

1 JENNIFER T. BUCKMAN, STATE BAR NO. 179143
2 BARTKIEWICZ, KRONICK & SHANAHAN
3 A PROFESSIONAL CORPORATION
4 1011 22nd St., Sacramento, CA 95816-4907
5 Telephone: (916) 446-4254
6 Fax: (916) 446-4018
7 E-mail: jtb@bkslawfirm.com

8 Attorneys for Amicus Curiae
9 ASSOCIATION OF CALIFORNIA
10 WATER AGENCIES

ELECTRONICALLY FILED
Superior Court of California,
County of Orange
05/27/2016 at 12:43:00 PM
Clerk of the Superior Court
By e Clerk, Deputy Clerk

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER
13

14 KENT EBINGER, an individual; and
15 YORBA LINDA TAXPAYERS
16 ASSOCIATION, a California mutual benefit
17 corporation,

18 Petitioners,

19 vs.

20 YORBA LINDA WATER DISTRICT, a public
21 entity; YORBA LINDA WATER DISTRICT
22 BOARD OF DIRECTORS in their respective
23 official capacities; and DOES I -X, inclusive,

24 Respondents.

Case No. 30-2016-00829548

Assigned For All Purposes to:
Hon. Robert Moss
Department: C-14

**NOTICE OF FILING AMICUS
CURIAE LETTER IN SUPPORT OF
RESPONDENTS**

Petition Filed: January 12, 2016
Hearing Date: June 13, 2016
Time:

25 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

26 PLEASE TAKE NOTICE THAT the Association of California Water Agencies
27 (“ACWA”) and the League of California Cities hereby file and serve the attached Amici
28 Curiae letter in support of Respondents Yorba Linda Water District and Yorba Linda Water

\\

\\

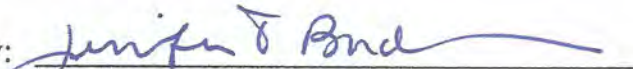
\\

\\

1 District Board of Directors. Amici Curiae respectfully requests that this Court review and
2 consider the attached letter.

3
4 Dated: May 16, 2016

BARTKIEWICZ, KRONICK & SHANAHAN
A Professional Corporation

5
6 By: 
7 Jennifer T. Buckman

8 Attorneys for Amicus Curiae
9 Association of California Water
10 Agencies



Association of
California Water Agencies
Since 1910



910 K Street, Suite 100
Sacramento, CA 95814
916.441.4545

May 16, 2016

Hon. Robert Moss
Department C-14
Orange County Superior Court
700 Civic Center Dr.
Santa Ana, CA 92701

RE: Ebinger v. Yorba Linda Water District (Case No. 30-2016-00829548)

Amici curiae the Association of California Water Agencies and the League of California Cities respectfully submit this letter in support of Respondents Yorba Linda Water District and Yorba Linda Water District Board of Directors' Opposition to Petition for Writ of Mandate.

Interests of Amici in This Case

Amici are organizations whose members are local governmental entities (including cities and special districts) and regulated public utilities that provide water services to their customers. Specifically, the Association of California Water Agencies ("ACWA") is the largest coalition of public water agencies in the nation; ACWA represents 430 public water suppliers that provide water for urban and agricultural use. ACWA's member agencies range in size from small irrigation districts to the largest water wholesalers in the country.

ACWA is joined in this amici brief by the League of California Cities ("League"), an association of 474 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhancing the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, comprised of 24 city attorneys from all regions of the State. The committee monitors litigation of concern to municipalities and identifies those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance for California cities, because many of the League's members operate municipal utilities that provide water service to their residents.

Both amici are concerned about this case due to its potential to disrupt the fiscal stability of California's water suppliers and to threaten their ability to provide safe and reliable water within their communities.

Revenue and Cost Impacts of Drought Regulations,
and Water Suppliers' Need for Fiscal Stability

In 2015, due to the ongoing and severe drought that California has been experiencing, the State Water Resources Control Board ("State Water Board") adopted mandatory emergency regulations which required all water suppliers within the state to impose certain measures to conserve water supplies and reduce "municipal and industrial" (i.e., urban and suburban) water use. First, in response to Governor Brown's April 1, 2015 Executive Order which called for statewide water use reduction of 25% compared to water use in 2013, the State Water Board adopted an emergency urban water conservation regulation intended to reduce each supplier's water use by 25%. On November 13, 2015, in response to comments received by amici's members and other affected parties who raised concerns about variations in local water supply conditions, the Governor issued an additional Executive Order directing the State Water Board to extend and revise the emergency urban water conservation regulations through October 2016 but no longer mandating the statewide 25% water use reduction goal. On February 2, 2016, the State Water Board adopted an extended emergency urban water conservation regulation, which took effect February 11 and extends through October 2016. These emergency regulations required urban and suburban local water suppliers to meet state-mandated conservation targets ranging from 4% to 36%, as compared to 2013 pre-drought baseline levels of water use.

This letter is intended to provide examples of impacts of the State Water Board's emergency water conservation regulations on local retail water suppliers that are ACWA and League members. Yorba Linda Water District is one such supplier. Most revenues of local water suppliers are generated by water sales. The volume or amount of water sold therefore directly impacts the revenues of a local water supplier.

To be fiscally sound, water suppliers must impose rates that are sufficient to cover the costs of supplying the water. Many of the water suppliers' costs of providing water service are fixed and therefore are not reduced even when less water is sold. Fixed costs include items such as the cost of certified or licensed staff positions (i.e., labor), capital costs and debt service, and costs associated with routine operations and maintenance of the water facilities.

Water suppliers spread these fixed costs among all of their ratepayers. For most suppliers, at least a portion of their fixed costs are recovered through volumetric rates, meaning that the total amount of costs is divided by the volume of water sold to create a per-unit water rate.

Conservation measures are intended to, and do, reduce the volume of water sold. When less water is sold, there is less volume over which to spread the costs. In other words,

the denominator is reduced. This means that water suppliers must increase the rates per unit of water sold in order to ensure that they are still covering that portion of their fixed costs that are allocated to their volumetric rates. For this reason, water suppliers throughout the state have been financially impacted by the mandatory conservation measures. Water suppliers that recover a greater amount of fixed costs from volumetric rates have experienced a larger drop in revenues than suppliers that recover more of their fixed costs in the fixed portion of water charges.

To assess the regulation's impact on water suppliers to date, the Association of California Water Agencies and the California Municipal Utilities Association (CMUA) authorized an informal survey of their members using survey software; the survey was conducted by ACWA staff in November 2015. Responses to the online survey were received from 85 urban water suppliers representing a 19% response rate. The data were compiled into a summary in table format. Additionally, three wholesale agencies responses to the survey. These responses were calculated separately. However, in assessing the true impact of the regulations, both urban retail and wholesale agencies responses were used. A true and correct copy of the table summarizing responses to the online survey is attached to this letter as Exhibit A.

As shown in the table summarizing the responses to the online survey, the emergency conservation regulation required water suppliers to reduce water use anywhere from 4% to 36%, depending on the specific target. The associated reduction in water sales translated into an estimated **combined revenue loss of more than \$528.5 million** from June 2015-February 2016 for the suppliers that responded to the survey. If the responses received from respondents are representative of the revenue losses experienced by water suppliers throughout the state, this equates to more than \$3 billion in lost revenue. (This figure does not include any costs experienced by wholesale water agencies, such as the Metropolitan Water District of Southern California, since wholesale water agencies were calculated separately in the survey.)

Expressed as a percentage of a supplier's total budget, the losses represent, on average, more than 13% of a supplier's annual budget. For some suppliers, the losses represented up to 33% of their annual budgets.

While the emergency conservation regulation reduced water suppliers' sales and therefore reduced their revenue, it also imposed additional costs. The emergency conservation regulation required many suppliers to expand conservation enforcement activities, public outreach and education, and incentives. Suppliers that responded to the survey estimated that their **additional costs for conservation-related programs totaled more than \$82 million** from June 2015-February 2016.

Due to the effects of the drought and the emergency conservation regulation, 59% of survey respondents have adopted or are in the process of adopting rate increases, and another 33% either plan to adopt or are considering adopting rate increases in 2016. Only 2% of respondents said they would not raise rates in 2015 or 2016.

Of the water suppliers that responded that they are raising rates, 25% have imposed or are in the process of imposing drought surcharges, and another 16% are considering imposing drought surcharges in 2016.

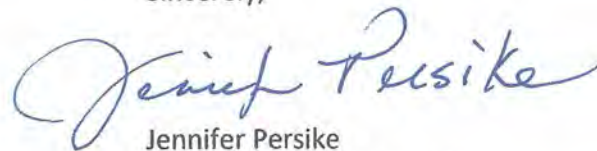
In sum, the survey results show that the emergency conservation regulation imposed costs of **more than \$610 million** on the 85 agencies that responded to the survey. That total includes both revenue losses and additional costs for conservation-related programs.

Water suppliers need sufficient funding to cover necessary costs associated with operating, maintaining and upgrading their water systems, such as investing in local resources development. Losses of revenues of the magnitude water suppliers experienced during the drought are unsustainable and must be offset by increases in water rates, or the ability of the water suppliers to operate and maintain their systems and credit ratings could be compromised.

Conclusion

Amici thank the Court for its consideration of their members' interests and the important public policy questions presented by this case. For all the reasons set forth above, amici support Respondents Yorba Linda Water District and Yorba Linda Water District Board of Directors' Opposition to the Petition for Writ of Mandate.

Sincerely,

A handwritten signature in blue ink that reads "Jennifer Persike". The signature is fluid and cursive, with the first name being the most prominent.

Jennifer Persike
Deputy Executive Director,
External Affairs/Member Services,
Association of California Water Agencies
on behalf of Association of California Water
Agencies and League of California Cities

EXHIBIT A

