



CITY OF FAIRFIELD

Founded 1856

Incorporated December 12, 1903

January 6, 2016

Home of
Travis Air Force Base

COUNCIL

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Community Resources

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Finance

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Fire

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Police

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Public Works

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Via email to Kathy.Frevert@waterboards.ca.gov

State Water Resources Control Board
Ms. Kathy Frevert
1001 I Street
Sacramento, CA 95814

Re: Comments on Proposed Regulatory Framework

Dear State Water Resources Control Board:

The City of Fairfield (Fairfield) has several concerns about the existing Emergency Water Conservation Regulations and any plans to continue these regulations into the future.

As noted in the City's previous comment letters sent on May 4, 2015 and December 1, 2015, the water use reduction mandates should be eliminated. The requirement for every water agency in the State to meet a prescribed conservation target does not fairly take into account good preparation, planning, investment and management by agencies such as Fairfield.

Fairfield recognizes and appreciates the severity of the multi-year drought plaguing much of California. Fairfield has achieved significant water-use savings in 2015 in response to the SWRCB's conservation mandates, which the City remains fundamentally opposed to and continues to question the legality of such action by the SWRCB. Fairfield, like other water suppliers, has developed drought strategies and made significant financial investments to prepare for a multi-year drought. In fact, Fairfield's past investments in securing back up water supplies have put Fairfield in a position to provide adequate water supplies to its residents without any reduction in water use even if the current drought extended for several more years. The SWRCB's Emergency Conservation Regulations caused substantial economic losses to the City in 2015 by reducing water consumption revenues and discouraging water intensive industry from locating in Fairfield. Fairfield was denied the benefit of its sound water management practices, long-term planning and financial investment and was effectively forced to forego utilizing its drought water supply.

First and foremost, in light of forecasts for significant rainfall in California (and particularly Northern California) in the upcoming winter the State Water Board needs to evaluate the water supplies available to all areas of the State at the end of the winter season (May 2016) and drop the “one size fits all approach” to water conservation targets. With above-average local rainfall and a normal snow-pack, the drought will be effectively over for much of California, particularly for Fairfield. In addition, even though our local supplies had at least a 4-year supply remaining going into this past summer, Fairfield was excluded from seeking a conservation target reduction because a portion of the City’s water supply portfolio comes from the State Water Project (SWP). This provision was unfair and should be eliminated regardless of the type of winter California experiences.

While disagreeing with the State Water Board’s emergency water conservation regulations and the proposed extension, as noted herein and in prior comment letters, assuming that the State Water Board will continue forward with additional regulations, Fairfield offers the following comments specific to the currently proposed Regulatory Framework for Extended Emergency Regulation for Urban Water Conservation:

Comment No. 1: Fairfield requests that the State Water Board delay extension of any kind of mandatory numeric water use reduction target until the end of the winter season (May 2016) at which point the statewide, as well as regional, water supply situation(s) can be fully ascertained.

Comment No. 2: The State Water Board should eliminate the one-size-fits-all approach to regulating water usage in the State and should instead focus on areas of the State that are having trouble managing their own water supplies.

Comment No. 3: Fairfield believes that the State Water Board should allow for exemptions for regions without drought conditions and further, that the use of an imported water supply as part of an agency’s water portfolio should not preclude that agency from receiving an exemption when a robust local water supply has been developed in conjunction with the imported supply.

Other general concerns:

In addition to the specific comments above, Fairfield would like to re-iterate some of the comments made in our May 4, 2015 and December 1, 2015 comment letters to the SWRCB. Fairfield remains very concerned about the State Water Resources Control Board's (SWRCB) current Emergency Conservation Regulations and the SWRCB's reliance on its "waste and unreasonable use" authority to force water suppliers throughout the state to meet arbitrary conservation targets.

The current emergency regulations ignore the significant steps and financial investments Fairfield has taken in water conservation. Water conservation has been an important aspect of Fairfield's water supply management strategy since the drought of the late 1980's/early 1990's. Fairfield's water conservation program is a model program and is undertaken in conjunction with Solano County Water Agency's regional water conservation program. Prior to this past summer, Fairfield's current water usage was *already* 26% below our baseline used to meet the 2009 20x2020 targets.

For residential water use, Fairfield runs the household water survey program for all of Solano County. As part of that program, Fairfield reviews past water use and makes site visits to check for leaks. Each year, Fairfield representatives visit hundreds of homes, saving hundreds of thousands of gallons of water. Also, and in conjunction with Solano County Water Agency, Fairfield offers rebates for the installation of water saving equipment, like high efficiency toilets and clothes washers, and has a turf replacement and SMART irrigation controller program.

For commercial water users, Fairfield, in conjunction with the Solano County Water Agency, reaches out to meet the unique water conservation challenges that local businesses face. Fairfield monitors irrigation water efficiency at all of the large landscapes in the community, providing review and notification services to assure that large landscapes are not overwatered.

Fairfield has recently gone through a process of upgrading water meters throughout the city. These new state of the art meters provide data logging and automatically analyze use patterns to see if there are leaks. The purpose of using this advanced technology is to find problems and fix them before they become expensive water losses. Along with these meter upgrades, Fairfield aggressively responds to water losses within its service area. Fairfield's most recent water audit showed only 5.6% of unaccounted-for water. This is well below the industry standard of 10% and very close to the 4% level that is generally considered as the lowest level achievable in a utility of any significant size.

Fairfield's largest industrial water use is Anheuser-Busch. For both economic and sustainability reasons, Anheuser-Busch reduced annual consumption by 56% from 2007 to 2014. Some of this reduction is due to the economic impacts of the recent recession, but the majority is the result of efforts made by Anheuser-Busch to save water. Even prior to the current drought, Anheuser-Busch eliminated almost all of its outdoor landscaping that required the use of potable water. With all of these significant reductions in use, Fairfield still has a contractual obligation to serve Anheuser-Busch through 2019. Anheuser-Busch has recently indicated they would intend to add production to their Fairfield Brewery by adding a bottling line in 2016. **Fairfield has more than an adequate water supply available to meet Anheuser-Busch's needs and has a contractual obligation to supply up to three times more than is currently being provided, but should the emergency regulations continue unchanged, Fairfield would likely miss the SWRCB's conservation mandate in doing so.** Of course, part of Fairfield's long-term water strategy and strategic drought planning had these uses in mind and Fairfield has planned and secured stable water supplies to meet customer demands even during prolonged droughts, in order to maintain Fairfield's overall financial health.

The SWRCB's existing arbitrary conservation mandate ignores all of these critical facts, including the nature and extent of water supplies available to Fairfield. It is incomprehensible that the SWRCB and State of California would encourage significant investments in long-term water supply planning and investment and, once a water supplier has undertaken that investment, the SWRCB attempts to make the use of those drought water supplies unlawful.

In addition to the specific facts surrounding Fairfield's investments and past conservation, the SWRCB's current emergency regulations violate basic concepts of California water law. The stated authority for imposing mandatory conservation targets contained in the current emergency regulations is the SWRCB's authority to prevent "waste and unreasonable use." The SWRCB has segregated water suppliers into "tiers", which are not based on any particular "unreasonable use" or "waste" of water but are instead simply tied to urban usage from a specific time period in 2013. The "tiers" do not recognize water right priorities, population density, climatic variation, or any other facts particular to water use.

The SWRCB cannot exercise its "reasonable use" authority in the blanket manner as articulated in the current emergency regulations. The SWRCB's "reasonable use" authority is not a panacea. Instead, it is a doctrine by which the SWRCB carefully examines specific diversion and use of water and determines whether, based on facts before it, a particular use is unreasonable. The current emergency regulations do not look at any particular use or type of use and instead simply declare the regulations are necessary to prevent the "waste and unreasonable use of water."

The tiers altogether ignore, for example, Fairfield's available supply and particulars of the use of water within Fairfield's service area.

The current emergency regulations also ignore the rule of priority. Because, in part, the current emergency regulations implemented tiered conservation mandates tied to beneficial use during a portion of 2013, it is likely to result in senior water right holders being forced to cease beneficial use ("conserve") while junior water right holders are entitled to continue to use water, perhaps at much greater quantities than senior water right holders. Imposing conservation mandates that result in water right holders diverting water without regard to priority "contravene[s] the rule of priority, which is one of the fundamental principles of California water law." (*El Dorado Irrigation Dist. v. State Water Resources Control Bd.* (2006) 142 Cal. App. 4th 937, 943.) The current emergency regulations also ignore legal preferences for the use of water within the Area of Origin – as there is no consideration whatsoever of the use of water in the Area of Origin as compared to other areas.

Last, the emergency regulations appear to attempt to impose some sort of "equitable" or "physical" solution to California's ongoing drought. The California Supreme Court, however, has expressly rejected the imposition of a physical solution that ignores existing rights to water. (*City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224 (*Mojave*).

As the *Mojave* Court explained, "water right priority has long been the central principle in California water law. The corollary of this rule is that an equitable physical solution must preserve water right priorities to the extent those priorities do not lead to unreasonable use." (*Mojave*, 1243.) Even where courts impose equitable solutions, those solutions should be based primarily on water right priorities. (*Mojave*, p. 1245-1246.) Where equitable solutions are sought, the primary consideration must be priority, with consideration also given to "physical and climatic conditions, the consumptive use of water in the several sections of the river, the character and rate of return flows, the extent of established uses, the availability of storage water, the practical effect of wasteful uses on downstream areas, the damage to upstream areas as compared to the benefits to downstream areas if a limitation is imposed on the former . . . all relevant factors." (*Mojave*, p. 1246.) The *Mojave* Court made clear that these factors are "merely illustrative," not exhaustive and that they underscore the "nature of the problem of apportionment and the delicate adjustment of interests which must be made." (*Mojave*, p. 1246.) These principles apply to both surface water and groundwater rights. Despite the concern expressed by many water agencies over consideration of these types of factors, the SWRCB's current emergency regulations fail to address these relevant issues and fail to respect the rule of priority.

We recognize that California's ongoing drought is significant in some areas. However, the existence of a drought does not mean the SWRCB can ignore legal rules governing the allocation of water, and does not provide the SWRCB with the authority to interfere with contracts or mandate water suppliers forego available supplies simply for a need to conserve regardless of drought planning and available water supplies. Conservation cannot be accomplished in a "one size fits all" approach, and should not punish those that have made plans and investments for these precise circumstances. The SWRCB should not extend the current emergency regulations and should instead consider the specific factual circumstances for each supplier and adopt regulations based on these factual circumstances. Moreover, the SWRCB cannot make "reasonable use" determinations based on some hypothetical level of conservation not tied to any particular use of water. Fairfield believes the actions of the SWRCB are illegal, but the City voluntarily continued its water conservation efforts in 2015 and has met the State's conservation targets. However, continuing on this path when Fairfield's local water supplies are adequate to safely meet the needs of the community will be injurious and not be acceptable to Fairfield, and the City will be forced to explore all legal remedies including fair compensation for the effective "taking" of water rights by the SWRCB.

Sincerely,

A handwritten signature in blue ink, appearing to read "G. Hicks", is written over the typed name.

GEORGE R. HICKS
Director of Public Works