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October 14, 2015

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

Sent via electronic mail to: State Water Board members

RE: Comment Letter – Conservation Regulations Workshop

Dear Chair Marcus and Board Members:

Thank you for the opportunity to engage in discussions about conservation regulations. Our organizations are dedicated to securing a sustainable and equitable water future for California.

We applaud the leadership and thoughtfulness that State Water Board members and staff have demonstrated in the development and implementation of the existing emergency conservation regulations. Although the response to Governor Brown's initial drought declaration and request for voluntary urban water use reductions was inconsistent at best, the mandatory urban 25% reduction invoked in the April 1, 2015 Executive Order has prompted many agencies, organizations and communities across California to step up to meet and even exceed conservation goals. 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 deepening challenges to long-term water reliability posed by climate change and continued population and economic growth. Our comments will primarily focus on the emergency regulations. However, we urge the State Board to initiate a parallel process to develop permanent conservation standards that are equitable to all communities and make California resilient as climate change and growth intensify and accelerate our longstanding water scarcity issues.

Emergency Regulations Must Anticipate Continuing Drought Conditions

The full impact of the winter storm season will not be apparent prior to the expiration of the current emergency regulations in February. Accordingly, we believe it to be prudent for the Board to prepare to extend the emergency conservation reporting and performance requirements in a form at least as stringent in their total effect as the current regulations. Rain – even heavy rain – is very unlikely to restore the state to “normal” supply conditions any time soon. In reality, 2016 could pose even greater challenges than 2015.

Generally, we believe that the current Emergency Regulations have been structured and implemented successfully. To the extent that 2016 supply conditions require greater or lesser urban conservation

savings, we recommend adjusting the 25% target up or down with corresponding shifts in the tiered target structure as needed to add up to a revised statewide percentage target. We recommend against major new carve-outs and concessions to high-consumption service areas pleading hardship while seeking to restore residential water sales. Any adjustments should be made in a manner that is both fair and effective. Towards this end, we offer the following recommendations:

1. New Local Supplies.

We strongly oppose conservation exemptions simply based upon investments in local supplies. Most areas have already developed the least expensive water supplies, and the next increment of supply is considerably more expensive. Water conservation and efficiency improvements are broadly recognized as the least expensive, fastest, and most environmentally-sound way to meet water demands. Moreover, efficiency improvements save energy, reduce water and wastewater treatment costs, and defer or eliminate the need for costly new infrastructure.

Providing exemptions for local supplies effectively prioritizes their development in preference to more cost-effective efficiency measures. There are already numerous incentives (financial and non-financial) to expand supply but far fewer incentives to effectively manage demand. Proposition 1, for example, set aside \$750 million for desalination and water reuse, compared with \$100 million for water conservation and efficiency. Moreover, such blanket exemptions could encourage the excessive use of local supplies. This is the wrong message and bad policy. Water conservation and efficiency promote the efficient use of *all* water resources in California, including newly developed local supplies.

Moreover, the state has adopted water reuse and stormwater capture goals. We support these local initiatives as well, but we also think there is a need for efficiency targets. Indeed, separate goals for all three are needed to meet the state's water challenges. This is similar to the approach taken by the energy sector, which has both efficiency targets and a renewable portfolio standard.

To the extent that newly developed local supplies now in service comprise a share of drinking water delivered to customers, such supplies should not become shut in or stranded assets due to the emergency conservation regulations. We are unaware of any such circumstances but encourage the Board to gather information from water suppliers that would substantiate any claims of shut-in local resources. Moreover, real and substantive efforts to reduce demand now will help to avoid building unnecessary supplies and stranding future investments.

2. Water Affordability for Essential Uses.

Water affordability is a central element to water access and the Human Right to Water. Signed into law in 2012 by Governor Brown, the Human Right to Water recognizes that “every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.”¹ Unaffordable water not only impedes access to drinking water for families and communities but also affects access to sanitation and cleaning facilities. When water for essential uses is unaffordable, there is a direct and immediate impact on health and safety. Conservation regulations, and local decisions in response to them, ought not exacerbate water affordability concerns.

¹ California Water Code § 106.3.

Calls to provide new exemptions from the emergency conservation regulations to promote water sales for more expensive local supplies ignore equity concerns and are inconsistent with the state's declaration that water is a human right. As noted above, new local supplies, especially seawater desalination, are more expensive than efficiency measures. Allowing agencies to boost water sales from more expensive local supplies would, in effect, increase customer water bills compared to what they would be if demand were to be met with water conservation and efficiency. These costs would be absorbed by consumers in the form of increased water costs and higher bills, unduly burdening disadvantaged and low income residences who can ill afford higher water costs.

Additionally, we are concerned about how drought surcharges will affect low-income customers. As water sales have dropped in response to the emergency regulations, some water suppliers are considering revising rates to increase fixed charges that all customers must pay regardless of the amount of water they use. Effective planning for the financial impacts of water shortages -- as required by the Urban Water Management Planning Act² and encouraged by the American Water Works Association's rate-making manual³ -- can avoid such outcomes. As the drought persists and conservation requirements remain in place, the Board should be alert to the actions of water suppliers that seek to maintain revenues by levying higher fixed charges that disproportionately affect low-income and low-consumption water users.

We urge the Board to incorporate environmental justice groups who work with and represent disadvantaged communities into discussions about conservation regulations to address these and other equity issues.

3. "Commercial Agricultural Use" Exemption.

The current emergency regulations provide special exemptions for so-called "commercial agricultural use" of drinking water provided by urban water suppliers. The regulations allow water utilities to remove such water sales from the total quantity of their drinking water production that is subject to the 25% reduction under the rule. Unfortunately, under the definition used by the Board⁴, "commercial agriculture" encompasses virtually any activity producing a plant or animal in any quantity for sale, no matter how incidental. The definition encompasses many large-lot subdivisions that are landscaped with avocados and lemons, a popular lifestyle for the affluent, especially in Southern California. The shortcomings and unfairness of this proposal are obvious. The large homes, tennis courts, and swimming pools often interspersed with these small groves and irrigated horse pastures belie the essentially residential nature of this use of publicly-supplied drinking water. The drinking water supplied to hobby farms and ranchettes should not be excluded from the total amount of potable water targeted for reduction. This provision should be eliminated, rather than extended. Otherwise, other, less affluent communities will have to reduce their own water use by a greater percentage, or the statewide reduction

² California Water Code § 10632(a)(7).

³ "Ideally, a well-designed drought surcharge should hold customers harmless if they comply with the desired and targeted savings levels. In other words, *a customer that has a targeted Stage 1 reduction of 10 percent and reduces their consumption accordingly may pay roughly the same bill as before the drought and produce the same level of revenue because the pricing of the surcharge has been structured to recover the same level of revenue, assuming a 10 percent reduction in consumption.*" (emphasis added) – American Water Works Association, *Principles of Water Rates, Fees, and Charges, Manual M1*, Sixth Edition, 2012.

⁴ California Government Code § 51201(b).

may not be fully met. Either outcome seems contrary to the Governor's call for statewide savings to be apportioned equitably.

Permanent Regulations to Improve Urban Water Use Efficiency and Prevent Waste Are Needed

During the meeting with urban water stakeholders on August 26, Board staff raised the possibility of the Board developing permanent (i.e., non-emergency) regulations to ensure continuing progress on water conservation and efficient use in the years ahead. We support this initiative, and urge that the development of such regulations get underway promptly.

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. 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.⁵ 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."⁶

In light of the well-established principles of beneficial use and avoidance of waste, underscored by persistent drought conditions and the growing manifestations of climate change, we take strong exception to the arguments contained in the September 18 letter to the Board authored by several urban water suppliers and trade associations. In this letter, these water suppliers attack both the authority and rationale for state conservation and efficiency regulations for non-drought periods.⁷ We could not disagree more.

- Every public water supplier has an obligation to prevent waste and unreasonable use;
- Every water supplier receiving water from or through the Delta has an obligation to reduce its reliance on the Delta;
- Every urban water supplier receiving financial assistance from the state has an obligation to implement water efficiency measures; and
- With most of the state served by interconnected water systems, reliability is enhanced when all water suppliers effectively conserve.

We believe the Board has both the authority and the responsibility to take action to identify areas where water suppliers must act to end water waste and ensure that all water is being put to beneficial use.

⁵ Cal. Const., Art. X, Sec. 2; Cal. Wat. Code sec. 100.

⁶ 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.

⁷ "At the meeting on August 26th, staff stated the State Water Board has sufficient authority to promulgate and enforce statewide water conservation standards during non-emergency periods as soon as 2016 and intended to do so by simple declaration of this authority. We disagree with this interpretation of authority and feel strongly that more time must be spent publicly deliberating this assumption of need. Also, we respectfully suggest that any conversation regarding the need for permanent water conservation regulations be balanced within an integrated planning framework that simultaneously evaluates the availability of water supplies. This is a very complex topic deserving of a full articulation of regional needs before presuming a state mandate for intervention." ACWA et al, letter to the SWRCB, September 18, 2015.

We agree with the authors of the September 18 letter in one respect – emergency drought regulations and long-term water efficiency standards should not be presumed to be the same, and separate processes should be maintained for both. We look forward to continued participation in discussions regarding extended emergency drought regulations for 2016, and the initiation of a parallel process by the Board to consider long-term conservation and efficiency standards. By separate cover, we will be glad to share with the Board a set of topics that should be addressed in permanent water efficiency regulations.

Sincerely,



Sara Aminzadeh, Executive Director
California Coastkeeper Alliance



Heather Cooley, Water Program Director
Pacific Institute



Edward R. Osann
Senior Policy Analyst
Natural Resources Defense Council