



Ms. Felicia Marcus, Chair
c/o Jessica Bean
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95812-2000

Re: Mandatory Conservation – Proposed Regulatory Framework

Dear Chair Marcus and Members of the Board:

The Natural Resources Defense Council (NRDC) and the Bay Institute appreciate the opportunity to comment on the State Water Resources Control Board's ("State Board" or "Board") proposed regulatory framework for mandatory conservation. NRDC strongly supports regulations that require water conservation during the drought emergency and establish more sustainable consumption patterns for the future. We offer the following recommendations with respect to the proposed conservation regulations for urban and small water suppliers, as well as end users.

Support for 2013 as the Base Year

Some water suppliers have questioned the continued use of 2013 as the base year, and would prefer to have the Board reach further back in time in the interest of "fairness" for prior water conservation initiatives. We support using 2013 as the base year. This is the same year on which last year's voluntary call for a 20% reduction in water use was based, so those utilities that have achieved substantial reductions during the drought will get those reductions credited toward this new requirement (assuming they are maintained), since the baseline is the same. Water suppliers whose 2013 usage was reduced by previous conservation efforts will benefit from those efforts by having to make lower absolute reductions now to meet the drought emergency regulations.

Apportioning Water Supplier Reductions

To improve the perceived fairness of reduction targets, the conservation standards could increase in smaller increments. The Board should consider using a sliding scale or a system with a greater number of groupings (or tiers), rather than the simple four-tier system with its unequal increments between tiers. Also, while the Board has appropriately increased reduction requirements among the water agencies with the highest per capita consumption rates, as called for in the Executive Order, the distribution of the reduction requirements may be improved by establishing a 5% conservation standard for the lowest-use suppliers and a conservation standard of up to 40% for the highest-use suppliers. In making any apportionment adjustments, the Board

should also ensure that any tiered or sliding-scale system will allow achievement of the statewide 25% reduction goal.

Reporting Requirements for Small Water Suppliers

In addition to reporting on their water production 180 days after the effective date of the emergency regulations as proposed, the State Board should also require small water suppliers to submit their production data at the end of February 2016. This additional reporting period will allow the State Board to assess whether small water suppliers have ultimately met their conservation targets and to mandate specific conservation actions or impose enforcement actions if necessary.

Further, water suppliers classified as “small systems” by the U.S. Environmental Protection Agency serve fewer than 3,300 people.¹ Many water systems that fall below California's statutory definition of “urban water supplier”² are considerably larger, and may serve 9,000 or more persons. In this time of drought, the State Board's special provisions for small water systems should be reserved for truly small systems. Accordingly, the Board should include all systems serving 3,300 people or more in the monthly reporting framework already established for urban water suppliers.

Compliance Assessment

To improve compliance assessment and enforcement, by October 15, 2015 (the midpoint of the nine-month period ending on February 28, 2016), the State Board should make a formal determination as to whether each water supplier is on track for compliance. If, by the Board's assessment, any supplier(s) are not on schedule to achieve their designated conservation standards, then the Board should mandate specific supplier action(s) to ensure that all will meet conservation standards by February 28, 2016. At or before this time, informal enforcement actions, such as warning letters, may also be undertaken. Under this compliance assessment process, any necessary formal enforcement actions may be timely implemented immediately following the February 28, 2016 assessment date.

Enforcement

The Board has proposed a number of enforcement options. One option, the Conservation Order, includes a provision allowing for reconsideration. Offering an effective waiver provision may unintentionally result in agencies and customers focusing their attentions on reconsideration efforts, rather than on the actions needed to meet conservation standards. Furthermore, processing requests for reconsideration would likely occupy resources that could better be

¹ Environmental Protection Agency, Regulations and Rules for Small Water Systems, <http://www.epa.gov/research/NRMRL/wswrd/dw/smallsystems/regulations.html>.

² Cal. Wat. Code §10617 sets a threshold of 3,000 annual acre feet or 3,000 *customers*, which has been interpreted by the state Department of Water Resources to mean 3,000 *service connections*, or roughly 9,000 people.

deployed elsewhere. While there are advantages in permitting a small measure of flexibility in establishing and enforcing standards, this flexibility may be better manifested in the manner in which the Board takes other enforcement actions, such as the size of the penalty assessed.

Furthermore, the State Board need not explicitly exempt violation of a Conservation Order from any enhanced penalties like those applied to violation of a Cease and Desist Order. The specificity and immediacy of Conservation Orders indicate that they will sometimes be used in extreme or emergency situations, and the Board should allow itself the ability to penalize violations accordingly.

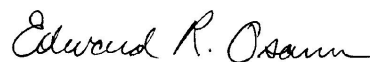
Additional Prohibitions and End-User Requirements

With respect to water use by commercial, industrial and institutional (CII) customers, the Board should consider a ban on sprinkler irrigation of ornamental turf in this sector. Such a ban in the CII sector would avoid a large quantity of nonessential potable water use in a customer class that may otherwise be difficult to address with simple percentage reductions.

Conclusion

Thank you for the opportunity to provide comments on the proposed conservation framework. NRDC and the Bay Institute strongly support the establishment of mandatory conservation requirements and stand ready to support the Board in its efforts to promote water conservation among all California customers and water suppliers.

Sincerely,



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