



VIA ELECTRONIC MAIL

May 4, 2015

Jeanine Townsend, Clerk
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814
commentletters@waterboards.ca.gov



Re: Draft Emergency Regulations to Implement Executive Order B-29-15

Dear Ms. Townsend:

California Water Association ("CWA") submits the following comments on the Draft Emergency Regulations issued by the State Water Resources Control Board ("State Water Board") on Tuesday, April 28, 2015 (the "Draft Regulations") pursuant to its April 29, 2015 Notice of Proposed Emergency Rulemaking.

CWA is a statewide association that represents the interests of 113 investor-owned water utilities ("IOUs") that are subject to the jurisdiction of the California Public Utilities Commission ("CPUC"). CWA has been an active participant in the preliminary development of the State Water Board's Draft Regulations, and provided feedback via comments submitted on April 13, 2015 and April 22, 2015. CWA takes this further opportunity to comment in order to raise and reiterate its concerns with the latest version of the Draft Regulations.

Monthly Cap on Total Potable Water Production

The Draft Regulations would require each urban water supplier to "reduce its total potable water **production** by the percentage identified as its conservation standard."¹ CWA is concerned that the State Water Board has not considered the full impact of this directive. By ordering a reduction in total potable water production on a monthly basis, the Draft Regulations would require each water supplier to terminate water production in a given service area if production volume reaches the point of the prescribed percentage of 2013 production in a given month. In effect, as currently proposed, the Draft Regulations set a monthly water production cap. Although this approach would virtually guarantee that a water supplier would comply with its applicable conservation standard, it would do so only at grave risk to public health and

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¹ Draft Regulations, Section 864(c)(1).

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safety, and, in the case of the Commission-regulated IOUs, by disregarding the IOUs' legal obligation to serve. This cannot be the intended result.

CWA understands that, in order to meet the Governor's 25% statewide water use reduction mandate, the Draft Regulations must provide a clear conservation directive to water suppliers and to their respective customers. But nothing in the Executive Order suggests that state regulators should be implementing measures as draconian as a water production cap. The Draft Regulations should be revised to direct water suppliers to implement a customer water-use reduction program that is **designed** to reduce potable water production by the applicable conservation standard, rather than to set a ceiling on monthly production. This approach would not force water suppliers – at the risk of incurring State Water Board-imposed penalties – to impose potentially widespread shutoffs denying water to customers just as the summer season ushers in warmer temperatures. This approach also better recognizes that water suppliers cannot, at the end of the day, directly control or precisely predict customer behavior. Accordingly, CWA strongly urges the State Water Board modify the Draft Regulations as follows:

- Sec. 865(c)(1):
“ . . . each urban water supplier shall *implement a customer water-use reduction program designed to* reduce its total potable water production by the percentage identified as its conservation standard in this subdivision. Each urban water supplier's conservation standard considers its service area's relative per capita water usage.”
- Subsections (2) through (10) under Section 865(c), setting forth the conservation standards for which water suppliers must comply, should be revised consistent with the recommended change immediately above.

Waste and Unreasonable Use of Water

One of the purported purposes of the Draft Regulations' water management directives is: “to prevent the waste and unreasonable use of water.”² As CWA observed in its April 22, 2015 comments to the State Water Board, using this terminology is problematic, particularly in the context of requiring water suppliers to reduce total potable water production, because it invokes the cornerstone of California's water rights laws – the Reasonable and Beneficial Use Doctrine.³

² See, e.g., Draft Emergency Regulations (issued April 28, 2015), Sections 865(c)(1) and 866(a)(1).

³ This foundational tenet of water rights law, which has been developed over many decades and has roots in constitutional, statutory, case law and administrative decisions, generally provides that all water use must be reasonable and beneficial regardless of the type of underlying water right.

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CWA submits that the State Water Board's use of the phrase in Sections 865(c)(1) (mandatory actions by water suppliers) and 866(a)(1) (enforcement tools) of the Draft Regulations impermissibly attempts to "bootstrap" the State Water Board's power to impose sanctions for wasteful practices on water suppliers that fail to achieve water production reductions, **without regard to any criteria traditionally applied in consideration of waste and unreasonable use.** A fast-tracked adjudication of alleged wasteful water use by the State Water Board's Executive Director raises serious due process concerns for water suppliers subject to the State Water Board's jurisdiction.

Instead, the Draft Regulations should focus more precisely on the Executive Order's underlying goals, which, in CWA's view, are to prevent nonessential and prohibited uses of water and to promote water conservation and waste-use efficiency. Reiterating our April 22, 2015 comments, CWA strongly urges the State Water Board to revise the Draft Regulations to eliminate inappropriate reference to the prevention of "waste and unreasonable use of water," as follows:

- Sec. 865(c)(1):

"To prevent the ~~waste and unreasonable use of water~~ *nonessential and prohibited uses of water, to promote water conservation and water-use efficiency*, and to meet the requirements of the Governor's April 1, 2015 Executive Order, each urban water supplier shall . . ."

- Sec. 866(a)(1):

"To prevent the ~~waste and unreasonable use of water~~ *nonessential and prohibited uses of water* and to promote conservation *and water-use efficiency*, when a water supplier does not meet its conservation standard required by section 865 the Executive Director, or his designee, may issue conservation orders requiring additional actions by the supplier to come into compliance with its conservation standard."

Water Supplier Reporting on Commercial, Industrial and Institutional Customer Usage

The Draft Regulations require each urban water supplier to submit a monthly monitoring report that details, among other things, information on commercial, industrial and institutional ("CII") customer water use for those CII customers it serves. The monitoring reports are intended to "document the effectiveness of existing conservation efforts and inform whether further actions are necessary to address the drought emergency."⁴ But neither the Draft Regulations, nor their accompanying explanatory documents, provide any detail as to how the

⁴ Emergency Regulations Digest, at 7.

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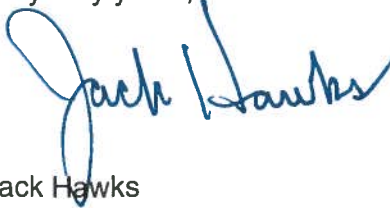
State Water Board plans to use CII customer usage information to evaluate a water system's compliance with its conservation standard. CWA is particularly concerned about the scenario where a water supplier cannot meet its conservation standard without requiring its CII customers to reduce essential process or business-related water use. It would be inappropriate to penalize a water supplier for failing to meet its conservation standard under those circumstances, unless and until drought conditions worsen to the point that competent state authorities specifically consider the likely negative impact on commercial and economic activity in the state and declare it state policy to curtail process water to CII customers. Implementing process water restrictions on a system by system basis would create a patchwork of water systems considered hostile to business – something that could have a lasting negative impact on targeted communities.

CWA understands that the State Water Board requires some flexibility in monitoring compliance in order to assist water suppliers to tailor conservation efforts on a going-forward basis. Notwithstanding that need for flexibility, CWA urges the State Water Board, in evaluating the impact of CII customer water usage on urban water supplier compliance, to take into consideration the crucial distinction between optional and essential process uses of water by CII customers.

Conclusion

CWA appreciates the opportunity to provide these comments and urges the State Water Board to revise the Draft Regulations by eliminating the mandatory monthly production limit, removing inappropriate references to the Reasonable and Beneficial Use Doctrine, and by recognizing the distinction between CII customers' optional and essential process uses of water.

Very truly yours,



Jack Hawks

cc: Commissioner Catherine J.K. Sandoval – California Public Utilities Commission
Rami S. Kahlon – CPUC Director, Division of Water & Audits
California Water Association Regulatory Committee