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In reply refer to: L2015-020

April 21, 2015

VIA EMAIL TO jessica.bean@waterboards.ca.gov

Re: Draft Regulations for Mandatory Conservation Measures

Dear Ms. Bean:

El Dorado Irrigation District appreciates the opportunity to comment on the State Water Board's draft regulations for implementation of the statewide 25% reduction in urban potable water use mandated by Governor Brown's April 1, 2015 Executive Order. The draft regulations address some of the defects that the District and others identified in comments on the prior proposed regulatory framework. It is disappointing, however, to see no improvements on several issues that will create significant inequities if the regulations are adopted without further revisions. The regulations must be fair to foster the statewide cooperation necessary to achieve 25% conservation; following are some simple ways to improve fairness.

1. *Conservation mandates should be adjusted for climate.*

The fact sheet accompanying the draft regulations acknowledges that climate should be accounted for when making comparisons of residential gallons per capita per day (R-GPCD). This acknowledgement is consistent with other State Water Board publications: "It is not appropriate to use R-GPCD water use data for comparisons across water suppliers unless all relevant factors are accounted for. Factors that can affect per capita water usage include: rainfall, temperature, and evaporation rates. . . (Drinking Water Information Clearinghouse, <https://drinc.ca.gov/dnn/Applications/UrbanWaterR-GPCD.aspx>). Identical homes with identical landscapes necessarily require much more water in the interior than they will near the coast, due to higher temperatures and greater evapotranspiration. Yet the draft regulations do not address this factor; the fact sheet suggests that there is not enough time to do so. This is wrong.

By ignoring this simple truth, the draft regulations impose heavier mandates on Californians who do not happen to live near the ocean. Those in the interior will sacrifice lawns and landscaping to achieve higher percentage reductions; those on the coast will make modest adjustments to meet lower reductions that largely preserve their green landscapes, complacently comparing their resulting R-GPCD to the much higher figures reported inland. That is a recipe for division and dissension, not success.



Also, as a region, interior California's economy is less robust than that of the coastal areas. Real estate values and market conditions are weaker inland, the building industry is only beginning to recover, and unemployment rates are typically higher. Imposing heavier conservation mandates in the interior will disproportionately impact these and many other facets of the region's economy compared to coastal communities. These economic impacts will compound the unfairness – all because the regulations fail to take climate into account.

The final regulations can mitigate these problems by adjusting each agency's conservation mandate upward or downward slightly, based upon the local climate. Because so many Californians live near the coast, the State Water Board's goal of 1.3 million acre-feet of conservation can be sustained by balancing very small upward percentage adjustments to coastal agencies' mandates with significant downward adjustments to the interior agencies' mandates.

Even so, conservation mandates are likely to remain substantially higher for inland California. Therefore, the state, including the State Water Board, should also ensure that a greater share of state grant and incentive dollars for conservation programs is programmed for the agencies with heavier conservation mandates, to help them reach their more difficult goals.

2. Conservation mandates should be adjusted to reflect prior conservation performance.

Although the State Water Board has calculated each agency's June 2014-February 2015 conservation performance and continues to include that information in its regulatory materials, the draft regulations still do not take that performance into account in any way. For example, only 16 out of 411 agencies (less than 4% of the total) equaled or exceeded the District's 24% conservation rate since last June. Only five (all urban agencies serving Los Angeles, the East Bay, San Jose, Sacramento, and Fresno) exceeded the District's total of 2.44 billion gallons conserved. Yet the District's 28% conservation mandate includes no adjustment for this outstanding performance!

Further, since 2007-2009, residential per-household usage in the District has dropped 37% – more than half of that prior to 2013. This past performance validates our customers' commitment to conservation and also makes further conservation more difficult – all of the easy savings has already occurred. Yet the draft regulations provide no means of recognizing this longer-term past performance.



Again, the fact sheet accompanying the draft regulations acknowledges that past conservation performance should be taken into account, but pleads lack of time. This is not a valid excuse; past conservation can be accounted for through two simple changes to methodology. First, the State Water Board should sort agencies within each conservation tier according to their 2014-2015 conservation performance, and assign each quartile a different percentage mandate. In this way, the best-performing agencies within the tier are assigned slightly lower conservation mandates, and the worst-performing agencies are assigned slightly higher mandates. This approach recognizes conservation performance, and it further refines the assignment of mandates to reduce the inequities that an agency can experience if it falls just above or just below a tier's breakpoint. Second, rather than using 2013 as the sole R-GPCD baseline for compliance, the State Water Board should allow agencies to substitute the average of any period of three or more consecutive years in which it has measured GPCD "20% by 2020" conservation compliance.

3. *Conservation upstream of water treatment plants should be included when determining compliance.*

The draft regulations do not incentivize agencies to implement conservation measures upstream of water treatment plants, because usage is calculated solely from plant output – which upstream improvements would not affect. For example, the District is currently expediting a public works project to convert three miles of open, earthen ditch leading to one of its treatment plants. The loss reduction is projected to save 1,000 acre-feet per year, which would immediately improve the District's real conservation performance by 3% to 4% – but would not count toward compliance with the District's 28% mandate. Ironically, these savings can be counted under the "20% by 2020" legislation and the state has already found them worthy of a \$1 million water conservation grant to help fund the project. No doubt, many other agencies have similar potential to conserve upstream of their treatment plants.

The final regulations should incentivize such important conservation measures by allowing an agency to deduct the savings from their plant output numbers, upon submittal and State Water Board approval of satisfactory data to substantiate the amount conserved.

The District appreciates this second opportunity to comment on the State Water Board's proposed regulatory approach. While progress has been made, many aspects of the draft regulations remain flawed and not well-suited to achieve success. While we appreciate the State Water Board's acknowledgement that factors such as climate and past conservation achievement

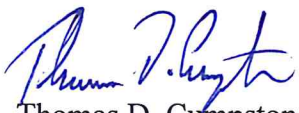


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should be taken into account, we reject the notion that these are long-term concerns that cannot be addressed now. We therefore hope that the State Water Board will seriously consider our proposed remedies, which are straightforward and feasible, when crafting and adopting its final regulations.

Sincerely,


Thomas D. Cumpston
General Counsel

TDC:pj

cc: EID Board of Directors
Jim Abercrombie, EID General Manager