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In reply refer to: L2015-068

November 25, 2015

**VIA EMAIL TO** [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

Felicia Marcus, Chair  
and State Water Resources Control Board (SWRCB)  
1001 I Street  
Sacramento, CA 95814

Re: December 7, 2015 Urban Water Conservation Workshop –  
Extension/Modification of Emergency Regulation

Dear Chair Marcus and Board Members D'Adamo, Doduc, Moore and Spivey-Weber:

El Dorado Irrigation District (EID or District) appreciates the opportunity to provide comments on how the SWRCB's Emergency Regulation for urban water conservation can be improved in 2016.

EID's customers have answered the state's call for conservation in both 2014 and 2015, exceeding the state's standards in both years. They have made this sacrifice even though the District's past, heavy investments in water supply security had made unnecessary the degree of conservation imposed by the state. Their conservation effort succeeded in 2015 even though the Emergency Regulation set a high bar because it failed to take into account climate and other local factors. As a result, EID's customers have borne a much heavier conservation burden, both in absolute terms and in harm to their property and inconvenience in their lifestyles, than millions of coastal California residents who, ironically, rely predominantly on imported water supplies rather than the local supplies available to EID.

Last spring, the District and many others urged the SWRCB to take local climate, land-use patterns, water availability, and past conservation efforts into account in formulating the Emergency Regulation. The SWRCB responded that there was insufficient time to do so, and that the various proposals offered were too complex. Now, however, the SWRCB has sufficient time to consider these issues, and some unintended inequities of the adopted Emergency Regulation have become clear.





The District therefore urges the SWRCB to adopt proposals on these subjects advanced by the Association of California Water Agencies (ACWA), Regional Water Authority (RWA), and others. These proposals, described below, are straightforward and will clearly improve the equity of the Emergency Regulation in 2016. Now is the time for the SWRCB to refine the regulation to improve equity and provide greater flexibility in implementation – particularly given the present uncertainty regarding 2016 water supply conditions statewide.

The District now addresses the three points on which the SWRCB has solicited comment for the workshop.

*1. What elements of the existing Emergency Regulation, if any, should be modified in an extended Emergency Regulation?*

There are four elements of the existing Emergency Regulation that could be modified to greatly improve equity state-wide. First, the extended Emergency Regulation should use a broader range of reported usage to calculate R-GPCD, rather than a snapshot of peak summer usage, in order to improve equity. Second, the extended Emergency Regulation should adjust conservation mandates to account for climatic variation, so that end users statewide are making comparable sacrifices, rather than perpetuating the error that poor stewardship, not extreme summer heat and dryness, are what cause end users in the state's interior to consume more water on average. Third, the extended Emergency Regulation should not impose restrictions in the name of shared sacrifice upon localities that have invested heavily and successfully in water supply security – via either conventional surface water supplies or water recycling – or that have recently hardened their demand via significant achievements in water conservation. Fourth, the extended Emergency Regulation should be flexible enough to authorize – although not require – a regional approach to compliance. The following discusses each of these elements in further detail.

*a. Calculation of R-GPCD*

The District endorses the RWA's proposal, submitted by separate letter for this workshop, to calculate R-GPCD on an annual, rather than seasonal basis. Alternatively, at the very least the SWRCB should calculate the R-GPCD figure for the same span of months in which conservation is mandated, such as February through October.

*b. Climatic Adjustments*

The District similarly endorses the proposal advanced by ACWA in its separate comments for this workshop, as well as by a statewide, ad-hoc coalition of water purveyors in an October 21, 2015 letter to SWRCB Environmental Program Manager, Max Gomberg, for a climatic adjustment to conservation mandates based upon readily available evapotranspiration rates. Both of these proposals improve equity by requiring functionally comparable conservation from local agencies throughout the state.



Felicia Marcus  
and State Water Resources Control Board  
November 25, 2015  
L2015-068

Page | 3

### c. Water Supply Reliability

For decades, the State of California’s official policy has been to encourage local water supply efficiency, self-sufficiency, and reliability. Water Code sections 1010 and 1011, enacted in the 1970s, the Costa-Kuehl legislation of 2001, the Delta Reform Act and contemporaneous “20% by 2020” legislation of 2009, and the California Water Action Plan of 2014 are just a few examples of this long-standing state policy. The current Emergency Regulations, however, abandoned this policy in the name of shared sacrifice. This policy choice had the effect of penalizing agencies, such as the District, that have invested ratepayer money into these efforts – at great expense, in good faith, and with significant success.

An extension of the Emergency Regulation offers the SWRCB an opportunity to address this anomaly and reward water agencies and ratepayers who had the foresight and will to invest in local water supply security. To that end, the District endorses the recycled water equity credit proposal advanced by AWCA and in the October 21 letter referenced above. Further, the District proposes two proposals it advanced last April to take into account past conservation performance (and the resultant demand hardening): first, adjust the 2016 conservation mandates by one to three percentage points up or down, based on how well or poorly an agency responded to the calls for conservation in 2014 and 2015; and second, take past conservation efforts into account by allowing an agency to replace 2013 as its GPCD baseline year with any period of three or more consecutive years in which it has measured GPCD “20% by 2020” conservation compliance.

Agencies such as the District should also not be penalized for having secured ample water supplies originating with their home region. If an agency has demonstrated over the last two years that it has sufficient reliable and local water supplies to allow a lesser level of conservation, the extended Emergency Regulation should provide an administrative process by which the SWRCB could review evidence of that local water supply reliability, and appropriately adjust the agency’s conservation mandate. The District endorses the ACWA proposal on this point as one means of addressing this issue.

Additionally, although not necessarily addressable in an extended Emergency Regulation, the SWRCB should promote efforts to transfer water conserved through demand reduction or recycled water substitution, as Water Code sections 1010 and 1011 clearly allow. Adding market-based incentives to the conservation mix would be a welcome addition to the purely command-and-control approach the SWRCB has adopted to date.



d. Regional Conservation

Finally, the extended Emergency Regulation should accommodate an alternative, voluntary regional compliance approach. Agencies and the public might reap significant benefits, both in compliance costs and results, by coordinating messaging and programs on a regional basis, and a regional approach would in no way compromise the statewide conservation goals to be achieved. ACWA has also prepared a proposal on this point, which the District endorses.

2. *What additional data, if any, should the State Water Board be collecting through the Emergency Regulation and how would it be used?*

The District urges caution on this point. It is very easy to lose sight of the distinction between data and information: data are merely raw facts and details that standing alone, mean nothing. Data are useful only if they can be compiled into actionable information. In our age of data, the temptation to gather more of it can become irresistible, but without context or a clear advance plan for how it will be compiled, interpreted, and used, demands for ever more data from water purveyors – who are already subject to myriad reporting responsibilities – will simply impose additional burdens and expense upon them without providing the SWRCB or anyone else with useful information.

The SWRCB should not collect any additional data unless it has first identified objectives to be achieved through data collection, determined what data are necessary to achieve those objectives, and then narrowly targeted its data requests accordingly. These deliberations should take place collaboratively with water agencies, to ensure that the SWRCB's data needs are clear and feasible, and that the objectives they will serve are understood by all parties.

3. *How should the State Water Board account for precipitation after January 2016 in its implementation of any extension to the Emergency Regulation?*

The current Emergency Regulation responded to an Executive Order setting a statewide conservation goal of 25%. Although extremely useful as a rallying point and undeniably beneficial to mitigate the consequences of a fifth consecutive drought year, that 25% goal appears to have been established by executive judgment, rather than by an analysis of available supply or in furtherance of a specific objective for deploying the water saved.

Either of two alternative approaches would be preferable in an extension to the Emergency Regulation. One approach would establish a statewide conservation goal in a public process that is based on scenario planning – taking the supply and demand data from each of the last two years, projecting that into 2016 as a reasonable base case, and determining what level of statewide urban conservation is appropriate in that scenario to again mitigate against the



Felicia Marcus  
and State Water Resources Control Board  
November 25, 2015  
L2015-068

Page | 5

consequences of continued drought. A second, more complex approach would be to perform the same analysis on a regional basis. Although more complicated, this approach would better accommodate a more particularized analysis of regional or even single-agency water supply security, to produce conservation mandates that are better tailored to the varying circumstances around the state. This approach could prove particularly fitting if the El Nino climate conditions have disparate effects on the state.

No matter what approach is taken, an extended Emergency Regulation should provide for an update in April or May, when the 2016 water supply picture will be much better known. Although repeated adjustments of conservation targets and mandates throughout the year would be chaotic and counterproductive, a single update and possible adjustment, planned in advance and implemented when the facts are better known, would enhance agency and public acceptance of whatever mandates are ultimately imposed. In the end, only our customers can answer the call to conserve, and it will require countless acts of volition and will to do so. Therefore, keeping their faith in the state's good judgment is essential and should be the touchstone for the SWRCB as it crafts an extended Emergency Regulation.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Thomas D. Cumpston', is written over a faint, larger version of the signature.

Thomas D. Cumpston  
General Counsel

TDC:pj

cc: EID Board of Directors  
Jim Abercrombie, EID General Manager  
Brian Poulsen, EID Senior Deputy General Counsel