



VIA ELECTRONIC MAIL

January 28, 2016

Honorable Felicia Marcus, Chair
and Members of the State Water Resources Control Board

c/o Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
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commentletters@waterboards.ca.gov

Re: 2/2/16 Board Meeting Item 7 (Conservation Extended Emergency Regulation)

Dear Chair Marcus and Members of the Board:

California Water Association ("CWA") submits the following comments on the proposed Extended Emergency Regulation. CWA is a statewide association that represents the interests of 108 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 development of the previous and current State Water Resources Control Board ("State Water Board") Emergency Regulation, and welcomes this opportunity to provide input on the proposed Extended Emergency Regulation.

CWA previously commented on the Proposed Regulatory Framework for the Extended Emergency Regulation ("Proposed Framework"). CWA was pleased to see that the State Water Board staff recommended several measures to make the conservation standards more equitable, but expressed its view that the Proposed Framework did not do enough to recognize the unique circumstances facing some water suppliers and to reward conservation-related investments.

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While the proposed Extended Emergency Regulation includes a few minor adjustments from the Proposed Framework to allow for further reduction of conservation targets, more adjustments are needed. CWA urges the State Water Board to make additional modifications to fully consider the possibility of changed conditions, to provide full credit for efforts made to ensure safe and reliable water supplies at the local level, and to create incentives in keeping with State water policy. CWA also is concerned that some of the language in the proposed Extended Emergency Regulation is unclear and may create confusion and delay. As discussed in more detail below, CWA requests that the State Water Board modify the Proposed Regulation to:

- revisit the mandated percentage reduction in total potable water production in April 2016;
- eliminate the cap on credits or adjustments to the conservation standards for urban water suppliers; and
- clarify and expand the credits for water supply investments.

The comments and suggestions in this letter are limited to the proposed Extended Emergency Regulation. CWA cautions against permanent mandated reductions in water use. Although targeted reduction standards are appropriate in the context of a drought emergency, they may not be necessary or desirable once drought conditions subside. Any consideration of permanent water use restrictions should be addressed in a separate proceeding once the drought emergency is over.

April 2016 Assessment and Adjustment

In its January 6, 2016 comments, CWA suggested that the State Water Board include in the draft Extended Emergency Regulation a plan to revisit the mandated water use reductions in April 2016. CWA recommended that the State Water Board use the updated data available at that time to make a decision as to the degree of water use reductions, water-use restrictions, and compliance that would carry the Emergency Regulation through to October 31, 2016. This idea has widespread support. In the comments on the Proposed Regulatory Framework submitted on January 6, 2016, numerous commenters urged the State Water Board to commit to revisit and possibly revise the conservation standards for individual water suppliers in April or May 2016.

As indicated in the Emergency Regulation Digest, water conditions in California have slightly improved from last year, particularly with respect to snowpack. As of January 13, 2016, “Northern Sierra snow water content was 107 percent of average, while Central and Southern Sierra precipitation was 117 and 112 percent of average, and snow water content was 105 and 112 percent of average, respectively.” (Emergency Regulation Digest, p. 3.) This is important because snowpack provides approximately one-third of California’s water needs in normal years. CWA recognizes that significant precipitation will be needed to restore reservoirs to pre-drought conditions and that it will take more than one wet winter to raise groundwater levels to pre-drought elevations. Nonetheless, it is possible, and even likely, that California will enter the 2016

spring and summer months under significantly less severe drought conditions than those that inspired the existing Emergency Regulation.

When the State Water Board issued the Emergency Regulation to reduce urban water use by 25 percent, Californians stepped up to the challenge. Thanks to the outstanding efforts of customers, businesses, agencies, and water suppliers, total potable water use has already been reduced by 26.3 percent through November 2015, as compared with the same time frame in 2013. If 2016 is an above-average year for precipitation and snowpack, however, it is unrealistic to expect that the public will remain committed to this extreme level of conservation, given the sacrifices necessary to achieve it. As the Association of California Water Agencies (“ACWA”) noted in its January 6, 2016 comments, “continuing to ask Californians to sustain heroic water conservation efforts that are disproportionate to the actual need or immediate water supply conditions will undermine the credibility of the Administration and California’s water agencies and may make it much harder to generate the required response should emergency conditions reemerge in the future.” (Association of California Water Agencies, Comments on Proposed Regulatory Framework, p. 3.)

State Water Board staff has indicated that it is “committed” to monitoring snowpack, reservoir storage levels and groundwater basin levels and has stated that it will bring a proposal to the Board to adjust or eliminate the Emergency Regulation “if conditions warrant.” (Fact Sheet on Extending Emergency Regulation, p. 2.) This provides insufficient assurance for planning purposes. CWA recommends including a mechanism with specific triggers in the Extended Emergency Regulation, rather than relying on a general promise to revisit conservation standards if unspecified conditions are met.

Specifically, CWA recommends that the State Water Board incorporate a simple formula into the Extended Emergency Regulation for adjusting the mandated percentage reduction in total potable water production identified in Section 865(c). To the extent that the final snowpack report in April 2016 reflects amelioration of drought conditions affecting California, the conservation standard for each urban water supplier should be reduced by an equal proportion, that amount being approximately equal to the weighted average proportion by which the deficiency in the State’s snowpack as compared with an average year and the deficiency in the principal State reservoirs as compared with an average year have improved in comparison to those deficiencies as of April 2015.

For example, if the deficiency in the snowpack in April 2015 was 95%, but in April 2016 is 45%, then the deficiency will have been reduced by 50 percentage points, and if the deficiency in reservoir storage in April 2015 was 50%, but in April 2016 is 30%, then the deficiency will have been reduced by 20 percentage points. Assuming the appropriate weighting of snowpack and reservoir storage is 1:1, then the weighted average deficiency reduction would be the simple average of 50% and 20%, or 35%.

In this example, CWA proposes that the conservation standard for each urban water supplier should be reduced by approximately 35%. So, if the conservation standard for 2015 for a particular water system was 8%, then the conservation standard for 2016 would be 65% of 8%, or 5% (rounded down from 5.2%). If the 2015 conservation standard for another system was 20%, then its conservation standard for 2016 would be 65% of 20%, or 13%. And for a water system with a 2015 conservation standard of 36%, the conservation standard for 2016, in this example, would be 65% of 36%, or 23% (rounded down from 23.4%).

A similar approach could be taken with recovery in reservoir storage, or a combination of both could be considered. The point is that the Governor's November 13, 2015 Executive Order (B-36-15) stipulated that the urban water use restrictions be extended if "drought conditions persist through January 2016." Although the long-term effects of the drought are still critical, the conditions underlying the drought have not persisted in January. Common sense and prudence, of course, tell us that the emergency regulation should continue through the winter in order to maintain the current conservation progress, but meteorological reality and utility customer relations also suggest that something more than a nebulous promise to revisit the restrictions at the end of March is necessary.

In the Emergency Regulation Digest, the State Water Board admits, "we simply do not know what hydrologic conditions will exist at the end of March." (Emergency Regulations Digest, p. 4.) This provides all the more reason to include in the Extended Emergency Regulation a mechanism to adjust the mandated percentage reduction in total potable water production. Instead of a vague commitment to possibly address improved water conditions, CWA recommends that the State Water Board modify the draft Extended Emergency Regulation to include an explicit commitment to providing relief from the stringent water conservation standards if certain specific conditions are met.

No Cap on Credits or Adjustments to Conservation Standards

In the Proposed Regulatory Framework, State Water Board staff recommended that all credits and adjustments be capped to allow up to a maximum of a four percentage point decrease to any individual water supplier's conservation standard. CWA and many other commenters criticized this cap as unnecessary and inequitable. The proposed Extended Emergency Regulation increased the overall cap to eight percentage points, but this is insufficient to reflect the potential combination of climate and growth challenges facing certain water suppliers and the smart and beneficial investments some of the same suppliers may have implemented to help ensure a stable and efficient water supply. The cap, even increased to eight percentage points, fails to ameliorate the effect of climate or growth on the ability to achieve the conservation standards, and would create a disincentive for many water suppliers to invest in much-needed drought-resilient water supplies.

As the State Water Board prepares to extend the Emergency Regulation, it should be mindful of the incentives (and disincentives) the regulation creates or perpetuates. As discussed above, as we

enter a possible second year of mandatory usage reductions, the credibility of the State Water Board and the water suppliers will be at stake. There is an expectation among the public that the State Water Board will take this opportunity to tackle inequities that could not be addressed in the rush to get the original Emergency Regulation established. In particular, CWA urges the State Water Board to eliminate the cap on credits and adjustments.

Expand Water Supply Investments Eligible for Credits

Although many of the comments on the Proposed Regulatory Framework suggested expanding the credits available for drought-resilient water supply investments, the environmental organizations that provided comments uniformly opposed providing **any** credits (often using identical language). In their January 6, 2016 comments, environmental groups such as the California Coastkeeper Alliance, Pacific Institute, Natural Resources Defense Council, Sierra Club, Surfrider Foundation and others argued that providing credits for drought-resilient supply investments would allow communities to avoid conservation, could result in stranded assets when the drought ends, and could negatively affect the environment. These comments suggest a fundamental rejection of water resource planning and the benefits of portfolio management.

CWA respectfully disagrees with the assertion that allowing credits for water supply investments undercuts the State Water Board's conservation message. Over the last year, water suppliers and their customers have demonstrated their commitment to conservation. Indeed, conservation has become de rigueur in California in ways that are unlikely to change even when the drought ends. In certain communities, however, conservation alone is not enough to ensure a reliable, long-term water supply. Recognizing this fact – and providing appropriate recognition of water supply investments in the Extended Emergency Regulation – does not undermine conservation efforts.

Nor will providing such credits encourage indiscriminate water supply projects that will result in stranded assets when the drought is over. First, a key factor in determining the need and scale for such projects is fire flow requirements, making these assets unlikely to be “stranded” post-drought. Second, the challenges facing such projects in California and the level of review and regulatory hurdles that must be cleared to proceed are extraordinary and ensure that only the most needed and cost-effective supply projects will proceed. Allowing credits for water supply projects in the Extended Emergency Regulation, while helpful, would not be enough of an incentive for communities and water suppliers to heedlessly pursue flawed or unnecessary projects. The comments from the general public on the Proposed Regulatory Framework demonstrate frustration over the inequitable treatment of communities that have had the foresight to invest in drought-resilient water supply projects. Allowing credits for such projects would recognize and reward investments in smart water supply planning.

Furthermore, questions raised about environmental harm are unsubstantiated. The California Environmental Quality Act (“CEQA”) provides a process for significant environmental review of such water supply projects, which can take years or even decades. Providing credits within the

Extended Emergency Regulation does not in any way reduce the CEQA obligations for project proponents. Moreover, these water supply projects lessen the burden on surface water and groundwater supplies, and may make more water available to address environmental concerns. Instead of eliminating the credits for water supply projects, CWA recommends that the State Water Board modify the proposed Extended Emergency Regulation to make credits available for a greater variety of water supply projects. Providing credits to recognize multiple types of water projects is in keeping with the recently updated California Water Action Plan:

Ensuring water security at the local level includes efforts to conserve and use water more efficiently, to protect or create habitat for local species, to ensure food security, to recycle water for reuse, to capture and treat stormwater for groundwater recharge and reuse, and to remove salts and contaminants from brackish or contaminated water or from seawater. (California Water Action Plan, 2016 Update, p. 7.)

For example, water suppliers should receive credit for investing in indirect potable reuse, whether using coastal wastewater or not. Although the proposed Extended Emergency Regulation removed the explicit reference to coastal wastewater from the drought-resilient supply credit, it is still unclear whether any other type of indirect potable reuse will qualify. Section 856(f)(3)(F) of the proposed Extended Emergency Regulation states that the drought-resilient supply credit is only available to projects where the “use of that supply does not reduce the water available to another legal user of water or the environment.” The State Water Board gives indirect potable reuse of coastal wastewater as an example of a project that would meet this standard (Fact Sheet on Extending Emergency Regulation, p. 7.), so a preference for coastal wastewater projects may continue to limit the availability of such credits.

CWA is troubled by the broad language used in the Extended Emergency Regulation, which invites subjective interpretation, and by the prospect that determination of whether a drought resilient water supply project “does not reduce” water available to other users or the environment will be made by State Water Board staff. This potentially complex legal issue could have ramifications beyond the question of whether a particular project qualifies for drought-resilient supply credits. Moreover, CWA does not believe such a finding is necessary to justify credits for indirect potable reuse. CWA recommends that State Water Board delete the problematic language (as well as the four percent threshold requirement) and simply calculate the credit based on the percentage of indirect potable reuse as part of the water supplier’s overall potable supply.

Additionally, the Extended Emergency Regulation should not limit the drought-resilient credit to projects developed after 2013. Water suppliers should also receive credit for drought resistant water supplies developed before 2013. It is important to recognize and reward the foresight of water suppliers who took action and made investments in reaction to previous periods of drought, not just the current drought. Without such projects, many communities would have suffered

significant economic hardships during the current drought. It is appropriate to provide credit for these projects in calculating the conservation standards in the Extended Emergency Regulation.

CWA also endorses a credit for non-potable recycled water use. Contrary to the claims made by State Water Board staff, suppliers using non-potable recycled water for irrigation are **not** already realizing the benefit of providing recycled water. A supplier that has made the necessary investments to allow it to meet a large portion of irrigation demand with non-potable recycled water will not have the same ability to meet water use reduction targets as a supplier who has not made similar efforts. The updated California Water Action Plan cites increasing the use of recycled water as one of the key actions necessary to achieve State water policy goals. “California needs more high quality water, and recycling is one way of getting there.” (California Water Action Plan, 2016 Update, p. 8.) Providing a credit for non-potable recycled water use provides an important incentive to increase the use of recycled water.

CWA also recommends providing a credit for remediation of polluted water sources. Remediation of polluted waters sources adds a new or restored source of supply to existing surface and groundwater supplies. The extended Emergency Regulation should recognize and provide incentives for such efforts by including a similar credit in the form of a one-to-one reduction from the calculated amount of water that needs to be saved under the Emergency Regulation.

Failure to acknowledge and adjust for these often-significant investments in a water utility’s individual conservation standard will undoubtedly create a disincentive for water suppliers to undertake such important projects in the future. This is why CWA urges the State Water Board to modify the proposed Extended Emergency Regulation to provide credits for a wider variety of water supply projects.

CWA appreciates being accorded this opportunity to provide input on the proposed Extended Emergency Regulation and to suggest ways to make it fairer and more effective. As Californians prepare for a likely second year of water use restrictions and prohibitions, it is important for the State Water Board to make changes to address inequities and reflect the possibility of improved circumstances. While CWA recognizes that it may take years to recover fully from this drought, the Extended Emergency Regulation presents an opportunity for the State Water Board to further the goals of the California Water Action Plan and to tailor conservation standards to reflect the particular circumstances of individual water suppliers.

Sincerely,



Jack Hawks

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