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January 6, 2016

Kathy Fervert
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

**Subject: Comments on Proposed Regulatory Framework for 2016
Emergency Drought Regulations**

Dear Ms. Fervert:

We appreciate the opportunity to provide input to the State Water Resources Control Board ("State Board") on the Proposed Regulatory Framework for the 2016 Emergency Drought Regulations issued for public review on December 21, 2015. We understand the importance of preserving water supplies, and are committed to helping the State manage water resources sustainably. We appreciate your consideration of stakeholder proposed equity adjustments and the revisions you are considering to incorporate experiences from the current Emergency Regulations and better equity for all water suppliers into the proposed 2016 Emergency Regulation. After a review of the proposed regulatory framework, we offer the following comments.

As a general comment, the Emergency Regulation should recognize the diversity in local conditions that exist throughout the state that can greatly impact water use levels. A local agency that is impacted by multiple factors, such as climate and growth, and that has already made significant investments in developing new water supplies, should not be held to an arbitrary four percent adjustment cap. If an agency has numerous factors that legitimately affect its ability to achieve conservation targets or has developed drought resilient supplies, under what technical rationale or standard of equity should these be discounted when establishing Emergency Regulations? If it is recognized that an adjustment is reasonable to account for factors impacting water use, then an agency should be able to utilize the full value of that adjustment. Placing a cap on credits and adjustments continues the inequitable treatment of communities with warmer, drier climates, economic growth, and historical investments in both pre-2013 and post-2013 sustainable supplies.

While some lack of precision and technical justification may have been explainable with the shortened promulgation schedule and urgent nature of the 2015 Emergency Regulations, our expectation was that the State Board, which

develops and administers some of the most complex and sophisticated regulations in the world, would have endeavored over the last nine months to develop much more technically rigorous Emergency Regulations for 2016. In our view the proposed 2016 Emergency Regulations regrettably fall short of that goal.

In this regard, the following comment sections address some specific concerns with the specific credits and adjustments currently being proposed by the State Board staff for the 2016 Emergency Regulations.

Climate Adjustment:

The proposed climate adjustment is oversimplified and results in an inaccurate reflection of the magnitude of the impact of climate on water use across the state. A warm, dry climate greatly increases the need for watering even the most water efficient landscaping. The same drought tolerant landscaping irrigated with identical water efficient systems will use more water in hot inland areas than in cooler coastal areas. As participants in the State Board's Workgroup, EMWD along with other agencies have provided numerous calculations demonstrating the adjustment necessary to treat these areas equitably.

Limiting the adjustment for climate does not justly recognize the influence of climate on outdoor water use. This is especially true for the summer months that have been used to set the Conservation Standards. Using an "average" of statewide ET (which includes unpopulated desert areas that have little population or applied water) for setting urban water conservation standards is simply not appropriate. We recommend that the population-weighted statewide average ET be used as baseline to compare against an agency's ET. This will more equitably reflect the climate deviation across the populated the urbanized areas of the state where the conservation regulations are actually being applied. This methodology was reflected in one of the Workgroup recommendations presented to State Board.

Growth Adjustment:

The proposed method of calculating a growth adjustment is unnecessarily complex and does not properly recognize or adjust for the impacts of growth on an agency's ability to meet its Conservation Standard. Both the calculation proposed to estimate new demand and the adjustment method in the proposed regulatory framework should be amended to accurately account for the significant impact of growth that some agencies are experiencing now and will continue to experience in the future. This is discussed below:

New Residential Demand Calculation

The calculation proposed for estimating new residential demand is unnecessarily complex and arbitrarily discounts the actual water demand new development has added since 2013. Concerns with this calculation include the following:

- Using the number of connections to estimate population growth. This does not accurately reflect the number of multi-family homes added because many multi-family facilities have single meters.
- Using a default of three persons per household. This is an over simplification that does not accurately reflect the variation in household size across the state.

- Requiring landscape area for new homes. Many agencies do not have landscape area information readily available for residential homes. The proposed method will require an estimate of irrigated area for many agencies, limiting the accuracy of the data.
- Using the current state standard irrigation application rate of 55 percent of local ET does not correctly reflect the landscape standards or ordinances, which provided a more generous allowance, that were in place when the growth actually occurred.

To improve the accuracy of the equation:

- Dwelling units should be used in-lieu of number of connections to calculate indoor water use.
- Actual census data should then be used to calculate persons per household rather than a statewide average.
- A factor of 70 percent of local ET should be applied. This represents the landscape requirements that were actually in place from 2013 through most of 2015.

Even with these changes, we believe this proposed method of estimating residential demand is still overly complicated and does not improve the accuracy of the growth adjustment. Alternatively, it is recommended that the State Board adopt a simpler method of estimating residential demand using an average water use per connection method as proposed for commercial, industrial, and institutional customers. This methodology was reflected in one of the Workgroup recommendations previously presented to State Board.

Growth Adjustment Calculation

In addition to revising and simplifying the proposed method for estimating demand, as noted above, the proposed method of applying the growth adjustment should also be modified to equitably account for the impact such growth-related demand has on agencies trying to meet Conservation Standards.

Currently, any growth in demand since 2013 from economic development must be offset by existing customers reducing demand in excess of the Conservation Standard assigned to that agency. To address this, the calculation methodology contained in the proposed framework multiplies the amount of calculated new demand from growth by an agency's original Conservation Standard to derive the adjustment to the new Conservation Standard. This appears to be an arbitrary mathematical manipulation to discount the actual effect of growth and the associated adjustment.

In the hypothetical agency example provided in the proposed framework, the agency grew by six percent but only received a two percent adjustment. As a result, the agency will have to reduce current demand by an additional four percent to account for growth, thereby penalizing the agency that experienced economic growth by essentially increasing its Conservation Standard. Arbitrarily "discounting" the adjustment given for growth with no rationale or technical justification seems improper in a regulatory context.

We recommend using a methodology that accurately and fully adjusts for the impact of growth. This would include applying the growth adjustment by subtracting the percent of new demand from the conservation requirement. This will fairly account for growth and prevent the penalization of areas with growing economic development. This is very similar to one of the Workgroup recommendations previously presented to State Board

Drought Resilient Sources of Supply Credit:

The draft framework proposes a credit for drought resilient supplies that is narrow in scope and limited in benefit. Only two sources of supply are considered to be 'drought resilient' and, once again, an arbitrary adjustment cap is applied.

Eligible Supplies

The only sources that the State Board staff have deemed to be eligible for the proposed supply credit in the proposed framework are indirect potable reuse of coastal water and desalinated seawater. This unfairly recognizes only 'drought resilient' supplies that have been developed by agencies along the coast. The draft framework does not include other drought resilient supplies such as the desalination of brackish groundwater, other impaired treated groundwater or indirect potable reuse in inland areas.

Much like seawater, brackish or chemically impaired groundwater cannot be used for potable purposes without significant and costly treatment. Recovering currently unused non-potable groundwater to meet potable demands provides a reliable source of water and helps protect potable groundwater basins from rising levels of brackish, saline water or other contamination that can impact adjacent potable groundwater supplies. Brackish groundwater supplies or impaired groundwater that is currently being desalted and treated is found in groundwater basins or sub-basins that have been documented to have substantial sustainable supplies. As such, desalinated or treated groundwater as previously described is clearly a drought resilient supply. Exclusion of a credit for such supplies in the proposed Emergency Regulations would appear to demonstrate a misunderstanding by the State Board of drought resilient water resources, and in our view results in an arbitrary and improperly constructed regulation.

Similarly, the proposal to limit credits for indirect potable reuse projects to coastal areas is not well justified in the proposed framework and presumes discharged wastewater in inland areas is universally used for potable purposes downstream. This over-simplification fails to recognize that indirect potable reuse in inland areas provides drought-proof, sustainable potable supply augmentation using wastewater that is discharged and in many cases is not used to meet urban water demands. As such, the proposed Emergency Regulations must include drought resilient supply credits for all indirect potable reuse projects.

Eligibility Window

The proposed credit also only applies to drought resilient supplies developed since 2013. This does not recognize the long-term approach to planning agencies have taken since previous droughts, like the one experienced in the early 1990's. New supply sources often require many years, even a decade or more, to develop. Applying a two-year eligibility window penalizes those agencies who were pioneers in developing sustainable water supplies, implementing forward-thinking conservation programs, and planning for the next drought far in advance.

We recommend removing the eligibility window and recognizing all resilient water supplies currently in use. This captures the historical investments agencies have already made and recognizes that these investments, which were in place before 2013, have actually served to mitigate the severity of the current drought in many areas.

Cap on Credits and Adjustments:

Finally and perhaps most significantly, arbitrarily limiting the credits and adjustments granted to an agency to a cumulative four percent cap not only penalizes those agencies that have made very large investments in sustainable supplies, but does not fully recognize agencies' local conditions attributable to climate and growth. If agencies have invested in sustainable supplies, have experienced tremendous growth, and are located in an extremely warm climate, all of these factors should be recognized.

The Emergency Regulations provide a range of Conservation Standards from eight percent to 36%. These were derived using an imperfect residential gallon-per-capita-per-day (GPCD) methodology that failed to consider housing density and type, climate differences, proportion of drought resilient supplies and other important considerations. Yet, if an agency at 36% legitimately qualifies for technically sound adjustments to its Conservation Standard, the State Board is proposing to limit the reduction in the Conservation Standard for this agency from 36% to 32%, even if a substantially larger reduction is justified.

To EMWD and the vast majority of the water community this just doesn't make sense. If the State Board is recognizing that credits and adjustments are necessary to address inequities in the Emergency Regulations, which seems to be the case, then full recognition of these credits and adjustments must be given. As such, we strongly encourage the State Board to not impose an adjustment cap of four percent.

Thank you for your consideration of our comments. We look forward to working with you to develop and implement an equitable and appropriate Emergency Regulation moving forward.

Sincerely,



Paul D. Jones II, P.E.
General Manager



Elizabeth Lovsted
Sr. Civil Engineer

c: EMWD Board of Directors