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VIA EMAIL: commentletters@waterboards.ca.gov

February 14, 2018

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814



Subject: "Comment Letter – Changes to Proposed Regulation Prohibiting Wasteful Water Use Practices"

Dear Ms. Townsend:

The Association of California Water Agencies (ACWA) appreciates this opportunity to provide comments on the State Water Resources Control Board's (State Water Board) changes to proposed regulation prohibiting certain "wasteful water uses." The changes were made in response to public comments on the initial draft and were released for a 15-day comment period on January 15, 2018. This proposal is intended, in part, to replace similar prohibitions that were part of the statewide emergency drought response regulation which expired on November 25, 2017.

ACWA represents approximately 440 public water agencies responsible for delivery of over 90% of the water used for residential, commercial and agricultural purposes in California. As noted in our previous comment letter dated December 21, 2017, most of California's urban water suppliers have already locally prohibited many of the "wasteful water uses" which were included in the emergency drought response regulation and are now proposed for permanent statewide prohibition. Any potential additional annual water savings associated with the State Water Board proposed statewide prohibitions would be essentially inconsequential and statewide regulation may be considered unnecessary from a practical perspective.

ACWA appreciates many of the proposed changes to refine and better target the proposed prohibitions. However, we continue to have several concerns about some of the proposed prohibitions, which were identified in our previous letter and to which the proposed changes are not fully responsive.

Additionally, ACWA continues to share a fundamental concern with urban water agencies and water rights holders statewide about the State Water Board's intention to use its general authority to prevent "waste and unreasonable use" as a means to categorically prohibit certain water use practices without consideration of specific water use circumstances as required by law. ACWA has joined a coalition letter dated February 14, 2018, prepared by water rights attorneys and submitted separately on behalf of a significant number of water agencies, which conveys the basis of this concern and advocates a more defensible legal framework for the proposed conservation regulation.

Proposed Prohibitions

ACWA appreciates some of the changes that were made to the proposal in response to comments. However, several concerns that we previously identified remain. ACWA asks the State Water Board to:

1. Eliminate the Statewide Prescription of What Constitutes “Measureable Rainfall”

Although ACWA supports the proposed change from specifying measurable rainfall as one fourth of an inch of rain instead of one tenth of an inch as initially proposed, we continue to believe that a statewide prescription should be eliminated entirely to restore needed local flexibility to balance highly localized and variable rainfall patterns, site-specific landscape irrigation needs, technical limitations of rain sensors and irrigation controllers, and to retain the wording of the previous emergency drought prohibition, which was effectively administered by local water suppliers.

2. Eliminate the Statewide Prohibition on Serving Drinking Water Other Than Upon Request In Favor of Local Implementation

Although ACWA supports the proposed change to this prohibition which conditions it upon a declaration of drought by the Governor, we continue to believe that this measure should be reserved and deployed as determined by local water suppliers in the appropriate local water supply and public education context to retain its effectiveness. It should therefore be removed as a statewide prohibition.

3. Eliminate Prescriptive and Burdensome Prohibitions on Turf Irrigation Adjacent to Streets and Use of Recycled Water for Irrigation of Turf on Medians

ACWA recommends the complete removal of turf irrigation on parkways from the list of prohibitions. Parkway are often irrigated on the same intertwined irrigation system as the rest of the landscaping on adjacent private property. The proposed regulation would require extensive resources to replace all existing irrigation systems connected with parkways. Communities that could not afford to retrofit existing irrigation systems would likely stop watering both the parkway and the property landscapes to comply with the new regulation, resulting in blighted neighborhoods.

Furthermore, although ACWA supports the proposed change to grandfather irrigation systems using recycled water installed prior to January 1, 2018, we continue to believe that the site-specific considerations associated with landscaping and irrigation of medians and parkways (including use of recycled water and irrigation methods to keep trees alive) renders imposition of a general statewide prohibition of this type highly burdensome and too prescriptive. Irrigation of center median or parkways with recycled water may not constitute an unreasonable use for a community with insufficient demands to utilize all of its available recycled water and when the excess water would otherwise be discharged to the ocean. On the other hand, a different determination may be warranted for a community that has limited water supplies and fully utilizes its recycled water for other, higher uses. Local agencies are best equipped to weigh these important factors and make fact-based determinations.

In addition, the proposed turf irrigation restriction is both redundant in part and inconsistent in part with existing regulations. The application of the restriction to center medians is redundant with Section 492.6(a)(1)(E) of the California Code of Regulations that prohibits high water using plants, characterized by a plant factor of 0.7 to 1.0, for these areas. With respect to publicly owned and maintained parkways, the restriction is redundant with Section 491(s) that establishes an ET adjustment factor of 0.45 for non-residential areas and would effectively preclude turf irrigated with potable water in these areas. However, the proposed restriction is inconsistent with Section 492.14(c) that appropriately categorizes landscapes using recycled water as "Special Landscape Areas" with an ET adjustment factor of up to 1.0, which would support turf.

We recommend that the Board remove the proposed prohibition on irrigating turf in center medians and parkways from the regulation or, at a minimum, modify the provision such that it does not extend to recycled water.

Thank you for your consideration of these comments. I am available to discuss them by email or phone at daveb@acwa.com or (916) 441-4545.

Sincerely,

A handwritten signature in black ink that reads "David E. Bolland". The signature is written in a cursive, slightly slanted style.

David Bolland
Director of State Regulatory Relations

cc: Honorable Felicia Marcus, Chair, State Water Resources Control Board
Honorable Steven Moore, Vice Chair, State Water Resources Control Board
Honorable Tam M. Doduc, Member, State Water Resources Control Board
Honorable Dorene D'Adamo, Member, State Water Resources Control Board
Honorable E. Joaquin Esquivel, Member, State Water Resources Control Board
Ms. Eileen Sobeck, Executive Director, State Water Resources Control Board
Mr. Michael Lauffer, Chief Counsel, State Water Resources Control Board
Mr. Eric Oppenheimer, Chief Deputy Director, State Water Resources Control Board
Mr. Max Gomberg, Climate and Conservation Program Manager, State Water Resources Control Board
Ms. Charlotte Ely, Climate and Conservation Specialist, State Water Resources Control Board
Ms. Kathy Frevert, Climate and Conservation Specialist, State Water Resources Control Board
Mr. Timothy Quinn, Executive Director, ACWA
Ms. Cindy Tuck, Deputy Executive Director, Government Relations, ACWA