



February 11, 2016

Jeanine Townsend
Clerk to the Board
commentletters@waterboards.ca.gov
Joe Serna Jr. - CalEPA Building
1001 I Street, Sacramento

Re: State Water Resources Control Board Resolution Adopting the Human Right to Water as a Core Value and Directing its Implementation in Water Board Program and Activities.

Dear Ms. Townsend:

The undersigned organizations appreciate the opportunity to provide the State Water Resources Control Board (**SWRCB**) with the following comments in relation to the SWRCB's Draft Resolution Adopting the Human Right to Water as a Core Value and Directing its Implementation in Water Board Program and Activities dated February 4, 2016 (**Resolution**).

The SWRCB's stated intent in adopting the Resolution is to provide direction and guidance to the Regional Water Quality Control Boards (**Regional Boards**) to ensure consistency in the manner in which the human right to water is considered in certain board actions. The SWRCB also insists the proposed Resolution will not expand the legal scope of the human right to water as described in Water Code section 106.3, nor will it impose new requirements on the regulated community, expand any obligation of the Regional Boards to provide water, or otherwise alter existing law.

We disagree with this analysis and believe the Resolution does alter existing law and expands the legal scope intended by Water Code section 106.3, including expanding the obligation of the Regional Boards, which were intentionally excluded from the requirements of Water Code section 106.3.

Water Code section 106.3 established a policy that "every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking and sanitary purposes." (Wat. Code § 106.3(a).) It further directed relevant state agencies to consider this policy when revising, adopting, or establishing policies, regulations, and grant criteria when the agency's policies, regulations and criteria are pertinent to adequate water for human consumption, cooking and sanitary purposes. (Wat. Code § 106.3(b).)

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Early drafts of AB 685 included the Regional Boards among the agencies identified to consider the policy in Water Code section 106.3. However, the scope of Water Code section 106.3 was intentionally limited during the legislative process to remove the Regional Boards from the bill. (Assem. Floor, analysis of Assem. Bill 685 (2011-2012 Reg. Sess.) passed as amended August 22, 2012.) Contrary to this intentional removal of the Regional Boards, the "Discussion" section of the SWRCB's Resolution states the Resolution is intended to direct the Regional Boards in the manner Water Code section 106.3 should be applied to Regional Board actions. Paragraphs 2 and 7 of the Resolution then "encourages" the Regional Boards to consider the human right to water in all activities that could affect existing or potential sources of drinking water and in all recommendations to the SWRCB. Paragraph 9 further "encourages" the Regional Boards to evaluate the extent to which a proposed project, plan, decision or action has been developed with engagement of impacted communities. This direction and identification of Regional Board actions in which the Regional Boards are "encouraged" to consider the human right to water is an expansion of Water Code section 106.3 and could impose additional requirements on the regulated community when a Regional Board is considering a proposed project plan, decision or action.

The Resolution also expands the scope of the application of Water Code 106.3. Paragraph 7 of the Resolution directs the SWRCB staff and encourages the Regional Boards to describe how the human right to water was considered in all recommendations to the SWRCB. This requirement removes the limitation placed in Water Code section 106.3 that state agencies only consider the human right to water when revising, adopting or establishing policies, regulations and grant criteria pertinent to the right to water for human consumption, cooking and sanitary purposes. Instead, it requires the consideration of the human right to water in all recommendations made to the SWRCB.

The Resolution is overly broad, goes beyond the intent of Water Code 106.3 and places unnecessary requirements on SWRCB and Regional Board staff. We request the SWRCB reject the Resolution and, if such action is proposed again in the future, provide legal justification before moving forward.

Sincerely,



Terry Gage
California Agricultural Aircraft Association



Barry Bedwell
California Fresh Fruit Association



Roger Isom
California Cotton Ginners and Growers
Associations
Western Agricultural Processors Association



California Rice Commission



Joel Nelsen
California Citrus Mutual



Renee Pinel
Western Plant Health Association

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cc: Felicia Marcus, Chair, State Water Resources Control Board;
Frances Spivy-Weber, Vice Chair, State Water Resources Control Board;
Tam M. Doduc, Member, State Water Resources Control Board;
Steven Moore, Member, State Water Resources Control Board;
Dorene D'Adamo, Member, State Water Resources Control Board