

April 29, 2015

The Honorable Felicia Marcus, Chair  
and Members of the State Water Resources Control Board  
c/o Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
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Sacramento, CA 95814



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Comment Letter – Emergency Conservation Regulation

Until you provide for Fire Protection the SWRCB has no authority to enact the regulations:

**Water Code 354** “After allocating and setting aside the amount of water which in the opinion of the governing body will be necessary to supply water needed for domestic use, sanitation, and **fire protection**, the regulations may establish priorities in the use of water for other purposes...” **specifically constrains the Water Board to make regulations which provide water for** domestic use, sanitation, and **fire protection before making any decision on other priorities.** And this means that until the Water Board provides water for fire protection that they cannot decide any favorable treatment for commercial usage. Note that the text does not say fire suppression. It says fire protection. Defensible space is my only fire protection, because I live on the steep face of a canyon (a 107-foot drop). A fire captain told me in my situation (urban-wildland interface), if I did not have defensible space and maybe even then, they would not even try to save my house because it was so inaccessible and steep they could be trapped. So the defensible space required under law is also for me a requirement for fire suppression services without which I would be left with no fire protection whatsoever. Specifically water for the required plantings to control erosion in steep defensible space in areas where it is legally required including the urban-wildland interface. These are areas serviced by urban water suppliers. *California Code of Regulations, Title 19, Division 1, §3.07(b)(2)* requires plantings in defensible space to prevent erosion. vegetation ... may be maintained where necessary to stabilize the soil and prevent erosion”. Since the Water Code 350, the authorization under law for this emergency, ~cite ... includes fire protection, I would be effectively denied fire protection if I had to pay several thousands of dollars a month in penalties to buy several hundred dollars per month to maintain the legally required defensible space. Note that **Water Code 354** does not say to limit fire protection to ensure water for business and agriculture. Note that the protected uses all relate to not killing off people. It rates human survival above setbacks for businesses. Your regulations of April 17, 2015 do not reflect these priorities of Water Code 354. And if they do not, does this mean despite the governor's executive order, your regulations lack the authority granted by Water Code 350 because your rules reverse the intention of that law?

SWRCB needs to define "ornamental landscaping", "functional landscaping" and **“legally required landscaping for safety”**. Otherwise some suppliers will be happy to fine defensible space. Just as they are happy to charge water-waster rates for it. See S. Roney.pdf  
[http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/drought/comments042215/index.shtml](http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/comments042215/index.shtml)

If the SWRCB's regulations denied water for required defensible space plantings which are preventing erosion in steep canyon areas, you would be encouraging erosion. The erosion in canyon areas goes down to the base of the canyon and during heavy rains water collects in the base of the canyon and finds its way into other bodies of water. So, the SWRCB would be responsible for polluting or impacting water quality by penalizing this Essential Use. Since water quality is a responsibility under law of the SWRCB it is inconsistent that SWRCB would be the cause of pollution. Since the cost to irrigate the defensible space would be as calculated in my prior letter \$6700 per summer month for a property which had no prior history, which was ordered by the local fire department to clear the defensible space. Since that is more than the value of the property, it is an "effective prohibition" because is the intention of the SWRCB



to prevent waste by making the cost prohibitively expensive. The SWRCB thus would be enabling the water supplier (a monopoly) to charge 8 times the non-drought penalty pricing to a person constrained by law and in danger of losing their life. This is legally called extortion. Therefore it is not the homeowner who is creating the pollution it is the SWRCB's regulations. And I would imagine that the **SWRCB does not have the authority to create a regulation which increases water pollution.**

The following rationale may fit within your existing enforcement structure. Two possible enforcement methods:

Suppliers who "effectively prohibit" this irrigation would create pollution by unwarrantedly denying valid exception requests. SWRCB's enforcement division could hold those suppliers responsible for that pollution with fines. Or cease and desist orders if they unwarrantedly delay the exception request until the plantings are dead (approximately \$150,000 and up to replant, plus it would then use more water than the mature plants). Exceptions for customers not backed by such enforcement cannot be relied upon; my prior letter explains why. That way unscrupulous suppliers cannot just throw an exception in their ordinance, and then refuse to acknowledge it (See letter#1 &#2reply ~on CD), or deny valid requests for no reason (see CD~ correspondence folder). Alternatively suppliers could create other pricing methods for this Essential Use portion to be billed at the Essential Use rate. A flat (topography maps), small (Google) property in the middle of the city (address) would be an easy suspect.

Also SWRCB may have the authority under this second basis: it is only under SWRCB authority that during drought levels that the suppliers can charge rates what otherwise would be extortion against people in danger of losing their lives. So, if suppliers, under non-drought times, are constrained not to charge extortion rates to threatened persons with no option but to buy from a monopoly, then under the state of emergency it is reasonable to require that that does not happen to these same people complying with state laws for safety. **Otherwise you are enabling them to use your drought regulations to deny fire protection instead of to provide for fire protection as Water Code 350, 353, 354 intended.**

Water Code - WAT

DIVISION 1. GENERAL STATE POWERS OVER WATER [100 - 540]

CHAPTER 3. Water Shortage Emergencies [350 - 359]

**354.**

After allocating and setting aside the amount of water which in the opinion of the governing body will be necessary to supply water needed for domestic use, sanitation, and **fire protection**, the regulations may establish priorities in the use of water for other purposes and provide for the allocation, distribution, and delivery of water for such other purposes, without discrimination between consumers using water for the same purpose or purposes.

- **homes in fire prone areas needing defensible space in the urban-wildland interface** as per *(California Code of Regulations, Title 19, Division 1, §3.07(b)(2))*

**From 2013 California Fire Code: (MY BOLDING)**

California Code of Regulations, Title 19, Division 1, §3.07(b)(2)

“(2) Maintain around and adjacent to any such building or structure additional fire protection or firebreak made by removing all bush, flammable vegetation, or combustible growth which is located from 30 feet to 100 feet from such building or structure or to the property line, whichever is nearer, as may be required by the enforcing agency if he finds that, because of extra hazardous conditions, a firebreak of only 30 feet around such building or structure is not sufficient to provide reasonable fire safety. Grass and other vegetation located more than 30 feet from such building or structure and less than 18 inches in height above the ground may be maintained **where necessary to stabilize the soil and prevent erosion**”.

- **homes on steep slopes with soft soil requiring plantings for safety as per the California Building Code Appendix J**



**“SECTION J110  
EROSION CONTROL**

**J110.1 General.** The faces of cut and fill slopes shall be prepared and maintained to control erosion. This control shall be permitted to consist of effective planting.

**Exception:** Erosion control measures need not be provided on cut slopes not subject to erosion due to the erosion-resistant character of the materials.

Erosion control for the slopes shall be installed as soon as practicable and prior to calling for final inspection.”

SWRCB FAQs:

**P.2. Is there an exemption to the prohibitions to protect public health and safety?**

A. Yes, the regulations state that the prohibitions apply “except where necessary to address an immediate health and safety need or to comply with a term or condition in a permit issued by a State or federal agency.” The regulations do not include a specific definition of what constitutes an immediate health and safety need, but generally speaking, a health and safety exception should be applied in good faith where a reasonable person would conclude that the application of water is necessary to address public health and safety. Pressure washing a sidewalk or driveway for aesthetic purposes, for example, would not be a health and safety need.”

**NOT ALL SUPPLIERS CHARGE DEFENSIBLE SPACE AT WATER-WASTER RATES, OR FALSELY DENY THEIR EXCEPTION EXISTS:**

March 5, 2009 By KPBS Public Broadcasting Alex Ruiz, (Assistant Director of SD Water Dept): It depends on what Escondido is doing, **I can say that within the city of San Diego we are going to recognize that there may be individuals who will be required to maintain landscape for fire prevention purposes. Primarily in the urban-wild land interface. And so, individuals will be able to apply for a variance from their allocation in order to meet that particular requirement.**

| Originally published June 1, 2009 at 9 a.m., This is a transcript of a live interview on KPBS Radio's talk show "These Days." guests, Dana Friehauf, a Principal Water Resources Specialist for the San Diego County Water Authority .Alex Ruiz, Assistant Director of the San Diego Public Utilities Department,

FRIEHAUF: Well, I think that in regard to the – the ordinance and such, **I think there can be—and – and Alex may be able to address this, too—you know, some variances for if you need the plants for fire protection because, again, that is so important for – for our community to have that to be safe. So I believe most of them will – you know, you can come in if it's required – the fire – I know the fire departments will often require you to have certain plantings.** So I think, and I don't know if Alex wants to comment further on that, but I believe...

RUIZ: Yeah, Da – Dana's correct. The – our ordinance recognizes that there are fire requirements that homeowners will have to comply with and we're not going to be working at cross purposes in that regard.

Water Code - WAT

DIVISION 1. GENERAL STATE POWERS OVER WATER [100 - 540]

CHAPTER 3. Water Shortage Emergencies [350 - 359]

**353.**

When the governing body has so determined and declared the existence of an emergency condition of water shortage within its service area, it shall thereupon adopt such regulations and restrictions on the delivery of water and the consumption within said area of water supplied for public use as will in the sound discretion of such governing body conserve the water supply for the greatest public benefit with particular regard to domestic use, sanitation, and fire protection.

Please refer to my public email for the April 22, 2015 deadline. See S. Roney.pdf

[http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/drought/comments042215/index.shtml](http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/comments042215/index.shtml)

I refer to supporting materials on a CD. This is intended for the Water Board's use only; not to be made public. I sent the original of that too late for the April 13<sup>th</sup> deadline. You may still have that CD.

S. Roney, Civil Engineer