



Paradise Irrigation District

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(12/7/15) Public Workshop
Urban Water Conservation
Deadline: 12/2/15 by 12:00 noon

November 30, 2015

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Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th floor
Sacramento, CA 95814
commentletters@waterboards.ca.gov



Re: Initial Comments on Extension of Mandatory Urban Water Conservation Emergency Regulations

Dear Chair Marcus and Members of the State Board:

Paradise Irrigation District (PID) appreciates this opportunity to submit comments on the potential extension of mandatory urban water conservation emergency regulations. PID fundamentally disagrees with the premise that statewide mandatory urban conservation regulations are necessary in lieu of existing urban water management plans and drought contingency measures. Local planning and control should govern. If the State Water Resources Control Board (SWRCB) extends or readopts emergency urban conservation regulations, it should make wholesale changes to the regulations to make them more adaptable to local conditions.

PID's customers have made outstanding efforts and have significantly exceeded the mandated 36% conservation goal. As of November 2015, PID's customers have achieved potable water use savings of 43% as compared to 2013—7 percentage points beyond the mandate, or nearly 20% more than what was asked of them. Nonetheless, the 2015 urban conservation regulations were imperfect and must be modified if they are reenacted for 2016.

PID and other urban water suppliers have long engaged in mandatory urban water management planning—preparing and updating urban water management plans and drought contingency plans—at significant expense to the district and ultimately its ratepayers. These plans are adopted outside the exigency of the current drought and, as a result, are well thought out and adapted to each supplier's unique characteristics. In 2015, after four years of drought, these plans were shelved by the SWRCB in favor of blunt, statewide conservation mandates that do not consider each supplier's specific geographical, economic, climatological, and hydrological situations.

Why require suppliers to expend significant sums in developing locally tailored drought plans only to discard them when drought strikes? Urban water suppliers should have been directed to comply with their state-mandated, state-approved drought plans, rather than put those resources to waste and impose an imprecise, non-local, top-down regulatory approach instead.

However, given that it appears to be a foregone conclusion that the SWRCB will extend mandatory urban water conservation emergency regulations for 2016 (because the Governor's recent executive order mandates the extension if drought conditions persist into January, rather than making the determination toward the end of the rainy season), the State Water Board must modify the regulations to better address the unique local contexts in which each urban water supplier operates. Any effort to create *permanent* urban water conservation requirements should be addressed separately through a traditional rulemaking processes.

PID's responses to the three questions presented in the Workshop Notice follow:

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

Many aspects of the emergency regulations must be modified if they are to be readopted in 2016. Comments from interested parties prior to the initial 2015 adoption of the urban conservation regulations identified many factors that should have been, but were not, considered in developing the regulations and assigning conservation goals to suppliers. The conservation goals were established based on each urban water supplier's daily per capita residential potable water use ("R-GPCD"). The State Water Board itself has cautioned that "[i]t is not appropriate to use R-GPCD water use data for comparisons across water suppliers unless *all relevant factors* are accounted for." (<https://drinc.ca.gov/dnn/Applications/UrbanWaterR-GPCD.aspx> (emphasis added).) These factors include but are not limited to local rainfall, temperature, and evapotranspiration rates; population growth; population density; and socioeconomic factors such as parcel size.

In developing the 2015 urban conservation emergency regulations, the State Water Board claimed that time was too short, and the emergency too pressing, to account for those variables in developing the 2015 conservation regulations. However, during the 2015 process, the State Board promised that those factors "will be considered as the Board moves forward in establishing . . . additional temporary emergency regulations that may be needed if it does not rain significantly next winter." (Fact Sheet on Draft Emergency Regulations, April 17, 2015, at p. 6.) The Board claimed that the "immediate need" to establish mandatory conservation regulations prevented it from thoroughly considering and incorporating the relevant variables (Fact Sheet on Proposed Emergency Regulations, April 28, 2015, at p. 4), and also argued that some of the factors did not need to be considered because the emergency regulations would only be in place for nine months (*id.* at p. 7). Now the State Water Board is considering a nine-month extension, so it must incorporate these additional factors into the next iteration of the emergency regulations. Additional variables that should be addressed include:

Local evapotranspiration ("ET") rates and climatological differences. Trees and plants in warmer geographical areas and in areas with higher ET rates require more water than those in cooler areas. Although many would argue that those in warmer or drier areas should simply allow plants to die, these same areas experience dangerous seasonal fire risks that can be mitigated by keeping defensible spaces green. In addition, consideration of local climate differences can help reduce hazards caused by dead, dying, and diseased trees impacted by reductions in outdoor watering, as recognized in the Governor's recent declaration of a state of emergency related to the state's millions of dead trees. Dead

and drought-stressed trees in heavily forested areas such as PID's service area pose extreme risks to human safety when wind events accompany winter storms—two people were killed by falling trees in Paradise less than a year ago due to the combination of drought-stressed trees and high winds. Suppliers in areas that receive reliable precipitation—as PID traditionally does—should be allowed to exercise their water rights, rather than be required to hold an unused supplies in storage, which could potentially be wasted if reservoir releases are required for flood control operations in the winter.

Recognize investments suppliers have made in water rights, water storage, and sustainable supplies. The 2015 emergency regulations applied equally to water suppliers that have invested in secure water rights, storage projects, and other sustainable supplies as well as to suppliers that rely on purchases and transfers of foreign water or on unsustainable groundwater pumping. Entities and their customers that have attempted to “drought proof” their supplies were not allowed to fully utilize their facilities and the benefits of foresight and significant investment under the SWRCB's 2015 emergency regulations. An extension of the emergency regulations must give suppliers credit for the development of local water supplies that were intended to protect against inevitable drought conditions. PID has resilient and robust water resources and credit should be given for planning ahead. Although the 2015 emergency regulations did allow reduced conservation goals for suppliers that could show four years of non-imported, non-groundwater supplies in storage, four years' supply is an unreasonable threshold, especially considering that additional precipitation falls every year, even if the amount may be less than normal.

Pre-2013 conservation successes. Conservation goals assigned to urban water suppliers should consider conservation, supply, and efficiency improvements made by the suppliers prior to the 2013 benchmark date used for the 2015 emergency regulations. Again, foresight should not be penalized, and conservation achieved prior to the onset of the current drought should be recognized.

Population growth. Although population growth was not a factor considered in the 2015 emergency regulation structure, the decision not to account for growth was based on “the limitation on the duration of the emergency regulation to 270 days.” (Fact Sheet on Proposed Emergency Regulations, April 28, 2015, at p. 7.) An extension of the emergency regulations for another 270 days must account for growth that has and will occur over the 18 months the emergency regulations will be in place.

Health and safety uses of water should be excluded. Water that must be used for health and safety purposes should not be included in R-GPCD calculations. PID's service area is subject to extreme fire dangers; water used for firefighting and fire prevention purposes should not count against the Agency's conservation goal. Similarly, reduced water deliveries can result in lower flow rates in PID'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.

Transfers of conserved water. Transfers of conserved water should be acknowledged in the emergency regulations and should not disadvantage either the transferor or the recipient. Water

transferred to needy urban suppliers should not count against the conservation goal of the transferor, and such water should be considered a new, sustainable supply for the recipient.

Consider realistic attainability of goals. The conservation goals are based on residential water use and were intended to be achieved primarily through reducing irrigation of ornamental landscapes during the summer. In the winter, when most water is used indoors, it is much more difficult to make significant conservation gains. And although the regulations were intended to reduce residential outdoor water use, commercial, institutional, and industrial (CII) water use is included in R-GPCD calculations. Unlike residential use, many CII users use the bulk of their water for industrial processes and cannot achieve significant water savings by reducing outdoor irrigation; practical and economic factors may prevent them from achieving the requested reductions via indoor conservation. Any extension of the emergency regulations into 2016 must not set water suppliers up for failure and should focus conservation requirements on realistically achievable goals (reducing outdoor ornamental water use) while minimizing impacts on jobs, the economy, and health and safety needs.

Apart from the additional variables that should be considered in assigning conservation goals to urban suppliers in a 2016 extension of the emergency regulations, the SWRCB should also make additional modifications, as follow:

Remove references to waste and unreasonable use. As was exhaustively explained in PID's (and other entities') comments on the 2015 emergency regulations, 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 submitted in advance of the 2015 emergency regulations, the extraneous references to waste and unreasonable use must be stricken from any extension of the emergency regulations.

Assure that relaxation of requirements on one supplier does not increase burdens on other suppliers. Finally, as the 2015 emergency regulations are modified in advance of their readoption for 2016, relaxation of conservation goals for one entity should not increase the burden on other agencies. The governor's recent executive order did not specify that a statewide 25% reduction must be achieved, but only that extended regulations "must achieve a statewide reduction in urban potable water use." Relaxing requirements on one supplier should not trigger a commensurate increase in the burden on other suppliers.

Question 2: What additional data, if any, should the State Water Board be collecting through the Emergency Regulation and how would it be used?

No additional data should be collected. The new reporting requirements are unfunded state mandates and only add to urban water suppliers' financial woes stemming from revenue losses attributable to customers' successful conservation efforts. Given this loss of revenue and the onerous reporting requirements and other mandated activities imposed by the 2015 emergency regulations, additional reporting requirements will only exacerbate the financial issues urban water suppliers are currently experiencing as a result of the drought.

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

Any extension of the mandatory urban water conservation emergency regulations must provide for a reassessment of the regulations at a point when 2016 water supply and drought conditions can be reasonably estimated. Precipitation will continue to augment the state's water supply well after January 2016, when the SWRCB must decide whether to extend the emergency regulations. One needs to look no further than the "miracle" March of 1991 to see that January is too early in the year to predict summer water supply conditions with any reliability.

Although the Governor's recent executive order mandates readoption of emergency urban conservation restrictions based on a January 2016 assessment of water supply conditions, an adaptive management approach is the only way to credibly extend urban water use restrictions based on an early water supply assessment. The State Water Board should build into any extension of the emergency regulations a mandatory reassessment of local water supply conditions to occur after 2016 water supplies can be estimated with reasonable certainty—no earlier than April. If the springtime reassessment shows that an urban water supplier's native supplies (surface water acquired under a supplier's own water rights and not by purchase or transfer) have sufficiently rebounded, then that supplier's assigned conservation goal should be reduced or eliminated, leaving in place only the statewide end-user requirements currently codified at 23 C.C.R. § 864. Mandating continued drastic water conservation goals on suppliers that are not experiencing drought conditions in 2016 will confuse customers, make it difficult for suppliers to achieve their reduction requirements, have significant financial repercussions on suppliers, and make it harder to successfully implement conservation requirements in the future, when a supplier may actually be experiencing drought conditions.

Conclusion

The people of California—and PID's customers in particular—have gone above and beyond what was asked of them to conserve water in the fourth year of the current drought, despite the imposition of rushed, less-than-perfect conservation regulations. The SWRCB is now tasked with extending those regulations at a point in time when it is too early to reasonably forecast summer water supplies. Any extension of the emergency regulations must consider local differences in water supply and use, investments in "drought-proof" water supplies, and incorporate an adaptive management approach to better respond to localized differences in weather and water supply conditions.

Sincerely,

Paradise Irrigation District


George Barber
General Manager