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May 2, 2015

Felicia Marcus, Chair
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100
Sent via email to: jessica.bean@waterboards.ca.gov



SUBJECT: "Comment Letter – Emergency Conservation Regulation"

Dear Chair Marcus,

Otay Water District (Otay) is a California Special District meeting the water, recycled water and sewer needs of 217,000 people residing in the communities of Spring Valley, La Presa, Rancho San Diego, Jamul, eastern Chula Vista and eastern Otay Mesa along the international border with Mexico. Educated and motivated by prior droughts and its location at the end of the pipeline, Otay has a long history - dating back to the early 1980's - of successful efforts to conserve water and implement water recycling programs in order to reduce its dependency on imported water. As a member agency of the San Diego County Water Authority (Water Authority), we have also supported its aggressive local water supply development in order to reduce the region's dependence on Delta imports. Our customers have supported these efforts based on our assurances that these investments would pay off when we need it, i.e., during times of shortage.

Otay joins in the Water Authority's detailed April 13, 2015 response to the State Board's proposed regulatory framework and its April 22, 2015 recommendations on the Draft Emergency Regulations for Urban Water Conservation (draft regulations). While we appreciate that some adjustments have been made, our board felt compelled to communicate to you and the Governor directly our utter dismay at the philosophical underpinning of the draft regulations, the message these rules send to our customers, and finally, what it forebodes for the future of our agency and the state.

Knowing that the Governor is a thoughtful man, we looked to history for a lesson to illustrate our concerns and found it in Benjamin Franklin's "On the Price of Corn and Management of the Poor, 1766." While not on "all fours," the expression is apt about the wisdom of government (or lack thereof) in begrudging the profits of honest labor by one so that another may have it cheaper.

While no one disputes that the state is currently in the grip of a record-breaking hydrologic drought, the draft regulations fail entirely to account for the reality that many parts of the state have been in the grip of a regulatory drought and impending dry-year supply shortages for many years. During that time, some agencies responded to the call by the Legislature and State Board to reduce reliance on Delta imports and invested in conservation and local water supply development, while others did not. It is, quite candidly, an insult to the hard work and

investment by our ratepayers to be told by the State Board that the use of these water supplies now, when we need it most, is a "waste" or "unreasonable use" of water.ⁱⁱ This is most unfortunate terminology.

Worse yet, it is entirely possible that water supplies that are "conserved"ⁱⁱⁱ at the retail level under the draft regulations will as a practical matter be of no beneficial use to anyone.^{iv} The overly simplistic focus solely on residential gallons per capita per day as a measure blurs important distinctions between public water suppliers and the sources of their supplies as well as a host of other relevant factors that have not been taken into account in the draft regulations. The Board's exclusive focus on restricting urban retail usage does not square with the actual availability of water.^v For example, Otay is being asked to enforce a 20% water supply reduction (in order to implement the Governor's call for a 25% statewide cutback) when only a 1% supply reduction is necessary to meet regional water demand in San Diego *due to the reliability programs our customers have funded over the years*. Rather than acknowledging and rewarding this behavior and motivating future investment, the Governor and Board send a message that we must all be reduced to the lowest common denominator and be water-deprived together.

Finally, we are extremely concerned that the draft regulations 1) commingle the subject of water conservation during times of drought with water conservation as an element of long term water supply planning; and 2) suggest that orders could include mandates on changes to rates and pricing. We strongly believe that long term water supply planning and rate-setting must be left to individual water agencies because they must comply with statutory and Constitutional rate-setting requirements based on the unique facts and circumstances of each agency and are directly accountable to the voters. While retail water agencies have experienced some new challenges in water supply planning and rate-setting as a result of voter-passed initiatives, we are finding ways to do that.^{vi} The idea of the state inserting itself into these local matters evokes what is, for many, the nine most frightening words in the English language: "I'm from the government and I'm here to help." *We implore you not to become further involved in what should be a matter of local government.*

In short, we are *"not so well satisfied of the goodness of this thing"* called the draft regulations. We sincerely hope that the State Board will convene a process and provide an opportunity to rethink its entire approach going forward. The draft regulations send our customers and California all the wrong messages, whether in the context of a local water supply project or Bay Delta Conservation Plan. You have *"offered a premium for the encouragement of idleness, and you should not now wonder that it has had its effect in the increase of poverty."* This does not bode well for the future, as we seek to secure voter support for needed projects.

We thank you for this opportunity to comment on the proposed regulations and look forward to working with you in the weeks and months ahead.

Sincerely,



Mark Watton
General Manager

ⁱ All italicized quotes are from this source, and a complete copy is attached.

ⁱⁱ As many water suppliers have indicated in their comments on the draft regulations, this language should be abandoned because it is used inappropriately in this context for many reasons.

ⁱⁱⁱ "Water conservation" is generally defined and understood as a *plan* for the most cost-effective and environmentally sound way to reduce our demand for water. The draft regulations are not a *plan* of any kind; they are a state mandate to reduce retail usage in the guise of water "conservation." At the same time usage limitations are being imposed on retail agencies, wholesale agencies like MWD are going about "business as usual." Last year, while the Governor's January 17, 2014 drought state of emergency was pending, MWD withdrew a whopping 1.2 million acre-feet of water from its available storage, i.e., *business as usual. No drought or water supply cutbacks were imposed.* Last month, MWD once again voted to conduct its business "as usual," voting finally to implement a water supply allocation but choosing to declare only a Level Three reduction. The messaging to water consumers about "conservation" has become unintelligible. The Governor and water community may find a much more skeptical electorate in the future, when support is needed to implement both water conservation and supply programs.

^{iv} Many question the wisdom of declaring a "statewide" water supply emergency at the retail level, when water supply conditions and the cause of water supply shortages in different regions of the state are so markedly different. There is no reason to believe, for example, that foregoing production of an acre-foot (AF) of seawater desalination in San Diego will help a farmer in the Central Valley. Rather than helping everyone get better together, the draft regulations are more likely to result in negative impacts on the economy in some regions that otherwise would not occur.

^v See discussion at footnote iii, *supra*.

^{vi} We do not believe that Propositions 218 or 26 present any insurmountable barriers to water conservation or tiered pricing. The voters have spoken that they expect water agencies to demonstrate the benefits they obtain from the water rates and charges they pay and we believe we owe that to our customers in any case.