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January 27, 2016

RE: Comments on Proposed Emergency Rulemaking Extending Drought Conservation Regulations

VIA EMAIL: commentletters@waterboards.ca.gov
Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

To the Members of the State Water Resources Control Board:

The City of South Pasadena ("City") submits the following comments on the State Water Resources Control Board's ("SWRCB") Proposed Emergency Rulemaking, dated January 22, 2016, extending and revising existing emergency regulations for urban water conservation. The City supports the SWRCB for providing several public comment opportunities as it considers whether and how to extend the existing water conservation regulations intended to respond to the ongoing drought.

The SWRCB's data indicates that the state, as a whole, has achieved a cumulative 26.3% water savings from June to November 2015, compared to the same period in 2013. At this level, the state has collectively met its conservation target over these six months, and is on track to continue to meet the conservation target overall. Given this fact, the SWRCB is right to respond positively to the stakeholder proposals to modify the existing conservation regulations by reducing individual agency's conservation targets when warranted in a variety of cases.

I. SWRCB Must Revise Regulations to Rationally Reflect Reality of Agencies in Areas with Higher than Average Evapotranspiration Rates by Allowing All Agencies in Hotter Areas to Proportionally Reduce Conservation Standards.

The SWRCB's proposed revised emergency regulations reduce conservation targets for agencies with higher than average evapotranspiration rates by up to 4%, reflecting the state's significant climatic variation. The City commends the Board's recognition that hotter, inland areas have higher heat indexes and evapotranspiration rates and thus require additional water to keep critical flora, including urban trees, healthy relative to cooler, coastal areas. Even with reductions in unnecessary landscape irrigation and limiting outdoor irrigation to critical flora, areas with higher evapotranspiration rates will still need more water for the same amount and type of landscaping as cooler, coastal areas. The proposed emergency regulations rightly recognize this.

However, the City is concerned that the proposed emergency regulations lack a rational basis to limit reduction of conservation standards to only those agencies with a 5% or higher level of evapotranspiration over the statewide average. All outdoor water users in areas with a higher than statewide average evapotranspiration rate must use more water than cooler, wetter areas, yet the Board's proposal only reduces conservation standards for agencies with at least a 5% upward deviation from the statewide average. This lacks a rational basis. The Board is right to recognize that the hotter, drier areas of the state need different conservation standards than the cooler, wetter areas. The Board must fully implement this recognition in its emergency regulations.

The City therefore recommends that the Board revised the proposed new Article 22.5, Section 865, subsection (f) to read as follows, with changes underlined:

> (f) In consideration of the differences in climate affecting different parts of the state, growth experienced by urban areas and significant investments that have been made by some suppliers towards creating new, local, drought-resilient sources of potable water supply, an urban water supplier's conservation standard identified in subdivision (c) shall be reduced by an amount, not to exceed ten (10) percentage points total, as follows:
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> (1) For an urban water supplier whose service area evapotranspiration (ETo) for the months of July through September exceeds the statewide average evapotranspiration for the same months, the supplier's conservation standard identified in subdivision (c) shall be reduced by the same percentage basis as the supplier's service area evapotranspiration exceeds the statewide average, up to a maximum of ten (10) percent.
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> (A) Statewide average evapotranspiration is calculated as the arithmetic mean of all urban water suppliers' service area default evapotranspiration values for the months of July through September. Default service area evapotranspiration will be based on the California Irrigation Management System (CIMIS) ETo Zones Map zone for which the supplier's service area has the greatest area of overlap. In lieu of applying its default service area evapotranspiration, a supplier may use specific data from CIMIS stations within its service area that have at least a five-year continuous period of record to identify a more specifically-applicable evapotranspiration for its service area. To qualify for the in-lieu climate adjustment the supplier shall submit the following data to the Board by March 15, 2016 for each station: CIMIS station ID; station location; and monthly evapotranspiration, in inches per month, for July, August, and September for the five-year continuous period of record.

This proposed modification will allow all agencies with higher than statewide average evapotranspiration rates to have reduced conservation standards, with a ten percent cap in recognition of the fact that the drought is severe and ongoing. Limiting the potential reduction in conservation standards to only 4%, and only for agencies with at least a 5% higher than average evapotranspiration level, when the state has, as a whole, met the conservation standard and when some agencies have evapotranspiration rates much higher than the statewide average fails to

accurately reflect the greater difficulty agencies with higher evapotranspiration rates face in conserving water. The City recommends that the SWRCB adopt the proposed evapotranspiration-rate based conservation standard reduction, but adjusted as stated above to reflect the difficult reality that the significant regional variation in the amount of water required for the same type of landscaping creates for agencies in these areas.

II. Precipitation After January 2016 should be Measured and Used to Reduce Conservation Requirements on a Regional Basis

The City continues to recommend that the SWRCB revise its proposed emergency regulations to account for precipitation after January 2016 on a regional basis. Specifically, the SWRCB should use available precipitation data to develop a monthly measure of the precipitation in each hydrologic region after January 2016 relative to the normal precipitation level in each region by month. The revised regulation should then adjust each region's table of required conservation tiers down to reflect any precipitation in that region above the four-year average on a proportional basis. For example, if precipitation in February 2016 in a given region is 15% higher than the normal February average rainfall for that region, then the conservation standards in that region would be reduced by 15% across the board. Given that the current conservation tiers are structured to achieve a 25% statewide conservation level, and have already achieved a 26.3% statewide level, there is no need to tighten the conservation standards if precipitation turns out to be lower than average for each month. The City recommends that precipitation be accounted for and used to reduce conservation tiers on a regional basis, rather than a statewide basis, as precipitation only recharges aquifers and reservoirs where it falls.

This approach would ensure that the significantly higher than average precipitation expected this winter, including due to the El Nino cyclical Pacific Ocean warming and associated weather pattern, is reflected in the state's mandatory water conservation standards. If, as expected, precipitation is significant, then that extra precipitation will filter into aquifers and will refill reservoirs, thus becoming available to some extent for domestic use and reducing the severity of the drought. The City recognizes that one good winter's amount of precipitation will not erase the drought nor completely refill the state's aquifers. Given that, the City only advocates reducing conservation requirements by the percentage that the precipitation exceeds the average and recommends that the tiers be left as is if precipitation is instead low. By maintaining the existing standards if the expected higher precipitation does not materialize, then the state can expect to at least maintain the existing, greater than 25% conservation level achieved under the existing regulations.

III. Losses to System Leaks Should be Accounted For, and Not Counted Against Agencies, if Agencies Have Plans to Find and Fix Leaks

The City continues to further recommend that the SWRCB revise the conservation regulations to allow an urban water supplier to deduct losses to system leaks from its reported water usage levels, if the supplier has a documented plan in place to identify and fix the leaks causing that loss. At present, losses to a system leak are not separately accounted for. This means that a water supplier and its community must conserve over and above the actual conservation requirements and bear the burden of increased enforcement and threats of fines while actively working to identify and

fix those leaks. This hardship is magnified because the City's significant water conservation efforts, having conserved 30.2% since 2013, mean that there is less water rate revenue available to fund system repairs and infrastructure improvements.

The City urges the SWRCB to take a less punitive approach to water suppliers with system leak issues, encouraging those agencies to identify and fix those leaks as soon as possible. To that end, the City recommends that the SWRCB revise the regulations to deduct the amount of water loss to any documented leaks from the water usage amounts used to assess conservation standard compliance, if the water supplier has developed and is implementing a plan to identify and fix system leaks. If a supplier has leaks, but has not developed and begun to implement a plan to fix those leaks, then the water losses to leaks count against the supplier, providing an incentive to create such a plan.

IV. SWRCB Should Consider Water Conservation Efforts Before Establishment of the 2013 Baseline in Evaluating Any Enforcement Actions

As cities and water agencies are enforcing the State conservation requirements, the most common complaint from consumers continues to be that water conservation efforts before the 2013 baseline have been detrimental to both setting and meeting the customers' individual targets. Residents and businesses that made significant investments in water conservation and that have already substantially changed their water use behavior, before the state's 2013 baseline, should be given explicit credit for those past conservation efforts. This disconnect is particularly troubling for those residents and businesses who are subject to the same strict conservation standard as neighbors who failed to previously conserve, yet are having difficulty meeting that standard as they have already conserved significant amounts of water. The State should establish an appeal process that would allow a city or agency to quantifiably demonstrate such pre-2013 conservation, then have their conservation targets proportionally adjusted to reflect the conservation already achieved.

Conclusion

For the foregoing reasons, the City requests the Board revise its existing regulations as follows:

- SWRCB must revise proposed emergency regulations adjusting conservation targets to reflect higher than average evapotranspiration rates to reduce conservation targets by the percentage that each agency's evapotranspiration exceeds the statewide average, up to a maximum reduction of 10%;

- Account for precipitation after January 2016 by reducing conservation standards on a regional basis by the same percentage as monthly precipitation exceeds the normal rainfall average for that month, with no increase in conservation standards if precipitation is less than the corresponding average;

- Revise the regulations to deduct losses to leaks from a water supplier's water usage levels used to assess compliance with the conservation standards, if the supplier has developed and is implementing a plan to identify and fix the leaks.

- Establish a process to allow a city to quantifiably demonstrate pre-2013 conservation, then proportionally adjust conservation targets to reflect conservation already achieved.

The City seeks these amendments to ensure that the revised emergency regulations are reasonable, feasible, reflect the expected significantly increased winter precipitation, and will continue to accomplish the Governor's stated goal of a 25% statewide water use reduction. After several months of implementing the regulations and a significant previous history of conservation, the City is proud to report that it has achieved a 30.2% conservation rate relative to 2013 water consumption levels, exceeding its conservation standard by 8%. The City will continue to work together with its residents and businesses to improve its conservation and urges the SWRCB to revise the conservation standards as stated above to ensure that the realities facing South Pasadena and many other similarly situated cities are taken into account in the revised regulations.

Sincerely,

Sergio Gonzalez
City Manager

cc: South Pasadena City Council
Teresa L. Highsmith, City Attorney