



NEVADA IRRIGATION DISTRICT

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VIA ELECTRONIC 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: 2/2/16 Board Meeting – Item 7 Conservation Extended Emergency Regulation

Dear State Water Resources Control Board:

Nevada Irrigation District (NID) appreciates this opportunity to comment on the proposed extension and modification of the mandatory urban conservation emergency regulations. NID previously commented on these and previous iterations of the mandatory urban conservation emergency regulations on December 7, May 4, April 22, and April 13, 2015. The comments previously submitted remain relevant, and are incorporated herein by this reference.

First, NID appreciates the inclusion of the climate and growth adjustments in the draft regulations (though they remain flawed as proposed). The State Water Board had acknowledged the need for these and other adjustments when initially developing the regulations in spring 2015, but did not include them then because the regulations were only supposed to remain in effect for 270 days. Now that the regulations are being extended, it is necessary that adjustments for climate differences and growth, among others, be incorporated.

While these minor adjustments help to relieve some of the gross inequity in the regulatory structure, the fact remains that NID and many other similarly situated urban water suppliers are simply not experiencing drought conditions within their own supply watersheds. And if NID were to reduce deliveries of potable water (or of raw water for that matter), that would not make any additional water available to any other water user. Reductions in NID's constituents' consumption has no effect other than to keep that conserved water in NID's storage.

There is a very real possibility that if precipitation continues to arrive as it has so far this winter, NID's reservoirs could fill and spill excess water. Clearly, where NID's stored water is approaching full supply, there is no drought "emergency" affecting NID and necessitating these unachievable conservation targets. If NID's constituents know that their reservoirs are full, how can the District or the state possibly justify mandatory 33% reductions in use? Imposing obviously unnecessary "emergency" restrictions when the District is not experiencing drought conditions is arbitrary and capricious and will do nothing but confuse and anger ratepayers, leaving the District and the state with little credibility.

The blanket imposition of "emergency" regulations on locales that are demonstrably not experiencing an emergency, preventing the exercise and use of vested usufructory water rights, could amount to an unjustified and uncompensated taking by the state. Although the regulations refer to the doctrine of waste and unreasonable use, which the State Water Board believes it can brandish as a talisman against takings claims, there is nothing wasteful or unreasonable about using water for beneficial purposes where there is a full supply of water and no other legal user would benefit from extended unnecessary conservation mandates.

Although the proposed extended emergency regulations include a 4% conservation tier for suppliers not experiencing drought conditions, the minimum threshold to qualify of four years' reserved supply is ridiculous—especially given that this assumes the impossible circumstance that the supplier would not receive any rainfall at all in those four years. Requiring four years' supply and mandating the impossible assumption of zero precipitation for four consecutive years makes the 4% conservation tier totally unachievable except for a few suppliers in a unique situation.

Aside from the imposition of draconian measures on suppliers not facing drought conditions, there are many other issues that must be remedied before this proposed modification and extension can take effect.

Evaluate necessity for emergency regulations toward end of wet season.

As many have already said, the State Board is set to adopt these regulations at its February 2 meeting, which is far too early to determine whether drought conditions will persist into 2016. The State Water Board must commit to reevaluating the necessity for and provisions of the emergency regulations when sufficient objective hydrological data are available. Even if statewide water supplies have not reached a level where conservation measures should be uniformly rolled back, many individual suppliers will have reached that point. In order to retain credibility and to focus "emergency" measures only on areas where emergencies actually exist, the State Water Board must

commit to reevaluating and rolling back, if necessary, the proposed emergency regulatory requirements to assure that they are not imposed where they are not needed, or where they will not provide any benefit to other water users.

Recognize investments in water rights and storage.

Allowances for “new, local, drought-resilient supplies” should apply to investments suppliers have historically made in water storage and water rights. The proposed modifications of the emergency regulations reward some suppliers who have recently made investments in certain water conservation projects, but ignore long-term, systematic improvements in water supply that other suppliers have been making for decades. Like the drought resiliency improvements recognized in the proposed regulations, utilization of NID’s long-term investments in water rights and storage “would not reduce the water available to another legal user of water or the environment.” (Proposed 23 C.C.R. § 865(f)(3).) Water suppliers’ investments in independent, drought resilient water rights and water storage must be recognized in the same manner as investments in new technologies, such as desalination, and should not be subject to the 4-year, no-precipitation threshold currently proposed..

Conservation tiers based on only three months’ usage are flawed and inequitable

The conservation tiers were assigned based on potable water production from July-September 2013. According to the Notice of Proposed Emergency Rulemaking, these months were chosen because they “reflect the amount of water used for summer irrigation, which provides the greatest opportunity for conservation savings.” (Notice, at p. N-5.) In some areas, summer ornamental irrigation “can account for as much as 80 percent of the water use.” (Emergency Regulations Digest at p. 8.) While establishing tiers in this manner may encourage reductions in outdoor watering during summer months, it results in gross inequity in winter months, when most water is used indoors. For most, it will be impossible to reduce indoor water usage by 33%, when those in cooler climates would only be required to reduce winter indoor water usage by as little as 8%. Conservation tiers should be established using more than just three months’ data; otherwise, these inequitable and impossible-to-achieve winter conservation requirements will inevitably burden less affluent, hotter areas while benefitting the coastal cities. These tiers were not designed for and are not appropriate to use outside of the three months upon which they were based.

Allow conservation of raw water to count toward potable conservation goal.

NID, like some other urban water suppliers, also serves untreated (“raw”) water to agricultural customers from the same commingled source from which water to be

treated is drawn. If the purpose of the mandatory conservation regulations is to cause suppliers to retain more water in storage in anticipation of another drought year, then conservation of raw water, which increases the amount of water retained in the commingled storage, should count towards the supplier's potable water reduction goal. Whether the water is conserved before or after it passes through a water treatment facility is irrelevant; the end result is the same: more water is held in storage for next year. NID's reductions in deliveries of raw water should count towards its potable water conservation goal.

Exclude health and safety uses of water.

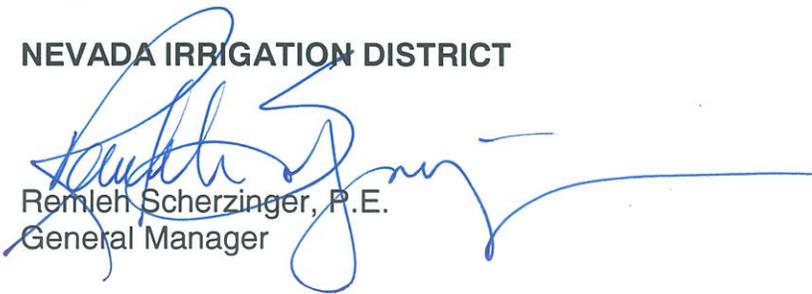
Water that must be used for health and safety purposes should not be included in R-GPCD calculations. NID's service area is subject to extreme fire dangers; water used for firefighting and fire prevention purposes should not count against the District's conservation goal. Similarly, reduced water deliveries can result in lower flow rates in NID's conveyances, which can ultimately require increased flushing of the system to preserve the health and safety of the water. Ratepayers should not be assigned unattainable conservation goals to make up for water used to protect human lives, human health, and property.

Strike references to waste and unreasonable use.

As was exhaustively explained in NID's (and other entities') past comments, there is absolutely no justification for the many unnecessary references to the doctrine of waste and unreasonable use in the regulations. Inclusion of those references neither justifies nor explains the regulations, and has no effect other than to alarm holders of water rights. For the reasons detailed in dozens of comment letters already submitted, the extraneous references to waste and unreasonable use must be stricken from any extension of the emergency regulations.

Respectfully submitted,

NEVADA IRRIGATION DISTRICT



Remleh Scherzinger, P.E.
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