



# City of Rolling Hills

INCORPORATED JANUARY 24, 1957

NO. 2 PORTUGUESE BEND ROAD  
ROLLING HILLS, CALIF. 90274  
(310) 377-1521  
FAX: (310) 377-7288

June 18, 2015

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



**RE: Comment Letter re: Conservation Pricing Public Workshop**

To the Honorable Chair and Members of the Board:

The City of Rolling Hills ("City") appreciates the opportunity to submit comments to inform the State Water Resources Control Board's ("Board") implementation of Directive 8 of Governor Brown's Executive Order B-29-15, which requires the Board to direct water suppliers to develop rate structures and other pricing mechanisms to maximize water conservation. The City agrees with the Board's observation that conservation pricing has the potential to incentivize water conservation, but that it must be carefully tailored to local circumstances to effectively balance the financial, technical, political, and legal concerns.

The City receives its water from the California Water Service Company ("CalWater"). On June 1, 2015, the California Public Utilities Commission ("CPUC") Division of Water and Audits ("DWA") approved CalWater's proposed conservation pricing and related drought response measures, over the protests of several parties including the City. The City's May 4, 2015 CPUC protest letter is attached as Attachment A and makes the following arguments:

1. Drought response measures should take into account the unique character of each community, which significantly affects water demand and individual users' ability to conserve water while still complying with local laws, regulations and requirements. For instance:
  - a. Rural communities, whose development standards require large lots and often significant amounts of landscaping, are likely to have very different water demands than urban areas with small parcels and more hardscape.
  - b. Rural equestrian communities, such as the City of Rolling Hills, have limited ability to reduce water usage without risking the health of horses and other animals.
  - c. Communities designated by the State of California as Very High Fire Severity Zones are highly susceptible to wildfires and should retain the ability to water landscaping to reduce the risk of damage from fires.

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Re: Comment Letter - Conservation Pricing Workshop

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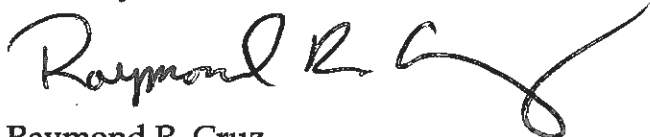
2. The drought response measures should provide some relief to residential agricultural users similar to the relief afforded to commercial agricultural users.
3. The drought response measures should take into account voluntary reductions in water usage taken after the "baseline" date.
4. It is unclear that the conservation rates proposed by CalWater are consistent with *Capistrano Taxpayers Association, Inc. v. City of San Juan Capistrano* (2015 WL 1798898) and *City of Palmdale v. Palmdale Water District* (198 Cal.App.4th 926). The legality of water providers' conservation pricing tools should be confirmed prior to CPUC approval.

In addition, the City shares the concerns raised by the CPUC Office of Ratepayer Advocates ("ORA") in its June 10, 2015 letter requesting Commission review of the DWA's approval of CalWater's conservation pricing schedule attached as Attachment B. The City understands that the ORA raised similar protests against conservation pricing schedules proposed by other water providers. The ORA's arguments regarding CalWater's proposal concern three points:

1. CalWater's proposal attempts to treat drought surcharges as income in contravention of CPUC Resolution W-4976.
2. Approval of CalWater's proposal with an effective date of June 1, 2015 fails to provide customers with the notice required by Resolution W-4976.
3. Approval of CalWater's "forward looking" appeal process deprives customers of an opportunity to appeal fines and penalties imposed during June 2015.

The City applauds the Board's interest in engaging in an informed and deliberate process to implement the Governor's directive and hopes that it considers the concerns discussed above. However, since many providers' conservation pricing schedules have already been approved by the CPUC, the City sincerely hopes that this endeavor is not in vain. If you have any questions regarding this letter or about our community, please feel free to contact me at (310) 377-1521.

Sincerely,



Raymond R. Cruz  
City Manager

Attachments

SC:RC:hl

07-18-15 State Water Board Comment Ltr July Public Workshop.docx

ATTACHMENT A



*City of Rolling Hills*

INCORPORATED JANUARY 24, 1957

NO. 2 PORTUGUESE BEND ROAD  
ROLLING HILLS, CALIF. 90274  
(310) 377-1521  
FAX: (310) 377-7288

May 4, 2015

Jeanine Townsend, Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24<sup>th</sup> Floor  
Sacramento, CA 95814

RE: Comment Letter - Emergency Conservation Regulation

Dear Ms. Townsend,

I am writing to the Board on behalf of the City of Rolling Hills to vehemently oppose the State Water Resources Control Board's Proposed Emergency Regulation concerning Drought Emergency Water Conversation. The City knows the Board is dealing with a serious environmental emergency in order to conserve water in a severe drought condition Statewide, but the Proposed Emergency Regulation needs to be amended to assist municipalities such as Rolling Hills.

The 36% reduction requirement for the City of Rolling Hills is very onerous and could be hazardous to our residents and their livestock. Rolling Hills is a unique rural and equestrian community in Los Angeles County with a population of only 1,860 residents, based on the 2010 census. Our city has less than 800 residences and no commercial businesses. Rolling Hills' water is provided by the California Water Service Company within its Palos Verdes District. Almost all the parcels in Rolling Hills range between 1 to 12 acres in size. It is obvious that a household in Rolling Hills will use more water than almost any other household in the State. To group our residents' per capita water usage to all other urban and suburban communities is simply not comparable and is unfair.

The entire City of Rolling Hills is zoned as "Residential Agricultural" where every household by right can farm on their land. Many of our residents have planted vineyards, orchards and vegetable plots that create in itself high water usage per capita. Within Sec. 865(e) of the Proposed Emergency Regulation, you allow water suppliers to credit themselves for commercial agricultural uses. Residential farmers such as those in Rolling Hills should get a similar credit by reducing the overall percentage requirement for the entire City. If not, you will put a damper on local food supply sustainability and destroy a very important local resource.

The City of Rolling Hills' entire history is based on its equestrian lifestyle and heritage. Every parcel in Rolling Hills is required to have an area for a horse stable and corral. Between the City and the Rolling Hills Homeowners Association, they own and operate two municipal corrals which are used to provide the required exercise for horses. Therefore, taking care of horses and other farm animals is commonplace in Rolling Hills. It takes a great deal of potable water to care for farm animals, particularly for their drinking water during the hot summer months, so that these animals remain healthy. These

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Re: Comment Letter – Emergency Conservation Regulation

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necessities cannot be compared to most urban households and cutting back water for livestock and equestrian uses is not possible.

The State of California has declared the entire City of Rolling Hills to be located in a Very High Fire Severity Zone. With the right conditions, our entire City can burn down by wildfire. The City already has concerns about certain households who have cut back their watering of vegetation around their home, which is causing this vegetation to die and making it more susceptible to wildfire. The City believes it is dangerous that the Board require residents in extremely high fire zones to cut any water to the plants surrounding residents' homes. Such plants provide firebreaks only when they are still alive due to proper irrigation.

Since the City has already implemented best practices in water conservation measures, it will be difficult for our residents to cut much more of their water usage. The City in 2013 adopted the California Housing and Community Development "CAL Green" code for water efficiency and conservation for both outdoor and indoor uses. Also, the City amended its municipal code by adopting the Water Efficient Landscape Ordinance. Finally, since our residents have already been paying such large bills due to their large lots with varied uses, they have on their own installed very expensive water conservation devices and have cut back on their personal water use. So requiring these residents to cut another 36% is simply not feasible and is penalizing them for their water conservation efforts.

A final point is that the Regulation is not consistent with the recent legal case involving the City of San Juan Capistrano. Any water rate structure, fee or fine must be commensurate with the cost of providing the water service.

Due to all the above stated facts and circumstances, the City of Rolling Hills believes that it deserves the least onerous water reduction requirements. We are requesting a citywide reduction requirement of only 8%.

If you have any questions regarding this letter or about our community, please contact me at (310) 377-1521.

Sincerely,



Raymond R. Cruz  
City Manager

RRC:hl

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Rolling Hills Mayor and City Council  
Dan Trejo, Acting District Manager, California Water Service Company  
State Senator Ben Allen  
State Assemblymember David Hadley



**ORA**

*Office of Ratepayer Advocates  
California Public Utilities Commission*

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San Francisco, California 94102

**JOSEPH P. COMO**

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**Acting Director**

Fax: 415-703-2057

**June 10, 2015**

**Mr. Rami Kahlon**  
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**Re: Request for Review of Disposition of California Water Service Company  
Advice Letters 2167, 2168, and 2169**

**Dear Mr. Kahlon:**

In accordance with General Order 96-B, the Office of Ratepayer Advocates ("ORA") hereby seeks California Public Utilities Commission ("Commission") review of the Division of Water and Audit's ("DWA") June 1, 2015 Disposition of California Water Service Company ("Cal Water") Advice Letters 2167, 2168 and 2169. DWA's approval of Advice Letter Nos. 2167, 2168 and 2169 is unlawful and erroneous and does not present reasonable grounds for approving Cal Water's requests within these advice letters.

On May 28, 2015, ORA properly filed, pursuant to General Order ("G.O.") 96-B, General Rule 7.4.1 a protest with DWA regarding Cal Water Advice Letters ("AL") Nos. 2167, 2168, and 2169.

On June 1, 2015 DWA responded to ORA's protest with its disposition letter approving Cal Water's filings as submitted. Upon review of this disposition letter, ORA requested pursuant to G.O. 96-B, General Rule 7.7.1, ("Rule 7.7.1") for Commission review of DWA's approval of Cal Water's ALs 2167, 2168 and 2169. ORA sets forth specifically the grounds on which it considers DWA's disposition of Cal Water's advice letters to be unlawful or erroneous.

### **RULE 7.7.1 REVIEW OF INDUSTRY DIVISION DISPOSITION**

According to Rule 7.7.1, any person filing a protest may request Commission review of an Industry Division disposition, here DWA. ORA's request for Commission review was filed with DWA within 10 days after the issuance of its June 1, 2015 disposition on Cal Water's ALs 2167, 2168 and 2169.

Consistent with Rule 7.7.1, DWA must prepare and place on the Commission's meeting agenda a proposed resolution, served on ORA and all others on whom the request was served. Pending Commission action on the proposed resolution, Cal Water's Advice Letters Nos. 2167, 2168 and 2169 will take effect as approved by DWA.

### **BACKGROUND**

Cal Water's AL 2167, dated April 28, 2015 requests Tier 2 approval of its modifications to Rule No. 14.1 with an effective date of June 1, 2015. According to AL 2167, the requested language for Rule No. 14.1, Section B, General Information, subsections 1 and 2 are the following:

*1. All expenses incurred by utility to implement Rule 14.1, and Schedule 14.1, and requirements of the California State Water Resources Control Board ("Water Board") that have not been considered in a General Rate Case or other proceeding shall be accumulated by Cal Water in a separate memorandum account, authorized in Resolution W-4976, for disposition as directed or authorized from time to time by the Commission.*

*2. To the extent that a Stage of Mandatory Water Use Restrictions in Schedule 14.1 has been activated, and a provision in this Rule is inconsistent with the activated Stage in Schedule 14.1, the provisions of Schedule 14.1 apply.*

ORA notes Subsection 1 states the "requirements of the Water Board" will be tracked in a separate memorandum account as authorized in Res. W-4976. One of those requirements includes drought surcharges. However, Subsection 2 replaces Subsection 1 with the language found in its Schedule No. 14.1.

Cal Water's AL 2168, dated April 28, 2015, requests Tier 2 approval of its Schedule No. 14.1 with an effective date of June 1, 2015. According to AL 2168, Schedule 14.1, Section B, General Information, subsection 3 states:

*3. All monies collected by Cal Water through drought surcharges, as established by the Mandatory Water Budgets found in Schedule 14.1, shall be recorded in the appropriate Water Revenue Adjustment Mechanism ("WRAM") account and used to offset under-collected revenues.*

Cal Water's AL 2169, dated April 29, 2015 requests Tier 1 approval for activation of its Schedule No. 14.1, level Stage 2.

The DWA approved these three advice letters whereas ORA finds legal error or erroneous disposition with respect to Commission Res. W-4976 for all three of these advice letters.

Advice Letter No. 2167 updates the utility's language in its Tariff Rule No. 14.1 by requiring replacement of any differences between the Rule No. 14.1 and Schedule No. 14.1 with the language found in its Schedule No. 14.1. Advice Letter No. 2168 updates Tariff Rule No. 14.1 with the inclusion of Schedule No. 14.1, which instructs the drought surcharges be recorded in a different account than as instructed in its Rule No. 14.1; and Advice Letter No. 2169 activates Schedule 14.1 to Stage 2.

Schedule No. 14.1 instructs the utility to record its drought surcharges in Cal Water's Water Revenue Adjustment Mechanism (WRAM) balancing account. This action is unlawful per the Commission's Resolution (Res.) W-4976. This term is also actionable in AL No. 2169 since it activates Cal Water's Schedule No. 14.1, the content of AL No. 2168. In other words, AL No. 2169 triggers implementation of Cal Water's Schedule No. 14.1. The content of AL No. 2168 is Cal Water's Schedule No. 14.1. DWA's approval of AL No. 2169 invokes AL No. 2168.

In addition, the notification process outlined in these advice letters does not comply with requirements of Res. W-4976. Notification of the surcharges and penalties activated by Cal Water's Schedule No. 14.1 will occur after they go into effect. ORA requested a 30 day delay of imposing the fines and drought surcharges to allow for proper notification, which would make the activation effective July 1, 2015 instead of June 1, 2015.

#### **DWA Disposition Letter**

On June 1, 2015 DWA responded to ORA's protest of Cal Water's ALs 2167, 2168, and 2169 with its disposition on these advice letters and expressed approval as submitted (with Cal Water's amended filing of May 27, 2015.) In part, DWA's June 1, 2015 response to ORA's protest stated:

*These advice letters ... in response to Commission Resolutions W-4976, W-5000, and W-5041, the Governor's Executive Order B-29-15, and the State Water Resources Control Board's (SWRCB's) Resolution 2015-0032... DWA also was in receipt of your protest, and the various issues you have raised. While the significant water reductions noted in your protest are a concern, in the interest of moving forward on CWS's water reductions, DWA has determined to authorize advice letters 2167, 2168, and 2169 effective June 1, 2015. (emphasis added)*

ORA is perplexed by this response as ORA's protest never referred to "significant water reductions" as a reason for its objections to the advice letters. In fact, DWA's disposition letter did not refer to any ORA protest issues other than to state DWA was in receipt of ORA's protest and aware of "the various issues you have raised."

## DISCUSSION

The Commission's Res. W-4976, resolved a Res. W-4781 outstanding issue and became the basis for the utilities to file their Rule No. 14.1 and their Schedule No. 14.1. It is Res. W-4976 Cal Water does not follow nor does DWA enforce with its approval of the instant advice letters. Below is a review of Res. W-4976 and its impacts on Cal Water's AL Nos. 2167, 2168 and 2169.

The outstanding issue in Res. W-4781 regards the Commission's delegation to DWA for the approval of new Tariff Rule 14.1 and Schedule 14.1, and the approval for activating these tariffs. This issue was resolved in Res. W-4976 "by delegating authority for both the approval of adding Tariff Rule 14.1 and Schedule 14.1 to the utility's tariffs, and the activation of these tariffs to DWA."<sup>1</sup>

Part of the discussion of Res. W-4976 raises ORA concerns about the lack of review for activation of water use restrictions, i.e., implementation of Schedule 14.1. However, the Commission did not reach the same conclusion:

*We disagree with ORA that the analysis required to activate rationing or to increase the stage of rationing is discretionary. The rules we set forth herein provide clear guidance to the utilities and to DWA staff, and advice letters filed under that guidance can be approved or denied as a ministerial matter.*<sup>2</sup>

The Commission, as one of the state's public agencies "may delegate the performance of ministerial tasks, including the investigation and determination of facts preliminary to agency action ... Moreover, an agency's subsequent approval or ratification of an act delegated to a subordinate validates the act, which becomes the act of the agency itself. (California School Employees, supra 3 Cal.3d at 144-145.)"<sup>3</sup>

DWA disposed of Cal-Water's AL 2167, 2168 and 2169 filings without any further Commission input.<sup>4</sup> Unfortunately, DWA's ministerial review of Cal-Water's AL 2167, 2168 and 2169 did not include recognition of mandates in Res. W-4976.

ORA understands the pressure to process these filings and the important position the Commission plays with respect to the drought. However, DWA should follow the procedures adopted in Res. W-4976 and not treat the drought surcharges as revenue, nor allow for these rates to be effective before proper customer notification.

In Res. W-4976, the Commission adopts drought procedures for water conservation, rationing and service connection moratoria. In principle, this resolution adopts not the DWA standard practice, but is based upon one of them:

*The Commission adopted Drought Procedures for Water Conservation, Rationing and Service Connection Moratoria based upon Standard Practice*

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<sup>1</sup> Res. W-4976, p. 5.

<sup>2</sup> Res. W-4976, p. 8.

<sup>3</sup> D.02-02-049, p.5.

<sup>4</sup> For contrast, the Energy Industry specific G.O. 96-B rules require resolutions written whenever an advice letter is protested. (SEE G.O. 96-B, Energy Rule 8.2)



*U-40-W<sup>5</sup> (SP 40), which prescribes the process to establish Tariff Rule 14.1, by which water utilities can introduce voluntary conservation measures, and Schedule 14.1,<sup>6</sup> which provides for mandatory rationing if voluntary measures do not yield the necessary reduction in consumption, or in circumstances of prolonged or severe drought. The procedures attached as Attachment A are based upon SP 40 and have been updated with modifications from Commission findings from previous proceedings.<sup>7</sup>*

According to Res. W-4976, Attachment A, Drought Procedures, Section F, Mandatory Rationing, subsection 24:

*"All monies collected by the utility through water use violation fines shall not be accounted for as income but rather booked to a memorandum account to offset authorized expenses incurred... All expenses incurred by utility to activate both Rule 14.1 voluntary conservations and Schedule 14.1 mandatory rationing efforts that have not been considered in a General Rate Case or other proceeding, shall be recoverable by utility if determined to be reasonable by Commission..." (emphasis added)*

The above ellipses refer to the right to create a memorandum account to record lost revenues. The addition of a lost revenue memorandum account only covers utilities without a full cost WRAM. Cal Water operates under a full cost WRAM and therefore recovers all lost revenue under its existing WRAM account.

#### **DROUGHT SURCHARGES OR PENALTIES SHALL NOT BE RECORDED IN WRAM**

First, since the drought surcharge monies collected cannot be accounted for as income they cannot be placed in Cal Water's full cost WRAM account. Second, Cal Water has a full cost WRAM, the only memorandum account that can be created via Res. W-4976 is the one to record the expenses and drought penalty and surcharge monies. To further this point, other language in Res. W-4976 enforces this fact.

According to Res. W-4976:

*A memorandum account to track lost revenues for utilities with existing full revenue decoupling WRAM is a redundant protection against lost revenues associated with reduced sales from voluntary conservation or mandatory rationing. A lost revenue memorandum account to track revenue shortfalls associated with reduced sales from either Activation of voluntary conservation measures or a mandatory rationing plan pursuant to a declared*

<sup>5</sup> SP 40 outlines the general procedure for utilities to request and implement Tariff Rule 14.1 and Schedule 14.1. Rule 14.1 is implemented in response to a utility's request for voluntary rationing from customers in order to reduce consumption. This may be accomplished by voluntary compliance with water use restrictions.

<sup>6</sup> Schedule 14.1 is activated in response to a declaration of a water shortage by a utility or in response to a governing agency such as a water wholesaler or Water District declaring a water shortage and imposing mandatory rationing on a utility that may result in the utility's reduction of customer water allocations based on a percentage of the customer's historical usage.

<sup>7</sup> Res. W-4976, p. 1.

*drought emergency is available only to utilities that do not have an existing full revenue decoupling WRAM. (emphasis added)*

Cal Water has a full revenue decoupling WRAM. The approval of Cal Water's AL Nos. 2467, 2168 and 2169 with respect to recording drought surcharges in its WRAM balancing account must be rescinded and replaced with instructions to record all proper drought expenses, surcharges and penalty funds in Cal Water's memorandum account created by Res. W-4976, the Drought Memorandum Account ("DRMA") filed by Cal Water in April 2014 and became effective in May 2014 via AL No. 2124

### FILING REQUIREMENTS

As Res. W-4976 states:

*Determining if the state is in a drought can be very difficult ... Once a drought proclamation has been made, an expeditious process for staff to approve these advice letters is required because they deal with imminent drought situations, and are time sensitive. It is important that we provide sufficient standards as to which advice letters can be approved such that most advice letters authorized by SP 40 can be approved by staff ministerial action consistent with General Order 96-B, Rule 7.6.1. The filing requirements for establishing Rule 14.1 voluntary conservation efforts and Schedule 14.1 mandatory rationing procedures remain unchanged in the draft circulated for comment.<sup>8</sup>*

Per the Drought Procedures attached to Res. W-4976:

*"Notice of ... activation for Schedule 14.1 mandatory rationing ... shall be provided to customers as a bill insert at the earliest billing cycle possible<sup>9</sup> or through direct mailing..."<sup>10</sup>*

Cal Water admits that the notice of the surcharges and penalties will not occur within the filing requirements established for its Schedule No. 14.1. ORA recommended that assessment of the penalties and/or surcharges be delayed one month in order to comply with notification requirements. Cal Water disagreed. Again, ORA finds Cal Water's actions unlawful as Res. W-4976 explicitly states no fines or penalties may be assessed until notification has been provided to its customers as shown above in Res. W-4976 Drought Procedures.

ORA finds this amounts to retroactive ratemaking and DWA should not have approved AL 2168 or AL 2169 with an effective date of June 1, 2015. Tracking requirements should begin as of June 1, as established in the Governor's Executive Order, but forcing ratepayers to

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<sup>8</sup> Res. W-4976 p. 3.

<sup>9</sup> In emergency situations the direct mailing may occur after water rationing has been activated; warnings may be provided but no fines or penalties may be assessed until notification has been provided.

<sup>10</sup> Res. W-4976, Drought Procedures, p.8.

pay drought surcharges before proper notification does not comply with Res. W-4976 nor is it in the public interest.

In addition, Cal Water stated any appeal process is "forward looking" only. The process for the appeal was offered simultaneous to implementation of the drought surcharges. This means Cal Water's appeal process may not apply to the June, 2015 surcharges.

Furthermore, these surcharges, whether from June or any other month, will be applied as revenue and recorded in its WRAM account. DWA should not allow these two actions as they are counter to Commission policy of retroactive ratemaking and lack of compliance with Res. W-4976.

CONCLUSION

For all of the above reasons, ORA requests DWA follow the requirements of General Order 96-B, General Rule 7.7.1 and submit a resolution for action by the Commission with respect to its approval of California Water Services Advice Letter Numbers 2167, 2168 and 2169.

Very truly yours,

 by tpy

Danilo Sanchez

Program Manager

Water Branch Office of Ratepayer Advocates

cc:

Paul G. Townsley, Vice President, Rates and Regulatory Matters, California Water Service Company

Natalie D. Wales, Regulatory Counsel, California Water Service Company

Joe Como, Director, ORA

Ting-Yuen, Program and Project Supervisor, ORA

Jim Boothe, Program and Project Supervisor, DWA

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**Advice Letter 2169:**

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