April 19, 2015

The Honorable Felicia Marcus, Chair
and Members of the State Water Resources Control Board
c/o
Jessica.Bean@waterboards.ca.gov
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

DRAFT REGULATION INFORMAL PUBLIC COMMENT

- I address Essential Use Landscaping required by law for safety—denial of plantings required for defensible space on steep slopes by the California Fire Code (wildfires), and required by the California Building Code for erosion (landslide). This is a problem not well considered under the Board's current drought rules. This argument is not submitted just to encourage the Board to weigh this use against other beneficial uses, such as for the survival of businesses, because it has legal status conferred to it under California's Constitution. That it's status is comparable, but of course does not exceed, that of drinking water which also cannot be weighed against business uses. Please run this argument past your 'water law' attorney:
  1) This use is Essential Use under Water Code Sec. 350 "…for human consumption, sanitation, and fire protection". Essential Use cannot be charged "penalty pricing" (Tiers) under California Constitution Article XIII D §6(b)(3) "… shall not exceed the proportional cost of the service attributable to the parcel." If it were Discretionary Use or Wasteful Use, this could be justified because the penalty could be interpreted as a "conservation charge" which offsets this person's wasteful use by giving someone else a low flow toilet. However, when the use is Essential Use no such argument can be made.
  2) Furthermore, under California's Constitution X Sec. 2 the regulation of water so that "unreasonable use…be prevented". Since this use is legally required by the California Fire Code and separately by the California Building Code, it cannot be said to be an "unreasonable use". It is inarguably reasonable because it is illegal not to provide the plantings. For the same action a person cannot be penalized for obeying state law and also penalized for not obeying state law.

- Historical allocations don't work with defensible space and the resulting penalties of thousands of dollars per month under penalty pricing is effectively a prohibition. The 25% cut is really a 100% cut. This is why exceptions for these Essential Uses should not be buried under Drought Level 4. Because there will be none left.
- What happened to me in the real world of filing for exceptions for safety from a supplier who intended to charge me $2,800 per month to buy $400 of Essential Use water for drought-tolerant plantings required by law for safety. She falsely denied there was any variance under state or local law until I quoted back from the ordinance she wrote. I include ideas for possible suggestions for preventing such problems with suppliers and customers.
- Also specific problems that some rules, made for ornamental lawns, don't work in the urban-wildland interface. I am a civil engineer who has worked in water resources (dam design and earthquake analysis) and also has developed my home's 2+ acre canyon defensible space in the urban-wildland interface (many close firestorms and two separate instances of major arson in adjoining lots). The steep slopes (cliffs) of sandy soil legally require plantings as per the California Building Code to prevent erosion (landslide).
- I refer to supporting materials on a CD. This is intended for the Water Board's use only; not to be made public. I sent the original of this too late for the April 13th deadline. You may still have that CD.

If SWRCB thought steep defensible space plantings should be punished with penalty pricing as "Wasteful Use" or "Discretionary Use", you would not have promoted this 'Essential Use Landscaping for Safety' http://**www.waterboards.ca.gov**/rwqcb6/publications_forms/available_documents/e_o_reports/2008/jan_feb08.pdf
"Water Board staff is also working with CAL FIRE and the Tahoe Basin Fire Agencies as a member of a

Bi-state Fire Commission defensible space/best management practices working group to develop clear guidelines that homeowners can use when creating **defensible space** around their homes, as required by California Public Resources Code Section 4291. These guidelines will specify what constitutes defensible space while still **providing adequate erosion control on private lots."**

After many wildfire deaths there would be an investigation and they would ask "why under Drought Level 2 or 3 was there no explicit protection for these steep slopes?" Especially since this is important to the lives of so many people since wildfires are more likely in droughts. And that would be a very hard question for your department to answer. A supplier would say their defense was that they followed SWRCB rules. That could become a complicated legal matter depending on the number of lives and homes lost, since Essential Use is not just "water used inside a house". By undercutting safety codes of other state boards who wrote the Fire and Building Codes, SWRCB would become the target in a disaster. Not because they forbade this irrigation, but because Historical allocations don't work with defensible space and the resulting monthly penalties of thousands of dollars under penalty pricing is effectively a prohibition. Mulch is not allowed since it is flammable. The only protection for residents in the urban-wildland interface is the water used to provide the defensible space plantings on slopes. To assume that **all** suppliers will try to meet the law if you do not explicitly spell it out for them is unfortunately not realistic.

To refuse to address fire safety in an explicit way within your guidelines could create a firestorm of political repercussions when a firestorm kills many people and exhausts the states firefighting budget like last year. In the context of large wildfires that travel 30 miles through urban areas, this becomes more of a state interest than that of the tiny little city where the problem developed. It is not the city that would be viewed as responsible. It would be the state agency that trusted a small city to apply hardship exceptions despite their pattern of conduct of recklessness and disregard for state law.

My water supplier is refusing to comply with state law. The other suppliers in the County are doing what you intended by including these safety exceptions in Model Drought Ordinance.

> **These exceptions appear under Drought Level 4 probably because you imagine the earlier level's cuts are small enough that the iceplant survives. Not so.** The problem is the use of **historical usage for defensible space.** Because when defensible space is cleared, or ordered to clear within one month by the fire department, there is a zero history of outdoor water usage. So anyone who complies with *Code of Regulations, Title 19, Division 1, §3.07(b) and* clears today will be billed 100% of their defensible drought-tolerant efficiently watered iceplant at penalty pricing rates. For a two-acre property close to **$6700 per summer month** for $517 of Essential Use water for iceplant legally required by state codes (cited below) and safety. This is a penalty of over $6200 per month which probably exceeds the value of the house, and so is a virtual seizure of a person's home for the crime of following state law. **For anyone this represents a 100% cutback not 25%. This is why exceptions for these Essential Uses should not be buried under Drought Level 4**. Because of "one-size-fits-all" Tier volumes they are needed under Non-Drought times too. (To calculate this (as per the 2009 City of Escondido method) I took the Tier3 rate times 8 but with this year's rates = ((100-1.5)*(8*8.49) + (1.5*5.17) + (0*6.67) + 34.40 = 6732.; the costs below are less because they were the rates at the time the exception request was first made and I had some iceplant in the historical period.)

Ignoring supplier "execution problems" and not tweaking your rules could undermine conservation. When this goes to civil court this is going to be discussed in the media. People hearing this will be outraged and feel the system is corrupt. They will not be proud, but feel like fools to do the right thing. If they see SWRCB actively solving this problem, it isolates the bad actors.

Some landscaping can save hundreds of lives; do we have to wait for hundreds people to die in wildfires? SWRCB FAQs say no.

"**P.2. Is there an exemption to the prohibitions to protect public health and safety?**

A. Yes, the regulations state that the prohibitions apply "except where necessary to address an immediate health and safety need or to comply with a term or condition in a permit issued by a State or federal agency." The regulations do not include a specific definition of what constitutes an immediate health and safety need, but generally speaking, a health and safety exception should be applied in good faith where a reasonable person would conclude that the application of water is necessary to address public health and safety. Pressure washing a sidewalk or driveway for aesthetic purposes, for example, would not be a health and safety need."

The SWRCB has a complaint process for water suppliers when the water quality will endanger many people's lives. Here is another situation that will endanger hundreds of lives; and it is the one that caused Australia to give up on its initial approach to drought. Your Model Drought Ordinance recommends exceptions for:

- **homes in fire prone areas needing defensible space in the urban-wildland interface** as per (*California Code of Regulations, Title 19, Division 1, §3.07(b)(2)*)

From 2013 California Fire Code: (MY BOLDING)

California Code of Regulations, Title 19, Division 1, §3.07(b)(2)

"(2) Maintain around and adjacent to any such building or structure additional fire protection or firebreak made by removing all bush, flammable vegetation, or combustible growth which is located from 30 feet to 100 feet from such building or structure or to the property line, whichever is nearer, as may be required by the enforcing agency if he finds that, because of extra hazardous conditions, a firebreak of only 30 feet around such building or structure is not sufficient to provide reasonable fire safety. Grass and other vegetation located more than 30 feet from such building or structure and less than 18 inches in height above the ground may be maintained **where necessary to stabilize the soil and prevent erosion".**

MY NOTE: Fire departments give the owner a month to clear the land but doesn't make them follow the planting rules because if it were a flat lot that would not be required. But the same state law that authorizes the clearing (above) does require plantings for erosion.

- **homes on steep slopes with soft soil requiring plantings for safety as per the California Building Code Appendix J**

"SECTION J110
EROSION CONTROL

J110.1 General. The faces of cut and fill slopes shall be prepared and maintained to control erosion. This control shall be permitted to consist of effective planting.

Exception: Erosion control measures need not be provided on cut slopes not subject to erosion due to the erosion-resistant character of the materials.

Erosion control for the slopes shall be installed as soon as practicable and prior to calling for final inspection."

The SWRCB assumes good faith on the part of the water supplier to apply these exceptions where they are obviously justified. However, a minority of cities would prefer to collect penalty pricing money from people who have no legal option to let the land go bare. Or perhaps because they can meet their percent reductions by making fewer voters lose their lawns by forcing a 100% reduction on the large users. But these "large users" have 'Essential Use Landscaping for Safety' so as to obey state law, provide public safety and not die in wildfires. Just as you investigate and use cease and desist orders for enforcing water quality standards, the same appropriate action could be provided to people who apply for these "exceptions" for safety, and are fraudulently told no legislation authorizing a "variance" at the local or state level. (See enclosed letter#1 &#2reply ~on CD). There was an exception process in the drought ordinance which this director wrote, and so she was aware that an exception process was in her own ordinance. Customers who did not have a copy of the drought ordinance would not be able to quote to her the text about the exception process. Thus they would give up.

I have more than two acres of legally required iceplant for safety: for defensible space and steep slopes meeting the requirements of Code of Regulations, Title 19, Division 1, §3.07(b) and California Building Code Appendix J, J110,...**The drop in elevation across my property is 107 feet!** This is the height of an eight-story building. Imagine a rooftop pool breaking and how fast the water runs down the stairs; except the stairs are made of sand. I'm given the **same non-drought allocation as a small ornamental lawn 1/23rd the size. The bulk is charged at Tier 3 penalty pricing.** I have already been overcharged several thousand dollars.
The state constitution also requires water to be used for the most important purpose which includes fire prevention. Use of water is classified as “Essential" (safety), "Discretionary" (ornamental plantings) and "Wasteful" (water running down the street). My use is essential but it is being billed as wasteful.

In 2009 disclosing impending Drought level 3, I was notified I would pay **$2800 a month to buy $400 of Essential Use water** despite both the defensible space and erosion of steep slopes state laws. (My Historical allotment period covered when it was not fully planted.) **For anyone this represents a 100% cutback not 25%.** This is why exceptions for these Essential Uses should not be buried under Drought Level 4. Because of one-size-fits-all Tier volumes exceptions for these Essential Uses are needed under Non-Drought times too. Despite several attempts they were unable to legally justify charging me this and refused my exception for no legal reason. (See correspondence ~on CD). The lives of people living in Canyon areas should not be sacrificed to a minority of water agencies who refuse to consider state law.

Your fraud division's Water law expertise would be invaluable to work with the State Attorney General’s office for water suppliers, who use your rationing rules to commit fraud for purposes of corruption or extortion. The resulting wildfires can kill as many people as water quality problems. It fits the objectives of your organization to protect water sources by not allowing water suppliers to kill off or deny iceplant to control erosion in steep canyon areas, because the water that runs off may eventually be funneled through the canyon into a creek or river.
A cease-and-desist order would be important for me. In 2009 I was notified that under Drought level 3 I would pay $2800 a month to buy $400 of Essential Use water. This despite numerous speeches to the city council and my 54-page exception request included validating information and citing state law, which proved my eligibility for the exception. Because I cannot pay thousands of dollars per month in penalty pricing, one month without water in the summer would kill the entire two acres of iceplant. A cease-and-desist order would be the only way to act quickly enough. National estimator said $125,000 to replant in 2009. The cost to clear and replant would maybe now be approximately $150,000; and would cause erosion and **double the water for the new iceplant to be established usually 2 years. Escondido Engineering Department (see Engr ordinance ~on CD) claims the right (under California Building Code Appendix J, J110) to replant & install irrigation systems and bill the homeowner for not providing the legally required plantings for safety**. That could be an endless cycle Utilities says wasteful, Engineering says mandatory. Iceplant takes two years to establish with increased use of water and the canyon has no vehicle access; the slopes and cliffs are too steep to even use a wheelbarrow. (~Photos of steep slopes, actually cliffs, on CD.) You would do the water suppliers a favor too since senselessly destroying hundreds of existing drought-tolerant, inaccessible areas, represents a large cost for the entity that ultimately needs to pay for that. Even if no one dies.
Imagine this scenario playing out at a minority of incompetent or politically corrupt water suppliers whose city enjoys redistributing the penalty pricing fund to small businesses. Thereby using SWRCB emergency drought rules to profit their political supporters. Are you willing to risk your organization's reputation and successful management of the drought on the judgment of a few bad suppliers?
Alternatively you could mandate charging the Essential Use rate for legally required iceplant for safety for defensible space and steep slopes meeting the requirements of Code of Regulations, Title 19, Division 1, §3.07(b) and California Building Code Appendix J, J110.
If even just my driveway slid, there would be no other access to the house because of the topography. This would be a limit on the use of the property. CWC 372 a 2 “…Nothing in this chapter is intended to permit public entities to limit the use of property through the establishment of a basic use allocation.” This would drastically reduce the house’s usefulness and value.

The benefit is of saving lives not only of canyon residents, but surrounding neighborhoods and schools and avoiding creating massive countywide wildfires.

COMMENTS:

- What is required not to violate state law is **mandatory** exceptions from penalty pricing (since it is required by law it is Essential Use) for qualifying portions of properties for the reasons of steep slopes and soft soil (**California Building Code Appendix J J110.1**) "The faces of cut and fill slopes shall be prepared and maintained to control erosion. This control **shall be permitted to consist of effective planting**." or if necessary to provide defensible space (*California Code of Regulations, Title 19, Division 1, §3.07(b)(2)*) vegetation located … may be maintained **where necessary to stabilize the soil and prevent erosion".**
- **At the highest drought level plantings on these slopes are allowed to be watered when ornamental landscaping is not; so logically how can they be billed at Tier 3 penalty pricing at a lower drought level?**
- If suppliers get rules that do not explicitly forbid penalty pricing on defensible space on steep slopes people may die in firestorms. And those responsible would be found criminally negligent. It would be unfortunate, since this could be avoided with strong clearly worded bans on effectively prohibiting steep defensible space as essential use. If there are any possible legal repercussions that the department water resources could back that up with, then that would be beneficial. It would be unfortunate to insist on waiting for deaths.
- Hardship variances are to sort out unusual or minor situations. They cannot be the policy that is intended to cover problem in conflict between law requiring necessary plantings and a state water policy, which does not mention that and leaves it as a minor correction within hardship variances. We now know by experience this can be fraudulently denied to exist.
- That directors put that hardship policy in the ordinance but that doesn't mean that that they are going to acknowledge or apply it.

- Many Californians are finding themselves in the same position without knowing what is happening is illegal. Virtually none of the canyon properties surrounding me provide the required fire safety because in 2009 the Escondido's utility department advertised a Drought Level 3 rate times 10 times the cost of water.

- My supplier is acting to effectively prohibit water for plantings of defensible space on steep canyons in the Urban-wildland interface. This essential use is the highest priority use of water and city of Escondido has been billing this water use as wasteful water use at a premium of 60 percent (2014) for the last year (non-drought rate). The resulting fires would result in costs to surrounding areas the state government, and the federal government.

- **If you cannot come up with rules for Essential Use landscape for safety by your deadline, could you mandate that water suppliers not apply the 25% cut to Essential Use landscape for safety that would be effectively a 100% cut for these properties (see explanation above).** This could be justified on the basis that cuts to lawns need to be done immediately while special use needs for safety are still to be reviewed. That the 'rules for ornamental landscaping are going into effect, but the rules for essential use landscaping will soon follow' could be announced. This will prevent a lot of people who feel it is useless to spend any more money on something they know it's going to be dead by the end of the summer. Then they could decide after your rules are in place. And during the interim these special essential use properties could be temporary billed as schools or some other flat rate so that suppliers can reprogram billing for residential. Bad actors may need to know some enforcement exists even for the interim. This will not be a problem for the responsible water suppliers who have been applying exceptions already. There are easy ways to verify qualifying properties: Topography maps vs. zip codes, lot size, maps of the urban-wildland interface, and most cities know their canyon areas because the fire department is very active there. It would be easy to identify the fraudulent customers. A $500 fine may help dissuade people from lying.

- Cease-and-desist orders for unreasonable denial of an exception for water legally required for safety, or for a fraudulent denial that any local or state exception or variance process exists. (letter#1 ~ on CD). Suppliers who deny valid requests for exceptions for steep slopes and defensible space could be made subject to cease and desist orders and fines for non-drought times as well as under drought declarations.
- The fraud division also could be for water suppliers, who use the rationing rules to commit fraud for purposes of corruption or extortion. Extortion requires a significant threat like wildfire or landslide, not "unhappy about high prices".
- At the highest drought level these slopes are allowed to be watered; so how can they be billed at Tier 3 penalty pricing at a lower drought level?

- Even a well-meaning water supplier threatened with fines of $10,000 a day if they don't meet cuts will be tempted to deny exceptions for safety. This could be balanced by having the same cease and desist fines for falsely denying exceptions for steep slopes (CBC **J110.1**) or defensible space in an urban-wildland interface(*California Code of Regulations, Title 19, Division 1, §3.07(b)(2)*). This would also be in the interest of the water supplier, so that they do not wind up being sued, as well as possible charges of fraud, and extortion. Since such a customer is under significant threat of loss of life or home in a fire or landslide, and has no choice but to pay the monopoly, the use of the word extortion here is not hyperbole. Especially if the money is used to subsidize political supporters for example: subsidizing the rates for avocado growers from the penalty pricing being unlawfully charged a customer under threat of dying in a fire. (mp3 clip #1 ~on CD).

- Water use under defensible space and erosion of steep slopes state laws are Essential Use for two independent reasons: they are essential for safety and (State Constitution Article X *"the waste or unreasonable use or unreasonable method of use of water be prevented,"*. Since it is required by state law by definition it cannot be unreasonable use) and they are required by two state laws. **Describing these safety Essential Uses under Drought Level 4 implies they can be ignored until then.** Implying that under non-drought times they can be given a Tier1 volume for Essential Use the same as indoor Essential Use; a Tier 2 volume of Discretionary Use for a small city lot's yard; and so the bulk is charged at Tier 3 Water waster rate. Under Drought Level 2 the cost is approximately four times higher. At this point all customers turn the water off and violate state law. At Drought Level 3 eight times higher than Tier3, higher than anyone's mortgage payment. At Drought Level 4 none are left. Because it is Essential Use required by law, it is a basic need of the property. As a basic "Need" it involves no waste, and the person is forbidden by state law not to provide it with water. Therefore it is not legal to charge more than "the cost attributable to the parcel" (State Constitution Article XIII Sec. 6 b) because there is no waste to justify paying "conservation offset fees" which is the only legal justification for water budgeting. This is not legal. Essential Use is Essential Use indoors or outdoors. To stand back and say let the customers and the suppliers sort this out in civil court is a very slow way to deal with a problem that can kill many people in fires this summer. Then if the supplier doesn't meet your conservation goal they pay $10,000 per day so you will tip the scales so that more water suppliers will deny these exceptions for Essential Use.

- State Law prevents people from profiting from emergencies by charging more than 10%. Obviously does not apply to penalty pricing for actual wasteful users. But when penalty pricing is intentionally applied to essential use, couldn't your enforcement division consider that also. The defensible space is in anticipation of a wildfire emergency, but I'm not sure that counts.

- **You could mandate legally required iceplant for safety for defensible space and steep slopes meeting the requirements of Code of Regulations, Title 19, Division 1, §3.07(b) and California Building Code Appendix J, J110, to be charged the Essential Use Rate.** This would be an advantage legally also. Since water for safety is the highest use or Essential Use, if it were billed at Tier 2 Discretionary Use or Tier 3 Wasteful Use rates, there would be legal problems when the money collected from the Tier 3 Wasteful Use was given as rebates to customers who replaced lawns (Discretionary Use) with iceplant (Discretionary Use). Because the money is illegally collected from Essential Use to discourage stabilizing slopes against erosion or defensible space and is given to

encourage ornamental landscaping (Discretionary Use). The idea of "conservation charges" is only legal if the money is taken from truly Wasteful Use. Similarly, it then also cannot be used as a slush fund for avocado growers. (mp3#1 ~on CD).

- Water legally required for safety be billed as Essential Use water in normal times and drought times. As long as it is for drought-tolerant plantings are efficiently irrigated.

- As an absolute minimum **for fire and slope protection** (slope protection also affects landslides of houses) a new minimum requirement that the size of the property be considered. Not the history of the property. Because of penalty pricing already announced in 2009 most properties around me have no defensible space. If they were to try or were forced to comply with the law they would have no historical use of water and their defensible space would die. If the use of water was determined
  - including the size of the property, or landscaped defensible space area of the property, then
  - as long as the amount of water included was enough (CIMIS) for succulent iceplant in 100-110 degree for hot months, and
  - CIMIS factors for slopes inclined to the sun, and
  - was provided for non-drought times through Drought Level 4 as indicated in the Model Drought Ordinance of the San Diego water authority for steep areas when all other outdoor irrigation is prohibited.
- then the water bill should not include thousands of dollars of penalties. Since Essential Use Water must be the "cost attributable to the property" without any "conservation charges".

- Another problem is the use of **historical usage allocations for defensible space**. Because when defensible space is required to be cleared by the fire department in an area that plantings are "necessary to stabilize the soil and prevent erosion". **There is a zero history of outdoor water usage** for that. So anyone who clears today will be billed 100% of their defensible drought-tolerant efficiently watered iceplant will be billed at penalty pricing rates. Four times the normal Tier3 under Drought Level 2 or $3350 per summer month for $517 of Essential Use water. Eight times normal Tier3 **under Drought level 3 or $6700 per summer month for $517 of Essential Use water.** Neither is the "cost attributable to the parcel" (California Constitution Article XIII Sec. 6 b (218) as required for Essential Use. An alternative is the bill passed by the Legislature AB2882 which establishes "need" (a precedent under Palmdale vs. Palmdale). Could be CIMIS-factored to represent succulent iceplant with efficient watering considering the climate and orientation of the slopes. It would be impossible to argue that something required by the California Fire Code and the California Building Code are not "need"(a precedent under Palmdale vs. Palmdale).

- Even someone with pre-existing plantings on steep slopes 100% through the historical period would have a problem. Anyone who planted grass, which is allowed under the fire code, would receive a lot of money for changing over to drought-tolerant, and they would have a sufficient allocation. But anybody who did the right thing and put in iceplant with an efficient watering system would have no choice but to have large sections die. Defensible space with 25% missing is like a bucket with a big hole.
- **With a 25% reduction this could represent $40,000 to replant a section that's a shame that the people who chose to plant grass come out fine and the ones who chose conservation will have to let the drought-tolerant plants die.**
- Or the whole thing could be dead if they already were efficiently watering and just reduced it 25%.
- Using CIMIS or the bill passed by the Legislature AB 2882, calculating everyone for grass, and then factoring it down. Existing mature iceplant would do fine at 50% or slightly less. Replanted iceplant would need 100% like grass for year 1, and 75% for year 2. Saves a lot of water not to kill it off. But if using Historical Period please consider a rule for Essential Use water for these reasons of safety, if it is already drought-tolerant plantings with efficient watering systems that they do not need to reduce. Saves a lot of water not to kill it off. In areas where there are wildfires even people with small city lawns, if they understood why, they may prefer to lose their own lawn than lose their entire house or have their child in a school evacuated for fire.
- If the historical calculation is the only practical solution for small water suppliers, limit it to them. It does not have to be an option for all suppliers.

- That cities, or possibly only cities which have charged penalty pricing for Essential Use, have an obligation to send a flyer to properties in the urban-wildland interface and steep canyon areas so that residents can determine whether they are covered by the laws and will not be billed at the punitive pricing for the portion that is legally required for safety.

- That **sufficient hours per week** are made available for the irrigation of legally required plantings for safety. So that homeowners can use low precipitation rates (drip and very low flow rotors) to avoid erosion. Also so as to not require them to replace their house meter with a larger one to meet the time of day limits intended for small Discretionary Use landscaping. Homeowners can be required to post a sign citing the applicable legal code. Since Model Drought Ordinances allow irrigation for slopes and fire at Drought Level 4 such a sign would help neighbors understand.
- Canyons have their own wind pattern, mine is noon to 11PM when it is too windy to run the low precipitation rate sprinklers. So those hours are virtually unusable unless you're willing to waste half the water blowing away. So if the regulations were set from 8 p.m. to 8 a.m. people with large Canyon properties would have only nine possible hours to water for two days a week, only 18 hours to water properties that are 23 times larger than a city lot (and are Essential Use). It would be like city property given less than one hour per week to water. Meter connections are not big enough to water everything at the same time. So people in canyons are going to wind up using the hours from 8 p.m. to 11 p.m. and wasting half the water to the wind. An option for this would be to say that the Canyon properties get sufficient hours to water any legally required plantings for safety.
- If watering is limited between 8 p.m. to 8 a.m. that in some times of the year that's in darkness malfunctions would not be noticed for months. People will be hesitant to do regular testing of their systems, feeling they will be hidden due to complex topography and long distances and so may be fined for using water during the day. You can barely walk on these cliffs in the day, how could you walk in the dark? Maybe that's OK for suburban houses where the sprinklers are close to the house lights. Canyon areas also have more coyotes and squirrels who chew drip lines for water in the summer. If the only watering hours for that zone is in the middle of the night that won't be discovered.

- There are costs to fighting unnecessary wildfires. Last year California paid 600 million plus (as I recall) fighting **wildfires**. It could be reduced this year if flyers were sent to homes in canyons assuring families if they clear the brush and chaparral and provide the legally required defensible space, the water for plantings required by the California Building Code for erosion control would not be billed at the advertised price of $34.80 per1000 gal as mailed out here in 2009 nor the comparable $67.92 today. Neither of these costs is the "cost attributable to the parcel" California Constitution Article XIII Sec. 6 b (218). (~2009 flyer rates on CD, Drought Level 3). **I am surrounded by acres of neighbor's weeds. My safety, the adjoining suburban lots, and nearby elementary school depends on them.**

- My 54-page exception request included validating information, which proved my eligibility for the exception. Exceptions on this basis could require the customer to supply similar proof. In addition, it described techniques that the utility could use discover invalid claims. More details available upon request (contact info on CD label)

The State Water Control Board and its enforcement agency may contact me for further information.

SUMMARY

I appreciate that you had rules in place to cover this, but those rules need to be tweaked to avoid the very expensive losses over the next month. The recognition that there are water suppliers who are bad actors, that some enforcement is necessary against those bad actors. Some water departments may be unaware of essential use landscaping, because it's only covered drought model at Drought Level 4 and will we are not to that point yet. But if action is not taken when we get Drought Level 4 there will not be any Essential Use landscape for safety left.

Historical periods for defensible space is not the same as for houses which probably already had some landscaping. It goes from virtually nothing to a whole lot of water. And that it is a whole lot of water, but it is a whole lot of water that's required by law. So it's really is not possible to say it is wasted water, and it's not only required by law it can kill families not to have it and it can burn people's homes blocks away. Water suppliers and agencies are so stuck in the mindset that water used inside the house is Essential Use and the water used outside the house is Discretionary Use. The California Constitution has laid out these priorities. And that's why you have the rule for safety, because that's in the California Constitution. Also in the Constitution is Article XIII Sec. 6 b (“218”) about the “need". Palmdale vs. Palmdale supported that even though the "need" was Discretionary need not Essential Use like this. Then there is the added complication of getting this wrong for one month in the summer in the large steep inaccessible areas with no vehicle access makes it extraordinarily expensive to clear the old dead iceplant the clearing is required for fire safety) and then replant. The unnecessary removal and replanting alone will cause erosion. The new iceplant will not adequately cover the property for several years and will require a great deal more water for two years than the established iceplant would have required.

Since the cost of replanting these inaccessible areas is so expensive, When the lawsuit for this essential use receives media coverage this year Many owners who were forced to let their iceplant die out, because it was being given the allocation for a little tiny lawn and charged at penalty pricing. Then there would be a large number of suits lawsuits throughout the state and if each of those lawsuits is an average of say $150,000. It doesn't take a lot of those lawsuits to affect the economy of California. Killing off something and then replanting it is a senseless way to stimulate the economy because there is no resulting improvement.

There are an increasing number of wildfires and during droughts and that these properties are located in the urban-wildland interface. Some houses there would have had defensible space killed off either by the 25% across-the-board cut because nobody can be expected to pay more than the value of their property for penalties not water, but penalties on their water bill. Or the people who never put in defensible space because they knew that they would be charged penalty pricing and so never planted. And once that fire goes through and the house burns down or somebody has wrongfully died. And after the lawsuit shows this was obviously always Essential Use being billed at illegal rates. Then they will be able to sue their water suppliers and that could be a big problem.

That would be a good justification for a delay while appropriate rules were worked out for Essential Use landscape for safety.

Thank you for your consideration of these comments.

S. Roney, Civil Engineer