

Sent via ELECTRONIC MAIL to Mary.Yang@waterboards.ca.gov

August 25, 2017

Ms. Mary Yang
Environmental Scientist
Division of Drinking Water
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Re: Program Scenarios: Association of California Water Agencies' Comments regarding the Development of a Plan for a Low-Income Water Rate Assistance Program [AB 401, Dodd, 2015 Implementation]

Dear Ms. Yang:

The Association of California Water Agencies (ACWA) appreciates the opportunity to comment regarding the State Water Resources Control Board's (State Water Board's or SWRCB's) development of a plan for the funding and implementation of a Low-Income Water Rate Assistance (LIWRA) Program (the Plan), as required by AB 401 (Dodd, 2015). ACWA represents over 440 public water agencies that collectively supply over 90% of the water delivered in California for domestic, agricultural, and business uses.

ACWA recognizes the importance of water affordability. At the same time, our members must make water management work on the ground. As recognized by now Senator Dodd, the development of the Plan requires collaboration with stakeholders to make sure it will work and not result in unintended consequences.

- 1. Governor Brown's Signing Message: Governor Brown wrote that the AB 401 Plan will provide a path for "modest, additional steps." The plan scenarios currently being analyzed by State Water Board staff would not be "modest, additional steps."**

In his signing message for AB 401 dated October 9, 2015, Governor Brown wrote the following:

While the plan called for in this bill will provide for **modest, additional steps**, we already know that Proposition 218 serves as the biggest impediment to public water systems being able to establish low-income rate assistance programs. Proposition 218 similarly serves as an obstacle to thoughtful, sustainable water conservation pricing and necessary flood and stormwater system improvements. My administration will work with the Legislature and stakeholders next year to address these problems, while maintaining rate payer protections. [Emphasis added.]

Currently, State Water Board staff is evaluating four scenarios. All **four of the scenarios currently being evaluated would include a water service subsidy for approximately 34 percent of the households in California.** This high percentage is based on a 200 percent of the federal poverty level eligibility threshold. As discussed in Comment 7, AB 401 authorizes the State Water Board to consider income levels less than a 200 percent threshold. While ACWA wants to be constructive in this area, **we do not see a subsidy for one-third of California households as a “modest step.”**

Further, one of the funding mechanisms that the State Water Board staff is talking about is a tax on water that would range from \$277 million per year to \$619 million per year depending on the scenario (not including administrative costs). **We do not see the use of a tax on water as a “modest, additional step.”** As commented on below, ACWA is concerned that a tax on water would work against the affordability of water.

2. Incremental Approach: The State Water Board should take an incremental approach such as incorporating pilot projects into the Plan and ramping up implementation over time.

As commented on below, different scenarios could have unintended consequences. Local water agencies are of all different sizes and have different water supplies, budgets and staffing levels. ACWA suggests that the State Water Board take an incremental approach. The Plan should begin with pilot projects which are aimed at learning before a new and untested approach is implemented statewide. This would help avoid unintended consequences. A rushed and simplistic approach could backfire against effective water management and needed local investments in water infrastructure.

3. Process: “Collaboration”: AB 401 requires the State Water Board to develop the Plan “in collaboration” with relevant stakeholders. One stakeholder meeting with the public water agency community is not sufficient to fulfill that requirement. “In collaboration with” means to “work jointly” on the development of the Plan with all relevant stakeholders.

This summer, State Water Board staff held a series of public meetings regarding plan development. ACWA appreciates the holding of the public meetings. We also appreciate the opportunity to provide written comments at this time.

In ACWA’s February 6, 2017 comment letter, we noted that subdivision (b) of Section 189.5 of the California Water Code requires the State Water Board to develop the plan “in collaboration (...) with relevant stakeholders.” We commented that **“Collaboration involves meetings where SWRCB staff and stakeholders roll up their sleeves and jointly work through issues.”** During the public meetings this summer, ACWA members and ACWA commented that a collaborative stakeholder process is needed to comply with the law.

Various State laws require the holding of public meetings. For example, Proposition 1 of 2014 required state agencies to conduct three public meetings to consider public comments prior to finalizing the project solicitation and evaluation guidelines. (See subdivision (b) of California Water Code Section 79706.)

Requiring “collaboration” is different than requiring the holding of public meetings. Under the plain meaning rule of statutory interpretation, in order for legislative intent to be given effect, a statute should be construed with due regard for the ordinary meaning of the language. Merriam-Webster’s Dictionary defines “collaborate” as “to **work jointly** with others or together especially in an intellectual endeavor.”¹ We appreciate that State Water Board staff has agreed to hold a stakeholder meeting with water stakeholders at the end of the month. However, to “work jointly” on the development of the Plan will take more than one stakeholder meeting. It will need to be an iterative process with staff and stakeholders sharing information and working together.

The Plan is not required to be completed until January 1, 2018, and the report is not due until February 1, 2018. Having been given the time, ACWA urges the State Water Board to use it to fulfill the requirement for collaboration.

4. Process: Participants: ACWA suggests the combination of small and large group stakeholder meetings.

State Water Board staff has now scheduled one water stakeholder meeting. ACWA appreciates staff’s outreach to the general public in the form of the public meetings and the scheduling of a stakeholder meeting. However, one meeting is not sufficient to allow State Water Board staff and water stakeholders to “work jointly” to develop the plan. Further, the meeting is by invitation only – with invitations going to a relatively small number of stakeholders. ACWA suggests that if the State Water Board wants to use the smaller group meetings, and we do see merit to that, there should also be larger meetings held where water stakeholder participation is more inclusive and provides for representation of agencies of all sizes, as well as from all of the regions in the state. Statewide plans should include a statewide perspective.

5. Process: Draft Plan Review: State Water Board staff should release the draft Plan to stakeholders for their final review and comments prior to completion of the final Plan.

Under AB 401, the State Water Board is required to complete the Plan by January 1, 2018. In the spirit of collaboration, State Water Board staff should commit to releasing a draft Plan to stakeholders ahead of this deadline to ensure adequate time for review and comment on the draft prior to completion of the final version and submittal to the Legislature.

6. Needs Assessment: The best solutions are based on a good understanding of the problem. There does not appear to be any needs assessment supporting the development of the Plan.

In ACWA’s February 6, 2017 comment letter, we noted that “if the SWRCB, the water community and other stakeholders can reach alignment on what ‘affordable’ means, how the scope of need should be determined and what that need is, there will be a solid foundation for engagement on other issues in this program.” We echo that comment in this letter for the August 25 comment deadline. This topic needs to be a major discussion item in the stakeholder meetings that need to be held.

¹ Merriam-Webster, Inc. <https://www.merriam-webster.com/dictionary/collaboration>. July 6, 2017.

7. Appropriate Thresholds (Sensitivity Analysis): The State Water Board should evaluate the pros and cons of different income eligibility thresholds.

All four of the potential scenarios that the State Water Board staff has presented to date are based on providing a benefit to households that are at or below 200 percent of the Federal Poverty Guideline Level. AB 401 defines “low income” as “a household with income that is equal to **or no greater than** 200 hundred percent of the federal poverty guideline.” (See subdivision (f)(2) of Water Code Section 189.5.) This definition allows the State Water Board to use a threshold that is lower than 200 percent. So the State Water Board can evaluate more than one threshold. Because this program could result in less affordable water for those just above whatever threshold is used, the Board should conduct a sensitivity analysis and really evaluate the effect of the program with, and the pros and cons of, different thresholds (such as 100 percent and 150 percent).

8. Scenarios: Transparency: ACWA again requests that State Water Board staff make available to the public all of the information provided by UCLA relative to AB 401 implementation.

In ACWA’s February 6, 2017 comment letter, we requested that State Water Board staff make available to the public all of the information provided by UCLA relative to AB 401 implementation. We assume that UCLA has provided more information than the Power Point presentations. At ACWA’s conference in May, staff indicated that they would post the UCLA data. To date, the UCLA information has not been posted. ACWA reiterates the comment again here requesting that all information provided by UCLA be made available in a timely fashion to the public and posted on the State Water Board’s website.

9. Scenarios: Benefit Calculation: Use of a volumetric approach in the benefit calculation should be consistent with the scope of California’s Human Right to Water.

In the program scenarios currently under consideration, the proposed benefit is based on a percentage of the customer’s expenditure on 12 hundred cubic feet (ccf) of water. For a household of four people, 12 ccf per month is equivalent to approximately 300 gallons for daily household usage or 75 gallons per capita per day. As explained below, ACWA suggests that the volume should be 8.82 ccf.

The Human Right to Water statute addresses water for human consumption, cooking and sanitary purposes. (See subdivision (a) of California Water Code Section 106.3.) The LIWRA benefit should be consistent with those three purposes (as opposed to providing a subsidy for watering of landscape, for example). If one assumes 55 gallons per day for those indoor purposes, it translates to 8.82 ccf in a month for a household of four.

10. Scenarios: Affordability/Spiral Effect: The State Water Board should be cognizant of the potential “spiral effect.”

The communities that local water agencies serve vary greatly across the State and across regions. As was raised at the ACWA Conference in May, a large part of a community may be below the selected income eligibility threshold, but a large part of the community may be just above that threshold. In such instances, what effect does this program have for those who are

just above the threshold? As water rates increase, the program could lead to a financial burden that falls on a progressively diminishing subset of ratepayers. ACWA suggests that the State Water Board be aware of this “spiral effect” issue as it develops the AB 401 Plan. A robust sensitivity analysis, as mentioned above, would help the State Water Board and stakeholders work through this issue.

11. Scenarios: Funding Sources: ACWA opposes a tax (public goods charge) on water to fund low income water rate assistance.

ACWA opposes a tax on water as a funding mechanism for a LIWRA program. ACWA believes that it is not good policy to tax something that is essential to life. Putting a tax on water would also work against affordability. A tax on water is regressive and has more of an impact on those who have lower incomes. Putting a tax on the water for 2/3 of households to subsidize part of water costs for 1/3 of the households is not a “modest step” as referenced by the Governor in his signing message.

12. Eligibility Verification: Eligibility verification is important and should be conducted in an efficient manner.

Making sure that customers qualify for discounts is important. However, water agencies generally do not have income information for customers. Information from existing federal and state welfare programs should be used as opposed to having the state or local agencies duplicate those existing efforts. The stakeholder process should further explore options for this topic.

13. Cost Sensitivity: As the State Water Board implements the Human Right to Water and develops the Plan, ACWA urges the State Water Board to be sensitive to how regulatory actions affect the cost of water and thereby water affordability.

AB 401 requires the State Water Board to include in the Plan a set of best practices for cost-savings at water utilities which can help keep rates down. Of course, one thing that the recent, historic drought confirmed was the importance of the investments that local water agencies and their customers have been making over the past decades in drought-resilient supplies. Caution is needed in this area.

We also request that the State Water Board be sensitive to the fact that regulatory actions that affect public water systems costs implicitly affect the affordability of water for consumption, cooking and sanitary purposes.

14. Legal Issues: State Water Board staff should make publicly available any legal analysis from UC Berkeley regarding AB 401 implementation.

ACWA requests that staff make publicly available in a timely fashion, on the State Water Board website, any legal analysis from UC Berkeley for the AB 401 program. We understand that State Water Board staff had asked the Wheeler Water Institute at the UC Berkeley School of Law to analyze legal issues for AB 401 implementation.

15. Existing Programs: ACWA recommends that the Plan build on the experience of existing programs.

ACWA recommends that the State Water Board research the experience and practices of other social service programs at the local, state, federal and nonprofit level to ensure that funding for the LIWRA program is used in the most efficient manner. We note that the CalFresh program currently enrolls only 11% of the State's population, reinforcing both our concerns that the proposed LIWRA program scope may overreach at the outset and our recommendation to proceed with LIWRA incrementally at a more limited pilot scale to learn by experience.

Existing LIWRA programs implemented by water retailers should be allowed to continue under this phased approach, while the State focuses initially on the lowest income households not being served by an existing program. We would also ask the State Water Board to recognize that there are numerous barriers to enrollment for eligible households. Finally, self-certification for eligibility without verification should not be allowed as that would inflate program costs with non-eligible participants.

ACWA appreciates the State Water Board's consideration of these comments. I am available to answer questions at (916) 441-4545 or cindyt@acwa.com.

Sincerely,

A handwritten signature in black ink that reads "Cindy Tuck". The signature is written in a cursive, flowing style.

Cindy Tuck
Deputy Executive Director for Government Relations

cc: The Honorable Felicia Marcus, Chair, SWRCB
The Honorable Steven Moore, Vice Chair, SWRCB
The Honorable Tam M. Doduc, Member, SWRCB
The Honorable Dorene D'Adamo, Member, SWRCB
The Honorable E. Joaquin Esquivel, Member, SWRCB
Mr. Gordon Burns, Undersecretary, CalEPA
Ms. Eileen Sobeck, Executive Director, SWRCB
Mr. Michael Lauffer, Chief Counsel, SWRCB
Mr. Eric Oppenheimer, Chief Deputy Director, SWRCB
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Mr. Max Gomberg, Climate and Conservation Manager, SWRCB