



December 22, 2017

State Water Resources Control Board  
Attention: Ms. Jeanine Townsend, Clerk of the Board  
P.O. Box 100  
Sacramento, CA 95812-2000



Sent via email to: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

### Comment Letter – Prohibiting Wasteful Water Use Practices

Dear Ms. Townsend:

On behalf of the California Water Association (“CWA”) and the 100 water utilities regulated by the California Public Utilities Commission (“CPUC” or “Commission”) that serve 6 million Californians with safe, reliable high-quality water, I respectfully submit the following comments on the proposed regulation of wasteful water use practices. By virtue of their performance in having consistently exceeded the statewide average for reductions in water production during the time frame for the State Water Resources Control Board’s (“State Water Board”) emergency regulation throughout the 2012-2016 drought, CWA’s members believe these comments warrant careful consideration.

The Commission was one of the five state agencies responsible for developing the “Making Conservation a California Way of Life” report, and CWA was pleased to have been able to coordinate with the CPUC on the development of those sections specifically related to the regulated public utilities. For many years, CWA member companies have applied an integrated approach to water conservation. They have been effectively supporting long-term water use efficiency through their implementation of the CPUC’s Water Action Plan and through their investments in conservation programs, recycled water, groundwater management, customer assistance and education, and deployment of conservation rate designs. All are committed to these efforts in the future.

Integral to CWA’s efforts is support for the “common sense” restrictions on wasteful water use practices, including those contained in the “Notice of Proposed Regulatory Action” issued by the State Water Board on November 1, 2017, which would, if adopted, establish a new Article 2 on Water Conservation in Chapter 3.5, Division 3, Title 23, “Conservation and the Prevention of Waste and Unreasonable Use,” in the California Code of Regulations. In fact, CWA member companies, working in close coordination with the CPUC (through authorized tariffs) and local government agencies, already prohibit the same wasteful water use practices listed in Article 2, Sec. 963(b)(1) of the proposed regulation.

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CWA generally supports the proposed restrictions and considers them reasonable and necessary for continued progress in maximizing water use efficiency. CWA is concerned about some of the language being proposed, however, and encourages the State Water Board to address these concerns in the final regulation. The basis for CWA's recommendations is that (1) not all of the prohibited practices fall under the "waste and unreasonable use" doctrine that the State Water Board is using as the legal basis for this regulation, and (2) CWA's members have devoted considerable time developing mutually beneficial working relationships with the local government agencies and communities they serve, and some of the language proposed for the regulation may hinder the coordination between the urban water suppliers and their communities that is necessary for successful implementation.

Accordingly, CWA requests that the State Board provide sufficient flexibility to water providers and their communities such that local circumstances (supply portfolios, recycled water investments, conservation rate structures, MS4 permit conditions, financial incentives and disincentives, etc.) can be considered and incorporated into local restrictions with a minimum of customer confusion and pushback. Allowing local government agencies to tailor restrictions to local circumstances, and to work with public water systems within their jurisdictions on such tailored restrictions, will preserve and enhance existing collaborative relationships.

CWA also recommends the following minor revisions to listed wasteful water use practices:

- The word "potable" should be added to Sec. 963(b)(1)(A) so that it reads: "The application of potable water to outdoor landscapes in a manner that causes runoff such that water flows onto adjacent property, non-irrigated areas, private and public walkways, roadways, parking lots, or structures." This minor change will exempt non-potable water use (gray water, non-potable recycled water, etc.) from the restriction and accommodate future technology gains and regulatory updates.
- For the same reasons, the word "potable" should be added to Sec. 963(b)(1)(B) so that it reads: "The use of a hose that dispenses potable water to wash a motor vehicle, except where the hose is fitted with a shut-off nozzle or device attached to it that causes it to cease dispensing water immediately when not in use."
- Likewise, for the same reasons, the word "potable" should be added to the first line of Sec. 963(b)(1)(E) between "of" and "water."
- And, again for the same reasons, as well as the additional explanation in the paragraph at the top of page 3, Sec. 963(b)(1)(G) should be revised as follows. Other exceptions should be included as well for cost control, dust control, fire risk reduction, and prevention of tree mortality. CWA suggests Sec. 963(b)(1)(G) be revised as follows:

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“The irrigation of turf on public street medians or publicly owned or maintained landscaped areas between the street and sidewalk with potable water, except where the turf serves a purpose other than ornamental, as determined by the appropriate local government and/or community organization responsible for such turf.”

It would be unfair to penalize those utilities and communities that supported state policy the past two decades through local investments in recycled water sources by prohibiting irrigation of these land parcels with recycled water. The proposed regulation conditions the prohibition with the caveat “except where the turf serves a community or neighborhood function.” Cost control, dust control, reduction of fire risk (where roadways can serve as partial fire breaks), prevention of tree mortality and shading and aesthetic benefits are all legitimate functions that the regulation should recognize. While potable water irrigation of these landscapes may be minimized if tree mortality isn’t a consideration, recycled water should be encouraged for this role, not subjected to a conditional prohibition. At a minimum, this regulation should not apply to medians or verges that contain trees.

In order to ensure that the proposed language of the exception in Sec. 963(b)(1)(G) pertaining to turf that “serves a community or neighborhood function” is not deemed vague or confusing, CWA recommends that this phrase be added to the end of the sentence: “... serves a community or neighborhood function, *as determined by the local authority.*”

Additional recommendations from CWA are as follows

- 1. Sec. 963(b)(1)(E)’s proposed restriction on irrigating turf and ornamental landscapes within 48 hours of measurable rainfall of at least one-tenth of an inch should be modified to orient the prohibition to local community implementation.**

The proposed prohibition does not consider microclimates (which abound in California), does not consider the wide variability of precipitation amounts in a community, and does not include a distance component. While one-tenth of an inch of rain may be measurable at a California Irrigation Management Information System (“CIMIS”) weather station, the measurable rain may not be discernable at a nearby location in the same community or customer service area ... and vice-versa.

This circumstance leads to the undesirable result that a public water system customer may be accused of a violation even though his or her home received no rainfall. However, it isn’t necessary to abandon this prohibition. Instead, CWA simply recommends excluding the one-tenth of an inch measurement, thereby allowing the local community and water supplier to deploy the necessary technology (e.g., GIS and daily precipitation data) and other resources that will allow them to implement the prohibition locally in a manner that is fair and practical for customers.

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**2. Exclude the prohibition to “serve drinking water other than upon request” in eating or drinking establishments.**

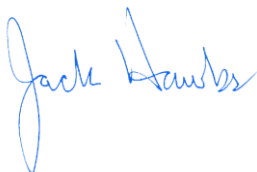
The restaurant and hospitality requirements in this regulation do not rise to the level of an unreasonable use of water. “Because this prohibition has more to do with raising consciousness than saving significant amounts of water,” this type of prohibition is better reserved for emergency conditions where it can be deployed locally as a customer education or messaging tool that serves to heighten customer awareness of the severity of a drought, thereby prompting water conservation behavior of a more consequential nature.

**3. The health and safety exemptions should be revised and simplified.**

Currently, the health and safety exemptions contained in Sec. 963(b)(2)(A) include several examples, none of which include the personal health and/or safety needs of individuals. So as not to inadvertently cause confusion or concern about whether water may be used for individual health and/or safety needs, the language of proposed Sec. 963(b)(2)(A) should be simplified as follows: “To the extent necessary to address an identified health and safety need.”

CWA appreciates this opportunity to provide its comments on the proposed regulation of prohibited water uses and related requirements. We urge the Board to consider these comments and modify the proposed regulation consistent with the recommendations presented above. If you have any questions, please feel free to contact me at [jhawks@calwaterassn.com](mailto:jhawks@calwaterassn.com) or (415) 561-9650.

Sincerely,



Jack Hawks  
Executive Director

Cc: Hon. Martha Guzman Aceves, Commissioner, California Public Utilities Commission  
Rami S. Kahlon, Director, Water Division, California Public Utilities Commission  
Eileen Sobek, Executive Director, State Water Resources Control Board  
Eric Oppenheimer, Chief Deputy Director, State Water Resources Control Board  
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