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May 4, 2015

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



RE: Emergency Regulations and Regulatory Framework—Governor's Executive Order B-29-15

Dear Ms. Townsend:

MSWD submitted significant comments in conjunction with the recent emergency regulations. It would appear that none of the points included were taken into consideration when placing MSWD into Tier 8 requiring a 32 percent reduction in water use. In addition, MSWD found an error in our own calculations of the data submitted to the state in our GPCD figures for July and August.

The July and August calculations were erroneously based upon 78% residential consumption when the number MSWD has normally been using in its reporting is 65%. The GPCD calculation that put us in tier 8 (32% reduction mandate) was 179.4. The actual GPCD is 158.3 and would put us in tier 6 (24%). We have submitted revised reporting and request that this is brought to the attention of the decision makers.

MSWD appreciates the Board's efforts to respond to the drought conditions facing California. I am, however, compelled to write to express concerns about the proposed SWRCB Regulatory Framework related to water use reductions under the Governor's Order: B-29-15. Following are numerous considerations that Mission Springs Water District (MSWD) believes should be addressed prior to ratification of the proposed framework by the Board.

Notwithstanding a number of the comments received by your office to date, MSWD feels that the following issues create a substantial and disproportionate impact on the severely disadvantaged communities (DACs) we serve. Further, MSWD believes that the proposed Regulatory Framework may irreparably harm both the District and the DACs it serves.

Recent Census data shows this District serves several communities that have the lowest per capita incomes of any community in Riverside County. The recession hit here harder than in any other area, requiring that MSWD drastically reduce staff by nearly 30% and seeing our budget revenues go from \$17 million to an average of \$10 million. The new state regulations for Chromium 6 will require an additional annual expenditure of \$2 million. A state mandated 32% reduction in our sales will reduce our revenues by \$2-3 million. These financial burdens will necessitate a significant rate increase impacting the poorest communities in Riverside County (and probably in the State). The SWRCB must be sensitive to how this methodology is impacting these communities.



I hereby request that the following be included in the record of the proceedings when the final draft of the Regulatory Framework is considered.

- **Summary:**

The Governor's order, B-29-15, requires that the State Water Resources Control Board impose restrictions to achieve 25% state-wide reduction in potable urban water usage through February 28, 2016. Mission Springs Water District is somewhat troubled by the method of determining which agencies will reduce per-capita usage (GPCD) by the amounts stipulated in the DRAFT amendments to Article 22.5—*Drought Emergency Water Conservation* and proposed Regulatory Framework.

- **Proposed Regulatory Framework Disregards Previous Gains and Rewards Historic Water Wasters:**

MSWD contends that the state did not consider gains made by “early conservation adopters” since establishing their baseline GPCD as outlined in their respective 2010 Urban Water Management Plans (UWMP). Further, MSWD asserts that agencies that were not proactive in GPCD reduction, or which did not experience economic impact that drove down water use, are being rewarded under the proposed framework while proactive agencies and disadvantaged communities (DAC) are being penalized.

In 2008, the state implemented the 20x2020 goal for reducing urban water demand in the face of drought conditions. The means by which suppliers proposed to meet this mark were spelled out in the respective agency's Urban Water Management Plans for 2010. The state provided various approved “methods” that each supplier had the choice to employ. MSWD chose Method 4: the “BMP” (best management Practices) option.

Throughout the past 10 years, MSWD has increased awareness of the need to use water wisely—a message at the center of MSWD's public outreach programs since the early 1990's. In 2005, MSWD, in partnership with the City of Desert Hot Springs, adopted a landscape ordinance for **all** new construction that required desert landscaping. Water use in the district went from a GPCD baseline annual average of 317.9 to the 2014 average of 135.5—a nearly 58% reduction. Few agencies can demonstrate this level of impact.

When the Governor decided to use the baseline year of 2013 for further conservation measurement, the **significant** progress made under the 2010 UWMP was apparently not considered. Conversely, agencies which had been less proactive have been given a buffer from which to implement conservation measures. This “buffer” not only safeguards their customer base from significant impact on actual water use reductions, but also on the fiscal constraints caused by reductions in commodity revenue.

MSWD believes that the State Board should modify its **Proposed Regulatory Framework** to consider the state's long-term conservation strategy as defined through the Urban Water Management Planning structure. The State Board should review GPCD gains from the 2010

baseline to measure cumulative GPCD reduction based upon the 20x2020 requirement and the recent additional 20% and 25% reduction targets.

MSWD customers have reduced GPCD usage by about 58% from the UWMP baseline and are now required to come down an additional 32%. If MSWD were to achieve the proposed 32% reduction, the net decrease in GPCD from our UWMP baseline, **along with** consumption revenue, would be nearly 68%! No agency can reduce revenue by this amount and reasonably expect to recover that loss through rate actions, particularly those which serve DACs. This is not only unreasonable, but also unachievable even on a temporary scale. If MSWD had been slower in reducing its GPCD from the 2010 UWMP baseline, like many were, even a 36% reduction today would be more manageable than the 32% being recommended. 36% off of fat is a far more achievable goal than 32% off of lean.

- **The proposed framework creates a negative Environmental Justice Condition on Disadvantaged Communities (DACs):**

MSWD believes that the impact of the proposed framework disproportionately impacts the DAC communities it serves. This impact negatively affects the community from both a financial perspective as well as with proportional and equitable access to water. MSWD believes that the proposed Framework will translate into DACs being priced out of the basic necessity of a reasonable domestic water budget. Many MSWD customers live on the usage set out in the District's lowest tier. Pricing must increase if an additional 32% is enforced which will disproportionately impact those who live at or below the poverty level.

As stated in the previous argument, the GPCD reductions in MSWD's service area over the past ten years have been significant and the accompanying reduction in consumption sales revenue has reflected this trend. MSWD, in accordance with Water Code Section 31007, has been forced to increase rates to cover the commodity sales reduction due to conservation and economic conditions.

Some customers have been able to reduce consumption as a response to increases in pricing. This response negates, to a great extent, the purpose of the rate increase forcing the District to again consider additional increases. Many residents in this DAC have reduced use to a minimum based upon household needs and severe climate conditions that require increased water use in the summer months when temperatures can run in the 110 range for weeks on end. An additional sustained reduction, as is being proposed in the Regulatory Framework, would create additional revenue losses for an undetermined period, thereby jeopardizing the fiscal stability of both the District as well as the DAC it serves. Simply stated, the additional reductions recommended in the Regulatory Framework will disproportionately impact DAC customers and limit access to water. **This unintended consequence is the essence of an Environmental Justice violation.**

Though the Governor and State Board have made the statement that agencies should simply raise rates to cover revenue losses and to implement conservation programs, the reality of the impact of this policy suggestion on this severely disadvantaged community renders such statements as callous and out of touch with the constraints of DACs in desert regions.

- **Geographic Inconsistency (Coastal -vs- desert land use and climate models, seasonal population):**

MSWD believes that the proposed Regulatory Framework disproportionately impacts desert regions where climate extremes, historic land use patterns and seasonal population increases are not being considered.

The simple reality is that the inland desert communities are unlike any regions in the state in land use patterns, climate and economy. The proposed Regulatory Framework appears to have been developed in a one-size-fits-all manner by applying a formula based upon total production divided by population to arrive at a GPCD figure. This broad-brush approach does not consider the following variables and creates a disproportionate and unfair mandate on inland desert communities and exacerbates impact on DACs.

Variable 1) Inland desert communities climate variable.

Temperatures in inland desert communities, as previously stated, can exceed 110 degrees for weeks at a time, with average temperatures exceeding 100 degrees for four to five months during the year. The water demand in inland desert communities is, by necessity, higher than coastal and non-desert communities. Though high water demand landscaping in MSWD's service area has been significantly diminished in the past decade, summer GPCD water demand is still comparatively higher than in areas of the state with more moderate climate. Evaporation and transpiration rates—both from plants as well as mammals—are significantly higher than non-desert communities. The proposed Regulatory Framework disproportionately penalizes inland desert communities for climate conditions that cannot be controlled.

Variable 2) Land Use Patterns.

Most inland desert communities are suburban areas of burgeoning coastal communities, such as Los Angeles. As development moved inland over the past century, the vast amounts and lower costs of land permitted land use planning that accommodated larger lots and more open space. This is in direct contrast to coastal communities where scarcity of land and high costs drove land use toward small lots and less open space. MSWD believes that the proposed Regulatory Framework does not consider land use patterns and disproportionately impacts inland desert communities that have been developed in a manner that cannot be changed under the Governor's order. Comparing the desert communities' water usage to the usage of other areas of the state is simply not representative of the demands driven by, among other factors, land use patterns.

Variable 3) Part-time resident and tourism economy.

MSWD's service area, as is common among many inland desert communities, experiences season population bubbles that increase water use in the cooler months. Since the GPCD calculation is based upon total pumping divided by full time population (census data), the GPCD number is artificially high. MSWD believes that the proposed Regulatory Framework does not consider the impact of tourism and "snow birds" in calculating GPCD, thereby disproportionately penalizing communities—and to a greater extent, DACs—which depend on seasonal populations for economic stability.

Additionally, some communities have decreased their population since the 2010 census while others have increased. This should be factored into the Framework as well. Those communities that have experienced a decreased in population will be at an advantage when compared to those which have not.

- **No accounting for water loss:**

MSWD believes that the state must exclude water loss factors from total pumping.

Water loss is part of the normal operation of a water district. Water loss is required to ensure the health of the water system. Flushing, fire demand and other public health and maintenance activities are required to operate the water system and ensure public safety. These losses will fluctuate in each community. Water losses to these and other demands are not necessarily under the control of the water purveyor. Since these factors are calculated as part of total pumping, the GPCD is skewed by water loss that may vary greatly from community to community. MSWD closely tracks water loss in its service area. MSWD believes that water losses should be excluded from the GPCD formula for those agencies that can demonstrate reasonable tracking of that loss.

- **Proposition 218 Hurdles:**

MSWD believes that hurdles created by Proposition 218 make certain communities (particularly DACs) vulnerable to fiscal instability due to revenue decreases through disproportionate water reduction requirements.

The SWRCB regulations place water purveying agencies between the proverbial rock and hard place. The proposed regulations require that water purveying agencies significantly reduce their total water use for the purposes of promoting conservation. These mandatory conservation measures will result in reduced agency revenues, as previously discussed, yet the costs of operations will not decrease correspondingly.

Consequently, agencies will be forced to raise rates to bridge the gap between declining revenues and fixed operating costs. Proposition 218 restricts the ability of agencies to offset declining revenues as those receiving Proposition 218 notices have the ability, by majority protest, to prevent the rate increases necessary due to conservation driven revenue reductions. The end result some agencies may experience would be an inability to bridge the gap between declining revenues and fixed costs. Ultimately, this would force agencies to provide essential services at rates that are below the cost of service. Where this occurs, agencies will be forced onto an unsustainable financial path that will threaten their ongoing ability to provide essential services to their customers.

- **Conclusion:**

The Governor has initiated a plan in mid-stream of a larger strategy, i.e. the Urban Water Management Planning Framework. The recession of the past decade has disproportionately impacted DAC communities and forced water agencies to delay rate increases even in the face of significantly declining revenue due to increasing costs, and water use reductions for economic reasons. This has left DAC-serving agencies fiscally vulnerable, has led to depleted

reserves, and made it infeasible to weather another revenue reduction—even if only temporary—due to the broad brushed approach being considered.

While some wealthier communities have done little to curb water use from their UWMP baseline, many DACs have, by necessity, have experienced drastic reductions in consumption. The water use patterns of MSWD's service area of the past decade have declined sharply and will not recover, forcing the district into charging higher prices for less water. Wealthier communities that did not respond to economic conditions in such an extreme manner have plenty of room to reduce water use.

Most agencies began on a level playing field when developing their 2010 UWMPs. The plans took into consideration many of the unique variables the SWRCB-proposed Regulatory Framework does not consider. The proposed Framework should start with the UWMP framework and, through emergency action, build upon it. The state should not disregard gains made by agencies and DACs due to prior conservation efforts and economic conditions that have already disproportionately impacted access to affordable water for many of our state's lowest income populations.

I urge the State Board to carefully consider the preceding comments as it seeks to find an equitable method by which to achieve the mandated 25% statewide GPCD reductions.

Sincerely,

A handwritten signature in black ink, appearing to read "Arden Wallum".

Arden Wallum,
General Manager