



# County of San Diego

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April 22, 2015

Jessica Bean  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814

Dear Ms. Bean:

Re: Proposed Emergency Regulations to Implement Executive Order B-29-15

The County of San Diego (County) appreciates the opportunity provided by the State Water Resources Control Board (State Water Board) to provide comments on the emergency regulations proposed by the State Water Board to implement Executive Order B-29-15 (Executive Order). Crafting a single set of regulations that fairly implements water conservation requirements in every community in a State as diverse as California is no easy task. The County offers these comments with the hope that they will assist the State Water Board in accomplishing this task.

Establish a Credit System: The County owns and operates a number of high water use facilities such as jails, courthouses and hospitals where water conservation opportunities are limited. While the County appreciates that the proposed regulations contain an exception to the conservation requirements otherwise placed on end users like the County for purposes of complying with State and federal permits or to address an immediate health and safety need, no similar exception is established for water suppliers. Water suppliers are expected to meet established conservation standards even though those agencies may disproportionately serve high water use government facilities. It is likely that some water suppliers will be unable to meet their water conservation standards because of their support of these facilities.

To address this problem, the County in its response to the State Water Board's proposed regulatory scheme suggested a credit system to be applied to city or county facilities located in multiple water districts. The State Water Board was apparently receptive to this idea, but proposed in the Fact Sheet for the proposed regulations that the system be applied between water agencies. While a credit system between water agencies would be a positive step, there will be very little incentive for water

agencies with lower conservation standards to support those with higher standards, or any guarantee that water agencies most impacted by their support of high water use government facilities will be benefitted. The County supports the development of a credit system between water agencies, but observes that such a system should be developed in addition to the County's proposal rather than instead of it.

Allowing the County the opportunity to meet a single water conservation standard for facilities located in multiple water districts, incentivizes water conservation by allowing the County to obtain credits where it can regardless of the water conservation standard for the water districts serving the facilities. The County can then apply credits to high water use facilities like courthouses and jails located in water districts that may have a disproportionately higher conservation standard because of these facilities. In this way, the County can conserve water in a manner consistent with the Executive Order without unfairly benefiting or harming water suppliers because of the type of government facility they just happen to serve.

The County would propose that the State Water Board allow for a credit system for cities and counties with facilities located in multiple water agencies by adding something like the following to Section 865 of the proposed regulations:

“Cities and counties with commercial, industrial or institutional facilities located within more than one urban water supplier or distributor of public water supply, as defined in Water Code section 350, may elect to independently achieve the water conservation standard applicable to a majority of the facilities. The cities and counties shall notify the urban water supplier, distributor of public water supply and State Water Board of those facilities subject to independent compliance and of the generally applicable water conservation standard. Urban water suppliers and distributors of public water supply may subtract the amount of water supplied for the facilities for which independent compliance is sought from its water production totals. The city or county shall submit a report to the State Water Board by December 15, 2015 showing the total potable water used, by month for the facilities, from June through November, 2015, and total potable water used for the facilities, by month, for June through November 2013.”

Exemption for Indoor Water Use in Essential Government Facilities: Limiting the use of potable water for irrigation of ornamental landscaping and turf is a primary focal point of the Executive Order and implementing regulations. The County agrees that this is generally a reasonable place to look for water conservation. The regulations proposed by the State Water Board, however, establish water conservation standards regardless of whether potable water is used for landscaping or in support of a jail, courthouse or other facilities with very little landscaping, but high water use to support occupancy. The County believes that an exemption should be provided for internal water use for these types of facilities.

Using the exemption developed for commercial agriculture as a guide, we would suggest something like the following be added to Section 365 of the proposed regulations:

“Each urban water supplier or distributor of public water supply, as defined in Water Code section 350, that serves a jail, courthouse, detention facility, hospital, in-patient care facility or other government facility providing essential services may subtract the amount of water supplied for indoor use from its water production total. Each government agency providing an essential service shall certify that the use is essential and provide the certification to the water supplier together with the amount of water used for indoor purposes. Urban water suppliers shall report total water production pursuant to subdivision (b)(2), identifying the total amount of water supplied for the essential service.”

Need for Clear Definitions: There is no definition in the proposed regulations or the Executive Order from which they are derived of what constitutes a “commercial, industrial, or institutional property.” There is also no definition of “potable water.” Since water conservation by end users and water suppliers is tied to reductions in potable water use, it is critical that potable water be clearly defined. The commonly used definition for the term potable water is water treated to a drinking water standard. (e.g., California Health and Safety Code section 113869.) This definition is acceptable to the County. If a different meaning is intended by the State Water Board, the County would recommend that a definition for potable water be included in the regulations.

“Commercial, industrial, and institutional properties” are separately identified in the proposed regulations for water conservation and reporting purposes. The County was unable to locate a single definition for these terms in State law or regulations. Without a clear definition, certain end users may assume their activities fall outside the water conservation requirements set forth in the regulations. The lack of a clear definition could also result in inconsistent water use reporting from urban water suppliers that define these terms differently. To avoid confusion and ensure consistent implementation, the County would request that the State Water Board define these terms.

Continue Effort to Account for Regional Variation: In the County’s response to the State Water Board’s proposed regulatory scheme, the need to better account for regional variation was addressed in two primary ways: 1) Use of multiple month periods to establish water conservation standards and to measure achievement of those standards, and 2) Allow for modification of conservation standards to account for regional conditions such as alternative water supplies, agricultural uses and other factors. The County was pleased to note that the State Water Board endeavored to some extent to address both of these points in the proposed regulations.

The County, however, remains concerned that there is no general mechanism to address unusual circumstances that may adversely impact compliance with conservation standards. This could arise, for example, if during the months of July-September 2014 unusual weather conditions in a region unexpectedly drove down water use. There may also be instances where limiting an exception for agricultural uses where those uses amount to more than 20 percent of a water suppliers deliveries is unduly restrictive. We would again request that the State Water Board consider including a mechanism in the proposed regulations to allow for modification by the State Water Board of conservation standards to adjust for unusual conditions.

Jessica Bean  
Page 4  
April 22, 2015

Thank you for giving the County an opportunity to comment on the proposed regulations. If you have any questions or would like additional information on any portion of the County's response to the proposed regulations please do not hesitate to contact me directly at (619) 531-4940 or April Heinze, Director County Department of General Services at (858) 694-2527.

Sincerely,

A handwritten signature in blue ink, appearing to read "Donald F. Steuer". The signature is fluid and cursive, with a large initial "D" and "S".

DONALD F. STEUER

Assistant Chief Administrative Officer/Chief Operating Officer

cc: Helen Robbins-Meyer, Chief Administrative Officer  
April Heinze, Director, General Services