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April 13, 2015

Delivered by e-mail to: Jessica.Bean@waterboards.ca.gov

Jessica Bean
Engineering Geologist
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Subject: Comments on Mandatory Conservation Proposed Regulatory Framework Released on
April 7, 2015

Dear Ms. Bean:

The Association of California Water Agencies (ACWA) appreciates this opportunity to comment on the State Water Resources Control Board (Water Board) staff's "Mandatory Conservation Proposed Regulatory Framework" (Regulatory Framework) and the draft table entitled "Urban Water Suppliers and Proposed Regulatory Framework Tiers to Achieve 25% Use Reduction" (Conservation Standard/Tiers Table) released on April 7, 2015.

ACWA appreciates that the Water Board staff has quickly responded to the Governor's April 1 Executive Order by preparing these preliminary regulatory proposals to address Executive Order provisions 2, 5, 6, and 7. We appreciate that Water Board staff is seeking input on these proposals to draft an emergency regulation, which will be released for informal public comment on April 17, 2015.

ACWA supports the Governor's Executive Order and its key provision to reduce potable urban water usage by 25 percent statewide over coming months. We appreciate the effort Water Board staff has devoted to meeting with and soliciting input from ACWA and other stakeholders on ways to do this effectively.

General Comments

The Emergency Regulation needs to develop and implement the Executive Order in a way that addresses two core policy principles, which are inherent in the Executive Order and the Administration's overall response to the drought:

1. Protect economic uses of potable water, while focusing efforts to substantially reduce water use for ornamental, lower-priority outdoor purposes; and
2. Ensure fairness for communities statewide.

Protect Economic Uses of Potable Water

Although the Executive Order properly directs attention to potable water use reductions for commercial, industrial and institutional (CII) water users, the Emergency Regulation should focus on the immediate need to reduce outdoor irrigation for ornamental purposes and install water efficient fixtures and appliances. It should clearly articulate State policy to protect CII water use for economic or process-related water uses. Local water suppliers should be left with discretion to implement CII water use reduction efforts as locally determined to balance the need to reduce water use with the need to protect local economies.

Additionally, where potable water is used locally for economic agricultural purposes, urban water suppliers should be allowed to deduct this water from reported "Total Water Production," which is used to calculate R-GPCD and assign water use reduction targets, for example in northern San Diego County (e.g. Valley Center, Rainbow, Fallbrook, and Yuima water districts). This approach is consistent with how the Executive Order generally addresses agriculture.

Ensure Fairness for Communities Statewide

A. Relevant Factors

The calculated indicator of residential gallons per capita per day (R-GPCD) from September 2014 is proposed by Water Board staff as the sorting mechanism for the proposed Conservation Standard/Tiers Table used to assign conservation targets to water suppliers. This one-month "snapshot" in time does not provide a fair measure of comparative water use efficiency, as it is fundamentally biased by local climate conditions (e.g. geographic location), among other factors that vary significantly from one community to another statewide. Indeed, the Water Board correctly states on its website "It 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*" (emphasis added), and then provides an example list of such factors in "An Important Note" (see Attachment 1). None of these factors are accounted for in the first draft of the Conservation Standard/Tiers Table.

We recognize that provision 2 of the Executive Order explicitly states that "these restrictions should consider the relative per capita water usage of each water supplier's service area, and require that those areas with high per capita use achieve proportionally greater reductions than those with low use". However, the principle of fairness indicates the need for adjustments to account for different climate conditions and land use patterns (such as lot sizes). Other considerations that may warrant adjustments may include use of recycled water, ocean or brackish water desalination, groundwater remediation, stormwater capture to offset potable water use. "Proportionally greater reductions" can still be assigned with a revised methodology that gives due consideration to these factors (as described in more detail below).

B. Exception Process

Another element that is essential to ensure fairness is the inclusion of an "exception process" as part of the Emergency Regulation. This process would allow water suppliers to present to the Water Board specific information and evidence supporting target adjustments to address extenuating circumstances or unreasonable local impacts. Such "exception processes" have been commonly used by water suppliers to address specific hardship situations on a case-by-case basis when implementing mandatory conservation programs in the past. An example of "extenuating circumstances" could be where a relatively small water

supplier has a relatively large state agency water customer (such as a prison, highway or office complex) that consumes a substantial proportion of the water suppliers' production but which has not reduced their water use despite local demands and state policy direction. Another example may be a situation in which local health and safety conditions are triggered. The "exception process" could require water suppliers to disclose proposed actions that would partially mitigate effects on overall water use reductions.

More specific comments are below.

Answers to Staff Questions

The Water Board's Fact Sheet requests consideration of the following general questions. We will offer our more detailed comments in response to these questions.

1. *Are there other approaches to achieve a 25% statewide reduction in potable urban water use that would also impose a greater responsibility on water suppliers with higher per capita water use than those that use less?*

Yes. As described above the proposed Conservation Standard/Tiers Table should be amended to incorporate adjustments that will result in a more fair assignment of conservation targets for water suppliers in light of relevant factors. Following are specific suggestions.

- a. **Average R-GPCD** - The first adjustment would be to amend the R-GPCD calculation for all water suppliers to indicate the average R-GPCD during the base period (back-calculated for months prior to September 2014 using monthly water production and population data for each month and then averaging for the period). The resulting average R-GPCD would reduce the effect of erratic monthly changes that are reflected in monthly reporting for many water suppliers. The water production data used for this calculation should deduct potable water supplies for economic agricultural purposes (see "Protect Economic Uses of Potable Water" above).
- b. **Adjust for Climate** - Next, an adjustment column should be added to the table to assign a reasonable outdoor irrigation water use allocation factor based on the location of each water supplier within three or more climate zones, using readily available evapotranspiration data.
- c. **Assign Custom Conservation Standard** - Finally, a range of Conservation Standards would be applied to the entire list of water suppliers to achieve an overall statewide water use reduction of 25%. The Conservation Standard would not be assigned in tiers in order to eliminate abrupt changes between "adjacent" water suppliers on the tiered list. Instead, the amended table would indicate a "custom" Conservation Standard for each water supplier based on its average R-GPCD adjusted for climate and its recent conservation performance.

The intended result of this alternative approach would be to assign a Conservation Standard to water suppliers that better reflects their unique attributes relative to other water suppliers. Water suppliers in hot inland locations with higher R-GPCDs and relatively poor past performance would still be assigned a relatively higher Conservation Standard than other agencies similarly situated but with better performance. In the same way, water suppliers in cooler coastal areas but with relatively poor past performance would still be assigned a relatively higher Conservation Standard than similarly situated water suppliers with better past performance, which would still be assigned a lower Conservation Standard. This approach would meet the requirements of Executive Order provision 2

and yet help implement the principle of fairness that will be a key to the effectiveness of the Emergency Regulation.

We look forward to collaborating with Water Board staff and our colleagues as this regulatory process proceeds to help refine and improve the resulting proposal.

2. How should the regulation differentiate between tiers of high, medium and low per capita water users?

As described above, tiers or classifications of “high”, “medium” and “low” per capita water suppliers would be replaced by a “custom” Conservation Standard for each water supplier.

3. Should water suppliers disclose their list of actions to achieve the required water reductions?

Given the need for water agencies to implement significant new actions to get substantially greater conservation results in very short timeframe, we believe that additional effort to prepare and submit lists of actions should not be a requirement of the Emergency Regulation. Such list of actions could be required as part of an “exception process” (as described above), or as part of the Water Board’s enforcement response (as described below). In coming weeks and months water suppliers will be identifying, implementing, and experimenting with many different combinations of actions, policies, procedures and programs under diverse conditions and with variable capabilities in response to local conditions. Documenting such actions to the Water Board could distract agency staff from the primary objective of achieving results.

4. Should these actions detail specific plans for potable water use reductions in the commercial, industrial, and institutional (CII) sectors?

See the answer to Question 3. However, as described under general comment on the need to protect economic uses of water, the Emergency Regulation should affirm the immediate need to reduce outdoor irrigation for ornamental purposes, install water efficient fixtures and appliances, and avoid unnecessary restrictions on CII water use for economic or process-related water uses. A significant constraint for water suppliers that intend to focus on reducing CII water use for outdoor irrigation is the widespread lack of dedicated irrigation meters. Water suppliers will need flexibility to use different approaches to target and account for reductions in CII water use.

New CII reporting requirements should not be disaggregated as proposed by Water Board staff. Water supplier metering and billing information does not generally support classifications of commercial (“large landscape commercial” such as golf courses, amusement parks) industrial, and institutional (“large landscape institutional water users” such as cemeteries, college campuses) into readily identifiable subsectors. Indeed, definitions and classification systems are currently quite variable among water suppliers. Resulting data submittals would likely not be comparable, and would require significant effort to impose standardization. Such efforts in the context of the Emergency Regulation will divert limited resources that need to be focused on action and results.

5. Should additional information be required in the monthly conservation reports for urban water suppliers to demonstrate progress towards achieving the required water reductions?

The Water Board staff should amend and standardize calculation methods to account for bimonthly billing cycles, different numbers of days in each billing cycle, and different methods of calculating and reporting water production which are evidenced in previous reporting. Water agencies need to be assured that reported data used comparatively for regulatory and enforcement purposes are actually comparable.

6. How and when should compliance with the required water reductions be assessed?

Monthly reporting should be monitored and objective thresholds established for Water Board response. Failure to submit reports should be immediately addressed and technical assistance should be offered as the initial remedy. Significantly below target performance on a two to three month cumulative basis could trigger informal enforcement, again with the primary focus on offering technical assistance to improve performance.

7. What enforcement response should be considered if water suppliers fail to achieve their required water use reductions?

Failure to achieve required water use reductions should be finally determined only at the end of the 270-day duration of the Emergency Regulation. Water suppliers should be subject to "graduated" enforcement based on the relative significance of their non-compliance. Compliance should be evaluated in consideration of information water suppliers provide on the actions they have taken to achieve compliance. If the drought emergency is continuing at that time, water suppliers should be ordered to prepare a "corrective action plan" identifying measures to be implemented to come into compliance. Any Water Board action to issue Cease and Desist Orders and impose Administrative Civil Liabilities of up to \$10,000 for non-compliance is quite likely to divert scarce resources away from on-going local efforts and should be considered an extreme "last resort".

Thank you for your consideration of these comments. ACWA will continue to work with the Water Board and our member water agencies to identify ways to effectively implement the Executive Order and the resulting Emergency Regulations. If you have any questions, please contact me at daveb@acwa.com or (916) 441-4545.

Sincerely,



David Bolland
Special Projects Manager

cc: Honorable Felicia Marcus, Chair
Honorable Frances Spivy-Weber, Vice Chair
Honorable Dorene D'Adamo, Board Member
Honorable Tam Doduc, Board Member
Honorable Steven Moore, Board Member
Mr. Tom Howard, Executive Director
Ms. Caren Trgovcich, Chief Deputy Director
Mr. Eric Oppenheimer, Director of the State Water Board's Office of Research, Planning and Performance
Mr. Max Gomberg, Climate Change Advisor

Monthly Urban Water Supplier Report Data

IMPORTANT NOTE!

It 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. Factors that can affect per capita water include:

- **Rainfall, temperature and evaporation rates** – Precipitation and temperature varies widely across the state. Areas with high temperature and low rainfall need to use more water to maintain outdoor landscaping. Even within the same hydrologic region or the same water supply district these factors can vary considerably, having a significant effect on the amount of water needed to maintain landscapes.
- **Population growth** – As communities grow, new residential dwellings are constructed with more efficient plumbing fixtures, which causes interior water use to decline per person as compared to water use in older communities. Population growth also increases overall demand.
- **Population density** – highly urbanized areas with high population densities use less water per person than do more rural or suburban areas since high density dwellings tend to have shared outdoor spaces and there is less landscaped area per person that needs to be irrigated.
- **Socio-economic measures such as lot size and income** – Areas with higher incomes generally use more water than areas with low incomes. Larger landscaped residential lots that require more water are often associated with more affluent communities. Additionally, higher income households may be less sensitive to the cost of water, since it represents a smaller portion of household income.
- **Water prices** – Water prices can influence demand by providing a monetary incentive for customers to conserve water. Rate structures have been established in many districts to incentivize water conservation, but the effectiveness of these rate structures to deter excessive use and customers sensitivity to water prices vary.

Source:

http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/conservation_reporting_info.shtml