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November 30, 2015

Delivered by e-mail to: commentletters@waterboards.ca.gov

The Honorable Felicia Marcus, Chair and Members of the State Water Resources Control Board
c/o Jeanine Townsend, Clerk to the Board State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814



Subject: "Comment Letter – Urban Water Conservation Workshop"

Dear Chair Marcus and Members of the Board:

The Three Valleys Municipal Water District (TVMWD) appreciates this opportunity to comment on the potential extension and modification of the existing Emergency Regulation for Statewide Urban Water Conservation (Emergency Regulation) if drought conditions persist into 2016. We appreciate the willingness of the State Water Resources Control Board (State Water Board) to engage water agencies and other stakeholders in a series of work group meetings and to schedule the public workshop on December 7 to receive broad input on this significant policy decision.

TVMWD treats and wholesales water to several public works systems, retail water agencies, colleges and investor-owned utilities. These member agencies of TVMWD are responsible for delivery of the water used for residential and commercial purposes in the San Gabriel Valley, covering an area of 133 square miles and a population of over 500,000. Our collective member agencies as well as water agencies statewide have been responding effectively on many levels to help Californians successfully weather the current unprecedented drought. The Emergency Regulation adopted by the State Water Board on May 5, 2015 in response to the Governor's April 1 Executive Order has resulted, as hoped, in sharply reduced urban water use. That said, significant issues of equity, unintended consequences, and insights gained require modifications to the Emergency Regulation in the event it needs to be extended into 2016.

Governor Brown explicitly provided the opportunity for comment in his November 13 Executive Order, which requires the State Water Board to extend the Emergency Regulation through October 2016 if the drought continues through January 2016. This Executive Order directs the State Water Board to consider modifying the restrictions to address uses of potable and non-potable water, as well as to incorporate insights gained from the existing restrictions (Executive Order B-36-15).

We appreciate that the State Water Board staff had solicited proposals for such modifications at the end of the August 26 work group meeting. Immediately thereafter, several participating water agencies reached out to colleagues to form ad-hoc teams to develop topic-specific proposals intended to address several equity and water policy issues that have been the focus of widespread attention by water agencies statewide. The water agencies then refined these proposals and presented them at the State Water Board work group meeting on October 26. The proposals address the following issues:

- Climate Adjustment
- Growth Adjustment
- Recycled Water Adjustment
- Sustainable Supplies Credits (desalination, potable reuse, and conserved water transfers)
- Groundwater Credits
- Regional Compliance Option

Each proposal was designed to be:

- 1) complementary to the other proposals
- 2) voluntary
- 3) based on information submitted to the State Water Board that would be simple to evaluate
- 4) simple to administer

The effect would be to refine the Conservation Standards assigned to water agencies for the duration of the 2016 Emergency Regulation. These proposals were summarized by one-page fact sheets. More detailed descriptions of each proposal have been previously submitted to the State Water Board and are posted, along with information about the work group process, and can be found on the Association of California Water Agencies (ACWA) website at: <http://www.acwa.com/content/urban-water-conservation>.

TVMWD supports and endorses all of these proposals for the reasons that are described below under “Elements of the Existing Regulation that should be Modified.” The equity, sustainability and water policy considerations that these proposals were designed to address are recognized as serious concerns statewide. These proposals are widely supported by water agencies, and if they are used to make adjustment in the 2016 regulation, we believe the result will substantially mitigate these concerns and help provide broader support for the Emergency Regulation.

In order to help frame input, the notice for the December 7 workshop indicated that the State Water Board is interested in receiving public input on the following three questions:

1. What elements of the existing emergency regulation, if any, should be modified in an extended emergency regulation?
2. What additional data, if any, should the State Water Board be collecting through the emergency regulation and how should it be used?
3. How should the State Water Board account for precipitation after January 2016 in its implementation of any extension of the emergency regulation?

We would like to offer the following responses to these questions:

1. Elements of the Existing Regulation that Should be Modified

TVMWD recommends that the State Water Board modify the Emergency Regulation to incorporate adjustments to address widely recognized equity, sustainability and public policy considerations. The key modifications and supporting rationale are as follows:

- a. Incorporate Proposals Developed by Water Agencies to Address Equity Issues in any Extension or Modification of the Emergency Regulation

Although the 2015 Emergency Regulation has resulted in significant water savings statewide by achieving the mandatory 25% statewide reduction in potable water use thus far, the results have been uneven and have been achieved at extremely high cost. Additionally, it is widely recognized that significant seasonal reductions in outdoor irrigation during the upcoming winter months will significantly reduce the total amount of water that Californian’s are able to save and so will derail the efforts of many water agencies to meet their individual Conservation

Standards. This, in turn, will probably undermine the cumulative statewide water use reduction results when the current Emergency Regulation expires in February 2016.

The equity issues and sustainability concerns associated with the current Emergency Regulation are combined with significant public policy considerations, such as widespread and substantial water agency revenue losses, additional administrative and conservation program cost increases, adverse water user reactions to rate increases, and creation of a general disincentive for on-going local water supply reliability investments, and are all among “insights gained” that can, and should, be addressed in the 2016 Emergency Regulation.

With regard to water agency revenue losses and additional program cost increases, a recent survey by ACWA and the California Municipal Utilities Association has found that the Emergency Regulation is estimated to have a total financial impact (revenue losses and additional costs for conservation-related programs) of more than \$500 million for the 270 day period (June 2015-February 2016) for the 73 agencies that responded to the survey. If the survey responses are representative, total revenue impacts could amount to a combined total of more than \$3 billion for the over 400 water suppliers subject to the regulation. Additional revenue losses and added costs for wholesale agencies and water suppliers with fewer than 3,000 service connections are not included in that figure and would certainly drive the total significantly higher. State Water Board had estimated the Emergency Regulation would have a total combined fiscal impact of \$500 million statewide.

This current level of financial impact is not sustainable for most water agencies. Although significant and sustained rate increases and drought surcharges are being widely implemented, these lost revenues mean that water agencies have that much less funding immediately available to maintain and upgrade their water systems, invest in local resources development and provide matching funds to secure grants under Proposition 1. Continued loss of revenues could affect the ability of agencies to maintain their systems and could begin to affect credit ratings for some agencies. The results of this survey are “eye-opening” and will be made available in more detail during the December 7 workshop.

Clearly, the response in light of a possible continuation of the drought cannot be a return to “business as usual” for water use in California. An extension of the Emergency Regulation for 2016 needs to incorporate modifications to address insights gained from the existing restrictions. Following are some proposals that will be presented during the workshop:

Climate Adjustment – The climate adjustment proposal would be implemented by a one-time adjustment to the individual water agency’s Conservation Standard calculated from the deviation between statewide and individual agency’s evapotranspiration (ET) values for the months of July, August, and September 2014. For illustrative purposes the deviation has been calculated using the default ET values published by California Irrigation Management Information System (CIMIS) for the state’s 18 climate zones, but for greater precision this adjustment should incorporate the individual agency’s self-reported evapotranspiration (ET) values. The need for a climate adjustment is based on the fact that all plant materials, including so called “California friendly” plants, require additional water in more arid regions of the state than they require in more temperate locations. The 2015 Conservation Standards were established based only on total water production relative to population but did not account for relative differences to geography, location, or climate. Establishing climate-based irrigation standards using ET is a key element of the state’s Water Efficient Landscape Ordinance and is necessary to preserve the viability of established trees and shrubs as well as the “California friendly” landscapes, which are replacing non-functional lawns throughout the state. The cumulative effect of a making this climate adjustment would be to reduce the total conserved water statewide by less than 3%. This adjustment would go a long way to achieving fair water use reductions statewide. This proposal is summarized in a Fact Sheet and will be presented during the workshop.

Growth Adjustment – The growth adjustment would be calculated monthly based on new water service connections and associated increased demand added to the 2013 production baseline to create a new adjusted baseline for the individual water agencies that are experiencing growth. This adjustment is needed to address population and economic growth that has occurred since 2013 in some parts of the state. As the number of service connections has increased, these growth areas have had a functional increase in their Conservation Standard as they accommodate increasing water demand relative to the “steady-state” water agencies that have not

experienced such growth. This impact is significant for those agencies experiencing such growth, and not addressing it is not equitable.

Recycled Water Adjustment - The recycled water adjustment would be based on the proportion of potable water production to non-potable recycled water production, adjusting the monthly potable production number reported. This adjustment is needed for agencies that supply a substantial amount of recycled water for outdoor irrigation so as to avoid disproportionately penalizing an agency's potable water customers, resulting in a de-facto increase in the Conservation Standard for these agencies. Because non-potable water is not currently subject to the water use reduction requirement, agencies with a large proportion of their total outdoor irrigation served by non-potable recycled water (typically commercial, industrial and institutional customers) must currently demand greater water use reductions from (typically residential) potable water customers. Since recycled water production varies monthly, the adjustment would be subtracted from the monthly production for the agency and the adjusted number would be reported to the State Water Board.

Sustainable Supplies Credits - This proposal would allow water agencies to apply new supplies in combination with continued water conservation savings to achieve their Conservation Standard. This credit is needed to support on-going local water supply reliability investments as advocated in the California Water Action Plan. Water agencies should not be penalized for having planned and invested for dry times – this is exactly what they should be doing. Such actions have been critical to California's ability to weather this drought. New water supplies such as desalination, potable reuse, and conserved water transfers "bring more water to the table." Rather than imposing demand reduction measures without regard to such new supply investments that have been made at substantial cost in many communities to enhance water reliability and mitigate the impacts of drought, this credit would recognize such investments. It would also avoid a signal against such investments which are critical to water supply reliability.

Groundwater Credits – This proposal would allow agencies to designate water supplies associated with sustainable groundwater banking and conjunctive use projects in combination with continued water conservation savings to achieve their Conservation Standard. This credit is needed to support on-going local groundwater management investments that are advocated in the California Water Action Plan and which will be incorporated in Groundwater Sustainability Plans under the Sustainable Groundwater Management Act of 2014. Existing and "proven" groundwater supplies also "bring more water to the table" and should be incentivized as among the on-going investments that enhance local water reliability and mitigate the impacts of drought. This proposal would consider collective actions by multiple water providers in groundwater basins or sub-basins and require projects to meet specified eligibility requirements.

b. Modify The Statewide 25% Conservation Requirement

The adjustment proposals described above are based on the key policy principle that the modifications to the Emergency Regulation should not result in raising the Conservation Standard for any water agency. The State Water Board established Conservation Standards for individual water agencies to achieve the statewide 25% reduction in potable water usage as required by the April 1 Executive Order, but these Conservation Standards now need to be adjusted to address the inequities and policy problems described above. Adjustments that unreasonably shift the burden between water agencies to achieve a pre-conceived outcome (such as the 25% goal) can be avoided by recalculating the total water production savings that can be achieved after application of the adopted adjustments and credits actually used for all water agencies affected by the regulation. Then a sustainable overall statewide target can be calculated and reported for the duration of the 2016 regulation, as is currently the case. The Governor's November 13, 2015 Executive Order does not specify a 2016 numeric conservation requirement for statewide reduction in urban potable water use, and it explicitly authorizes the State Water Board to make modifications. The State Water Board clearly has authority to impose a lower overall conservation requirement.

c. Add a Regional Compliance Option

TVMWD supports adding a Regional Compliance Option to the Emergency Regulation. The Regional Compliance Option was designed to achieve the same water savings as would be achieved by the participating individual water agencies. It would be based on voluntary participation by adjacent water agencies based on an existing structure of

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“regional alliances” as administered by the Department of Water Resources (DWR) to implement SB7X7 (2009). Proponents of a regional compliance option believe they could achieve significant administrative and public outreach efficiencies and could more effectively assist agencies that are struggling to meet their Conservation Standards. Individual agency compliance reporting would continue to be public, and success of the individual participating agencies would be key to the success of the regional group. Several groups of water agencies in different parts of the state are interested in implementing this option. There is no downside risk to the State Water Board regulatory program to in offering this option, and it could empower water agencies to even greater regional conservation savings in 2016.

d. Add a “Rollover Credit” for 2015 Compliance Above Conservation Standard

We support adding a “rollover credit” for individual water agencies that at the expiration of the 2015 regulation have water production savings that have exceeded exceeding their Conservation Standard. This credit would be “rolled over” to the 2016 extension period and would apply to individual agency or regional compliance (assuming that this option is adopted).

e. Retain Key Elements of The 2015 Regulation Several elements of the 2015 regulation that have been effective and well-administered should be retained in any 2016 extension, including:

- Agricultural Water Use Exclusion
- Four Percent Reserve Tier for Surface Storage
- Alternate Methods of Compliance

2. Additional Data

There is no need to add additional data submittal requirements to the regulation, except as necessary to implement the proposed climate and growth adjustments (i.e. ET data and service connections data).

3. Accounting for Precipitation

After January 2016 The State Water Board should reduce the Conservation Standards or sunset the emergency regulation if precipitation levels or runoff projections on April 1 indicate that a drought emergency no longer exists. It is extremely important for the State Water Board and water agencies maintain credibility with California’s water users regarding any demonstrable need for emergency conservation in the remaining months of 2016. It may be possible and advisable to establish “triggers” for regions or individual agencies based on a nexus between the mandated Conservation Standard and current local water supply conditions. The State Board could scale back the applicable Conservation Standard for individual agencies when sufficient water supply as determined by reported water storage levels are sufficient to meet the region or agency needs. We encourage the State Water Board to work closely with the Administration’s Drought Management Team and staff of the DWR, and to collaborate with other water resources managers and ACWA, to consider how to structure this extremely important element of the 2016 Emergency Regulation.

Long-Term Urban Water Conservation Policy

The recommendations proposed in this comment letter are for adjustments to the Emergency Regulation for 2016, if an extension of the Emergency Regulation is necessary, but they should not be considered as directly applicable to a broader discussion on long-term urban water conservation policy. We look forward to working with the State Water Board, the DWR, the water community, and other stakeholders to consider how the current (non-emergency) urban water conservation policy and regulatory framework may be refined to support and complement the state’s broader, long-term water supply reliability objectives.

TVMWD looks forward to working with the State Water Board and other stakeholders to develop these and other promising ideas for reasonable adjustments in the Emergency Regulation that may emerge during the workshop process. Thank you for your consideration of these comments. If you have any questions or comments or need any additional information about TVMWD, please contact me at 909-621-5568.

Sincerely,



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General Manager
Three Valleys Municipal Water District

cc: Three Valleys MWD Board of Directors – Kuhn, De Jesus, Bowcock, Goytia, Horan, Lantz, Ruzicka