



Bringing
Water
Together

VIA EMAIL: wue@water.ca.gov; commentletters@waterboards.ca.gov

December 19, 2016

The Honorable Felicia Marcus, Chair
State Water Resources Control Board
1001 I Street, 24th Floor
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The Honorable Mark Cowin, Director
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SUBJECT: Comments on “Making Conservation a California Way of Life” November 2016 Public Review Draft

Dear Chair Marcus and Director Cowin:

The undersigned water suppliers and associations comprise designated members of the Urban Advisory Group (UAG) convened by the State to provide input on the framework for implementation of Executive Order B-37-16 (EO) and additional participants in the recent stakeholder outreach process. Many of us submitted a joint comment letter and detailed recommendations dated October 18, 2016, and we include that package with this letter, as it continues to be germane to the Public Review Draft. We would also like to draw your attention to a comment letter being submitted today from the American Water Works Association, California-Nevada Chapter, which pertains to portions of the Public Review Draft.

We would like to express our ongoing appreciation for the opportunities that the State has offered to provide input in this process. We continue to be committed to helping define a successful framework to help California prepare for and respond to future droughts, and to promote the long-term efficiency of water use. We would like to collaborate with you and your colleagues in the Brown Administration to craft a legislative package that we can all support.

While we are largely supportive of the initial recommendations in the Draft Report, we cannot support any policy that allows the State Agencies carte blanche in determining future water-use budgets, prohibitions or performance measures. We believe all new water-use target setting efforts must include a formal stakeholder involvement process, allowing for input on technical considerations and the potential for unintended consequences.

The conservation framework must take into account the One Water policy perspective, seeking a balanced and integrated approach to sustainable water management. Water sustainability and drought resilience must be measured in terms of BOTH water-use efficiency and the development of new supplies and storage.

To that end, we are concerned that the uncertainty associated with unknown future conservation regulations will serve as a significant *disincentive* for the development of new sustainable supply sources

and storage by local agencies, and we strongly believe that this would be an unwise direction for California to take. As such, several of our comments are aimed at improving incentives for new supply development while maintaining water-use efficiency principles.

Similar to the approach we took in October, we have identified the elements of the Public Review Draft that we support and which we believe will improve water management in the future, and we have provided specific feedback aimed at improving the proposal. We support the enforcement of water use efficiency targets in 2025, the transition to a five-year drought planning sequence in the Urban Water Management Plan, and the additional components proposed for the Water Shortage Contingency Plans – communication plan, specific compliance and exemption procedures, monitoring and reporting protocols and a regular review process. We also believe that providing State agencies with our annual supply and demand assessments will facilitate better understanding of hydrologic conditions throughout the state.

We have identified the following areas of continued concern, which we look forward to resolving with the Executive Order agencies in the final report (the citations in each comment refer to the relevant section(s) of the Public Review Draft).

Using Water More Wisely

Section 2.1 Emergency Conservation Regulations for 2017

- As the State Water Resources Control Board (SWRCB) considers extending the emergency regulation in January/February 2017, they must consider that many parts of the state are not experiencing emergency drought conditions due to improved hydrologic conditions, development of drought resilient supplies, or both. The SWRCB should rescind the emergency conservation regulations for those areas with adequate supplies, and focus on those communities that require assistance in meeting the water demands of their community. The SWRCB could continue its “stress test” demand reduction measures for areas in which supplies are inadequate in 2017 to meet normal demands.

Section 2.2 Permanent Prohibition of Wasteful Practices

- We request that the EO agencies include language to exempt residents from these prohibitions in the case of a public health or safety emergency and that uniform definitions of “measurable rainfall” and “street medians” be provided. We also ask that it be made clear in Section 2.2.4 that it will be the responsibility of local agencies to enforce these new regulations.

Section 2.4 Process for Determining Cost-Effectiveness of Water Conservation and Energy Efficiency

- It is stated in this section that the cost-effectiveness of potential appliance standards is based on the value of the water or energy saved, the effect on product efficacy for the consumer, and the life-cycle cost of complying with the standard to the consumer. The California Energy Commission (CEC) assesses the cost effectiveness of a proposed appliance standard by surveying and comparing the cost and operation of compliant and non-compliant appliances. Any increased costs must be offset by water and energy savings due to the increase in appliance

efficiency. We call on the CEC to include potential wastewater system impacts as a valid life-cycle cost associated with indoor appliances when conducting its cost-effectiveness analysis.

Section 3.1 New Water Use Targets

General

- Alternative Target-setting Approach (Sections 3.1.1 and 3.1.2.) We continue to request that the State include optional approaches to the strengthened standards target-setting process that build on the elements of SB x7-7, as is directed by the EO. Expansion of the State agencies' water budget based proposal to provide for alternative target-setting approaches that can be customized to unique local conditions, would be equally effective in reducing water use and would allow for alternative methods to reducing water demands that could be more cost-effective for some agencies to implement. This is particularly important for water agencies that lack resources or capacity to implement water budget programs, or for water agencies that would benefit from this additional flexibility. We also believe that a regional compliance approach should be allowed as an option.
- No Impact on Water Rights. The new water use efficiency program requirements must not adversely affect water rights or contracts held by water suppliers in California, and must explicitly recognize the ability of water suppliers to use or transfer the conserved water, pursuant to Water Code Section 1011. These provisions are already contained in Water Code Sections 10608 et seq. (SB x7-7), and must be maintained in any modifications thereto or in any new Water Code language to implement the Executive Order. We ask that language be added to the executive summary and introduction clearly stating the state's intent to preserve water rights as the elements of the Executive Order are implemented.
- Sustainable Water Management. When setting water use standards, it is imperative for the EO agencies to recognize that water conservation by itself is not going to result in a resilient supply that can manage severe shortage situations, which the state is likely to face in the future. As described in Governor Brown's California Water Action Plan, an integrated and sustainable approach must include both water use efficiency and local supply development. When considering lowering the standards on water use, the state must take into account local efforts in developing drought resilient supplies, as mentioned in section 4.2.2 of the Public Review Draft.

Indoor and Outdoor Standards

- Water Use Efficiency Standards and Reporting (Section 3.1.3.) We support the proposal to establish 55 gallons per capita per day (GPCD) as the indoor use standard and the use of MWELo standards in place when landscapes were installed as the outdoor use standard for residential properties, when using the proposed method, for determining compliance with the new efficiency targets in 2025. The landscape standard should be applied to irrigable areas of parcels. We support reporting on compliance with the 2025 targets in the 2025 Urban Water Management Plan. We do not support annual reporting on targets either before or after the

2025 Plan. Finally, while we are open to considering lower water use standards for residential customers in future years, we insist that any such consideration be inclusive of a public stakeholder process.

- Indoor Standards Workgroup (Section 3.1.3.) Similar to the Landscape Area Measurement Workgroup, which is to assist the state in developing the outdoor irrigation standard, the EO agencies should form an Indoor Standards Workgroup to assist the state in evaluating the data and research to be utilized in determining the 2025 indoor standard. As part of this effort, the EO agencies must conduct a scientific evaluation to identify potential impacts on wastewater systems and recycled water/potable reuse production before the indoor water use standard is reduced to a standard below 55 GPCD.
- Landscape Area Measurement Data (Section 3.1.3.) We request that the State provide to water suppliers either the detailed, verified landscape data for every parcel in a water agency that chooses to use the water use efficiency compliance method defined in the Public Review Draft or the funding for the agency to perform this analysis. A significant amount of data and technical assistance, as well as dedication of precious fiscal resources, will be required to implement these standards. The process and methods to obtain and disseminate the data will need to be transparent and technically sound in order to ensure credibility with the public and local decision makers.

In lieu of using state-supplied landscape data, water suppliers should be allowed to use self-supplied landscape data of equivalent or superior quality to develop targets. Additional landscape data provided by water suppliers could be used to address unique conditions in a service area such as agricultural land or to provide updated landscape area reflecting service area growth. Any landscape data provided by the water supplier would be required to incorporate landscape area assumptions and definitions consistent with those used in the state-supplied data set. We urge the State to take a deliberate and iterative approach that includes verification of accuracy by an independent third party and allows sufficient time to test the proposed standards and make refinements as necessary. In this regard, any delay in the availability of verified landscape data should be reflected in compliance deadlines for water suppliers.

- Variiances (Section 3.1.3.) We request that the EO agencies develop and implement a variance process to allow for the establishment of indoor and outdoor water use standards according to a water supplier's unique conditions, such as providing more water than the average for large animals, swamp coolers, home food production, etc. We ask that the draft framework include the development of variances and a variance process through a collaborative effort with water industry stakeholders.
- Recycled Water (Section 3.1.3.) The recycling and reuse of water is considered an efficient use of supplies and therefore should be removed from the water production calculations for determining compliance with 2025 targets, consistent with SB x7-7 (as is noted on pages 3-2 and 3-3 of this report). This approach will ensure incentives for the continued development of

recycling and potable reuse projects, which are critical to a resilient and sustainable water supply future for California.

Commercial and Industrial Performance Standards

- Commercial, Industrial, and Institutional (CII) Performance Measures (Section 3.1.3.) We support the exemption of CII water uses from volumetric targets. We conceptually support the establishment of performance measures for the CII sector but recommend that a CII workgroup with representative members from a broad spectrum of industries be engaged in the establishment of performance measures rather than by dictate in this report. Participation by industry along with water supplier representatives will help ensure Performance Measures are appropriate, effective and result in efficient water use without impairing economic activity. Further, we believe the stakeholder process is essential for achieving long-term support of Conservation as a Way of Life in the CII sector. The development of Performance Measures should build on the CII taskforce report completed in 2013. We also request the language concerning audits be revised to read:

Work with willing CII customers to conduct representative water-use audits or water management plans for CII accounts over a specified size, volume, or percentage threshold or an equivalent measure determined by the CII workgroup.

Water Loss

- Water Loss Requirements (Sections 2.3.3 and 3.1.3.) The Draft describes the requirements of SB 555 and the actions planned by DWR, CPUC and the SWRCB in Section 2.3.3, including potential loss standards and enforcement tools. We do not support also including water loss requirements in overall efficiency targets, as doing so creates an unnecessary, redundant and potentially conflicting compliance requirement.
- Reporting, Compliance Assistance and Enforcement (Section 2.3.4.) We support submittal of validated water loss audit reports to the California Department of Water Resources (DWR) by October 1, 2017 as is already required by law. However, we do not support the provision to disqualify agencies that do not submit these reports by that date from eligibility for DWR grants and loans.

Implementation and Enforcement

- Legislative Role in Updates to Water Use Targets (Section 3.1.3.) Any revisions of the standards and CII performance measures beyond the 2025 compliance period must only be implemented through future legislation. The role of the Legislature in crafting and refining California's water use policies and water use efficiency standards is critical, as is the role of the Legislature in providing agency oversight and accountability.
- Enforcement Measures (Section 3.1.4.) The consequences for a water supplier that fails to meet its 2020 water use efficiency standard consist of that water supplier becoming ineligible for

State grant funding. Water Code Section 10608.56 includes additional provisions that condition the imposition of such sanctions. We believe that these sanctions provide adequate incentive for water suppliers to achieve the water use efficiency standards proposed in the Public Review Draft and that any other financial penalties or enforcement processes would be unnecessary and counterproductive.

- Timeline Feasibility (section 4.3.) The EO agencies have proposed a significant number of important tasks to be completed between 2017 and 2018. We request that the state provide additional details on specific timelines and hold a workshop to ensure the schedule is realistic by seeking input from water suppliers regarding the possible impacts/constraints on staff and budget.

Eliminating Water Waste

Section 2.2 Monthly Reporting and Permanent Prohibition of Wasteful Practices

- Existing Authority (Section 2.2.3.) The Public Review Draft notes that the EO agencies plan to implement monthly reporting requirements and permanent water use prohibitions through existing authority. We request that the State provide more detailed information about the specific statutes that provide this authority.
- Stakeholder Input (Section 2.2.3.) A stakeholder workgroup should be formed as part of the rulemaking process to ensure the reports submitted monthly serve a meaningful purpose to the state and public and that the statewide permanent prohibitions are appropriate for communities throughout the state.

Strengthening Local Drought Resilience

Section 3.2 Water Shortage Contingency Plans

- Water Shortage Contingency Plan, Recommendation **Updated Contents of the Urban Water Management Plans** (Section 3.2.3.) In order to acknowledge the benefit of developing drought resilient, hydrologically independent supplies consistent with the California Water Action Plan, we request that the following be added below *2. Evaluation Criteria*:
 - e) *Drought resilient, hydrologically independent supplies such as potable reuse, recycled water and desalination are considered fully reliable under all historical drought hydrology and plausible climate change effects.*
- Water Shortage Contingency Plan , Recommendation , **Contents of the Water Shortage Contingency Plans** (Section 3.2.3.) This section should be clarified to acknowledge that in some cases where water suppliers have in place or may invest in drought resilient, hydrologically independent supplies, these agencies may in fact not experience shortages under drought

conditions. In light of this, we recommend the following language be added to 4. *Shortage Levels. Evaluation Criteria:*

- *Water suppliers with a substantial portfolio of drought resilient, hydrologically independent base supplies may not experience shortage conditions due to drought or climate change. Water suppliers with validated, reliable, base water supplies of this type shall only be required in WSCPs to address shortage levels up to the maximum percentage that can be feasibly caused by dry hydrologic conditions.*
- Additional Dry Year Analyses (Section 3.2.3). We do not support the State’s proposal to require “one or more <additional> dry years” to be analyzed as part of the annual water budget forecast. We would support an analysis of one additional dry year in the forecast, if conditions require a water supplier to implement its water shortage contingency plan.
- Water Shortage Contingency Plans (page 3-13). It must be made clear that should an agency implement its defined shortage response actions (SRA’s) that effectively move the agency out of a shortage condition, then there is no need for the agency to declare an emergency, or be considered to be in an emergency shortage condition by the DWR or SWRCB.
- Drought Planning for Small Water Suppliers and Rural Communities, Current Status (Section 3.3.1.) While SGMA implementation will be important to future water supplies in California, and sustainable groundwater management will be a key element of preparing for and responding to future droughts, we believe the Draft mischaracterizes the authority and responsibility of GSAs relative to Drought Planning for Small Water Suppliers and Rural Communities. We believe that drought planning for specific water systems and assurance of future water supplies is beyond the scope of SGMA, and recommends this reference (p 3-16, second column, lines 5-11) be removed from the document. While GSAs must consider the interests of all water users, they do not have an explicit obligation for water supply reliability to any user.
- Drought Planning for Small Water Suppliers and Rural Communities, Recommendations (Section 3.3.3.) We request that the framework clarify that those small water systems which have already established their own shortage plans should retain the flexibility to maintain the authority to implement their shortage plans and coordinate with their respective water wholesaler or County and not be subject to a new duplicative countywide effort.
- Drought Planning for Small Water Suppliers and Rural Communities, Recommendations (Section 3.3.3.) We support the effort to improve drought planning for small and rural water suppliers but do not recommend adding additional requirements to Groundwater Sustainability Plans without appropriate and necessary stakeholder input. We request the coordination language be revised to read:

5. *Coordination – Work with stakeholders to develop opportunities to coordinate SGMA efforts and drought planning. Evaluate options for reflecting drought planning and responses in Groundwater Sustainability Plans.*

Thank you for the opportunity to comment. We look forward to continued collaboration with staff of the State agencies to develop a framework by the January 2017 deadline that meets the objectives of the EO while preserving local water supplier authority and providing flexibility in implementation.

Sincerely,

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