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Monday, May 04, 2015



[Submitted via email to: commentletters@waterboards.ca.gov]

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

Dear Ms. Townsend,

Thank you for the opportunity to submit further comments to the SWRCB as part of the Drought Emergency Regulatory Framework issued by the SWRCB. It is unclear from the SWRCB's notice whether Carmichael Water District's (CWD) previous comments are incorporated into the public record for the proposed hearing on May 5 and 6, so CWD has attached its previous comment letters to this letter to ensure that all documents are properly considered by the SWRCB.

In summary, CWD reasserts its positions that the SWRCB's regulations are contrary to the Reasonable Use Doctrine and California's water rights priority system as explained by the California Supreme Court in *Barstow v. Mojave*.¹ The SWRCB's regulations are also contrary to the California's Regional Self Reliance mandates as adopted in 2009, codified in Water Code Section 85021, as well as Water Code Section 1011 that preserves conserved water for those who implement water conservation activities. And last, the SWRCB's regulations are unreasonable and arbitrary as they are applied to calculating the gallons per capita per day (GPCD) baseline conditions, assigning conservation tiers to the water purveyors, and determining SWRCB's underlying methodology that is applied to calculate GPCD conservation savings. All of these problems result in a set of unworkable regulatory actions that cause material harm to water purveyors that have planned and prepared for California droughts.

¹ *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224.

As described in the attached documents, CWD respectfully requests that the SWRCB issue regulations that better align with California's 165 year history of water rights laws and recognize CWD's prudent planning to manage its water supplies.

Sincerely,

A handwritten signature in black ink that reads "Steve Nugent". The signature is written in a cursive style with a large, looped "S" and "N".

Steve Nugent
General Manager
Carmichael Water District

Attachments: CWD SWRCB Response Letter, April 13, 2015
 CWD Emergency Regulations Comment Letter, April 22, 2015



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April 22, 2015

Ms. Jessica Bean
State Water Resources Control Board
Jessica.bean@waterboards.ca.gov

Dear Ms. Bean,

Carmichael Water District (District) disagrees with the SWRCB's proposed draft emergency regulations implementing the Governor's April 1, 2015 Executive Order (Proposed Regulations) issued on Saturday April 18, 2015. The Proposed Regulations violate state law as well as the State's regional self-reliance mandate, punishing those entities who rely upon local water sources by investing "*in water use efficiency, water recycling, advanced water technologies, local and regional water supply projects, and improved regional coordination of local and regional water supply efforts.*"¹

"No Good Deed Goes Unpunished"²

The District has invested millions of ratepayer dollars to carefully plan and implement water management measures that have positioned the District to continue reasonable water service to its ratepayers during periods of drought or other water supply disruptions. In other words, the District has planned for its water supply reliability for 2015 and beyond through sound management and sound investments so that its ratepayers' needs are met.

The District also continues to help Californian's during the prolonged drought by voluntarily reducing its water use to assist those in need – achieving an average monthly savings since July 2014 of 20%. Yet the reduction mandates included in the Proposed Regulations disproportionately punish the District for its regional self-

¹ Water Code Section 85021 (developed as part of the Sacramento-San Joaquin Delta Reform Act of 2009).

² Clare Boothe Luce (1956).

reliant planning by illegally taking the District's water without compensation for use by those who have not planned for drought in accordance with California law.³

The District's primary investment for drought protection has been its conjunctive use facilities and prudent management of regional surface and groundwater with its regional partners. Our regional surface water and groundwater conditions have been managed expressly for drought mitigation – after years of extensive regional water supply planning. Yet these investments must now remain idle as SWRCB forces the District's ratepayers – that made the drought-savvy investments – to take extraordinary conservation measures to benefit other areas in the state. Why is the SWRCB forcing the District's ratepayers to forego our own locally-available resources to meet the needs of those that have failed to plan at significant cost and expense to the District?

Who Benefits from the 1.3 MAF Savings?

The SWRCB states that the tiered reductions will save approximately 1.3 million acre-feet (MAF) over the next nine months, equating to a little more than 1.7 MAF annually. With one acre-foot able to meet the needs of between 1 and 5 homes for a year⁴, and using 3-people per home as an average, 1.7 MAF would be enough to serve 5 million to 25 million people. Who are the intended beneficiaries of the District's conserved water? The District does not need SWRCB protection or planning because it has responsibly managed its water assets for 2015 and beyond. But if the SWRCB is protecting others that have not planned for their future then the uncompensated reallocation of water resources based upon vague notions of waste and unreasonable use is simply illegal. All water conserved by the District belongs exclusively to the District under Water Code Section 1011 and cannot be reallocated to others without the consent of the District.

We fully understand that some regions of the state face significant groundwater declines and other regions are solely dependent on surface water resources that are significantly depleted. But the District has planned for these circumstances in its local region based upon the availability of local resources – the District is regionally self-reliant. The perceived “equity” in taking water from those who have planned for drought conditions to help those that have not is not only illegal under California Water Law, it is the most inequitable solution available.⁵

³ The California Supreme Court has been very clear on the doctrine of prior appropriation as the primary component in California Water Rights law. *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224.

⁴ The range is dependent on the factors noted by the SWRCB on their urban water use reporting website:

http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/conservation_reporting_info.shtml

⁵ *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224

The Regulations are Unworkable

The Emergency Regulations state: "Each urban supplier...shall reduce its total water usage by [*some identified percentage*] compared to the amount used in the same month in 2013." Our District's reduction target is 36%. Though we understand the attraction of mathematical simplicity used by the SWRCB to develop these targets, the methodology ignores the complexity of water management and use in this region and is contrary to SWRCB's own policy for addressing conservation savings.⁶

The current Emergency Regulations state: "*These three months reflect the amount of water used for summer outdoor irrigation, which provides the greatest opportunity for conservation savings.*"⁷ From this premise, a 36% reduction is imposed on our ratepayers for all months – whether or not outdoor irrigation is actually occurring. The solution posed is completely unworkable and grossly inequitable during the winter months for District ratepayers.

SWRCB's proposed regulations mandate that the District's ratepayers reduce their **indoor use** by over 30% during the winter months – a rate far more punitive than the rates imposed on other purveyors who live in cooler climates and more dense communities (where those locations 2014 summer baseline R-GPCD value reflects indoor use). Our ratepayers cannot be expected to reduce indoor use by over 30% when others with the same indoor use have significantly lower mandates, most of which rely almost exclusively on imported water supplies.

Solution: The reduction targets must be adjusted so that indoor conservation objectives are more equitable and achievable. At a minimum, the Proposed Regulations should be modified to reflect a second period of average R-GPCD when landscape irrigation is minimal or even non-existent. We suggest this period would be the average of use during November 2014 through February 2015.

As an example, the District's July-September 2014 R-GPCD averaged 274. In contrast, the November-February average R-GPCD was 91.

Under this framework, a November-February required reduction target would be 16%, as represented by the proposed Section 865(c)(5). This target has a much greater equity and opportunity for success than applying the summertime target of 36% to our significantly lower winter-month R-GPCD.

Summary

⁶ The SWRCB lists several factors as part of a "Important Note" that clearly states: "*It is not appropriate to use Residential Gallons Per Capita Day (R-GPCD) water use data for comparisons across water suppliers, unless all relevant factors are accounted for.*" (http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/conservation_reporting_info.shtml)

⁷ April 18, 2015 Fact Sheet, p. 2.

The SWRCB's self-declared "equitable, achievable, and enforceable" emergency regulations are truly just the opposite – the proposed regulations reward those who failed to plan for drought by punishing those that did plan. SWRCB is punishing the District's ratepayers for their foresight and drought-planning investments and actions. Moreover, the proposed regulations ignore accepted principles of California Water Law and ignore the state's policy of "regional self-reliance" by placing the drought mitigation burden on the District – a District that has prepared for these exact drought circumstances with local resources and local planning.

The mandated target of 36% for the responsible Carmichael Water District ratepayers is illegal and inequitable.

Sincerely,

A handwritten signature in blue ink that reads "Steve Nugent". The signature is written in a cursive style with a large initial "S".

Steve Nugent
General Manager
Carmichael Water District

Cc: State Water Resources Control Board Members
John Woodling, Regional Water Authority



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Delivered by e-mail to: jessica.bean@waterboards.ca.gov

Ms. Jessica Bean
and Members of the State Water Resources Control Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Subject: Mandatory Conservation Proposed Regulatory Framework

Dear Ms. Bean and Members of the Board:

The Carmichael Water District (CWD) has reviewed the Notice of Proposed Regulatory Framework for implementation of the required statewide 25% potable urban water savings. We appreciate the opportunity to comment, and hope that our comments will assist the State Water Resources Control Board (SWRCB).

On January 27, 2014, CWD implemented our water shortage contingency plan calling for reductions in water use. In addition, the CWD Board of Directors adopted Resolution 06162014-1 declaring a water shortage emergency condition. With the water shortage emergency declaration, CWD fully implemented the SWRCB's July 15, 2014 Emergency Regulations for Water Conservation. Since implementation of the above actions, CWD has seen reductions of 20% compared to 2013 water use. Although CWD agrees with the need for mandatory conservation there are factors that should be considered further in the SWRCB's approach when developing the regulatory framework.

Past Performance Programs - Factors That Should Be Considered

- **Meter Program:** CWD is 100% metered and charges customers based on a consumptive charge as well as a set service charge.
- **Leak Detection:** CWD measures unaccounted for water, surveys main and service lines and implements an aggressive repair program. Currently, CWD's audit, leak detection and repair program keep unaccounted for water at just under 10%.
- **Best Management Practices (BMP):** CWD implemented and maintains a BMP program to ensure efficient water use throughout its service area. CWD has been a Sacramento Area Water Forum (Water Forum) signatory since 2000 and has been operating its water conservation program consistent with its purveyor specific agreement under the Water Forum. In addition CWD is a member of the California Urban Water Conservation Council and has actively participated on many of its committees.
- **Beneficial Use:** Since July 2005, CWD, Aerojet Rocketdyne (Aerojet), and Sacramento County Regional Parks Department have collaborated in groundwater remediation projects to prevent contaminant plumes from reaching CWD groundwater supplies resulting in the installation of two Groundwater Extraction & Treatment facilities. One facility, located at Ancil Hoffman Park in Carmichael, utilizes treated water for irrigation of the golf course. The volume of water treated is sufficient to meet about half of the golf course's non-potable irrigation water needs from May through September, and all of the non-potable irrigation water needs from October through April. This innovative approach

has reduced CWD's largest water user's consumption by 50%. Any water not used for irrigation is discharged to the American River for beneficial use.

CWD's collective approach to water conservation, system improvements, and resource management has reduced water production from a 1997 level of 13,646 acre feet per year (af/yr) to a 2014 low of 8,359 af/yr. The result is a 39% reduction in use since CWD began aggressive implementation of water reduction measures. Opportunities for additional conservation measures are becoming increasingly difficult and punitive to CWD customers.

CWD Concerns

- CWD agrees with utilizing 2013 data as the baseline for setting water reduction goals as long as it is approached as an *annual base line and not month-by-month*.
- The placement of agencies in the regulatory framework tiers is of concern to CWD. The use of September 2014 R-GPCD data does not accurately reflect CWD's true annual R-GPCD and reductions. The September 2014 R-GPCD number for CWD in the proposed regulatory framework does not match the data that was submitted.
- The SWRCB's proposed regulatory framework does not incorporate demographics (lot size, climate, etc.), past performance programs (completion of meter installations, leak detection and repair programs, etc.) and continued reductions in use. These factors play a significant role in meeting reduction requirements.

Suggested Alternative Approach

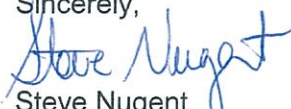
CWD agrees that a tiered approach in meeting the Governor's Executive Order to reduce California's water consumption by 25% may be the best solution and fully supports the SWRCB's current non-prescriptive method at meeting this goal; however, the use of September 2014 data only when determining placement within the tiers is not a truly accurate index to the actual water conservation that has been achieved by CWD.

CWD has calculated its R-GPCD for the full 2014 calendar year utilizing the SWRCB's formula. The results show CWD achieving an R-GPCD of **148** for 2014. This is a much more accurate assessment of CWD's R-GPCD compared to the single month approach that placed CWD at 203 R-GPCD. Annual comparison is a more equitable approach when calculating an agency's placement among the tiers.

A past conservation performance factor needs to be incorporated into the tiered approach. Investment into programs such as 100% completed meter installations and annual leak detection achieve considerable water savings. Agencies should be given proper credit for achieving State mandated goals.

CWD appreciates the need for statewide emergency action. CWD is ready and willing to assist the SWRCB in seeking a workable approach to water conservation during the current drought; however, CWD believes that an annual calendar comparison, along with incorporating past performance programs, leads to a more balanced and equitable method in implementing the Governor's April 1, 2015 executive Order.

Sincerely,


Steve Nugent
General Manager