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January 6, 2016

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

Sent via electronic mail to: Kathy.Frevert@waterboards.ca.gov

cc: Wade Crowfoot, Deputy Cabinet Secretary & Senior Advisor
Martha Guzman-Aceves, Deputy Legislative Secretary
Office of Governor Edmund G. Brown Jr.

Sent via electronic mail to: wade.crowfoot@gov.ca.gov

RE: Proposed Regulatory Framework for Extended Emergency Regulation for Urban Water Conservation

Dear Chair Marcus and Board Members:

We applaud the leadership and thoughtfulness that State Water Board members and staff have demonstrated in the development and implementation of the existing and Proposed Regulatory Framework for Extended Emergency Regulation for Urban Water Conservation (Proposed Framework). Although the response to Governor Brown's initial drought declaration and request for voluntary urban water use reductions fell short of its goal, the mandatory urban 25% reduction invoked in the April 1, 2015 Executive Order has prompted many agencies and communities to step up to meet and, in some cases, even exceed conservation goals.

We have served as members of the Water Conservation Workgroup to consider and offer input on proposals to amend the emergency regulations over the past three months. Having carefully considered the rationale and context for proposed amendments, and how proposals would work in practice, we oppose the adjustments and credits described in the Proposed Framework. We believe that these adjustments and credits are generally inappropriate in the context of emergency regulations, and as proposed, would primarily benefit high-consumption service areas pleading hardship while seeking to restore residential water sales.

We understand that the Proposed Framework reflects Board staff's intent to find middle ground with the proposed adjustments, however, we urge you not to provide credits or make adjustments for climate, population growth, or new supplies. The Board could use regulatory discretion to address these issues, especially high rates of population growth and the use of swamp coolers in disadvantaged communities. Moreover, exemptions for new supplies built since 2013 encourages the development of new supplies for drought-related needs; recent experience in California and elsewhere suggests that this can result in stranded assets. If the Board moves forward with providing credits, then we urge the Board to cap these adjustments to 4%, or one tier. In the following sections, we offer recommendations to revise the Proposed Framework prior to the adoption of emergency regulations.

1. Climate Adjustment.

The proposed climate adjustment would reduce the water conservation standard by up to 4% in warmer areas. We oppose the climate adjustment because warmer areas with above average per capita water use have the greatest savings opportunities and thus should be doing more, not less, during the drought to extend the available supplies. This is especially true because the highest rates of outdoor water use typically occur in warmer communities and therefore many of these communities would only need to reduce outdoor water use by half in order to meet the most stringent mandatory water use reductions. Some have noted that the climate adjustment would provide relief to disadvantaged communities with swamp coolers. We share concerns about impacts on these communities and suggest that the Board use its enforcement discretion to address this issue rather than a formal adjustment to the conservation standard. Outside of the emergency extension, the Board could also consider targeted efficiency programs to address the use of swamp coolers in disadvantaged communities and we would be happy to discuss this recommendation further with the Board and Board staff.

Throughout the emergency regulation and extended emergency regulation setting processes, we have repeatedly heard that the reason for this adjustment is that “climate-appropriate plants” require more water in hot, dry inland areas than in cooler coastal areas. This rationale is concerning and misleading. “Climate-appropriate plants” are not the same for cooler and for warmer areas of the state; rather, they are intended to be specific to the *local climate*. Thus, “climate-appropriate plants” should have similar irrigation requirements in both cooler and warmer climates.

The Proposed Framework uses a comparison of local evapotranspiration (ET) to statewide average ET to determine eligibility for the adjustment. We do not support a climate adjustment, as noted above. However, if the Board adopts a climate adjustment, we recommend that the statewide average ET be weighted by population rather than service area or land area. Most of the state’s population lives in warmer climates in Southern California, so if the goal is to identify communities that are true climate outliers, then a population-weighted average would be most appropriate. Calculating the statewide ET based on “service area” or “land area” would likely result in a significantly lower statewide average and a larger fraction of the population would then fall in communities that qualify for this adjustment than is likely intended by the Board and Board staff.

2. Growth Adjustment.

We oppose the inclusion of an adjustment for growth in the extended emergency drought regulations and believe that an analysis of anomalous population and business growth may be better suited for policies that address longer term needs and objectives. However, if the Board proceeds with this adjustment, we recommend the following revisions to the framework provided by staff on December 21, 2015:

- Board staff has suggested estimating residential indoor water use assuming 3 people per household and per capita water use of 55 gallons per day, resulting in an assumed indoor water demand of 165 gallons per person per day for recent construction. In contrast, data from the recently completed *2014 Residential End Uses of Water Update Study*¹ (DeOreo, 2015)

¹ <http://www.waterrf.org/resources/expertsymposiums/Lists/PublicExpertSymposiums/Attachments/2/WRF-SustainWaterMgtConf-DeOreo-3-31-14.pptx>

demonstrates that indoor water use for existing homes averages 125 gallons per household per day. Although new homes should be more efficient than existing homes, we suggest using a maximum of 125 gallons per household per day for indoor uses for the growth calculation.

- Qualification for this adjustment should be based on demonstrated growth significantly higher than the statewide average. According to the California Department of Finance, recent statewide growth has been approximately 4%, therefore only communities that can demonstrate a growth rate greater than 6% should be eligible for this adjustment.

3. “Drought-Resilient” Sources of Supply.

As we consider the possible extension of emergency regulations and the continued dialogue with California communities about water, we oppose credits for new “drought-resilient” water supplies for several reasons. First, water suppliers have not provided any evidence that meeting mandatory water use reductions would curtail their ability to fully operate new local supplies and therefore have not demonstrated a need for this credit. Second, the purpose of the statewide emergency designation and subsequent drought emergency regulations is to reduce stress on our water resources from the Sierra Nevada Mountains, Sacramento-San Joaquin Delta, and Colorado River; this is best achieved by combining conservation and local supply development, not by allowing water suppliers to choose one at the expense of the other. Third, offering credits for new supplies incorrectly characterizes their development during a drought as an effective drought-response strategy; however, past experience suggests that these facilities could become stranded assets when the drought ends. Finally, granting credits for “drought-resilient” supplies sends a confusing message to Californians that water conservation is needed for some water sources, but not others. This undercuts the new water ethic we have collectively worked so hard to foster, which prioritizes the efficient use of *all* water resources in California, and sets a poor precedent for forthcoming long-term conservation measures. Below, we provide additional detail on each of these points:

a. No Evidence of Need for Supply Credits

Water suppliers argue that compliance with mandatory water use reductions would preclude their ability to fully utilize new, local water supplies. However, no agency has provided a real example of a new supply that could not be fully operational if water reduction targets were met. Because water suppliers are able to operate new supplies under the current conservation mandates, the additional water use allowed under the exemption would effectively be met with imported supplies, perpetuating stress on impaired waterbodies, including the Sacramento-San Joaquin Delta. If the goal of the Emergency Regulation is to preserve existing surface and groundwater supplies, then that is best accomplished by combining demand reduction from water conservation and efficiency and new local supply development, not by allowing water suppliers to choose one at the expense of the other, particularly when one option is significantly more cost-effective.

b. Supply Credits Undercut the Efficient Use of All Water Sources.

Water conservation and efficiency improvements are broadly recognized as the least expensive, fastest, and most environmentally-sound way to meet water needs.² Moreover, they save energy, reduce

² See California Water Plan Update 2013 at Table 1-3 Range of Strategy Unit Costs comparing resource management strategies. (http://www.waterplan.water.ca.gov/docs/cwpu2013/Final/Vol3_Ch01_Introduction.pdf).

greenhouse gas emissions, lessen water and wastewater treatment costs, and defer or eliminate the need for costly new water and wastewater infrastructure. The 2015 emergency urban conservation regulations have spurred significant conservation gains. Granting a credit in the extension of emergency regulations for new supplies effectively incentivizes their development in preference to more cost-effective efficiency measures. This increases the cost of providing water service and exacerbates affordability concerns for low-income households. Moreover, this undercuts the new water ethic we have collectively worked so hard to foster.

When thinking about the balance between supply and demand management, we can, and should, look to the energy sector for guidance. In California, energy utilities have efficiency targets *and* a renewable portfolio standard. This approach maximizes the value of investments in renewables and opportunities to reduce greenhouse gas emissions. Likewise, efforts to manage water demand and water supplies should be separated to maximize the value of those investments. There are numerous incentives (financial and non-financial) to expand water supplies in California, including Proposition 1 and water reuse and stormwater capture goals. Water conservation and efficiency promote the efficient use of *all* water resources in California, including these newly developed local supplies, and help to ensure that we maximize the value of these investments. The draft framework notes that the chief aim of the emergency regulations is to preserve existing surface and groundwater supplies. This is best accomplished by combining demand reduction from water conservation and efficiency and new local supply development, not allowing water suppliers to choose one or the other.

c. Developing New, Expensive Infrastructure is Not an Effective Drought-Response Strategy.

The proposed credit promotes the development of new supplies as a drought-response strategy; yet, past experience shows that building large water-supply projects in response to drought often results in stranded assets. During the 1987-1992 drought, for example, the City of Santa Barbara completed its desalination facility in March 1992, and shortly thereafter, the drought ended. The plant was eventually decommissioned as the cost to produce the water was too high to warrant use during non-drought periods. Similarly, Australia invested billions of dollars to develop recycled water and desalination plants in response to the Millennium Drought. Several of these plants, including 4 of the 6 large desalination plants and several potable recycling plants, were shut down when the drought ended. Ratepayers continue to pay for those plants while receiving only minimal benefit. While these shuttered plants could be activated if needed (thereby providing a reliability benefit), the treatment technologies could also become obsolete before they are needed and require significant investment to bring them back online, as has happened in Santa Barbara. These examples highlight the risks associated with building large, expensive new supplies to meet needs during drought periods and demonstrate why state policy should not encourage these types of investments as drought-response strategies.

If the State Board moves forward with granting credits for new, local supplies, we urge the Board to set criteria to qualify for the credit and define how these credits would be implemented. First, water suppliers should have to demonstrate that they will not be able to fully operate the new, local supply if they are required to meet the current conservation target. Second, water suppliers should meet some efficiency target, for example falling within the bottom 25% of residential per capita water use (July-October) in their hydrologic region. This would help to ensure that water suppliers have taken proactive steps to implement efficiency improvements and are maximizing the value of local supply investments. Third,

water suppliers would have to demonstrate that they have appreciably reduced the volume of water imported from impaired aquifers and surface waters, especially the Sacramento-San Joaquin Delta. Fourth, the credit should only be offered to those projects that comply with the State Water Board's preferred technologies as outlined in its regulations, including the recently adopted Desalination Ocean Plan Amendment. If the state is going to recognize these new supply projects, they should be required to adequately mitigate their environmental impacts. Finally, we urge the State Board to clearly articulate how these credits would be implemented. For example, if the wholesaler develops the new supply, it is unclear whether all retail agencies obtain the credit.

4. Elimination of Commercial Agricultural Exclusion.

As we have described in previous comments, the initial Emergency Regulations contained an exemption for commercial agricultural use that was too broad, and unintentionally exempted water use by hobby farms and ranchettes. Accordingly, we strongly support staff's recommendation to modify the Commercial Agriculture Exclusion to require certification that agricultural customers produce a minimum of \$1,000 per year in revenue from agricultural sales and are not subtracting water used on ornamental landscapes.

5. Long-Term Conservation Measures to Improve Urban Water Use Efficiency and Prevent Waste Are Needed.

As we consider the extension of emergency drought regulations, we look forward to the development of long-term, non-emergency water conservation regulations. Our state's water management challenges will only become more intense and severe with climate change and continued population and economic growth. Water conservation and efficiency improvements are the cheapest, fastest, least environmentally-damaging response to these challenges. As described above, reduction in statewide water demand reduces reliance on the Delta, and improves water supply reliability compared with restoration of water consumption to pre-drought levels.

Both the California Constitution and the State Water Code prohibit the waste or unreasonable use of water in the State.³ The State Board has held that what constitutes unreasonable use is not a static concept and cannot be resolved in a vacuum without considering issues of statewide importance. Paramount among these considerations is "the ever increasing need for conservation of water in this State."⁴

The well-established principles of beneficial use and avoidance of waste, underscored by persistent drought conditions and the growing manifestations of climate change, afford clear authority and sound rationale for state conservation and efficiency regulations for non-drought periods. We look forward to working with the State Water Board, water suppliers and other partners in the coming months to develop long-term measures to end water waste and ensure that all water is being put to beneficial use.

Even as we look forward to what could be a wet winter, we urge state and local entities to build on recent conservation successes to prepare for near-term continuation of severe drought conditions and the

³ Cal. Const., Art. X, Sec. 2; Cal. Wat. Code sec. 100.

⁴ State Water Resources Control Board, Order No. WR 2012-0004, *In the Matter of the Alleged Waste and Unreasonable Use of Water by Hidden Lakes Estates Homeowners Association* (Feb. 7, 2012), at 6.

deepening challenges to long-term water reliability posed by climate change and continued population and economic growth.

Sincerely,

A handwritten signature in black ink, appearing to read "Sara Aminzadeh".

Sara Aminzadeh, Executive Director
California Coastkeeper Alliance

A handwritten signature in black ink, appearing to read "Heather Cooley".

Heather Cooley, Water Program Director
Pacific Institute

A handwritten signature in black ink, appearing to read "Tracy Quinn".

Tracy Quinn, Senior Policy Analyst
Natural Resources Defense Council