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January 6, 2016

VIA E-MAIL AND U.S. MAIL

Kathy Frevert
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100
Kathy.Frevert@waterboards.ca.gov

Re: Comments on Proposed Regulatory Framework for Extended Emergency Regulation for Urban Water Conservation

Dear Ms. Frevert:

We are special water counsel to the City of Bakersfield ("Bakersfield" or "City"). On behalf of Bakersfield, we submit the following comments to the State Water Resources Control Board's ("SWRCB") staff recommendations regarding the extension and modification of the Emergency Regulation for Statewide Urban Water Conservation ("Emergency Regulation"). Bakersfield specifically submits comments to the December 21, 2015 "*Proposed Regulatory Framework for Extended Emergency Regulation for Urban Water Conservation.*"

Bakersfield previously submitted comments dated December 2, 2015 regarding the potential extension and modification of the Emergency Regulation, which comments are attached hereto and incorporated herein by reference. Bakersfield also attended and participated in the SWRCB's December 7, 2015, Public Workshop on the Emergency Regulation.

Bakersfield appreciates staff's efforts, responses and recommendations regarding modifications of the Emergency Regulation. Bakersfield generally supports staff's recommended modifications to the Emergency Regulation. Bakersfield maintains, however, that the Emergency Regulation should be further modified, if it is extended, as follows:

1. **Recycled and reclaimed water developed and used by a water supplier should still be recognized as an offset or credit against a water purveyor's production and use of water**

The current "Urban Water Supplier Reporting Tool" utilized by the SWRCB, and the methodology and equation used to estimate R-GPCD, do not sufficiently account for and recognize the use of recycled water for outdoor irrigation. Bakersfield, along with the Association of California Water Agencies (ACWA) and a number of other entities, therefore, previously recommended that any extension of the Emergency Regulation should allow a water supplier to claim a credit, offset or other reduction in water production or R-GPCD to account for use of non-potable recycled, reclaimed water.

SWRCB staff have not currently recommended any credit or offset for the use of reclaimed, recycled water because they contend that "suppliers have already realized the benefit of providing recycled water by not having that water counted as part of their total production and not having to reduce of use of that water." Bakersfield and other water suppliers, however, have not actually realized any benefit through the production and use of recycled water because Bakersfield was placed in the highest (36%) water reduction tier. Because non-potable water use is not subject to the water use reduction requirement, the City must still seek greater water use reductions from potable water use customers. That penalizes all of the City's potable water use customers and results in a de-facto increase in the conservation standard.

In addition, not realizing a credit and adjustment for recycled water use is a disincentive for suppliers investing in capital for recycled water reuse. That is contrary to beneficial and established California policies promoting the use of recycled and reclaimed water as an important tool for overall water sustainability.

Bakersfield utilizes increasing quantities of tertiary treated, or recycled, water for outdoor irrigation, pursuant to the California Water Plan, the SWRCB's April 25, 2013 Recycled Water Policy, and the SWRCB's mandate to increase the use of recycled water. The City also develops additional water supplies by "de-nitrifying" secondary treated water supplies, and by using over 330 sumps throughout the City to capture stormwater for recharge and re-use.

Bakersfield is currently generating and producing approximately 1,000 acre-feet of non-potable recycled water per year for outdoor irrigation. Out of a total demand of 43,000 acre-feet annually within the City's domestic service area, this equates to approximately 2% of water demand and thus a potential credit of up to 2% and adjustment off its 36% tier.

2. **Urban suppliers should receive a credit or offset for water extracted from ground or surface water storage for later domestic use.**

As previously stated by Bakersfield and other commenters, including ACWA, water extracted from storage for use by customers should not be counted or considered as part of a supplier's

overall water use, or production. The City respectfully disagrees with staff's reasoning and justification for not recommending a credit specifically for the use of stored or banked groundwater supplies. SWRCB staff has not, in their December 21, 2015, proposal, sufficiently addressed the fact that the current Emergency Regulation does not recognize or support ongoing groundwater management efforts by various entities and the strong practical and policy support for groundwater management, and banking and storage, in the California Water Action Plan and other State regulations, statutes and policies.

Bakersfield owns water storage, transportation and recharge facilities with excellent water flow measurement capabilities, including the City's 2800 Acre Groundwater Recharge Facility. These facilities provide a highly efficient method for managing water in both wet and multiple drought years. Bakersfield developed such facilities, consistent with and supported by, relevant State statutes and policies, with the specific intent of providing a supplemental water supply for drought and dry year conditions. Rejection of a groundwater banking credit would contradict such policies and discourage the establishment of groundwater storage and banking programs, and the use of stored and banked groundwater in lieu of surface water supplies during drought conditions.

Staff's contention that the State should not adopt a groundwater storage credit because "groundwater augmentation uses water that was already part of existing freshwater resources" does not justify the rejection of a groundwater credit. The purpose of the drought regulations is to reduce the use of existing water supplies, including surface water resources, not to create new supply sources. The City and other suppliers bank and store water in groundwater storage facilities in times of surplus for later use when *existing* supplies are insufficient and need to be conserved." Use of stored groundwater does constitute and represent the use of a new water supply that would otherwise not be considered part of a supplier's available water supply or practically available for use.

Staff's concern over potential impacts associated with pumping by the entities that would receive a credit for the use of stored groundwater are also unfounded. Any groundwater storage project or facility would have already undergone extensive review pursuant to the California Environmental Quality Act (CEQA). Such review would have already sufficiently reviewed and assessed impacts associated with pumping under various scenarios, including in times of drought. Staff's concern over alleged impacts from a groundwater use credit, and with regard to the impact of the credit on "statewide savings," is additionally unfounded because those concerns would apply to any and all proposed drought regulations. The State cannot know or predict the impact of **any** proposed regulations on statewide savings in advance of the implementation of the regulation.

SWRCB staff further did not respond to or address the fact that the Emergency Regulation in Section 865(c)(2), already recognizes that the use of surface water from storage under certain conditions does not exacerbate or add to drought and water shortage conditions and therefore does not need to be counted or considered in connection with water use reductions. Staff does

not respond to or challenge the City's prior contention that this provision should be expanded to apply to all water held in storage, including banked groundwater.

3. The State should remove the proposed four percent cap on credits and adjustments

Bakersfield opposes and disagrees with staff's recommendation that "all credits and adjustments be capped to allow up to a maximum of four percentage point decrease to any individual water supplier's conservation standard (tier)."

Bakersfield was placed in the highest reduction tier partly due to climate and because it was not given credit for recycled water use. The recommendations and proposals for modification of the Emergency Regulation aim to mitigate some of these conditions, yet an upper cap of four percent compromises and undermines the full effect of the mitigation, and nullifies the effect of the well intentioned proposed changes to the Emergency Regulation.

Local and regional agencies and purveyors have been primarily responsible for water supply planning and development throughout the State. Local and regional agencies and purveyors have developed detailed and effective drought contingency plans at the local level, which plans have resulted in investments in innovation in conservation, recycling, desalination, water marketing, local storage projects, and a host of other water management tools. Such agencies and purveyors have always been able to combine, or "stack," these water management tools to form an integrated water management infrastructure in order to provide reliable water resources to sustain the local economy in normal times and protect it during droughts.

The State has strongly encouraged such innovative local resource development and recognized that such programs, policies and actions are essential to successful water management in California. The State has passed bonds to fund a portion of local resource development and has required the formation of IRWMPs in order for local governments to access much of those bond monies. State policies and programs have recognized that the "stacking" of innovative local resource development is absolutely essential to successful water management.

The current proposal to eliminate the "stacking" of credits and adjustments threatens to undermine local water management efforts and programs, including efforts and programs intended to achieve the goals and standards of the Emergency Regulation. The proposal would eliminate any incentive by local agencies to develop plans and programs for drought preparedness.

The SWRCB should therefore allow credits and adjustments to be "stacked" as intended in local plans and programs, and pursuant to State policies, including the Governor's California Water Action Plan. This would reduce the role of mandatory rationing and increase the role of local water supply preparedness in coping with drought.

4. **The Emergency Regulation should be subject to further limitation or revocation in the near future as precipitation levels increase and the impacts of the drought are reduced.**

The SWRCB should further modify the Emergency Regulation to reduce the conservation standards, and "tiers," if the current drought emergency is further reduced or eliminated as a result of increased precipitation levels over the next few weeks and months. The modified Emergency Regulation could provide for or recognize triggers or other criteria for further modification, reduction or elimination of the conservation standards, or the Emergency Regulation itself. Such further modification is logically and practically necessary for the State, and the City and other local agencies, to be able to maintain credibility regarding further conservation efforts and water use reductions.

We thank you and the SWRCB for considering these comments. Please let us know if you have any questions or require any further information on these matters.

Sincerely,

on behalf of
Colin L. Pearce

CLP:jc

cc: Alan Tandy, City Manager, City of Bakersfield
Virginia Gennaro, City Attorney, City of Bakersfield
Art Chianello, Water Resources Manager, City of Bakersfield

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December 2, 2015

VIA E-MAIL

Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th floor
Sacramento, CA 95814

Re: Comment Letter-Urban Water Conservation Workshop

Dear Ms. Townsend:

We are special water counsel to the City of Bakersfield ("Bakersfield" or "City"). On behalf of Bakersfield, we submit the following comments regarding the potential extension and modification of the existing Emergency Regulation for Statewide Urban Water Conservation (Emergency Regulation). Bakersfield submits these comments to the State Water Resources Control Board ("SWRCB") pursuant to the November 6, 2015 Notice of Public Workshop, and in advance of the December 7, 2015, Public Workshop on the Emergency Regulation.

Bakersfield provides input on the following questions identified by the SWRCB in its November 6, 2015, Notice:

1. What elements of the existing Emergency Regulation, if any, should be modified in an extended Emergency Regulation?

A. Any extension of the Emergency Regulation should eliminate the "tiering" system, which requires different levels for the reduction of water production and use for different water suppliers and purveyors.

Tiers are no longer necessary because, as indicated in the Notice of Public Workshop, the State's urban water suppliers have reduced water use by 28.1% relative to 2013 for the same months. There is no longer any valid basis for requiring urban water suppliers to reduce water use by

more than 25%, including by as much, as in Bakersfield's situation, as 36%, while other water suppliers are only obligated to reduce water use by as little as 8%.

The SWRCB's tiered categorization methodology also fails to take into account a number of critical factors that impact residential gallons per capita daily usage (R-GPCD), including climate, precipitation, environmental factors, location of the urban water supplier, cloud cover, and prior and on-going local conservation efforts.

It is not reasonable for Bakersfield to be penalized for being located in a drier climate, with less precipitation. Differences in climate, rainfall, cloud cover, and location have an inevitable and direct impact on water consumption. Cities in warmer, drier climates will necessarily use more water, per R-GPCD, than cities in cooler, wetter climates, for reasons unrelated to the policies, pricing structure, and conservation efforts of the cities. Residents of cities in wetter, cooler environments will necessarily need to use less water to maintain a comparable level of outdoor vegetation.

The "Conservation Reporting" requirements for Urban Water Supplier's monthly reports to the SWRCB, as posted on the SWRCB's web site at http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/conservation_reporting_info.shtml#urban_ws_rpt, states that "[i]t is not appropriate to use Residential Gallons Per Capita Day (R-GPCD) water use data for comparisons across water suppliers, unless all relevant factors are accounted for." The SWRCB web site further indicates that among the factors that can affect per capita water use are "rainfall, temperature, and evaporation rates," "population density," and "socio-economic measures such as lot size and income." The Emergency Regulation does not follow those standards, as it uses R-GPCD for "comparisons across water suppliers," and the tiers fail to take into account all "relevant factors" that affect per capita water use. The State should accordingly eliminate the use of such water use tiers in connection with any extension of the Emergency Regulation.

The current tiered structure additionally does not take into account population growth, system growth and other factors that naturally increase demands. The current tiered structure therefore cannot practically or feasibly serve as a long term conservation goal or methodology.

The tieirng structure also fails to take into account prior and ongoing conservation efforts by water purveyors, as well as efforts related to the recycling and reuse of water supplies, and ongoing water storage projects and efforts. Bakersfield in particular has adopted a three day a week watering ordinance, has adopted and implemented substantial public education efforts and programs, including the use of door hangars and other forms of advertising, and appointed City employees to enforce drought related ordinances and regulations.

Instead of adopting broad, uniform tiers for water use reduction, the State should focus its efforts on assisting water purveyors in developing effective long term and short term projects, programs and policies for addressing the current drought, as well as future water supply shortages. The

State could do that by monitoring and requiring compliance with current Urban Water Management Plans (UWMP), which already contain detailed plans and strategies for addressing drought conditions and water supply shortages. UWMPs establish plans and programs for addressing water shortages which are already specifically tailored to the particular location, supply, needs, climate, population, growth, and other factors for each water supplier.

All water purveyors of a certain size, moreover, have already prepared and adopted UWMPs. UWMPs, moreover, already set forth plans and strategies to achieve a 20% reduction in water use by 2020. The State could also adopt new regulations and requirements for future UWMPs, starting with 2015 UWMPs, that facilitate and strengthen plans and strategies for drought related conditions.

B. Recycled and reclaimed water developed and used by a water purveyor should be recognized as an offset or credit against a water purveyor's production and use of water.

Bakersfield utilizes increasing quantities of tertiary treated, or recycled, water for outdoor irrigation, pursuant to the California Water Plan, the SWRCB's April 25, 2013 Recycled Water Policy, and the SWRCB's mandate to increase the use of recycled water. The City also develops additional water supplies by "de-nitrifying" secondary treated water supplies, and by using over 330 sumps throughout the City to capture stormwater for recharge and re-use.

The current "Urban Water Supplier Reporting Tool" utilized by the SWRCB, and the methodology and equation used to estimate R-GPCD, do not sufficiently account for and recognize the use of recycled water for outdoor irrigation. Any extension of the Emergency Regulation should therefore allow a water purveyor to claim a credit, offset or other reduction in water production or R-GPCD to account for use of recycled, reclaimed water.

C. Urban purveyors should receive a credit or offset for water extracted from ground or surface water storage for later domestic use.

Bakersfield has developed and utilized extensive water storage facilities, including through Lake Isabella and the City's 2800 Acre Groundwater Recharge Facility, located in the western part of the City, along the Kern River, and through other groundwater recharge and banking facilities throughout the City. Bakersfield developed such water storage facilities, consistent with and supported by relevant State statutes and policies, with the specific intent of providing a supplemental water supply for drought and dry year conditions. Water extracted from storage for use by customers and City residents therefore should not be counted or considered as part of the City's overall water use, or production.

The Emergency Regulation already recognizes that the use of water from storage does not exacerbate or add to drought and water shortage conditions and therefore does not need to be

counted or considered in connection with water use reductions. Section 865(c)(2) of the Emergency Regulation provides, in part:

> (2) Each urban water supplier whose source of supply does not include groundwater or water imported from outside the hydrologic region in which the water supplier is located, and that has a minimum of four years' reserved supply available may, submit to the Executive Director for approval a request that, in lieu of the reduction that would otherwise be required under paragraphs (3) through (10), the urban water supplier shall reduce its total potable water production by 4 percent for each month as compared to the amount used in the same month in 2013.

At the very least, that provision should be expanded to apply to all water held in storage, including groundwater.

2. ***What additional data, if any, should the State Water Board be collecting though the Emergency Regulation and how would it be used?***

A. Recycled, reclaimed water used by the water purveyor, which should be counted as a credit or offset for water production or consumptive water use data (See prior discussion).

B. Water extracted from storage (surface water or groundwater), which should be counted as a credit or offset for water production or consumptive water use data (See prior discussion).

3. How should the State Water Board account for precipitation after January 2016 in its implementation of any extension of the Emergency Regulation?

A. If the State removes the water use tiers from any extension of the regulations, and focuses its efforts on more sustainable, long term and short term policies and procedures for the reduction of water use, including by working towards a 20% reduction in 2020, precipitation after January 2016 should practically not have an impact on policies and programs intended to implement and extend the Emergency Regulation.

B. Alternatively, if the State does not eliminate the tier system, or specific water use reduction goals, any extension of the Emergency Regulation should only be for a very limited period of time, and such extension could be further limited or revoked if precipitation levels increase and the impacts of the drought are reduced.

We thank you and the SWRCB for considering these comments. Please let us know if you have any questions or require any further information on these matters.

Sincerely,

Colin Pearce/jc

Colin L. Pearce

CLP:jc

cc: Alan Tandy, City Manager, City of Bakersfield
Virginia Gennaro, City Attorney, City of Bakersfield
Art Chianello, Water Resources Manager, City of Bakersfield