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August 22, 2017

Via Email: mary.yang@waterboards.ca.gov

Mary Yang
State Water Resources Control Board

Re: Comment Letter – Low Income Rate Assistance (LIRA) Program

Dear Ms. Yang:

We write to you on behalf of urban retail water suppliers Nevada Irrigation District, Paradise Irrigation District, and South Feather Water and Power Agency (collectively the "Districts"). The Districts provide water supplies to foothill and mountain communities in the watersheds and areas of origin in Northern California. While the Districts recognize the good intentions and concepts behind the proposed LIRA Program, the draft plan fails to identify the critical issue affecting water affordability in California – the dramatically increasing scope and expense of unfunded state mandates being placed on water suppliers. For AB 401 to have its full intended positive effect, it is essential that the State Water Resources Control Board (State Water Board or SWRCB) identify the causes of water unaffordability, including the role of the SWRCB and the Legislature in increasing the cost of providing water service in California. By understanding the causes of water unaffordability, the SWRCB will be in a better position to recommend a plan to fund and implement the LIRA Program.

1. To Address Water Affordability, the Cause of Unaffordability Must be Understood.

Over the past ten years, the State of California has imposed an unprecedented number of new regulations and unfunded State mandates on urban retail water suppliers. The Districts urge the SWRCB to conduct or procure an accurate and comprehensive study of the factors behind water rate appreciation in California, including how the State's own increasing mandates contribute to the increasing cost of providing water to customers.

Examples of factors behind water rate increases that are deserving of study include the State Water Board's modified drinking water fees, more onerous and costly water conservation requirements, water loss audit requirements, and new lead standards for certain drinking water customers. In each instance, the new requirements were imposed on urban suppliers without a comprehensive assessment of how these mandates could be funded at the local level and in a

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manner that does not disproportionately impact low-income households. These recently imposed state mandates are just a few of the many new statutory mandates and regulations that have increased to cost of providing drinking water to customers who ultimately must foot the bill.

To successfully implement a LIRA Program, the State Water Board and the Legislature must understand and appreciate the effect new unfunded mandates have on water rates. The Districts encourage the State Water Board to undertake that assessment and include it in the plan it provides to the Legislature by January 1, 2018.

2. State Reimbursement for New State Mandates is Now in Question Given a Recent Change in Decades-long Interpretation by the Commission on State Mandates

The California Constitution broadly provides that “whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local agency for the costs of the program or increased level of service”, with limited exceptions. (Cal. Const. Art. XIII B § 6.) For decades, the Commission on State Mandates interpreted this provision in accordance with its plain meaning and provided for state reimbursement for legitimate new state mandates imposed on local agencies, including water districts. This meant that local agencies could seek state funding for new mandates, as opposed to being required to pass the costs of new mandates onto customers.

Recently, however, the Commission has changed this decades-long interpretation to the point of absurdity. In its Decision in Test Claims 10-TC-12 and 12-TC-01 adopted December 5, 2014¹, The Commission ruled that water districts have fee authority and *must* attempt to pass the costs of new mandates onto customers. (Decision pp. 72-79.) This fee authority and requirement to pass the expense of new mandates onto customers exists notwithstanding the stated purpose and effect of Proposition 218 to divest local agencies of unilateral fee authority. Proposition 218 gives customers the ability to approve or disapprove proposed fee changes. While the Commission’s decision is currently being challenged², the ultimate effect of this reasoning is to make water agencies and other enterprise districts *permanently ineligible* for state reimbursement for new mandates. New mandates must be passed on to customers, including customers that would qualify for the LIRA Program.

3. Proposition 218 Limits LIRA Funding Options.

The SWRCB should recognize that Proposition 218 limits available funding mechanisms. A funding program where the cost of providing water to a low-income households within the Districts is subsidized through charges on the water bills of other households is in direct violation of Proposition 218 which requires that fees reflect the proportional cost of service provided to each parcel. A water bill fee on one class of customers that funds the cost of

¹ The Decision concerns a test claim seeking reimbursement for new state mandates contained in SBx7-7 (2009), commonly known as the Water Conservation Act. The decision is available at <https://www.csm.ca.gov/matters/10-TC-12.php>

² *Paradise Irrigation District et al. v. Commission on State Mandates et al.* 3rd Appellate District, Case No. C081929

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providing service to a different, low-income class of ratepayers is in direct violation of Proposition 218.

With Proposition 218 prohibiting local districts from funding the LIRA Program with charges on other households, the only current legal mechanism for the State to fund the LIRA program is either to use existing general fund revenues or issue a bond measure. We encourage the State Water Board to assess these two options in its report to the Legislature.

The cumulative effect of the foregoing three points cannot be overstated. The State and its administrative agencies, including the SWRCB, are imposing new, unfunded state mandates on local water suppliers at an unprecedented rate. The Commission on State Mandates has recently changed its decades-long interpretation to effectively render water agencies permanently ineligible for state reimbursement for new state mandates. The costs to implement new state mandates must be passed on to customers, including low income customers. Proposition 218 prohibits disproportionately distributing the costs of new mandates on its customers, meaning the local agency cannot charge one customer class more to benefit low-income customers. (See Cal. Const. Art. XIII D, § 6(b)(1)-(5).) The foregoing should be presented to the Legislature to allow for a fully informed discussion on existing limitations and roadblocks to successfully implementing the proposed LIRA Program. The SWRCB's report should include any potential legislative or constitutional changes to address these limitations.

4. The LIRA Program Could Detract from Water Affordability.

The SWRCB has recognized that 34% of California residents are eligible for a LIRA subsidy. With over one-third of the State population eligible, there is a significant risk that measures taken to fund the LIRA subsidy will raise the cost of water, and in doing so increase the number of California residents eligible and in need of a LIRA subsidy. The State should give serious consideration to how the program is to be funded, and how this will impact the number of eligible LIRA recipients. SWRCB and UCLA estimates of the LIRA program cost do not reflect the increase of eligible LIRA recipients that is likely to result from various program structures. The study should assess the effect of charging certain customers for the benefit of low-income customers and a potential unintended consequence of steering a larger number of customers into low-income status.

5. Water Suppliers Lack the Authority, Ability and Funding to Implement a LIRA Program.

A LIRA Program will require income verification of eligible recipients. Individual water suppliers lack the resources and authority necessary to verify the income of individual ratepayers, and to determine if they qualify for a LIRA subsidy. In addition, imposing such an obligation on water suppliers, even if water suppliers hired consultants to perform the work, would detract from water affordability because the costs of income verification would be passed on to customers in the form of higher rates (this, too a Proposition 218 violation). The additional cost to suppliers to administer any LIRA Program should be quantified and should not be borne by customers.

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6. The LIRA Program Should be Administered through an Existing Welfare Program or Distributed Through a Tax Credit.

If the State is truly interested in helping low-income households with escalating water rates, the State should allocate the money necessary to fund the proposed LIRA Program to an existing welfare program with a directive that the money or equivalent monetary value be distributed to eligible LIRA recipients. Alternatively, the LIRA program money could be allocated to eligible individuals in the form of a tax credit. These program structures will prevent the additional expenses and inefficiencies that will result from the creation of a new bureaucracy in Sacramento, especially a new bureaucracy within the SWRCB - an agency without the expertise or experience required to develop and execute a statewide welfare program. By allocating LIRA funds to an existing welfare agency, or distributing it as a tax credit, the State will minimize new administrative and implementation expenses while maximizing the amount of aid actually delivered to individuals in need. These program structures will also ensure that low income households benefit from the program even if they don't directly pay their water bills.

Very truly yours,

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By: 

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