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December 2, 2015

VIA E-MAIL

Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th floor
Sacramento, CA 95814



Re: Comment Letter-Urban Water Conservation Workshop

Dear Ms. Townsend:

We are special water counsel to the City of Bakersfield ("Bakersfield" or "City"). On behalf of Bakersfield, we submit the following comments regarding the potential extension and modification of the existing Emergency Regulation for Statewide Urban Water Conservation (Emergency Regulation). Bakersfield submits these comments to the State Water Resources Control Board ("SWRCB") pursuant to the November 6, 2015 Notice of Public Workshop, and in advance of the December 7, 2015, Public Workshop on the Emergency Regulation.

Bakersfield provides input on the following questions identified by the SWRCB in its November 6, 2015, Notice:

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

A. Any extension of the Emergency Regulation should eliminate the "tiering" system, which requires different levels for the reduction of water production and use for different water suppliers and purveyors.

Tiers are no longer necessary because, as indicated in the Notice of Public Workshop, the State's urban water suppliers have reduced water use by 28.1% relative to 2013 for the same months. There is no longer any valid basis for requiring urban water suppliers to reduce water use by

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more than 25%, including by as much, as in Bakersfield's situation, as 36%, while other water suppliers are only obligated to reduce water use by as little as 8%.

The SWRCB's tiered categorization methodology also fails to take into account a number of critical factors that impact residential gallons per capita daily usage (R-GPCD), including climate, precipitation, environmental factors, location of the urban water supplier, cloud cover, and prior and on-going local conservation efforts.

It is not reasonable for Bakersfield to be penalized for being located in a drier climate, with less precipitation. Differences in climate, rainfall, cloud cover, and location have an inevitable and direct impact on water consumption. Cities in warmer, drier climates will necessarily use more water, per R-GPCD, than cities in cooler, wetter climates, for reasons unrelated to the policies, pricing structure, and conservation efforts of the cities. Residents of cities in wetter, cooler environments will necessarily need to use less water to maintain a comparable level of outdoor vegetation.

The "Conservation Reporting" requirements for Urban Water Supplier's monthly reports to the SWRCB, as posted on the SWRCB's web site at http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/conservation_reporting_info.shtml#urban_ws_rpt, states that "[i]t is not appropriate to use Residential Gallons Per Capita Day (R-GPCD) water use data for comparisons across water suppliers, unless all relevant factors are accounted for." The SWRCB web site further indicates that among the factors that can affect per capita water use are "rainfall, temperature, and evaporation rates," "population density," and "socio-economic measures such as lot size and income." The Emergency Regulation does not follow those standards, as it uses R-GPCD for "comparisons across water suppliers," and the tiers fail to take into account all "relevant factors" that affect per capita water use. The State should accordingly eliminate the use of such water use tiers in connection with any extension of the Emergency Regulation.

The current tiered structure additionally does not take into account population growth, system growth and other factors that naturally increase demands. The current tiered structure therefore cannot practically or feasibly serve as a long term conservation goal or methodology.

The tiering structure also fails to take into account prior and ongoing conservation efforts by water purveyors, as well as efforts related to the recycling and reuse of water supplies, and ongoing water storage projects and efforts. Bakersfield in particular has adopted a three day a week watering ordinance, has adopted and implemented substantial public education efforts and programs, including the use of door hangars and other forms of advertising, and appointed City employees to enforce drought related ordinances and regulations.

Instead of adopting broad, uniform tiers for water use reduction, the State should focus its efforts on assisting water purveyors in developing effective long term and short term projects, programs and policies for addressing the current drought, as well as future water supply shortages. The

State could do that by monitoring and requiring compliance with current Urban Water Management Plans (UWMP), which already contain detailed plans and strategies for addressing drought conditions and water supply shortages. UWMPs establish plans and programs for addressing water shortages which are already specifically tailored to the particular location, supply, needs, climate, population, growth, and other factors for each water supplier.

All water purveyors of a certain size, moreover, have already prepared and adopted UWMPs. UWMPs, moreover, already set forth plans and strategies to achieve a 20% reduction in water use by 2020. The State could also adopt new regulations and requirements for future UWMPs, starting with 2015 UWMPs, that facilitate and strengthen plans and strategies for drought related conditions.

B. Recycled and reclaimed water developed and used by a water purveyor should be recognized as an offset or credit against a water purveyor's production and use of water.

Bakersfield utilizes increasing quantities of tertiary treated, or recycled, water for outdoor irrigation, pursuant to the California Water Plan, the SWRCB's April 25, 2013 Recycled Water Policy, and the SWRCB's mandate to increase the use of recycled water. The City also develops additional water supplies by "de-nitrifying" secondary treated water supplies, and by using over 330 sumps throughout the City to capture stormwater for recharge and re-use.

The current "Urban Water Supplier Reporting Tool" utilized by the SWRCB, and the methodology and equation used to estimate R-GPCD, do not sufficiently account for and recognize the use of recycled water for outdoor irrigation. Any extension of the Emergency Regulation should therefore allow a water purveyor to claim a credit, offset or other reduction in water production or R-GPCD to account for use of recycled, reclaimed water.

C. Urban purveyors should receive a credit or offset for water extracted from ground or surface water storage for later domestic use.

Bakersfield has developed and utilized extensive water storage facilities, including through Lake Isabella and the City's 2800 Acre Groundwater Recharge Facility, located in the western part of the City, along the Kern River, and through other groundwater recharge and banking facilities throughout the City. Bakersfield developed such water storage facilities, consistent with and supported by relevant State statutes and policies, with the specific intent of providing a supplemental water supply for drought and dry year conditions. Water extracted from storage for use by customers and City residents therefore should not be counted or considered as part of the City's overall water use, or production.

The Emergency Regulation already recognizes that the use of water from storage does not exacerbate or add to drought and water shortage conditions and therefore does not need to be

counted or considered in connection with water use reductions. Section 865(c)(2) of the Emergency Regulation provides, in part:

(2) Each urban water supplier whose source of supply does not include groundwater or water imported from outside the hydrologic region in which the water supplier is located, and that has a minimum of four years' reserved supply available may, submit to the Executive Director for approval a request that, in lieu of the reduction that would otherwise be required under paragraphs (3) through (10), the urban water supplier shall reduce its total potable water production by 4 percent for each month as compared to the amount used in the same month in 2013.

At the very least, that provision should be expanded to apply to all water held in storage, including groundwater.

2. *What additional data, if any, should the State Water Board be collecting though the Emergency Regulation and how would it be used?*

A. Recycled, reclaimed water used by the water purveyor, which should be counted as a credit or offset for water production or consumptive water use data (See prior discussion).

B. Water extracted from storage (surface water or groundwater), which should be counted as a credit or offset for water production or consumptive water use data (See prior discussion).

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

A. If the State removes the water use tiers from any extension of the regulations, and focuses its efforts on more sustainable, long term and short term policies and procedures for the reduction of water use, including by working towards a 20% reduction in 2020, precipitation after January 2016 should practically not have an impact on policies and programs intended to implement and extend the Emergency Regulation.

B. Alternatively, if the State does not eliminate the tier system, or specific water use reduction goals, any extension of the Emergency Regulation should only be for a very limited period of time, and such extension could be further limited or revoked if precipitation levels increase and the impacts of the drought are reduced.

We thank you and the SWRCB for considering these comments. Please let us know if you have any questions or require any further information on these matters.

State Water Resources Control Board
December 2, 2015
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Duane Morris

Sincerely,

A handwritten signature in blue ink that reads "Colin Pearce / jc". The signature is written in a cursive style.

Colin L. Pearce

CLP:jc

cc: Alan Tandy, City Manager, City of Bakersfield
Virginia Gennaro, City Attorney, City of Bakersfield
Art Chianello, Water Resources Manager, City of Bakersfield