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In reply refer to: L2016-007

January 27, 2016

**VIA EMAIL TO [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)**

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

Re: February 2, 2016 Board Meeting – Conservation Extended Emergency Regulation

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

El Dorado Irrigation District (EID or District) provides the following comments on the extended emergency regulation the SWRCB will consider on February 2.

The draft regulation promulgated for comment continues on the welcome path established by the regulatory framework document issued in December, which the District commented upon on January 5. We appreciate the SWRCB staff's efforts in both documents to address the many inequities of the expiring emergency regulation.

As policymakers, however, the SWRCB can and should do more than its staff has proposed. The lessons learned in 2015, the demands of equity, and this winter's unfolding hydrology all require more extensive revision to the final regulation. Specifically: the climate adjustment does not provide sufficient equity to agencies in hot, dry areas of the state; the proposed adjustment for growth is convoluted, unusable by most agencies, and wrongly adjusts the conservation mandate, rather than the 2013 baseline; a cap on credits and adjustments is arbitrary and unwarranted; and the adjustment for drought-resilient supplies is framed too narrowly. The District encourages the Board to address these points in the adopted regulation. Also, if the regulation itself does not do so, the resolution adopting the regulation must set forth a specific timeline and criteria for the SWRCB to make any needed "course correction" once more is known about 2016's hydrology. We address all of these points below.

### *Climate Adjustment*

The District supports the draft regulation's climate adjustment proposal, but we believe it does not go far enough. A modest 4% maximum adjustment to the conservation mandate does not come close to providing equity to an agency like EID, which has evapotranspiration rates (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 in the expiring regulation, versus the 16% mandate applied to Los Angeles, San Diego, and Oakland, and the 8% mandate San Francisco received.

The table of proposed adjustments recently released also contains an unpleasant surprise, wrapped in a "black box." In the regulatory framework, SWRCB staff calculated and stated the statewide July-September ET average to be 6.13 inches. With the District's service area straddling ET zones 13 and 14, our average ET was either 7.48 inches (Zone 13) and 22% above the state average, or 7.38 inches (Zone 14) and 20.4% above the average. In either case, the result was a 4% adjustment under both the regulatory framework and now, the draft regulation. The new table provides no calculations at all, but simply shows EID and the entire Sacramento region as entitled to only a 3% adjustment. Has the calculation of the statewide average ET changed? If not, the table is erroneous. If so, the change should be disclosed and made subject to public comment.

Also, the District continues to believe that the SWRCB should adopt the stakeholder's proposal presented at the SWRCB's December 7 workshop as an acceptable solution that better 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, and provides more equity without upsetting reasonable statewide conservation expectations.

### *Growth Adjustment*

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. The stakeholder proposal responded to the SWRCB's express desire for simplicity in the regulation.

Rather than adopting this approach, the proposed regulation employs a labyrinthine calculation that requires, among other things, a calculation of residential landscaped area – data that water purveyors rarely possess and are unlikely to be able to obtain. As a result, few agencies will be able to benefit from this much-needed, but unduly convoluted adjustment factor. The proposed

regulation also converts this calculation into an adjustment to the conservation mandate – a step that is neither necessary nor wise, because it sends a paradoxical public message that by growing, a community can reduce its conservation mandate.

The Board should replace this complicated and unworkable approach with the stakeholder’s proposal, which is straightforward, easy to administer and verify, equitable, and only changes an agency’s 2013 baseline, not its conservation mandate.

### *Cap on Adjustments*

The draft regulation set an overall 8% cap on credits and adjustments to an 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. An adjustment is either equitable, or it is not; there is no such thing as providing too much equity. The Board should allow adjustments and credits, singly or together, to be made on the merits of the individual case, without imposing any arbitrary limit.

### *Drought-Resilient Supplies*

The District supports the draft regulation’s expanded definition (compared to the framework) of qualifying drought-resilient supplies for purposes of adjusting an agency’s conservation mandate. Still, by excluding all supplies developed before 2013, that definition provides no credit to agencies like the District that have long invested in drought-resilient supplies ***for the very purpose of avoiding draconian cutbacks in a drought.*** By adding the ill-defined requirement that the supply “not reduce the water available to another legal user of water or the environment” (a requirement all new supplies should have already met in the water right approval process), the expanded definition also creates uncertainty and appears (again) to restrict its application to coastal agencies. Finally, the qualification requirements appear to exclude non-potable recycled water supplies, such as those the District delivers to about 4,000 residential customers, even though our recycled water program reduces the District’s potable water production, gallon-for-gallon. This is illogical, unfair, and creates yet another perverse disincentive to water reuse.

The adopted regulation should address all of these issues by expanding or eliminating the time constraint, eliminating the unnecessary and unhelpful “not reduce the water available” language, and allowing non-potable recycled water substitutes for demand that would otherwise be met with potable water.



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### *The Resolution*

The Fact Sheet accompanying the draft regulation states, “State Water Board staff is committed to monitoring and evaluating available data on snowpack, reservoir storage levels and groundwater basin levels, and intends [to] report back to the State Water Board in March and April 2016. If conditions warrant, State Water Board staff will promptly bring a proposal before the State Water Board to adjust or eliminate the Emergency Regulation.” The District and many others have repeatedly noted that it is essential that the SWRCB plan for such a “course correction” – otherwise, it will jeopardize the public’s faith, good will, and cooperation, and with that, the success of its conservation program.

A vague promise in a fact sheet, however, is not sufficient to allay that risk. The regulation should lay out a process; because it does not, at the very least the resolution adopting the regulation should address this issue head-on. (The draft resolution was not yet available for public review when this letter was written.) The resolution should lay out a *detailed timetable* for staff reports and SWRCB action as spring approaches. It should also specify, at the very least, the *specific criteria* upon which the SWRCB will base its decision. Obviously, the decision will be based on “snowpack, reservoir storage levels, and groundwater conditions” as stated in the fact sheet, but this is too vague. The SWRCB should specify *which* snowpack measurements, *which* reservoirs, and *which* groundwater basin levels it will rely upon most heavily. The SWRCB should also confirm that it will tailor any course correction to *regional* conditions, rather than imposing a single statewide adjustment.

It is understandable and appropriate that the SWRCB would not want to pre-determine its responsive actions before the data are acquired and analyzed, but the SWRCB can and should provide much more specificity now without impairing its decision-making discretion. Doing so will allow agencies and customers to plan intelligently for the summer and equally importantly, demonstrate that the SWRCB will base any late-spring course correction on hard data, rather than other considerations.

In conclusion, the District commends the SWRCB for the progress it has made to bring more equity to the emergency regulation in 2016, and we urge you to take further action as outlined above. Also, it is vital to keep this long-running regulatory process in perspective: this emergency regulation has caused significant hardship, both for California water agencies, including the SWRCB, and more importantly, for the citizens we represent. Many have made short-run sacrifices that cannot be sustained at the same level indefinitely.



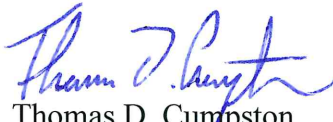
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This regulation should therefore be understood as a unique enactment forged by unique circumstances, and not as a template for permanent water-use efficiency policy or even for “stand-by” regulations to be activated in the next drought. The District will be pleased to participate in any regulatory activities on those two fronts, but such initiatives must proceed with a fresh slate and in full compliance with the Administrative Procedure Act’s provisions for normal rule-making.

Thank you for considering the District’s comments.

Sincerely,



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