent, DACs—which depend on seasonal populations for economic stability.

- **No accounting for water loss:**

MSWD believes that the state must exclude water loss factors from total pumping PRIOR to calculating GPCD.

Water loss is part of the normal operation of a water district. Water loss is required to ensure the health of the water system. Flushing, fire demand and other public health and maintenance activities are required to operate the water system and ensure public safety. These losses will fluctuate in each community. Water losses to these and other demands are not necessarily under the control of the water purveyor. Since these factors are calculated as part of total pumping, the GPCD is skewed by water loss that may vary greatly from community to community. MSWD closely tracks water loss in its service area. MSWD believes that water losses should be excluded from the GPCD formula for those agencies that can demonstrate reasonable tracking of that loss.

- **Proposition 218 Hurdles:**

MSWD believes that hurdles created by Proposition 218 make certain communities (particularly DACs) vulnerable to fiscal instability due to revenue decreases through disproportionate water reduction requirements.

The SWRCB regulations place water purveying agencies between the proverbial rock and hard place. The proposed regulations require that water purveying agencies significantly reduce their total water use for the purposes of promoting conservation. These mandatory conservation measures will result in reduced agency revenues, as previously discussed, yet the costs of operations will not decrease correspondingly.

Consequently, agencies will be forced to raise rates to bridge the gap between declining revenues and fixed operating costs. Proposition 218 restricts the ability of agencies to offset declining revenues as those receiving Proposition 218 notices have the ability, by majority protest, to prevent the rate increases necessary due to conservation driven revenue reductions. The end result some agencies may experience would be an inability to bridge the gap between declining revenues and fixed costs. Ultimately, this would force agencies to provide essential services at rates that are below the cost of service. Where this occurs, agencies will be forced onto an unsustainable financial path that will threaten their ongoing ability to provide essential services to their customers.

- **Conclusion:**

The Governor has initiated a plan in mid-stream of a larger strategy, i.e. the Urban Water Management Planning Framework. The recession of the past decade has disproportionately impacted DAC communities and forced water agencies to delay rate increases even in the face of significantly declining revenue due to increasing costs, and water use reductions for economic reasons. This has left DAC-serving agencies fiscally vulnerable, has led to depleted reserves, and made it infeasible to weather another revenue reduction—even if only temporary—due to the current broad-brushed approach.

While some wealthier communities have done little to curb water use from their UWMP baseline, many DACs have, by necessity, experienced drastic reductions in consumption. The water use patterns of MSWD's service area of the past decade have declined sharply and will not recover, forcing the district into charging higher prices for less water. Wealthier communities that did not respond to economic conditions in such an extreme manner have plenty of room to reduce water use.

Most agencies began on a level playing field when developing their 2010 UWMPs. The plans took into consideration many of the unique variables the SWRCB-proposed Regulatory Framework does not consider. The proposed Framework should start with the UWMP framework and, through emergency action, build upon it considering both geographic as well as demographic factors. The state should not disregard gains made by agencies and DACs due to prior conservation efforts and economic conditions that have already disproportionately impacted access to affordable water for many of our state's lowest income populations.

I urge the State Board to carefully consider the preceding comments as it seeks to find an equitable method by which to continue to reduce California's domestic water footprintzz.

Sincerely,



Arden Wallum,  
General Manager