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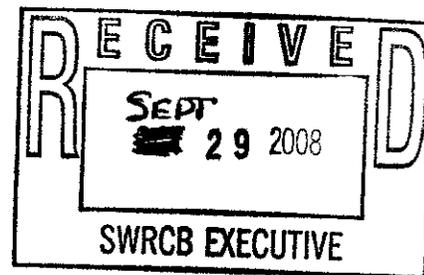
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**MEMBER AGENCY OF THE
METROPOLITAN WATER
DISTRICT
SOUTHERN CALIFORNIA**

10/1/08 Board Workshop
Urban Water Conservation
Deadline: 9/23/08 by 12 noon

September 24, 2008



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

Subject: Proposal to mandate water conservation actions - Comments

The Las Virgenes Municipal Water District (LVMWD) is a public utility providing water and wastewater treatment services to approximately 100,000 customers in northwest Los Angeles County, including the cities of Agoura Hills, Calabasas, Hidden Hills and Westlake Village. The District is an acknowledged leader in water conservation, with long experience in developing and administering water conservation programs¹. We appreciate this opportunity to comment on the State proposal to mandate water conservation measures for water providers.

Key Issues and Questions

We begin by responding to the key issues and questions identified in the SWRCB discussion paper of August 22, 2008.

1. Should the State Water Board adopt an urban water conservation regulatory program? What should be the scope and content of such a program? Will mandating urban water suppliers to implement certain practices or meet specific performance standards be beneficial for enhancing water conservation?

No. This approach was considered in the early 1990's, prompted then, as now, by a statewide water shortage. The consensus then – and now, we believe – was that a new state regulatory program broadly mandating specific water conservation measures would actually prove counter-productive, especially for those agencies voluntarily developing and implementing new conservation programs. Instead, lawmakers, water utilities, environmental groups and other conservation stakeholders formed the California Urban Water Conservation Council (CUWCC) for the purpose of accelerating urban water conservation efforts statewide.

¹ ACWA Clair A. Hill award (1990); CUWCC Charter Member (1991); Charter signatory to the state MOU on urban water conservation (1991); Conservation Leadership Award (POWER, 1991); Conservation and Recycling Awards (WateReuse, 1995; USBR, 1997); State Prop. 13, Prop. 50 Water Conservation grants (2003, 2005, 2008).



Initially, critics of this approach argued that urban water agencies would not participate in CUWCC or sign the State's Memorandum of Understanding for Urban Water Conservation (MOU). Today, CUWCC has 394 members, including the large majority of urban water providers. This non-mandated approach can claim a direct role in the substantial reduction of urban water demand via its member's commitment to the Council's fourteen Best Management Practices (BMPs). The State's most effective role in this effort has been as a source of financial and technical assistance to the state MOU signatories.

To be sure, a voluntary approach such as CUWCC can fail for lack of participation. But we feel it's important to examine the reasons for non-participation, because those reasons do not lend themselves to a mandatory regulatory program:

- **Financial and Staffing Constraints.** Many non-signatory agencies to the existing State MOU on urban water conservation are constrained by financial or staff limitations, which under a mandatory program is a recipe for non-compliance, appeals and, potentially, lawsuits.
- **Compliance Challenges.** The proposed regulatory mandate differs substantially from the SWRCB's other regulatory mandates under the Clean Water Act, insofar as NPDES permits directly regulate the responsible party (i.e. dischargers). In contrast, a new regulatory program focused targeting only water providers would have to address the fact that water agencies such as ours have only limited control over how our customers use water. It seems clear that any acceptable regulatory program for conservation would be limited by potential legal challenges to only those requirements that we could reasonably comply with and enforce on water agency customers. For signatories to the State MOU, these requirements are already in place and working. It is not clear how we could enforce more stringent requirements than those already in place on retail customers. Legally, this approach would require substantial changes to statutory authority to regulate retail customer water use. It is true that, like the SWRCB, existing law governing public water suppliers provides some discretionary latitude to "raise the bar" on what constitutes unreasonable use, but the use of that authority is vulnerable to local initiatives to recall or replace the governing boards of public water utilities, especially given the current climate of rate increases (driven largely by the need to keep abreast with just the current spectrum of regulatory requirements).
- **State fiscal challenges.** Given the current economic setting, it is unclear how the state would pay for a new regulatory mandate of this scope. Existing SWRCB staff is already challenged to carry out its primary mission of protecting water quality, just as water districts are already challenged to hold the line on water rates against the rising cost of service.
- **Effectiveness.** Beyond the adoption of mandatory increasing block rate structures – something most urban suppliers have already implemented – the proposed policy is largely silent on the details of the water conservation actions it contemplates mandating. It is important to recognize that many of the water conservation BMPs already mandated for signatories to the State MOU are problematic for many agencies, including both signatories and non-signatories to the State MOU. Rather than simply mandating new requirements, or mandating statewide compliance with the existing State MOU, we feel a better direction for the state is to directly address the reasons resulting in inefficient water use, focusing its efforts, not on the water

agencies that provide the water, but on those who actually use the water and the industries that supply water fixtures. This approach has proven highly effective, examples being legislation requiring retrofits upon resale and tighter standards for the manufacture of water-using appliances and irrigation equipment.

2. What is an appropriate definition of urban water supplier? Should it include both wholesale and retail water suppliers? One option is to use the definition of "urban water supplier" in the Urban Water Management Planning Act (Wat. Code, § 10610 et seq.), that is, a supplier, either publicly or privately owned, providing water for municipal purposes either directly or indirectly to more than 3,000 customers or supplying more than 3,000 acre-feet of water annually. An urban water supplier includes a supplier or contractor for water, regardless of the basis of right, which distributes or sells for ultimate resale to customers. (Wat. Code, § 10617.)

A better definition of an urban water supplier in the context of conserving water would be any urban water supplier who has not already implemented the fourteen BMPs identified in Table 1 in the state discussion paper.

Regardless of how one defines the regulated community, though, this question highlights the potential fiscal and administrative burden of a regulatory program of this scope, a program that could potentially affect all urban water suppliers. Two decades ago the UWMP Act recognized these burdens and acknowledged their potentially disproportionate impact on smaller agencies. The solution then was to exempt urban suppliers at the then-reasonable cutoff of less than 3,000 customers or 3,000 acre-feet.

Today, however, even medium-sized agencies like ours with less than 100,000 customers are struggling to keep apace with the rapidly increasing cost of service, while attempting simultaneously to minimize rate increases on public consumers increasingly critical of - and resistant to - any utility rate hikes. To some degree this situation exists due to the public's historical experience of low water rates, especially when compared to other basic services. But this historical expectation of low rates is exacerbated by today's economic climate, where even small increases in water rates pose genuine economic hardships for families paying more for all basic services.

The fact is that today most water agencies, large and small, are struggling to stay within the public's expectation of relatively inexpensive water and wastewater treatment services. An additional overlay of an entire regulatory program with its associated costs on top of these existing challenges is unlikely to find much support, even among agencies that have historically supported new conservation initiatives. Few water agencies are equipped, from a personnel or funding standpoint, to have what amounts to an ongoing role in what amounts to enforcement.

3. Should the regulatory program apply to all areas of the state or only to areas subject to certain criteria? Water conservation can provide consumer benefits even in areas that are not water short. Key benefits can be lower water bills and reduced energy use for water heating. However, water conservation has significantly greater importance in areas that are chronically water short or that depend on water exported from watersheds that are under environmental stress, such as the Delta. Perhaps the State Water Board's regulatory authority should be focused on these special areas.

Directly or indirectly, nearly every aspect of the state's water supply is interconnected. The state discussion paper makes a good point that conservation benefits citizens even in areas not currently short of water (via reduced demand on regional electrical grids, for example, and reduced diversions from watersheds located primarily in the wetter portions of the state). As for the previous question, we believe any regulatory program should limit itself to those areas and agencies that are not currently in compliance with the existing state MOU on Urban Water Conservation. This approach would reserve regulatory mandates for those agencies (and their associated geographic service areas) for whom a more voluntary, flexible approach has failed.

4. Would a performance-based regulatory program, allowing latitude for urban water suppliers to select the practices to meet specified water use reductions, be an effective approach? In what form should the performance standards be expressed, for example, targeted reductions based on total urban per capita use or on water use sectors (residential, commercial, institutional, and industrial)?

Yes. This approach already exists to some degree in the current state MOU on urban water conservation and the compliance alternatives to the existing list of performance-based Best Management Practices. The logic of reasonably flexible, performance based BMPs has not changed since the last statewide water shortage:

- The large number of water suppliers in California is a direct consequence of the incredible range and variety of hydrological and political challenges that local "on the ground" water managers must address. Performance-based regulations that build-in the latitude necessary to tailor them to local jurisdictions are far more effective than "one size fits all" prescriptions.
- A rigorously proscriptive approach to conservation can preclude alternative conservation efforts that may be capable of conserving equivalent volumes of water more cheaply or efficiently. That is why the current list of conservation BMPs under the state MOU includes "as effective" language to enable compliance via alternative methods.
- Some BMPs are easier to implement than others, and agencies vary in their ability to advance multiple BMPs simultaneously. That is why the state MOU does not dictate how or when signatories come into compliance, within fairly generous limits.
- Water agencies are relatively easy to regulate in comparison with their customers, but ultimately the ability of water agencies to conserve water depends on their customers' behavior. Local managers typically know whether a given conservation measure will work with their customer base, and where problems exist it is local managers who can best identify workable alternatives. They need to be given the latitude necessary to gain the support and active cooperation of the public they serve.
- Many water agencies are captive to planning decisions made decades ago by different governing bodies in terms of lot size, adopted landscaping plans and the like. It should be recognized that many of these decisions pose formidable challenges in terms of modifying existing patterns of water use. County and local governments may need to take on an active role in helping to implement water-use reductions. Similarly, the covenants, conditions and restrictions of homeowner

associations often dictate landscape policies that are counter to water conservation practices. The state may consider overriding legislation or regulations that negate these outdated policies.

5. Should the State Water Board adopt prescriptive urban water conservation management practices, such as the BMPs in Table 1? Would some of the BMPs in Table 1 be more appropriate for state wide implementation than others?

No. See our comments to the previous question.

6. Are water pricing structures the most effective conservation measure to mandate on a state wide basis? Should particular volumetric water rate structures, such as increasing block rate, be specified? What criteria should be considered in defining a rate structure? What should the rate structure look like?

No. While conservation rate structures are unquestionably one "tool" in an array of methods that can save water, but there are larger issues that argue against the state dictating how water agencies manage their revenue streams. For public agencies with elected governing boards, rate structures must balance the need for conservation incentives with other equally important needs, such as planning for capital improvements, adjustments for weather impacts on demand, and debt payment, not to mention the essential need for the public's support. A caveat to consider is that "ratepayer revolt" to high rates can result in highly qualified and conservation-committed board members being voted out in favor of board members running on a platform of lower rates. This is not a hypothetical scenario.

A key issue for utilities seeking to adopt or adjust increasing block water rates is the degree to which volume-independent costs are captured in the lowest tiers. If this issue is not addressed, then rate structures that reduce demand eventually require higher rates to recover the fixed costs of providing service. If this issue is not addressed, then a legally mandated increasing block rate structure – if effective at reducing water sales – will eventually result in higher water rates for all customers. The most common complaint heard by our customer service staff with respect to water conservation is that, "I conserved and they just raised the price." The solution to this dilemma is a pricing structure that recovers most fixed costs at the lowest use tiers, but the ease of making the transition to this type of rate structure will vary significantly across the state. It is not clear how effective a rate regulation would be that provides the latitude necessary for elected boards to successfully implement them in concert with the other factors that go into rates and rate structures.

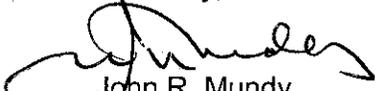
7. What data are available to support mandating particular water conservation practices and estimating the potential water savings associated with those measures?

We recommend contacting staff at CUWCC or the Metropolitan Water District of Southern California, both of which have considerable experience with estimating potential water savings for particular water conservation practices.

In closing, we do not wish to appear unduly critical of the state's interest in accelerating water conservation efforts, especially in light of the current statewide water shortage. Looking back on our agency's actions since the last drought of the 1990's, the three most important factors are our governing board's long-standing support for conservation efforts, state and federal laws prohibiting the sale of inefficient fixtures, and the availability of state and federal funding for new conservation efforts.

We appreciate the opportunity for comment and dialogue. Please contact Dr. Randal Orton in our Resource Conservation and Public Outreach Department if you have further questions. He can be reached at 818 / 251-2145 or rorton@lvmwd.com.

Sincerely,



John R. Mundy
General Manager