



Heal the Bay

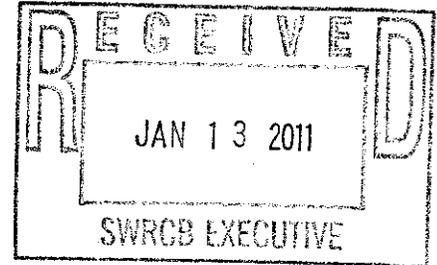
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January 12, 2011

Charlie Hoppin, Chair and Board Members  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814  
c/o Jeanine Townsend, Clerk to the Board  
**Via Electronic Mail: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)**



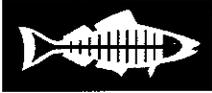
**Re: 1/18-19/2011 BOARD MEETING – Item #12, Reasonable Use Doctrine**

Dear Chair Hoppin and Members of the Board:

On behalf of Heal the Bay and our over 13,000 members, we have the following comments on the “Reasonable Use Doctrine and Agricultural Water Use Efficiency” Report, and associated recommendations on the application of the doctrine to promote more efficient use of agricultural water. First of all, we strongly commend the State Water Board for finally beginning to address California’s most serious environmental problem: increasing water scarcity and the difficult balance between providing Californians with their water needs while protecting aquatic beneficial uses. The reasonable use and conservation strategies and policies have been in the California Constitution and the Water Code for years, but they have not been systematically used to better manage the state’s increasingly stressed water supply and aquatic ecosystems. We are strongly encouraged that the State Water Board is finally using these critical tools to lead us to sustainable water supply and aquatic ecosystem management in California.

Heal the Bay incorporates by reference the comment letter submitted by Linda Sheehan on behalf of the California Coastkeeper Alliance. Overall, Heal the Bay is strongly supportive of the way that Mr. Wilson laid out the water management problems and the regulatory tools that are present in existing law. Also, his citations on relevant case law supporting the use of the reasonable use doctrine were comprehensive and extremely helpful. In addition, the section on promoting more efficient agricultural water use demonstrated that relatively simple changes in conservation technology and management practices can achieve substantial water savings. Like the Coastkeepers, Heal the Bay strongly supports the following findings in the Report regarding the scope and use of the Reasonable Use Doctrine:

- The Reasonable Use Doctrine is the “cornerstone of California’s complex water rights laws.”
- “All water use must be reasonable and beneficial regardless of the type of underlying water right,” and “[n]o one has an enforceable property interest in the unreasonable use of water.”
- The Report’s “underlying premise” is that the “inefficient use of water is an unreasonable use of water.”
- The Reasonable Use Doctrine “is available prospectively to prevent general practices of inefficient water use,” and moreover “can comprehensively address the inefficient use of water in California.”



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- The Reasonable Use Doctrine may be used “broadly to promote the efficient use of water” and it “can be used to promote [more efficient and reasonable agricultural] practices.”
- The “doctrine may apply to an unreasonable method of diversion, even in the absence of any assertion that the diverted water has been wasted or unreasonably used.”
- “Inefficient Water Use is unreasonable water use.”

Also, Heal the Bay supports the recommendation to create a Reasonable Water Use Unit to “enforce the prohibition against the waste or unreasonable use of water,” and that this enforcement process should be streamlined to “start with the issuance of a Cease and Desist Order.” In addition, the recommendation to maximize the use of State Water Board funds for agricultural efficiency projects makes a lot of sense. The SWRCB should coordinate with Cal-EPA and Resources to ensure that DWR funds are utilized in the same manner in order to achieve substantial water use reductions.

However, the other recommendations in the report were disappointing in their cautious, measured approach. A reasonable use summit will be helpful to generate needed dialogue on this critical issue and pilot studies and plan modifications are helpful too, but the State Water Board needs to take the Wilson Report and develop a more comprehensive and detailed strategy. The State Water Board needs to clearly identify unreasonable uses and the amount of water that is used annually by these uses. Also, the state needs to quantify the potential economic, ecological and water supply benefits of applying and enforcing the reasonable use doctrine for both agricultural and urban uses (discharge of highly treated recycled water in urban and agricultural communities is an example of unreasonable water use that is rampant throughout the state).

In addition, State funding for agricultural efficiency projects should be allocated in a manner that maximizes water use reductions. All too often, the state implements funding programs without clearly identified metrics to assess program success. These metrics must be identified and the eligibility criteria should be crafted specifically to ensure that the metrics are achieved. All too often, state funding criteria are so broad that the funded projects do not provide the cumulative benefits so sorely needed statewide.

Thank you for the opportunity to comment, and thank you for beginning to take on this incredibly critical issue. There is so much at stake for California and the reasonable use doctrine may be the most critical tool to enable the state to move forward on sustainable water supply management. Please let me know if there is anything Heal the Bay can do to help the State Water Board mover forward quickly and effectively.

Sincerely,

Mark Gold, D. Env.  
President