



County of San Diego



HELEN N. ROBBINS-MEYER
CHIEF ADMINISTRATIVE OFFICER
(619) 531-6226
FAX (619) 557-4060

CHIEF ADMINISTRATIVE OFFICE
1600 PACIFIC HIGHWAY, SUITE 209 SAN DIEGO, CA 92101-2422

DONALD F. STEUER
ASST. CHIEF ADMINISTRATIVE OFFICER/
CHIEF OPERATING OFFICER
(619) 531-4940
FAX (619) 557-4060

January 27, 2016

Clerk of the State Water Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Dear Clerk of the Board:

Re: 2/2/16 BOARD MEETING (Conservation Extended Emergency Regulation)

The County of San Diego ("County") appreciates the opportunity provided by the State Water Resources Control Board ("State Water Board") to comment on the proposed revisions to the State's drought emergency water conservation regulations, 23 CCR § 863 et seq. The State Water Board's willingness to consider and propose credits against water conservation standards to account for new development, climatic variation and the development of drought-resilient supply is a positive step in helping to ensure the regulations are well-tailored for a State as large and diverse as California. The County remains concerned that the restriction of credits, particularly for the development of drought-resilient supply, and the continued lack of opportunity for participation by local government risk undermining the water conservation goals the regulations aim to achieve. The County would also request that the regulations incorporate a mandatory reevaluation in the spring of 2016 to account for the potential impacts of the El Niño weather pattern. These concerns are described in more detail below:

1) Don't Cap the Drought Resilient Supply or Total Credits. The County notes that when State Water Board staff proposed a framework for the revisions to the regulations, total credits and adjustments to water conservation standards were proposed to be capped at 4%. After receiving comments from the County and others, State Water Board staff increased the cap for total credits and adjustments to 8%, with the caveat that no water purveyor eligible for a credit can have a conservation standard below 8%. The County appreciates the State Water Board's willingness to consider comments and make adjustments to the regulations, but does not believe that credits for drought-resilient supply or total credits should be capped to retain a minimum 8% conservation standard.

Placing a cap on credits fails to fairly recognize or encourage regional investment in water conservation. Regions which already have or are close to the 8% conservation standard will have little

or no incentive to invest in additional water conservation. The County notes that applying the State Water Board's proposed credit system, a water purveyor that obtains all its water from a drought-resilient source of supply such as desalinated sea water would still be subject to an 8% minimum conservation standard. This makes little sense. To better encourage all water purveyors to continue to invest in water conservation regardless of their current conservation standard, the County would propose that there be no minimum conservation standard. The County would also propose that there be no restriction on the credit applied for drought-resilient supply so that regions are encouraged to continue to invest in sources of supply like desalinated sea water regardless of their current conservation standard.

While the County does not believe that a cap should be placed on available credits, the County notes that certain urban water suppliers that are not dependent on imported water or groundwater as a source of supply have a conservation standard of only 4%. All other urban water suppliers have a conservation standard ranging from 8-36%. If the State Water Board is unwilling to consider eliminating a minimum water conservation standard, the County would request that the minimum standard be 4%. This would give all urban water purveyors an opportunity to achieve a uniform 4% conservation standard by applying available credits. This would incentivize water conservation and further investment in drought-resilient supply for most of the State's water purveyors.

2) Local Government Credit System. Since the time the regulations were first proposed, the County has advocated for a credit system that would allow local governments an opportunity to separately account for water conservation achieved at their facilities. The request had its origin in a desire to ensure water purveyors aren't unfairly penalized for an overconcentration of high water use government facilities such as prisons or hospitals in their service territories. The request also sought to better achieve long term water conservation in the State by incentivizing water conservation for local governments by allowing them to capture and apply water conservation credits across a range of facilities that may be located within different water districts with substantially different conservation standards. The County continues to believe that the development of an alternative compliance option for local government will help ensure the State meets the water conservation goals set by the Governor.

The County appreciates that in April and May of 2015 when the regulations were first being written, they were developed on an emergency basis. Given the need for quick action, the County understood the State Water Board's desire to focus the regulations on water purveyors. This was, however, nearly a year ago and the regulations which were to remain in effect through February 2016 are now proposed to be extended through October 31, 2016. The fact is that the current drought was many years in the making and it is reasonable to expect that a full recovery will last for an extended period of time. It's also likely given the recurrent nature of droughts in this State that at some point these regulations, in one form or another, will again be pressed into service. Given the likelihood that these regulations will find prolonged utility, the County believes that its time to develop a means of incentivizing water conservation by local governments by providing an alternative compliance option.

The County notes that on its own initiative it adopted and allocated substantial funds for a Drought Response Action Plan that included permanent investment in water conservation at County facilities. As a result of these investments, the County estimates that it will conserve 78 million gallons of potable water a year at its facilities. Together with other water conservation efforts, the County is currently using 30% less water at its facilities when comparing June-August 2015 against June-August 2013. If local governments were provided an opportunity to capture and apply credits for investments in water conservation at their facilities, the County is convinced substantial, permanent water conservation could be achieved throughout the State.

3) Incorporate a Mandatory Review into the Regulations. While the Governor's Executive Order of November 13, 2015 directs that the State's drought regulations be extended until October 31, 2016, it doesn't mandate that they be left unchanged during that entire period. Recognizing that the current El Niño weather pattern may bring substantial snowpack and precipitation over the next few months, State Water Board staff state in the Fact Sheet for the proposed regulations that they intend to report back to the State Water Board in March and April 2016. If conditions warrant, staff further states they will bring a proposal before the State Water Board to adjust or eliminate the emergency regulations. However, these commitments aren't incorporated into the proposed regulations. The County agrees with this plan but feels it would be best to report slightly later to better ensure the impacts from this winter and even early spring are fully known. Therefore, we requests that Section 863 of the regulations be amended to include a new subpart (5) that provides something like the following: "(5) State Water Board staff shall report back to the State Water Board between April and May 2016 to report on precipitation received as a result of the current El Niño weather pattern and make a recommendation regarding the continuation or elimination of these regulations."

The County appreciates the opportunity to comment on the draft regulations. If you have any questions or would like any additional information, please don't hesitate to contact me directly at (619) 531-4940 or April Heinze, Acting General Manager, Community Services Group at (619) 531-4837.

Sincerely,



DONALD F. STEUER

Assistant Chief Administrative Officer/Chief Operating Officer

cc: Helen Robbins-Meyer, Chief Administrative Officer
April Heinze, Acting General Manager, Community Services Group