



April 22, 2015

Via email to Jessica.Bean@waterboards.ca.gov

Ms. Felicia Marcus, Chair
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Re: Comments on Draft Urban Water Conservation Regulations by
Sacramento Suburban Water District

Dear Ms. Marcus:

Sacramento Suburban Water District (SSWD) objects to the State Water Resources Control Board's (SWRCB) potential adoption of its April 17, 2015 draft of urban water conservation regulations as arbitrary, capricious and an abuse of discretion.

Numerous points demonstrate the problems with the SWRCB's draft regulations. Those draft regulations focus solely on residential gallons per capita per day (R-GPCD) as the standard for determining what level of conservation a water supplier would be required to implement, notwithstanding the SWRCB's prior guidance that R-GPCD cannot be used to compare water suppliers without considering other relevant factors and notwithstanding the existence of many other such factors. The SWRCB's draft regulations also would require SSWD to strand over 180,000 acre-feet of banked groundwater that SSWD has developed from local sources consistent with all applicable California laws to stabilize the local basin and drought-proof SSWD's supplies. Instead, the SWRCB proposes to favor agencies that are heavily reliant on imported water sources with high transmission losses and greenhouse-gas impacts by requiring them to meet lower conservation standards largely because their R-GPCDs are lower as a direct function of their cooler climates. The SWRCB proposes to ignore the fact that, while large percentages of water used by inland agencies return to the state's surface waters and groundwater for others' use, water used in many places with low R-GPCD is used once and then discharged to the ocean. In effect, the SWRCB is choosing winners and losers among California's water suppliers largely based on how close they are to the ocean. The SWRCB must reevaluate its draft regulations to appropriately recognize all of the factors that the SWRCB already has stated must be considered when evaluating agencies' relative R-GPCDs.

The SWRCB is improperly employing its authority over "reasonable use".

SSWD joins the earlier comments submitted today by eight Sacramento area purveyors – Placer County Water Agency, San Juan Water District, City of Roseville, Sacramento County Water

Ms. Felicia Marcus
April 22, 2015
Page 2

Agency, Carmichael Water District, El Dorado Irrigation District, city of Yuba City and the city of Folsom.

It Would Be Arbitrary For The SWRCB To Rely Solely On R-GPCD To Set Conservation Levels After Informing The Public That Sole Reliance On R-GPCD Is Inappropriate

SSWD joins in the comments of the Association of California Water Agencies, the Regional Water Authority, El Dorado Irrigation District and others that have identified the discrepancy between the SWRCB's prior statements that it is not appropriate to use R-GPCD to compare water suppliers' conservation without considering other relevant factors and the sole reliance of the SWRCB's proposed regulation on R-GPCD to compare water suppliers' conservation. As of April 21, 2015, the SWRCB had posted on its website a November 4, 2014 media release in which the SWRCB summarized a portion of its staff's presentation about R-GPCD as follows:

State Water Board staff cautioned that R-GPCD data should not be used to compare water suppliers, or even hydrologic regions, unless relevant factors are taken into account. Those relevant factors include population density, population growth, temperature and evaporation rates, topography and socio-economic measures, such as lot size.

(http://www.waterboards.ca.gov/press_room/press_releases/2014/pr110414_rgcpd.pdf.)

It is striking that, less than six months after advising the public and the state's water suppliers not to rely solely on R-GPCD to compare water suppliers, the SWRCB now is proposing to do exactly that to support regulations that are associated with potentially \$10,000 per day in penalties. Such a regulatory approach would be arbitrary and capricious.

In fact, it is known to the SWRCB that throughout California urban water suppliers employ very different methods to calculate the R-GPCD figures for their respective service areas. The SWRCB proposes to set enforceable conservation targets with severe monetary penalties based on self-reported R-GPCD without defining how R-GPCD must be calculated or even confirming that the calculations are accurate.

The SWRCB's Proposed Regulations Would Strand Millions Of Dollars That SSWD's Ratepayers Have Invested To Stabilize The Local Groundwater And Drought-Proof SSWD's Supplies

SSWD joins the prior comments of EID and the City of Folsom that stated their objections to the manner in which the SWRCB's proposed urban conservation rules would violate California's water-right priority system and deny water suppliers that have invested in reliable local water supplies the benefits of those investments.

SSWD's situation provides a concrete example of this problem. SSWD was formed in 2002 by the merger of two preexisting water districts. Those districts historically relied entirely on pumped local groundwater as their water supply. As a result of this pumping, and the pumping of others, the local basin – the Sacramento County portion of the North American Subbasin – experienced significant declines in groundwater levels. Beginning in the late 1990s and continuing after SSWD's formation, however, SSWD and its predecessors began to invest roughly 120 million dollars of ratepayer funds in the infrastructure necessary for the acquisition of surface water supplies to stabilize the local groundwater and to create a bank of in-lieu recharged water that could be used during dry years. SSWD holds a take-or-pay contract with Placer County Water Agency (PCWA) that currently requires SSWD to take, or pay for, water from PCWA's Middle Fork American River project each year when that water is available. SSWD also holds a contract with the City of Sacramento to receive up to 26,000 acre-feet of water each year under that city's water rights. SSWD has accommodated constraints on these two surface-water supplies in order to balance the lower American River's fisheries with water demands through the Sacramento Water Forum. In walking these many lines, SSWD has invested millions of dollars of its ratepayers' funds – approximately \$4.6 million in payments to PCWA alone – and has developed, through in-lieu groundwater use, approximately 180,000 acre-feet in banked groundwater. SSWD has consistently reported the banking of this groundwater to the SWRCB under Water Code section 1005.1.

The SWRCB's proposed regulations, however, would effectively command SSWD to strand this asset – developed with local American River water supplies – by prohibiting SSWD from using it to drought-proof its water supplies during this drought. The arbitrariness of this proposed mandate is demonstrated by the fact that the SWRCB's draft regulations would allow a water supplier "whose source of supply does not include groundwater or water imported from outside of the hydrologic region and that received average annual precipitation in 2014" to apply to the Executive Director for only a 4% conservation mandate. (Draft regulations § 865(c)(1).) There effectively is no difference between such a water supplier and SSWD. SSWD developed its banked groundwater supply during average or wet years and its use of that supply would be consistent with California law concerning the conjunctive use of surface water and groundwater. Yet SSWD would have no ability to access its locally-sourced banked groundwater and would be subject to an arbitrary conservation mandate exceeding 30%, while coastal agencies that are heavily reliant on imported water generally would be subject to lower mandates. SSWD customers approved the sale of bonds to fund construction of the conjunctive use program because it would drought proof the system and preclude onerous drought-related restrictions.

The SWRCB's Proposed Regulations Would Not Effectively Reduce Water Use Statewide Because They Would Ignore The Sources And The Results Of Water Suppliers' Activities

Reducing total urban water use statewide would partially ameliorate this severe drought. Unfortunately, the SWRCB's proposed regulations would not be particularly effective in achieving this goal because those regulations would ignore the significant losses of water that occur within some conveyance systems and also would ignore the fact that many water suppliers' use generates return flows that enable that water to be reused by others.

The SWRCB's proposed regulations focus entirely on water's ultimate end use and therefore ignore the dramatic differences in how much water is lost in its conveyance to a water suppliers' service area. While that water was taken from the natural environment, it is not included in the SWRCB's suggested accounting for Residential GPCD. While distribution system losses are included, transmission system losses are inexplicably excluded. The systems of water suppliers located near their water sources, particularly those located in inland areas like SSWD, involve few or no conveyance losses because the water need not be conveyed much distance at all. In contrast, where water suppliers import their water from distant sources, the conveyance of that water can involve losses of large percentages of the water diverted from the source. For example, water conveyed in the California Aqueduct from the Delta through the western San Joaquin Valley during the summer presumably involves the loss of at least tens of thousands of acre-feet through evaporation and leakage. Instead, the SWRCB's proposed regulations actually favor water suppliers whose water use involves significant conveyance losses because those suppliers tend to be located near the coast and distant from the state's major rivers. This disparity demonstrates that those proposed regulations actually do not appropriately implement the reasonable use requirement of Article X, section two, of the California Constitution because those proposed regulations arbitrarily do not consider any water use other than the end use. The flow of water through a conveyance system is not so arbitrarily divided. The adoption of the proposed regulations therefore would be arbitrary and capricious.

Similarly, the SWRCB's adoption of the proposed regulations would be arbitrary and capricious because they ignore the wide disparity in the net water use of water suppliers. Many water suppliers located in inland areas, like SSWD, generate return flows to surface streams that make water available for others. Approximately 40% of water delivered by the Sacramento metropolitan region's water suppliers returns to surface streams and flows to the Delta, where it is available for diversion by the State Water Project, the Central Valley Project and other water users. In contrast, the water use of many coastal agencies that are favored due to their cool climates under the SWRCB's draft regulations is not only based at least in part on imports of water from distant regions, but also results in one-and-done water use because the wastewater that is generated not returned to the watershed of origin, is instead discharged to the ocean or another saline waterbody, and therefore is lost to any additional use. If a fundamental goal of water conservation during a drought is to reduce actual water use, then the SWRCB's draft regulations would not effectively promote that goal because they would ignore the actual consumption of water involved in urban water suppliers' operations.

Nothing in the Governor's April 1, 2015 executive order would be contrary to the SWRCB considering conveyance losses and net water use in developing its urban conservation regulations. That order directs the SWRCB to adopt regulations "to achieve a statewide 25% reduction in potable urban water usage" and requires that the SWRCB "consider the relative per capita water usage of each water suppliers' service area" Considering conveyance losses and net water use would accurately depict how much water is used by any given water suppliers' service area because that calculation would reflect the entire cycle of that service area's use. SSWD proposes that the SWRCB Emergency Regulations include accounting for net water taken from the natural environment (measurement at the well head or point of diversion) with

allowances for water returned to the originating watershed. Failing to consider that entire cycle would be arbitrary and capricious.

The SWRCB's Proposed Regulations Are Inconsistent With State And SWRCB Policy Because They Ignore The Wide Disparity In The Greenhouse Gas Impacts Of Different Urban Water Uses

In 2007, the Legislature enacted state policy that “[i]t is vital that state government lead by example in meeting California’s greenhouse gas emission requirements” and to “[e]nsure that state agencies consider and implement measures and strategies under their authority to reduce their greenhouse gas emissions in furtherance of the targets in the Climate Action Team Report and the California Global Warming Solutions Act of 2006.” (Government Code § 12890(c), (d)(1).) Consistent with these policies, the SWRCB’s website states the following:

The Water Boards are committed to the adoption and implementation of effective actions to mitigate greenhouse gas emissions and adaptation of our policies and programs to the environmental conditions resulting from climate change. The Water Board is a member of the Cal/EPA Climate Action Team, the Water Working Group of Climate Adaptation Strategies Team, and the 20x2020 Agency Team. The Water Board is a sponsor of climate mitigation measures in the AB 32 Climate Change Scoping Plan. Water Board staff are actively engaged in preparation and review of sections of the California State Water Plan Update 2009 which incorporate climate mitigation and adaptation considerations.

([http://www.waterboards.ca.gov/water_issues/programs/climate/.](http://www.waterboards.ca.gov/water_issues/programs/climate/))

According to the California Energy Commission, “[t]ransportation and treatment of water, treatment and disposal of wastewater, and the energy used to heat and consume water account for nearly 20 percent of the total electricity and 30 percent of the non-power plant related natural gas consumed in California.” (<http://www.energy.ca.gov/research/iaw/water.html>.) Much of that energy use and related generation of greenhouse gasses is involved in transportation from one region to another. For example, the State Water Project deliveries can involve pumping water from the Delta, pumping water within the California Aqueduct, pumping water into San Luis Reservoir and pumping water over the Tehachapi Mountains. The Edmondton Pumping Station alone involves a vertical lift of nearly 2,000 feet. In contrast, the delivery of water by an urban supplier in the Central Valley generally involves much less energy, and much lower generation of greenhouse gasses, because the water source generally is quite local.

Notwithstanding statutory statements of state greenhouse-gas policy and the SWRCB’s statements of its own policy on the subject, the SWRCB’s proposed urban conservation regulations would ignore the very wide disparities in the greenhouse gas impacts generated by various water suppliers’ water uses. In fact, by favoring coastal agencies that more often rely on water imported from other regions, the SWRCB’s proposed regulations actually would favor agencies with high greenhouse gas impacts. If the SWRCB intends to be true to its commitment

Ms. Felicia Marcus
April 22, 2015
Page 6

to address greenhouse-gas impacts, then significant revisions to the proposed regulations that would account for such impacts are necessary.

Conclusion

SSWD urges the SWRCB to reconsider its proposed urban water conservation regulations. As stated in other agencies' letters, which SSWD joins, those proposed regulations are inconsistent with water right priorities that have been integral to California law and the development of the state's water systems since the 1850s. This effect would be particularly keen for SSWD, which would be compelled to strand its ratepayers' investments in conjunctive use of surface water and groundwater in exactly the sort of drought that those investments were intended to address. Such a compelled stranding would be an illegal uncompensated taking. The proposed regulations actually would not be particularly effective in addressing the drought because they would focus only on the very end water use and would ignore conveyance losses and return flows that are important factors in determining how much water a water supplier actually consumes. Finally, the proposed regulations would be inconsistent with state policy, and the SWRCB's own policy, on greenhouse gas impacts because the regulations actually would favor agencies whose water uses involve greater impacts. For all of these reasons, it would be arbitrary and capricious for the SWRCB to adopt those proposed regulations, particularly because they are based on a method for comparing water suppliers that the SWRCB has acknowledged is inappropriate.

Very truly yours,



Robert Roscoe
General Manager

Cc (via e-mail): Frances Spivy-Weber, Board Member, SWRCB
Dorene D'Adamo, Board Member, SWRCB
Tam Dudoc, Board Member, SWRCB
Steven Moore, Board Member, SWRCB
Thomas Howard, Executive Officer, SWRCB
John Woodling, Executive Director, RWA
Tim Quinn, Executive Director, ACWA