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In reply refer to: L2016-001

January 6, 2016

VIA EMAIL TO Kathy.Frevert@waterboards.ca.gov

Felicia Marcus, Chair
and State Water Resources Control Board (SWRCB)
1001 I Street
Sacramento, CA 95814

Re: December 21, 2015 Proposed Regulatory Framework for Extended Emergency
Regulation for Urban Water Conservation

Dear Chair Marcus and Board Members D'Adamo, Doduc, Moore and Spivey-Weber:

El Dorado Irrigation District (EID or District) appreciates the opportunity to provide comments on the above-named framework document.

The District appreciates SWRCB staff's thoughtful response to stakeholder proposals advanced before and at the SWRCB's December 7 workshop on this topic. We believe that while the framework represents a step in the right direction, the lessons learned in 2015, the demands of equity, and this winter's unfolding hydrology all require more extensive action from the Board itself. Specifically, the framework's climate adjustment proposal does not provide sufficient relief from the gross inequities of the existing regulation, its proposed growth adjustment is unduly complicated and unclear, its proposed cap on credits and adjustments is arbitrary and unwarranted, and the framework lacks flexibility to adjust the state-wide conservation target in response to new hydrologic information. The District encourages the Board to address these points, and other issues touched on below, in its forthcoming regulatory action.

The Climate Adjustment Proposal is Inadequate

The District is pleased by the framework's implicit acknowledgement that the substantial local variances in July – September evapotranspiration rates (ET) in local service areas create substantial inequities in the existing regulation's assignment of conservation mandates. We welcome the framework's proposal to provide relief, but we believe it does not go far enough. A modest 4% maximum relief from the conservation mandate does not come close to providing equity to an agency like EID, which has ET about 27% higher than Los Angeles', 40% higher than San Diego's, 65% higher than San Francisco's, and 86% higher than Oakland's, yet was assigned a 28% conservation mandate versus the 16% mandate applied to Los Angeles, San Diego, and Oakland, and the 8% mandate San Francisco received.

The District also recognizes, however, that a truly equitable climate adjustment could threaten the achievement of statewide conservation goals. That is why we believe that the SWRCB should adopt the stakeholder's proposal presented at the SWRCB's December 7 workshop as an acceptable solution that improves equity without jeopardizing the existing regulatory structure. The stakeholder's proposal utilizes the same data as the framework proposal, is only modestly more aggressive (for example, EID's adjusted mandate would be 22% under the stakeholder proposal, versus 24% under the framework proposal), and provides more equity.

The Proposed Growth Adjustment is Complicated and Unclear

Adjusting an agency's conservation responsibilities to account for growth since the 2013 baseline year is vitally important, because even a modest amount of unaccounted-for growth can significantly increase the agency's true conservation burden. On December 7, stakeholders demonstrated this significant effect and proposed a straightforward approach to addressing it: increase the agency's baseline water production by the product of the number of new connections times the average water use per connection. Rather than adopting this approach, the framework proposes a labyrinthine calculation that distinguishes between types of connections, attributes a fixed "reasonable" quantity of indoor water use to each type of residential connection, requires a calculation of residential landscaped area that most water agencies are very unlikely to have the data to perform, introduces an ET factor, and adds calendar-day and inches-to-gallons conversion factors.

It is doubtful that this elaborate approach will produce a significantly more accurate estimate of additional water use attributable to growth – but it is certain that it will require so much local agency time and effort that few will be inclined to undertake it. In all discussions of potential adjustments to the conservation regulation, the SWRCB has emphasized the need for simplicity; this proposal abandons that goal entirely, and without justification.

The adjustment method is also incomplete and unclear. It is incomplete because does not appear to account at all for new agricultural users. It is unclear because the purpose of a growth adjustment is simply to adjust the baseline from which conservation is calculated, but the framework's sample calculation instead converts that result into a change in the percentage conservation mandate. Besides being logically inconsistent, this approach appears to make the growth adjustment subject to the framework's proposed 4% total cap on all credits and adjustments. As discussed below, the SWRCB should not be imposing a cap in any event, but if it does, including a growth adjustment in that cap effectively penalizes agencies for having a growing customer base – ironically perpetuating the very inequity the growth adjustment is intended to remedy.

The Board should reject the framework's complicated, unworkable, and self-defeating approach and adopt the stakeholder's proposal, which is straightforward, easy to administer and verify, and equitable.

The 4% Cap on Credits and Adjustments is Arbitrary and Unwarranted

The framework recommends that all credits and adjustments be capped to allow a 4% maximum decrease in any agency's conservation mandate. No explanation or rationale for this recommendation is provided, and the District respectfully asserts that none exists. If an agency's circumstances warrant a credit or adjustment – or a combination of them – as a matter of equity, then imposing an arbitrary cap on their magnitude is unwarranted. Either a change is equitable, or it is not; there is no such thing as providing too much equity. The Board should

reject this recommendation and allow adjustments and credits, singly or together, to be made on the merits of the individual case, without an arbitrary limit.

The Framework Lacks Flexibility to Respond to Changed Conditions

Numerous stakeholders recommended, both before and at the December 7 workshop, that the SWRCB regulations incorporate a “course correction” to allow the existing 25% statewide conservation target (and accordingly, individual agencies’ implementing mandates) to be adjusted once more is known about this winter’s hydrology. Indeed, the SWRCB solicited stakeholder comments on this very point. And yet, the framework completely ignores this issue. The Board’s regulation should incorporate an explicit procedure to allow adjustments to new hydrological information as the winter progresses.

It would be foolhardy not to. Nothing in the Governor’s current Executive Order mandates the continuance of a 25% target; in fact, the Order expressly directs the SWRCB to “consider modifying its existing restrictions to address uses of potable and non-potable water, as well as to incorporate insights gained from existing restrictions.” (Executive Order B-36-15 at ¶ 3.) The 25% target in 2015-16 reflected the worst snowpack on record and a fourth consecutive year of dry conditions. Even now, with most of the winter yet to come, few would predict that similarly dire circumstances will exist next May. The SWRCB risks appearing arbitrary or out of touch – and thereby risks its most valuable asset, the public’s trust, good will, and cooperation – if it does not expressly anticipate the possibility of a course correction now, and then make the correction later if circumstances clearly warrant it.

To provide consistent messaging and to maximize the possibility of a wise decision, it would be sensible to have a single decision point, shortly before agricultural and residential irrigation begins in late spring. Mid-April to early May would be an appropriate timeline. The Department of Water Resources’ Bulletin 120 provides a convenient means and a primary data point for such a procedure. The monthly Bulletin 120 updates would give the Board the opportunity to focus public attention and interest as the decision date approaches and arrives. To ensure that the Board would have the authority to adjust conservation levels to match any conceivable circumstances, the regulation should allow the current 25% target to be adjusted either upward or downward.

It seems likely that the framework’s proposed 4% cap on credits and adjustments is partly a side-effect of the failure to provide flexibility to adjust the overall target. Therefore, addressing this omission in the framework provides an additional basis for eliminating the 4% cap.

The Regulation Should Also Address Other Issues

The District has consistently urged the SWRCB to employ incentives, and not just sanctions, to motivate conservation. The framework does not consider any incentives; the final regulation should. For example, agencies such as EID that exceed their 2015-16 conservation mandates should receive some consideration in the terms and enforcement of the next regulation. The District supports a “roll-over” credit concept suggested by numerous stakeholders – if an agency exceeded its mandate by a certain percentage in 2015-16, its 2016 mandate would be reduced by the same percentage. If the Board is disinclined to consider this proposal, however, its forthcoming regulation should at least direct lenience in enforcement against an agency that falls



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short of its 2016 mandates, so long as the cumulative conservation rate from the two periods meets standards. In other words, over-performing agencies would have some buffer against harsh enforcement of a future shortfall. The Board should also consider other incentives – particularly financial incentives – that would counterbalance the various sanctions and enforcement actions associated with the existing regulation.

Finally, there is no good reason to exclude non-potable, non-coastal recycled water from the framework's proposed credit for drought-resilient sources of supply. The District's recycled water supply is as drought-resilient as the supplies identified in this proposed credit, and we serve it not only to commercial and institutional customers, but to nearly 5,000 residences for front- and back-yard irrigation (who voluntarily conserved in 2015-16 at rates approaching those of our potable customers). Particularly given the framework's rejection of the stakeholders' proposed recycled water adjustment to the conservation mandate, it would be equitable to include recycled water as a permissible source of drought-resilient supply for purposes of that credit.

Again, the District appreciates the many positive aspects of the SWRCB staff's framework, and the hard work and careful consideration it represents. We urge the Board to improve on the framework as indicated above when it takes regulatory action next month.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Thomas D. Cumpston', is written over a light blue horizontal line.

Thomas D. Cumpston
General Counsel

TDC:pj

cc: EID Board of Directors
Jim Abercrombie, EID General Manager
Brian Poulsen, EID Senior Deputy General Counsel
Brian Mueller, EID Engineering Director