

February 12, 2018



State Water Resources
Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Clerk of the Board:

RE: Comment Letter – Changes to Proposed Regulations
Prohibiting Wasteful Water Use Practices

I would like to submit the following comments regarding the above referenced *Changes to Proposed Regulations Prohibiting Wasteful Water Use Practices*.

- 1) The State Water Resources Control Board (“Water Boards”) continues to pursue regulatory authority and control over water resources for which there is no legal basis. The State of California has no recognized or lawful claim under California Law over groundwater rights in California, yet the Water Boards continue to attempt to exert control using a tenuous, at best, and more likely non-existent authority derived from general language in the State Constitution to prevent water waste or unreasonable use (not defined) of surface water resources. The current regulatory language even attempts to insert new language and new standards over what should be a very fact specific determination of what constitutes unreasonable use, substituting the Water Boards own general opinions rather than a lawful court’s careful consideration and findings of relevant facts. This process has no legal grounding. You might consider it an example of regulatory overreach, but it goes far beyond that and represents a clear taking of legal rights of those who actually have ownership of groundwater resources under California Law.
- 2) The proposed regulations clearly conflict with the clear intent and wisdom of the California Legislature as found in the Sustainable Groundwater Management Act (“SGMA”) which placed groundwater control and management on an individual basin under local control as being most effective. The whole concept of a statewide standard of how to manage water resources and what is wasteful use is ludicrous and contrary to the clear intent of the Legislature.
- 3) It is doubtful that the Water Boards have complied with open government and regulatory procedural requirements by giving public notice and soliciting public input for these regulations. The proposed regulations affect every single Californian, not just the water purveyors who are being asked to assume some quasi-regulatory role over consumers. I would challenge the Water Boards to show they have made any meaningful attempt, or involved/reached any significant portion of the true population (water consumers) affected by these proposed regulations.
- 4) The Water Boards are not identifying any additional resources with which to enforce the proposed regulations, instead placing a financial burden on water purveyors to assume some sort of “derived” regulatory powers which they do not currently have (and do not need) and exposing them to endless litigation liability in any attempts to comply with the proposed regulation(s).

Comments: Changes ... Prohibiting Wasteful Water Use Practices

During the previous drought when emergency regulations were hastily promulgated under the mistaken view that a crisis was a “terrible thing to waste,” we had the opportunity to observe how poorly this approach worked and we should look to the limited number of court rulings generated to recognize the failure of arbitrary and capricious regulations to address California’s water issues. In the end, it was the actions of individual Californians voluntarily coming together and working locally that resulted in the water savings that saw us through the drought. This will also be the source, innovation, and impetus that will result in the social change needed to manage our future water needs. A regulatory approach will only generate active resistance and limit solutions.

Thank you for your consideration of these comments.

Sincerely,

/s/

Mark Calhoon