



NEVADA IRRIGATION DISTRICT

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VIA EMAIL: wue@water.ca.gov; commentletters@waterboards.ca.gov

December 19, 2016

The Honorable Felicia Marcus, Chair
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

The Honorable Mark Cowin, Director
California Department of Water Resources
P.O. Box 942836, Room 1115-1
Sacramento, CA 94236-0001

SUBJECT: Comments on “Making Water Conservation a California Way of Life” November 2016 Public Review Draft

Dear Chair Marcus and Director Cowin:

Nevada Irrigation District (NID) appreciates this opportunity to comment on the proposed “Making Water Conservation a California Way of Life: Implementing Executive Order B-37-16” (Public Review Draft). The Public Review Draft correctly acknowledges the need to “balance” efforts to enhance “conservation with the need for water suppliers to continue investing in water supply portfolio diversification....” (Public Review Draft, page 4-2, section 4.2.2.) However, the conservation measures recommended in the Public Review Draft fail to strike this necessary balance between encouraging conservation without stifling supply diversification and enhancement or water rights priority. The conservation measures would constitute a significant overreach by the state into matters best conceived and implemented at the local level. If implemented, the new conservation mandates would significantly deter future investment in water supply by local entities. It would also act as an uncompensated taking against agencies, such as NID, that have already expended significant investments in water supply and facilities to reliably serve the needs of customers at their desired demand levels in all time periods, including during periods of prolonged drought. NID is concerned with the apparent return to the “one-sized-fits all” approach set forth in the Public Review Draft, notwithstanding the absence of details regarding implementation. The one-sized-fits all approach utilized in 2015 was appropriately shelved in 2016 in favor of a more tailored “stress test” approach that accounted for, and respected local supply availability, prior investments in supply enhancement and diversification, and the unique characteristics of water suppliers throughout the state.

NID is not opposed to efforts to enhance and encourage conservation. It is, however, strongly opposed to mandates that fail to recognize local conditions. The new concepts proposed in the Draft Report generally fail to respect the unique characteristics of each urban water supplier statewide. In an effort to provide comments in the timeframe provided, NID offers the following general comments for your consideration:

1. Recognize the Need for and Enhance Local Control of Conservation Measures to Ensure Drought Resiliency

Executive Order B-37-16 directed the State Water Resources Control Board to develop a proposal which would "achieve a mandatory reduction in potable urban water usage that builds off of the mandatory 25% reduction called for in Executive Order B-29-15 and lessons learned through 2016." Executive Order B-37-16 further provides that new water use targets "shall be customized to the unique conditions of each water agency." The blanket rules proposed in the Public Review Draft fail to comply with the Executive Order request and further fail to recognize the unique conditions of each water supplier.

Conservation and drought resiliency is best achieved at the local level. Alternative methods to achieve conservation targets similar to those allowed in SBX7-7 are necessary to allow flexibility for each agency to determine the best way to achieve conservation at the levels desired by local rate payers.

The 2016 update to the California Water Action Plan describes local efforts as "essential" to making regions "more self-reliant by reducing water demand and by developing new or underused water resources locally." (California Water Action Plan 2016 Update, page 4.) State efforts should "not replace these local efforts" but, rather, should "complement and leverage them." (*Id.*) The Public Review Draft does not provide enough local control to implement conservation measures and assure drought resiliency. The state should empower suppliers – not bluntly mandate – to achieve greater conservation and drought resiliency at the local level. Allowing suppliers to tailor conservation measures to local conditions, including supply availability, will ensure a more effective and collaborative outcome.

NID strongly opposes the Public Review Draft's departure from the California Water Action Plan and the concepts of local control and regional self-reliance. NID prefers a supportive role for state government rather than a dictatorial role. A preferred approach would be something akin to the Sustainable Groundwater Management Act (SGMA), where the state has tasked local agencies with defining and then implementing groundwater sustainability at the local level to be achieved over a planning horizon. Here, the state has a legitimate interest in water suppliers demonstrating "drought sustainability". Like SGMA, suppliers should be permitted to define, describe (through their urban water management plans) and implement actions to become drought sustainable or, in NID's case, to maintain existing drought sustainability. Importantly, this drought sustainability planning effort would be determined locally and customized to local conditions, including availability of water supply, seniority of water rights, prior and planned investment in facilities, economic considerations, and the water needs of customers.

2. Mandatory Budget Based Allocations Are a Violation of The Water Right Priority System

The Public Review Draft recommends legislation to establish a fixed indoor water use target of 55 gallons per capita per day (GPCD), a variable outdoor irrigation standard expressed as a percentage of reference evapotranspiration, and performance measures for commercial, industrial, and institutional (CII) uses. Taken together, these figures will provide each supplier with a total volume of water that the supplier can provide to customers. These budgets will be made without consideration or recognition of priority of water rights and the prior investment in and development of water supply facilities which could be considered an unlawful and uncompensated taking. A supplier with the most senior water rights with significant prior investment in storage facilities designed to mitigate effects of drought would have the same "budget" as a supplier with the most junior water rights (or no water rights whatsoever) if the two suppliers have otherwise similar populations, climatic zones, and CII demands. This is a significant departure from existing law and would constitute an unlawful infringement on vested property rights.

The Public Review Draft is unclear whether similar budgets would be proposed for agricultural water suppliers (see Section 3.4 of the Public Review Draft). NID is both an urban retail water supplier and agricultural water supplier with irrigated acreage in excess of 25,000 acres. As an agricultural water supplier, NID would also be subject to any new or enhanced conservation mandates applicable to such agencies. NID is strongly opposed to any mandatory water budget based on type of crop, crop duties or any other measurement for the same reasons it objects to the establishment of a treated water budget. Such a recommendation would depart from the water right priority system and would constitute an uncompensated taking of vested property rights.

Also of interest is the introduction of private well monitoring. NID does not have the authority nor is it in its interest to monitor private wells. In addition the financial liability for the monitoring and reporting of the thousands of private wells within NID's service boundary would be expensive and over burdensome. NID considers this the highest invasion into personal private property rights of its customers and would strongly oppose any requirement by the state to mandate the District's involvement in private well use.

3. Address Proposition 218 Restraints on Revenue Generation

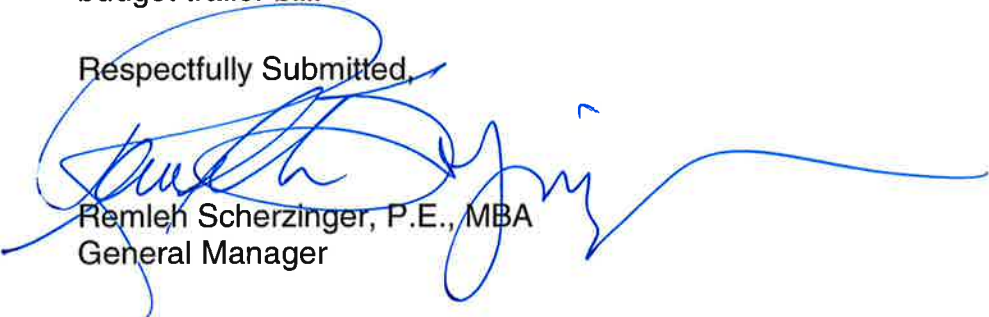
Most, if not all, of the new conservation measures proposed in the Public Review Draft will result in a significant expense to water suppliers and subsequently the system customers. While section 4.3 of the Public Review Draft mentions the importance of water suppliers having "the ability to generate funding for their investment needs and stabilized revenue for steady improvement," it does not adequately acknowledge how Proposition 218 affects an agency's ability to do so. Under Proposition 218, public agency suppliers may only propose rate changes based on the actual cost of service. Price elasticity which is enjoyed by power utilities is not available to water purveyors given Proposition 218. By design, Proposition 218 grants the suppliers' customers with discretion to approve or disapprove proposed rate changes. Disapproval of rate changes is not theoretical; successful protests have occurred throughout the state, including for example in Paradise Irrigation District earlier this year. If the state

intends to increase the obligations of local agencies, it must also address the real limitations imposed by Proposition 218. The state should either (a) provide state funding for suppliers to fund the new conservation and reporting mandates; or (b) secure Proposition 218 reform.

4. Process for Adoption of Legislation

Implementing many of the conservation measures contained in the Public Review Draft will require the adoption of legislation. The conservation measures are complex and touch upon significant matters of policy. Proposed legislation will benefit from comments and feedback of local agencies tasked with implementing the conservation measures and other stakeholder groups potentially affected by the legislation. To that end, NID seeks your assurance that any legislation will be adopted through the standard bill adoption process and not as part of a budget trailer bill.

Respectfully Submitted,



Remleh Scherzinger, P.E., MBA
General Manager

cc: Governor Edmund G. Brown Jr., State of California
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Senator Ted Gains, State of California
Assembly Member Brian Dahle State of California
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