



Home of
Travis Air Force Base

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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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CITY OF FAIRFIELD

Founded 1856

Incorporated December 12, 1903

(5/5-6/15) Board Meeting- Item 6
Emergency Conservation Regulation
Deadline: 5/4/15 by 10:00 am

May 4, 2015

Via email to commentletters@waterboards.ca.gov



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

Re: Comment Letter – Emergency Conservation Regulation

Dear Ms. Townsend, Chair Marcus, and Board Members:

The City of Fairfield (Fairfield) joins in the concerns expressed by many water suppliers in Northern California regarding the State Water Resources Control Board's (SWRCB) draft Emergency Conservation Regulations (Draft 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.

Fairfield recognizes and appreciates the severity of the multi-year drought plaguing California. Water suppliers throughout the State have implemented significant conservation measures that have resulted in measureable water savings. 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 even if the current drought extended for several more years. The SWRCB's Draft Regulations now send the signal to Fairfield that those significant financial investments and back up reliable drought water supply will not be utilized for the benefit of the citizens of Fairfield. Instead, Fairfield will be denied the benefit of its long-term planning and financial investment and will be forced to forego utilizing its drought water supply. In this regard, the SWRCB's Draft Regulations discourage the type of investments made by Fairfield.

Fairfield's two primary sources of water supply are the State Water Project and the Solano Project (Lake Berryessa). While the reliability of State Water Project water varies, water supplies from the Solano Project are quite reliable. As of last week, the Solano Project's storage was 64% of capacity, or approximately 1,030,000 acre-feet (AF) of water in storage. Annual water demands from the Solano Project total approximately 250,000 AF – meaning there are 4 years of water supplies currently in storage in the Solano Project. Even if the drought continued – there is currently a 4-year supply in the Solano Project.

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Fairfield participated in the Solano Project to prepare for precisely the present circumstances – and attempted to obtain water supplies that would provide adequate water supplies to Fairfield through the driest years without significant reductions in water deliveries. Fairfield's entitlement to water from the Solano Project is 27,200 acre feet annually, and Fairfield has reduced its use from a maximum of 24,000 acre feet in 2004 to approximately 20,000 acre feet in 2014 – usage levels last seen in the late-1990s. 2,000 acre feet of Fairfield's available Solano County supply was purchased in 2009 for the equivalent of \$10 million. The SWRCB's Draft Regulations undermine Fairfield's significant planning and investment in drought planning and completely ignores the fact that the Solano Project *currently* has 4 years of water supply in storage.

The Draft Regulations also 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. Current water usage is *already* 26% below our baseline used to meet the 2009 20x2020 targets. Last year, despite ample supply availability for to Fairfield, our residents still reduced water usage voluntarily by 11% over the 2013 baseline currently being used by the SWRCB.

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.

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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 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 their Fairfield Brewery by adding a bottling line within the coming year. Fairfield has more than an adequate water supply available to meet Anheuser-Busch's needs, but 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 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 use of those drought water supplies unlawful.

In addition to the specific facts surrounding Fairfield's investments and past conservation, the SWRCB's Draft Regulations violate basic concepts of California water law. The stated authority for imposing mandatory conservation targets contained in the Draft Regulations is the SWRCB's authority to prevent "waste and unreasonable use." The SWRCB has proposed to segregate 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.

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The SWRCB cannot exercise its “reasonable use” authority in the blanket manner as articulated in the Draft 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 Draft 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 Draft Regulations also ignore the rule of priority. Because, in part, the Draft Regulations implement 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 Draft 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 Draft 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.)

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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 Draft Regulations fail to address these relevant issues and fail to respect the rule of priority.

We recognize that California’s ongoing drought has reached crisis proportions. 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 cannot punish those that have made investments for these precise circumstances.

The SWRCB should not adopt the Draft Regulations as presented constituted and should instead consider the specific factual circumstances for each supplier. Moreover, the SWRCB cannot make “reasonable use” determinations based on some hypothetical level of conservation not tied to any particular use of water. Although Fairfield believes the actions of the SWRCB are illegal, the City will voluntarily continue its water conservation efforts.

Sincerely,

A handwritten signature in black ink, appearing to read 'G. Hicks', written over a white background.

GEORGE R. HICKS
Director of Public Works