

1 Gregory V. Moser (Bar No. 101137)
greg.moser@procopio.com
2 Adriana R. Ochoa (Bar No. 256854)
adriana.ochoa@procopio.com
3 Rahul E. Reddy (Bar No. 266403)
rahul.reddy@procopio.com
4 PROCOPIO, CORY, HARGREAVES & SAVITCH
LLP
5 525 B Street, Suite 2200
San Diego, CA 92101
6 Telephone: 619.238.1900
Facsimile: 619.235.0398

7 Attorney for Petitioner
8 RAINBOW MUNICIPAL WATER DISTRICT

9 BEFORE THE
10 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

11
12 In the Matter of the State Water Resources Control
Board's Conservation Order for Rainbow
13 Municipal Water District.

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
RAINBOW MUNICIPAL WATER
DISTRICT'S PETITION FOR
RECONSIDERATION OF THE
CONSERVATION ORDER**

14
15
16
17 September 30, 2015

18 Pursuant to Water Code Section 1122 and California Code of Regulations, Title 23, Section
19 768, Rainbow Municipal Water District (RMWD) submits this Memorandum of Points and
20 Authorities in support of its Petition for Reconsideration. RMWD petitions the State Water
21 Resources Control Board (State Water Board) to reconsider the Conservation Order In the Matter
22 of Urban Water Conservation by Rainbow Municipal Water District issued on August 31, 2015
23 (Conservation Order). RMWD respectfully requests that RMWD be reclassified as a water
24 supplier that must comply with the 32% conservation standard per 23 Cal. Code Regs. § 865(c)(9)
25 and that the Conservation Order be vacated pursuant to 23 Cal. Code Regs. § 770(2)(C).

26 **INTRODUCTION**

27 On or about April 23, 2015, the State Water Board classified RMWD as a water supplier
28 that must comply with a 36% conservation standard based on data that had been submitted in

1 October 2014. In early May 2015, days after it issued its final emergency regulations, State Water
2 Board staff sent one email to a single RMWD employee, informing her of a May 31, 2015 deadline
3 to submit revised data in order for the State Water Board to reclassify RMWD’s conservation
4 standard. This employee, lacked a clear understanding of the technical aspects and the importance
5 of the email, and failed to share the email with anyone else at RMWD, which resulted in RMWD’s
6 delayed submission of accurate RGPCD data to the State Water Board. A few short weeks after
7 this “deadline” (which pertinent RMWD officials had no knowledge of) had passed, RMWD began
8 to persistently and repeatedly contact the State Water Board to request a reclassification of
9 RMWD’s conservation standard based on the accurate data, to no avail. The State Water Board
10 continues to deny RMWD’s request for reclassification because RMWD “missed” this seemingly
11 arbitrary, non-statutory, staff-imposed “deadline” by a few weeks. To deny RMWD this important
12 reclassification based on a one-time error by a mid-level employee unfairly punishes RMWD and
13 its ratepayers.

14 Enforcement of the Conservation Order against RMWD based on the inapplicable 36%
15 conservation standard would be inequitable and unfair and results entirely from an excusable error
16 that is readily correctible. If RMWD’s performance is judged under the proper conservation
17 standard, RMWD would not be subject to any Conservation Order. The data available to all parties
18 now clearly demonstrate that RMWD should be placed in the 32% conservation tier (RMWD data
19 attached to this memorandum as **Exhibit “A”**¹).

20 If the State Water Board does not direct that RMWD be reclassified and the Conservation
21 Order vacated on those grounds, the State Water Board should vacate the Conservation Order on
22 the grounds that its issuance was premature, since no violation of the Governor’s Executive Order
23 B-29-15 can occur until February 28, 2016. If the State Water Board does not vacate the
24 Conservation Order on these grounds, then RMWD respectfully requests that the State Water
25

26 _____
27 ¹ The data in Exhibit A differs slightly from the most recent data submitted to State Water Board staff in June 2015,
28 due to RMWD’s continuing efforts to properly categorize its accounts. Specifically, RMWD found that the Pala Mesa
Resort was misclassified as residential in its data – this misclassification changes RMWD’s RGPCD by a significant
amount.

1 Board modify certain terms of the Conservation Order that are arbitrary, lack legal authority, and
2 violate state law.

3 RMWD reserves all rights to challenge the legality of the Conservation Order and submit
4 further legal briefing on the matter, but submits this Petition for Reconsideration in abeyance
5 pursuant to 23 Cal. Code Regs. § 2050.5, pending further discussions with State Water Board
6 officials to resolve concerns regarding reclassification and the Conservation Order.

7 **STATEMENT OF FACTS**

8 **I. Background**

- 9 1. RMWD is organized under Water Code § 71000, and provides water and sanitation
10 services to the unincorporated communities of Rainbow, Bonsall, and Fallbrook and
11 portions of the City of Oceanside.
- 12 2. On April 1, 2015, Governor Edmund G. Brown, Jr. issued Executive Order B-29-15
13 (Executive Order) to strengthen the state's ability to manage water and habitat
14 effectively in drought conditions. The Executive Order called on the State Water
15 Board to impose restrictions on urban water suppliers to achieve statewide 25%
16 reduction in potable urban water usage through February 2016.
- 17 3. Between July 2013 and July 2015, RMWD reduced total water consumption per
18 month from 2595 acre-feet of water (AF) to 1653 AF, respectively.
- 19 4. On May 5, 2015, the State Water Board issued emergency regulations (Emergency
20 Regulations) that, in part, require each urban water supplier to reduce its potable
21 water production by the percentage identified as its conservation standard.
- 22 5. The Emergency Regulation sets conservation requirements based on a water
23 supplier's average Residential Gallons Per Capita Per Day (RGPCD) from July to
24 September 2014. (23 Cal. Code Regs. §§ 865-866.)

25 **II. Applicable Conservation Standard for RMWD**

- 26 1. On or about August 15, 2014, RMWD submitted water production information in
27 response to a request from the State Water Board for the information. The data was
28 submitted through a State Board website created for this purpose. At the time of this

1 first submittal, no RGPCD information was submitted by RMWD to the State;
2 RGPCD information was not required or requested until the October 2014 submittal.
3 Based on this October data, the State Water Board staff placed RMWD in the 36%
4 conservation standard tier because the reported RGPCD was greater than 215. (23
5 Cal. Code Regs. § 865(c)(10).) When the State Water Board requested this water
6 production information, it did not provide RMWD with any guidelines for how to
7 reclassify its billing data to match the categories used by the State Water Board.
8 RMWD's billing system is old and uses a classification system that differs greatly
9 from the State Water Board's system. There was no effort on the part of the State
10 Water Board staff to contact RMWD to review the data in any way prior to the
11 issuance of the Conservation Order to ensure consistency in the reporting.

- 12 2. On or about May 7, 2015, the State Water Board sent an email to RMWD indicating
13 a deadline of May 31, 2015, for urban water suppliers to submit data in order for the
14 State Water Board to reclassify the supplier's conservation standards.
- 15 3. The May 7, 2015 email was sent to a single RMWD employee, RMWD's Finance
16 Manager Midge Thomas. No other party within RMWD was sent this email or was
17 made aware by the State Water Board of the important opportunity for the district to
18 submit data for reclassification of its conservation standard. Ms. Thomas did not
19 inform RMWD's Board of Directors, its General Manager, or any other employee at
20 RMWD, about this email she received from the State Water board. She took no
21 action to respond to the email.
- 22 4. Shortly after the Emergency Regulations were issued on May 5, 2015, and in order to
23 ensure an accurate submission of RGPCD data, RMWD's staff undertook a
24 comprehensive review of domestic and commercial customer classes, and realigned
25 its billing system and to more closely match its customer classification categories to
26 the newly-defined and articulated State Water Board categories.
- 27 5. RMWD's analysis found that a significant percentage of the domestic customers it
28 reported to the State Water Board were actually defined as agricultural customers and

1 thereby exempt from the RGPCD calculation. (*See*, 23 Cal. Code. Regs. §
2 865(e)(1).)

- 3 6. Based on RMWD’s analysis, RMWD concluded that the actual average RGPCD for
4 July-September 2014 is approximately 212, which places RMWD within the 32%
5 conservation standard tier. (23 Cal. Code Regs. § 865(c)(9).)
- 6 7. Soon thereafter on June 17, 2015, RMWD sent a letter to Jessica Bean, Chief
7 Geologist at the State Water Board, highlighting the significant efforts RMWD
8 undertook to update the RGPCD data, and pointed out that the data demonstrates that
9 RMWD should have been reviewed in accordance with the 32% conservation
10 standard.
- 11 8. RMWD has requested on numerous occasions that the State Water Board audit
12 RMWD’s data to confirm that RMWD should be in the 32% conservation tier. The
13 State Water Board has not reviewed or audited RMWD’s data in response to
14 RMWD’s requests.
- 15 9. On August 7, 2015, the State Water Board Office of Enforcement issued an
16 Information Order pursuant to its authority in Section 866(b) of the Emergency
17 Regulations, to determine, what actions RMWD has taken to comply with the
18 requirements of the 36% conservation standard.
- 19 10. The State Water Board found that RMWD failed to meet its conservation target
20 pursuant to the 36% conservation standard by 8.4%.
- 21 11. If RMWD had been reviewed under the 32% conservation standard, RMWD would
22 have been cumulatively *only 4.4% behind* the applicable conservation standard and
23 therefore RMWD would not have been subject to a conservation order pursuant to
24 the State Water Board’s enforcement standards.²
- 25 12. On August 17, 2015, RMWD met with State Water Board staff to discuss the
26 Information Order. RMWD reiterated its viewpoint that it was inaccurately reviewed

27 ² See State Water Resources Control Board, “Water Conservation Portal – Enforcement”, available at
28 http://www.waterboards.ca.gov/water_issues/programs/conservation_portal/enforcement.shtml; 23 Cal. Code Regs. §
865(c)(1).

1 pursuant to the 36% conservation standard when it should have been reviewed in
2 accordance with the 32% conservation standard.

3 13. The State Water Board Office of Enforcement issued a Draft Conservation Order to
4 RMWD based on its findings that RMWD is not on track to meet the 36%
5 conservation standard requirements by February 2016.

6 14. On August 26, 2015, RMWD responded to the Draft Conservation Order by
7 specifying concerns with the draft order's requirements, highlighting that RMWD
8 was reviewed under the wrong conservation standard, and requesting reclassification.

9 15. On August 31, 2015, the State Water Board Office of Enforcement issued a
10 Conservation Order to "help ensure RMWD will meet its conservation target of 36%
11 reduction."

12 16. On September 3, 2015, State Water Board Office of Enforcement notified RMWD
13 via email that the conservation standard reclassification request was made too late
14 and would not be honored by the Office of Enforcement.

15 **III. Conservation Order issued by State Water Board**

16 17. On August 31, 2015, the State Water Board Office of Enforcement issued a
17 Conservation Order that mandates that RMWD complete ten corrective actions.

18 18. The Conservation Order requires that RMWD "[i]mmediately and diligently pursue a
19 rate study in compliance with California Proposition 218, with the goal of
20 implementing a water rate structure that encourages conservation as well as
21 discouraging waste or overuse." (Requirement 2A from the Conservation Order).

22 19. The Conservation Order stipulates RMWD must determine, within the next thirty
23 days, the feasibility of instituting a "drought surcharge" on the existing rate structure,
24 and if such surcharge is infeasible, include a "drought surcharge" as part of the
25 mandated rate study described above. (Requirement 2B from the Conservation
26 Order).

27 20. The Conservation Order also requires RMWD make certain staffing decisions as
28 RMWD must hire or allocate at least: (i) two new or existing part-time employees

1 dedicated to enforcing the District’s outdoor water restrictions within sixty days; and
2 (ii) one new or existing full-time employee that will be dedicated to coordinating and
3 implementing the RMWD’s water conservation program within sixty days.
4 (Requirements 2H and 2I from the Conservation Order).

5 21. The Conservation Order also requires that RMWD develop “an outreach program
6 that includes public education on the value and application of mulch, so as to reduce
7 the amount of residential water use necessary to irrigate trees.” (Requirement 2J from
8 the Conservation Order).

9 LEGAL DISCUSSION

10 The Conservation Order is an abuse of direction that results in an inequitable action because
11 RMWD would not have been subject to a conservation order if the State Water Board applied the
12 proper conservation standard. The State Water Board should reclassify RMWD in the 32% tier and
13 vacate the Conservation Order. If the State Water Board does not reclassify RMWD, then the State
14 Water Board should strike certain requirements from the Conservation Order because these
15 requirements violate state law and were ordered in excess of the State Water Board’s authority.

16
17 **I. The State Water Board should reclassify RMWD under the appropriate
18 conservation standard and vacate the Conservation Order because it would be
19 unjust to enforce the Conservation Order against RMWD based on an
20 inapplicable conservation standard.**

21 The State Water Board should vacate the Conservation Order because it applied the
22 incorrect conservation standard to RMWD and mandates burdensome actions through a
23 Conservation Order that would not have been issued if the proper conservation standard had been
24 applied. Therefore, the Order is unjust as it imposes unwarranted costs and obligations on RMWD
25 and its ratepayers.

26 The Emergency Regulations define a water supplier’s conservation requirements based on
27 its average RGPCD for July-September 2014. The RGPCD calculation does not include
28 agricultural consumption. RMWD’s billing system previously had a large amount of its
agricultural consumption grouped with residential consumption which incorrectly inflated the

1 RGPCD data that was originally submitted to the State Water Board. Soon after the Emergency
2 Regulations were issued, RMWD began a thorough review of its billing system in order to more
3 closely align RMWD's billing categories to the State Water Board-defined categories. Prior to the
4 Emergency Regulations, RMWD did not have any reason to mirror the State Water Board's
5 approach to classifying users. After RMWD was able to complete this review, the updated data
6 demonstrated that RMWD's average RGPCD amount for July-September 2014 was approximately
7 212. This places RMWD squarely into the 32% conservation tier. (23 Cal. Code Regs.
8 § 865(c)(9).)

9 Within weeks after the deadline, RMWD notified the State Water Board that it was
10 misclassified and requested that the State Water Board work with RMWD officials to review the
11 RGPCD data to confirm that RMWD should be placed in the 32% conservation tier. However, the
12 State Water Board has not granted any of these requests. The State Water Board's Office of
13 Enforcement advised that because RMWD did not provide this updated data prior to May 31, 2015,
14 it would refuse to consider any requests for conservation standard reclassification regardless of the
15 facts as to whether reclassification is warranted.

16 The only notification RMWD had of the May 31, 2015, deadline was a single email sent to
17 one RMWD employee selected by the Office of Enforcement staff. This employee was the finance
18 manager who lacked a clear understanding of the technical aspects and the importance of the email.
19 This employee failed to share the email with anyone else at RMWD. If the RMWD Board of
20 Directors or General Manager had learned of this key deadline, the district would have acted to
21 promptly review its billing system in order to submit accurate RGPCD data by the deadline.
22 Regardless, RMWD acknowledges that the employee perhaps should have notified others
23 responsible for management of the district. RMWD has taken steps to ensure that any potentially
24 important State Water Board correspondence will reach key management officials. RMWD regrets
25 this oversight.

26 However, to enforce a Conservation Order based on seriously misleading data resulting
27 from a one-time error by a mid-level employee unfairly punishes RMWD and its ratepayers. If the
28 State Water Board utilizes the 32% conservation standard to review RMWD, it appears that no

1 Conservation Order would have been issued. RMWD was only cumulatively 4.4% behind the 32%
2 conservation standard requirements, which per the State Water Board’s enforcement standards
3 would have only warranted a warning letter.³

4 RMWD remains committed to its conservation efforts as the total consumption amounts
5 from July 2013 to July 2015 reduced from 2595 AF to 1653 AF. RMWD and its ratepayers will be
6 unfairly punished if they must incur the additional costs stemming from the Conservation Order.
7 Therefore, equity demands that the State Water Board reclassify RMWD as a water supplier
8 subject to the 32% conservation standard per 23 Cal. Code Regs. § 865(c)(9) and vacate the
9 Conservation Order.

10 **II. The State Water Board lacks authority to issue the Conservation Order**
11 **because No Violation of the Executive Order has occurred**

12 The State Water Board’s authority to create the Emergency Regulations is derived from the
13 Governor’s Executive Order. The Executive Order directs the State Water Board to impose
14 restrictions on water suppliers to achieve “a statewide 25% reduction in potable urban water usage
15 through February 28, 2016.” Thus, on its face, the Executive Order allows water providers like
16 RMWD until February 28, 2016 to comply with the 25% reduction requirement. It is therefore
17 premature for the State Water Board to issue the Conservation Order at this time, since it is
18 technically impossible for a violation of the Executive Order to occur until February 28, 2016.
19 RMWD’s compliance, or potential lack thereof, is not ripe for a challenge or a Conservation Order.
20 Accordingly, the State Water Board improperly and prematurely issued the Conservation Order
21 and the Conservation Order should be vacated.

22 ///
23 ///
24 ///
25 ///

26
27 ³ See State Water Resources Control Board, “Water Conservation Portal – Enforcement”, available at
28 http://www.waterboards.ca.gov/water_issues/programs/conservation_portal/enforcement.shtml; 23 Cal. Code Regs. § 865(c)(1).

1 **III. The State Water Board should vacate five of the required actions in the**
2 **Conservation Order as these mandates are arbitrary, in excess of the State**
3 **Water Board’s authority, and violate state law.**

4 The Conservation Order issued on August 31, 2015 compels RMWD to take numerous
5 actions in order to meet the consumption reduction goals of the 36% conservation standard. The
6 Conservation Order cites to Section 866(a) of the Emergency Regulations as its authority to compel
7 water suppliers to complete additional actions if the water supplier does not meet its conservation
8 goals articulated in Section 865. Specifically, the State Water Board “may issue conservation
9 orders requiring additional actions by the supplier to come into compliance with the conservation
10 standard[.]” (23 Cal. Code Regs. § 866(a).)

11 RMWD, per its September 15, 2015 letter to the State Water Board, is making a good faith
12 effort to comply with all of the requirements of the Conservation Order. However, a number of
13 these requirements lack legal authority and violate state law. RMWD requests that the State Water
14 Board vacate these conditions of the Conservation Order. As this petition is submitted in
15 abeyance, RMWD reserves all rights to supplement its legal briefing and further contest all of the
16 Conservation Order’s terms and conditions.

17 A. The State Water Board should vacate the Conservation Order’s requirement that
18 RMWD conduct a rate study to implement a new water rate structure.

19 Requirement 2A of the Conservation Order compels, without authority, RMWD to institute
20 a new water rate structure based on conservation and limiting waste. The State Water Board does
21 not specify any such authority that would allow it to force RMWD to institute a new water rate
22 structure. Assuming there is authority for this action, the Conservation Order’s mandated rate
23 structure is still problematic because it compels RMWD to create a rate structure that would violate
24 Article XIII D § 6 of the California Constitution (“Proposition 218”).

25 Proposition 218 prohibits local agencies like RMWD from issuing or increasing a property-
26 related fee or charge to its ratepayers unless certain procedural and substantive conditions are met.
27 (Cal. Const., art. XIII D, § 6, subd. (b)(1); (b)(3).) The Fourth District Court of Appeal recently
28 held that a tiered water rate structure created to promote conservation violated Proposition 218.

1 (*Capistrano Taxpayers Association Inc. v. City of San Juan Capistrano* (2015) 235 Cal. App. 4th
2 1493, 1506 (“*Capistrano*”).) In *Capistrano*, the City of San Juan Capistrano created a four-tier
3 pricing model for water and sewage services. The Court held that Proposition 218 requires that
4 water rates must reflect the “cost of service attributable” to a given parcel, and that the City of San
5 Juan Capistrano failed to correlate the tiered prices with costs of service. (*Id.*, citing to Cal. Const.,
6 art. XIII D, § 6, subd. (b)(3).) Therefore, the Court struck down the City of San Juan Capistrano’s
7 tiered pricing structure because it was based on “pre-determined usage budgets”, as opposed to
8 actual costs of service as required under Proposition 218.

9 The State Water Board’s Conservation Order would require RMWD to create a tiered
10 pricing model that may similarly violate Proposition 218. While the Conservation Order requires
11 that a “rate study” be done to create a new water rate structure in compliance with Proposition 218,
12 the mandated water rate structure is still premised on compliance with the conservation standards
13 of the Emergency Regulations. Specifically, the Conservation Order contemplates that the purpose
14 of the mandated compliance initiatives is to ensure that RMWD meet its conservation target of
15 36% through February 2016.

16 This rate structure is imposed on RMWD for the purpose of promoting conservation,
17 discouraging waste, and meeting pre-determined conservation goals, as opposed to tying rates to
18 actual cost of service. The ordered water rate structure deviates from the “cost of service”
19 requirements of Proposition 218 and therefore directs the District to violate state law.

20 Furthermore, the State Water Board has not issued any Proposition 218 guidance nor has it
21 indicated whether it would assist RMWD if faced with a legal challenge to the structure. If
22 RMWD implements a new water rate structure, it may face expensive and contentious litigation
23 due to the public’s resentment of raised fees coupled with the precedent set forth by *Capistrano*.
24 Even if the mandated rate structure is upheld by a court, this requirement is plainly unfair because
25 it will likely subject RMWD to significant legal risk without any legal support or guidance from
26 the State Water Board.

1 Therefore, the State Water Board should strike the mandated water rate structure
2 requirement of the Conservation Order because it compels, without authority, RMWD to
3 implement a water rate structure that may violate Proposition 218.

4 B. The State Water Board should strike the Conservation Order’s requirement that
5 RMWD develop an outreach program that includes public education on the
6 application of mulch.

7 The State Water Board should vacate Requirement 2J of the Conservation Order, which
8 requires that RMWD create a mulch outreach program, because it was issued arbitrarily without
9 consideration of local conditions within RMWD and if followed, may result in RMWD potentially
10 violating other state regulations.

11 The California Regional Water Quality Control Board recently issued draft storm water
12 regulations that generally prohibit the use of mulch in areas where it would run off during rain
13 events into the watershed.⁴ Specifically, mulch is not allowed on slopes where containment is
14 difficult. The areas served by RMWD are primarily hilly, and even mountainous, and includes
15 minimal flat land. The majority of agriculture grows on the side of hills, so promoting the use of
16 mulch for these RMWD customers may result in them violating pending storm water regulations.
17 The State Water Board arbitrarily included this requirement without considering the particular
18 facts, topography and customers applicable to RMWD. This requirement therefore should be
19 vacated.

20 C. The State Water Board should vacate the Conservation Order’s requirement that
21 RMWD implement a drought surcharge.

22 Requirement 2B of the Conservation Order requires that RMWD research the feasibility of
23 implementing a “drought surcharge” into its existing rate structure, and if that is not feasible, the
24 “drought surcharge” should be implemented as part of the newly required tiered water rate
25 structure. This requirement is vague and arbitrary as it is unclear what exactly constitutes a
26 “drought surcharge.” The term is not defined and the State Water Board did not provide any

27 ⁴ See California Regional Water Quality Control Board – San Diego Region Tentative Order No. R9-2014-Tent
28 (available at http://www.waterboards.ca.gov/sandiego/water_issues/programs/irrigated_lands/docs/tp/DRAFT_WDR_1.pdf).

1 guidance on how a “drought surcharge” can comply with Proposition 218 or Proposition 26.
2 Therefore, the State Water Board should strike this requirement from the Conservation Order.

3 D. The State Water Board should remove the Conservation Order’s requirement
4 that RMWD hire or allocate staff.

5 The State Water Board lacks the legal authority to compel RMWD to either hire or allocate
6 employees for any particular task. Requirements 2H and 2I of the Conservation Order compel
7 RMWD to hire or allocate: (i) two new staff dedicated to enforce outdoor water restrictions; and
8 (ii) at least one employee dedicated to coordinating RMWD’s water conservation program. There
9 is no authority that permits the State Water Board to force a quasi-legislative body to make
10 particular staffing decisions. This requirement interferes with a quasi-legislative body’s decision-
11 making authority, is overly broad and an overreach of the State Water Board’s purported authority.
12 Therefore, the State Water Board should vacate this requirement of the Conservation Order.

13 **CONCLUSION**

14 For the reasons discussed above, we first request that the State Water Board direct its staff
15 to consider the corrected data submitted by RMWD which will result in reclassification of the
16 agency as a water supplier that must comply with the 32% conservation standard. If the State
17 Water Board reclassifies RMWD appropriately, the Conservation Order should also be vacated, as
18 RMWD will be within 5% of the applicable conservation standard and no Conservation Order will
19 be needed.

20 If the State Water Board does not reclassify RMWD, the Conservation Order should be
21 modified to vacate the requirements to implement a water rate structure that promotes
22 conservation, implement a “drought surcharge”, hire or allocate staff for any purposes, and initiate
23 public outreach on a mulch program. The State Water Board lacks authority to mandate such
24 requirements, and in some instances, the requirements would result in RMWD violating state law.

25 As stated above, it is requested that this Petition for Reconsideration be held in abeyance
26 pending further conversations with State Water Board staff to alleviate concerns regarding
27 reclassification and the requirements of the Order. We hope this memorandum is helpful in the
28

1 State Water Board's process of analyzing its approach to ensure that the implementation and
2 enforcement of the Emergency Regulations is both equitable and effective.

3 DATED: September 30, 2015

PROCOPIO, CORY, HARGREAVES & SAVITCH
LLP

4

5

By: _____

6

Gregory V. Moser

7

Adriana R. Ochoa

8

Rahul E. Reddy

9

Attorneys for Petitioner RAINBOW

10

MUNICIPAL WATER DISTRICT

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is PROCOPIO, CORY, HARGREAVES & SAVITCH LLP, 525 B Street, Suite 2200, San Diego, CA 92101. A copy of this petition and accompanying materials have been sent to all interested parties. On **September 29, 2015**, I served the within documents:

1. **NOTICE OF PETITION AND PETITION FOR RECONSIDERATION OF THE CONSERVATION ORDER FOR RAINBOW MUNICIPAL WATER DISTRICT**
2. **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF RAINBOW MUNICIPAL WATER DISTRICT'S PETITION FOR RECONSIDERATION OF THE CONSERVATION ORDER**

- BY FACSIMILE [Code Civ. Proc. §1013(e)]** by transmitting via facsimile number (619) 235-0398 the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. A copy of the transmission confirmation report is attached hereto.
- BY U.S. MAIL [Code Civ. Proc. §1013(a)]** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Diego, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.
- BY OVERNIGHT DELIVERY [Code Civ. Proc. §1013(d)]** by placing the document(s) listed above in a sealed overnight envelope and depositing it for overnight delivery at San Diego, California, addressed as set forth below. I am readily familiar with the practice of this firm for collection and processing of correspondence for processing by overnight mail. Pursuant to this practice, correspondence would be deposited in the overnight box located at 530 B Street, Suite 2100, San Diego, CA 92101, in the ordinary course of business on the date of this declaration.
- BY PERSONAL SERVICE [Code Civ. Proc. §1011]** by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- BY ELECTRONIC SERVICE [Code Civ. Proc. §1010.6]** by electronically mailing the document(s) listed above to the e-mail address(es) set forth below, or as stated on the attached service list per agreement in accordance with Code of Civil Procedure Section 1010.6.
- (*State*) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- (*Federal*) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

1 **STATE WATER BOARD**

2 **Felicia Marcus, Chair**

State Water Resources Control Board
3 1001 I Street
Sacramento, CA 95814
4 Phone: (916) 341-5615 (Executive Offices)
Email: fmarcus@waterboards.ca.gov

5 **Fran Spivy-Weber, Vice Chair**

6 State Water Resources Control Board
1001 I Street
7 Sacramento, CA 95814
Phone: (916) 341-5615 (Executive Offices)
8 Email: fweber@waterboards.ca.gov

9 **Tam Doduc, Civil Engineer**

State Water Resources Control Board
10 1001 I Street
Sacramento, CA 95814
11 Phone: (916) 341-5615 (Executive Offices)
Email: tdoduc@waterboards.ca.gov

12 **Dorene D'Adamo**

13 State Water Resources Control Board
1001 I Street
14 Sacramento, CA 95814
Phone: (916) 341-5607
15 Email: dorene.dadamo@waterboards.ca.gov

16 **Steven Moore**

State Water Resources Control Board
17 1001 I Street
Sacramento, CA 95814
18 Phone: (916) 341-5615
Email: smoore@waterboards.ca.gov

19 **Thomas Howard**

20 State Water Resources Control Board
Executive Director
21 1001 I Street
Sacramento, CA 95814
22 Phone: (916) 341-5615
Email: thoward@waterboards.ca.gov

23 **Christian M. Carrigan**

24 State Water Resources Control
Office of Enforcement
25 Director
1001 I Street
26 Sacramento, CA 95814
Email: Cris.Carrigan@waterboards.ca.gov

27 **Adrianna Crowl**

28 State Water Resources Control

1 Office of Chief Counsel
2 Petition Coordinators
3 1001 I Street
4 Sacramento, CA 95814
5 Phone: (916) 341-5156
6 Email: Adrianna.Crowl@waterboards.ca.gov

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28