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January 26, 2016

VIA E-MAIL

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814
commentletters@waterboards.ca.gov



Re: Comment Letter—Proposed Emergency Rulemaking

Dear Ms. Townsend:

I am the General Manager of West Kern Water District ("West Kern") and write this comment letter on behalf of West Kern in regards to the State Water Resources Control Board's invitation to comment on the proposed extension of the emergency conservation regulations.

West Kern encourages the Water Board to include in the extended regulations the option for water suppliers who face firm commercial and industrial water use to seek an "alternative method of compliance." Ideally, the alternative compliance option should be codified into the reenacted regulations.

West Kern also encourages the Water Board to hold public meetings in the spring and summer to discuss the status of the state's conservation needs and begin planning future conservation action.

I. Alternative Compliance

The option to grant water suppliers an alternative method to comply with conservation standards has been a useful point of flexibility for suppliers and the Water Board. The Water Board should continue to allow alternative compliance methods in any extended emergency regulations.

A. Alternative Compliance has been a useful tool for water suppliers and the Water Board.

When the Water Board adopted the current emergency regulations, its resolution included language providing that, "[i]f the supplier believes the conservation standard is unachievable due to firm commercial and industrial water use and residential use reductions that would affect public health and safety, it should provide any supporting information or documentation for an alternative method of compliance." (Resolution No. 2015-0032, ¶ 16.)

The Water Board has granted alternative compliance orders to at least seven water suppliers since the implementation of the emergency regulations. (See http://www.waterboards.ca.gov/water_issues/programs/conservation_portal/alternate_compliance_orders.shtml.) Each of those water suppliers is tasked with providing reliable sources of water to indispensable state industries, such as petroleum drilling and refining operations, and power plants.

Although these industries may have long-term options to reduce water use, they often have no short-term options to enhance conservation without adversely affecting operations and reducing employment. The option to grant alternative compliance orders, therefore, gives the Water Board the flexibility to recognize the unique position of certain suppliers, and relieves suppliers from having to impose counterproductive restrictions on important industries.

B. Alternative Compliance should be adopted as a formal part of the emergency regulations.

When the emergency regulations were initially issued, the alternative compliance option was not formally included in the regulations. Instead, the option was included as part of the Water Board's resolution issuing the emergency regulations. (Resolution No. 2015-0032, ¶ 16.)

The Water Board should take this opportunity to add the alternative compliance option to the regulations.

The alternative compliance option could be added to section 866 of the current emergency regulations as the following subsection (c):

(c)(1) If a water supplier believes that its conservation standard is unachievable due to firm commercial and industrial water use and residential use reductions that would affect public health and safety, it may submit a request to the Executive Director, or the Executive Director's designee, providing any supporting information or documentation and requesting an alternative method of compliance.

(2) If the Executive Director, or the Executive Director's designee, determines that a water supplier's conservation standard is unachievable due to firm commercial and industrial water use and residential use reductions that would affect public health and safety, the Executive Director, or the Executive Director's designee, shall issue an alternative compliance order.

(3) An alternative compliance order issued pursuant to this subsection (c) may require additional actions by the supplier to maximize achievable conservation and shall permit the supplier to exclude industrial and institutional process water from the calculation of its total potable water production.

The option to exclude industrial and institutional process water from the calculation of total potable water production would be a valuable feature for alternative compliance. Under the current emergency regulation framework, conservation standards are determined by reference to residential gallons per capita per day. But, the supplier's mandate to reduce its total potable water production includes deliveries both to residential and industrial customers. Because industrial customers have no flexibility to reduce process water, the responsibility to make up for the water those industrial customers cannot conserve falls to the provider's residential customers.

This burden shifting to residential customers is both unfair and impractical. In the West Kern Water District, for example, if the District stopped supplying *any* water for non-industrial use and continued to supply its industrial users with their needed process water, it still would be unable to achieve its assigned conservation standard. In other words, on a month-to-month basis, the amount of water produced for process water needs alone generally exceeds the amount of water that the emergency regulations targeted the District to supply in total.

The regulation proposed above would allow suppliers to exclude process water production from their calculation of total potable water production. Under this proposal, the water supplier would still have to meet its conservation standard, but the supplier's residential customers would not be required to subsidize industrial customers that happen to have nearby facilities. Additionally, because only process water would be excluded, industrial customers would still be required to conserve water used for other functions, such as landscaping and non-functional turf.

The proposed alternative compliance regulation should be adopted to formally add the alternative compliance option to the emergency regulations and advance its utility as a tool for the Water Board.

II. The Water Board should hold early, public workshops to discuss any further extension of the emergency regulations.

West Kern is encouraged by the Water Board's commitment to re-evaluate the state's immediate conservation needs in April. All stakeholders hope that heavy precipitation this winter will allow the Water Board to propose suspension of the emergency regulations. But in the likely scenario that California's near-term drought needs remain uncertain; the Water Board should also begin public workshops aimed at further tailoring the conservation regulations.

California is on pace to meet the Governor's 25 percent conservation goal because of citizens' extraordinary efforts. But, if the emergency regulations need to be extended again in October, public angst will swell as measures that were once sold as temporary begin to look permanent. Any new extension will need to balance the state's conservation needs with the reality that the public's buy-in will wane over time. Striking this balance will require input from all stakeholders.

Although the Water Board held some closed door workshops in fall 2015 for similar purposes, the group that met with the Water Board did not include a representative who had extensive knowledge of the water needs of the southern San Joaquin Valley. All stakeholders, including suppliers from around the state as well as NGOs, need to have the opportunity to interact directly with Water Board staff and decision makers before general policy considerations become anchored. If public opportunities are not available early in the decision making process, it will become difficult for West Kern, and similarly situated suppliers, to win the buy-in of its customers.

Thank you for your consideration. West Kern appreciates the chance to be involved in this process.

Sincerely,



HARRY STARKEY
General Manager

cc: Joseph D. Hughes, Esq.