



NEVADA IRRIGATION DISTRICT

1036 W. Main Street, Grass Valley, CA 95945-5424
(530) 273-6185 ~ Fax: (530) 477-2646 ~ www.nidwater.com

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VIA ELECTRONIC MAIL

Jessica Bean
State Water Resources Control Board
I Street, 24th Floor
Sacramento, CA 95814
Jessica.bean@waterboards.ca.gov

RE: Comment Letter - Mandatory Conservation Proposed Regulatory Framework

Dear Chair Marcus and Board Members:

Thank you for the opportunity to comment on the framework for the proposed water conservation regulations. The Nevada Irrigation District (District) and its customer base have worked, and will continue to work, diligently to reduce our total water consumption (including raw and treated water deliveries). Treated water conservation has played a key role in our success to date, and will continue to be utilized, along with other tools available to the District, as it strives to deliver clean and reliable water in the most efficient and cost effective manner while meeting statewide conservation goals.

The District urges the State Water Resources Control Board (SWRCB) to allow flexibility in achieving the policy objectives and overall water savings mandated by Governor Brown. The regulatory framework, as proposed, appears too inflexible to address the abundant diversity of California, including differences in water supply availability, water use and method of use, weather conditions, evapotranspiration rates, water right priorities and county/area of origin protections. If applied to the District, it would create substantial challenges to our continued efforts to reduce total water consumption. Below are some comments and concerns along with suggestions on alternative ways to meet the target reductions, while also complying with the letter and spirit of Governor Brown's April 1, 2015 Executive Order.

1. Executive Order, paragraph 2: The Conservation Regulations Should Be Flexible Enough to Allow Water Suppliers, Such as the District, to Comply by Demonstrating Comparable Savings Through Other Conservation Methods.

The primary purpose of the Governor's Executive Order is to "save water" in preparation for possible continuation of the drought into 2016 (see paragraphs 2-8). In statements

accompanying the Order, Governor Brown emphasized that adherence to the mandates will save approximately 1.5 million acre-feet of water over the next 9 months.

The District has a unique water distribution system. It delivers both treated potable water and untreated raw water to customers from a common source (i.e., a series of reservoirs). The District is currently within tier 4 (35%) of the proposed regulatory framework and is mandated to save approximately 1.2 million gallons of treated water compared to 2013 usage. This treated water “savings” would be reflected in greater carryover storage levels in the District’s reservoirs. However, because treated and raw water deliveries are drawn from the same source, this same water “savings” and higher carryover storage levels can also be accomplished by implementing raw water conservation measures. In the District’s case, saving water in storage can be accomplished solely through reduced treated water usage, solely through reducing raw water usage, or by reducing *both* raw and treated water usage.

The regulatory framework should be flexible enough to allow suppliers to achieve the mandated water savings through actual reduction of treated water deliveries or through other methods, such as raw water conservation, that achieve comparable or better water savings in preparation for 2016. In complying with the Governor’s conservation mandates, the District would like to treat its customer classes equally, e.g., enforcing reductions in treated *and* raw water usage that cumulatively results in meeting or exceeding the mandated water savings.

2. Executive Order, paragraph 2: The R-GPCP Standard Should be Adjusted and Normalized to Account for California’s Abundant Diversity

The proposal of achieving a 25% statewide reduction by placing different reduction targets for each water purveyor based on a strict R-GPCD standard is not an equitable regulatory demand. The SWRCB has acknowledged that strict adherence to an R-GPCD standard is not a good indicator of efficient water use and should not be used to compare water suppliers. According to the SWRCB’s DRINC Portal:

It is not appropriate to use R-GPCD water use data for comparisons across water suppliers unless all relevant factors are accounted for. Factors that can affect per capita water usage include:

- Rainfall, temperature and evaporation rates – Precipitation and temperature varies widely across the state. Areas with high temperature and low rainfall need to use more water to maintain outdoor landscaping. Even within the same hydrological region or the same water supply district, these factors can vary considerably having a significant effect on the amount of water needed to maintain landscapes.
- Population growth – As communities grow, new residential dwellings are constructed with more efficient plumbing fixtures, which cause interior water

use to decline per person as compared to water use in older communities. Population growth also increases overall demand.

- Population density – highly urbanized areas with high population densities use less water per person than do more rural or suburban areas since high density dwellings tend to have shared outdoor spaces and there is less landscaped area per person that needs to be irrigated.
- Socio-economic measures such as lot size and income – Areas with higher incomes generally use more water than areas with lower incomes. Larger landscaped residential lots that require more water are often associated with more affluent communities. Additionally, higher income households may be less sensitive to the cost of water, since it represents a smaller portion of household income.
- Water prices – Water prices can influence demand by providing a monetary incentive for customers to conserve water. Rate structures have been established in many districts for water conservation, but the effectiveness of these rate structures to deter excessive use and customer sensitivity to water prices vary.

The SWRCB should adjust and normalize R-GPCD to account for California's diversity, including drastic differences in climate, population density/urbanization, lot sizes, income levels, evapotranspiration rates, etc. For example, the R-GPCD standard does not incorporate water use on public parks. In California's urbanized areas where it is atypical to have a front or back yard, public parks serve as the outdoor landscape for entire communities, yet that extensive water usage is exempt from the proposed tiered system and variable conservation standards.

3. Executive Order, paragraph 2: Implementing a 35% Reduction on the District's Treated Water Customers Effectively Prevents Most Outdoor Watering And May Have Catastrophic Consequences in Foothill and Mountain Communities At Risk of Wildlife

With the fourth year of drought at hand, fire danger is of major concern. The District is located in an extremely hazardous area that is subject to wild fires. Many of the District's customers utilize outdoor watering to provide a safety zone surrounding their homes as required by CA Public Resources Code Section 4291-4299. This is a water use/demand that is a public health and safety issue and should not be restricted.

4. Executive Order, paragraph 7: The Mandate to Limit Outdoor Irrigation for New Construction Should be Directed to Public Agencies with Land Use Authority, Such as Cities and Counties

While the District supports this campaign, the authority to demand this provision lies within the applicable city/county building or inspection department. The District intends to communicate

the regulation to the local building departments; however, achieving compliance will be under their regulatory authority.

5. Enforcement Should be Utilized as a Last Resort; Penalties Collected Should be Earmarked For Water Conservation Programs and Projects

The District realizes the SWRCB has a number of tools for enforcement and penalties. To date the District has appreciated the SWRCB's understanding, flexibility, and exercise of prosecutorial discretion in imposing penalties. However, that appears to be changing. The proposal to use cease and desist orders with a \$10,000/day penalties is unwarranted and doesn't seem to mirror the SWRCB's actions to date. Additionally, because the District is not a policing authority, some regulations will be a challenge to implement. Placing fines on an agency for not implementing actions it does not have the legal authority to enact is unjust. Similarly, notwithstanding an agency's best efforts, achieving the mandated conservation level may be impossible given possible lags in customer response.

Informal warning letters are more appropriate and allow the District to make adjustments to their conservation program to comply. Enforcement with monetary fines should be utilized as a last resort after previous, informal efforts have not accomplished the desired result. To the extent monetary fines are imposed and collected, they should be earmarked for water conservation programs and projects to assist the noncompliant agencies in better responding to droughts in the future.

Finally, current Water Code provisions make it unclear whether water suppliers will be required to petition for reconsideration of the SWRCB's adoption of any regulations to implement the Governor's Executive Order. Unless the SWRCB would like an influx of prophylactic petitions for reconsideration, the regulations ought to make clear that reconsideration is not required and water suppliers preserve any and all legal arguments and defenses should the SWRCB ultimately pursue enforcement.

Respectfully submitted,



Remleh Scherzinger, P.E.
General Manager