



Association of California Water Agencies

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January 6, 2015

Delivered by e-mail to: Kathy.Frevert@waterboards.ca.gov

The 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
Sacramento, CA 95814

Subject: "Comments on Proposed Regulatory Framework"

Dear Chair Marcus and Members of the Board:

The Association of California Water Agencies (ACWA) is pleased to comment on the State Water Resources Control Board (State Water Board) staff "Proposed Regulatory Framework for Extended Emergency Conservation Regulation for Urban Water Conservation" (Proposed Framework), which staff released for public review on December 21, 2015. ACWA represents over 430 public water agencies which are responsible for delivery of over 90% of the water used for residential, commercial and agricultural purposes in California. Water agencies statewide have played a key role in the successful implementation of the 2015 Emergency Conservation Regulation to address the on-going drought. We recognize the need to extend these regulations into 2016 in a modified form that "incorporates insights gained" as authorized by the Governor's most recent Executive Order B-36-15. We understand that the State Water Board is currently planning to adopt an Extended Emergency Conservation Regulation (Extended Regulation) in early February, effective immediately upon expiration of the current regulation on February 13.

We appreciate the staff's willingness to consider input offered by water agencies as part of the informal work group process and the December 7 public workshop, and this input is clearly reflected in elements of the Proposed Framework. We are also thankful that the staff was willing to extend the originally proposed comment deadline in recognition of the holidays.

ACWA believes that the State Water Board should not adopt an Extended Regulation without addressing three fundamental concerns raised by the staff Proposed Framework. First, ACWA strongly opposes the total cap of 4 percentage points for all credits and adjustments as proposed by staff. We also oppose the individual caps of 4 percentage points for climate adjustment and drought resilient sources of supply. These caps severely undermine the purpose of these needed adjustments. Second, the credit for drought resilient sources of supply must be modified to remove the "coastal" restrictions and explicitly include a much broader range of drought resilient supplies, such as the desalination of brackish groundwater, groundwater banks and conjunctive use projects, surface storage, and non-potable recycled water supplies which contribute to local water supply reliability, even if developed prior to 2013. Third, the State Water Board should incorporate within the Extended Regulation a provision to re-evaluate and reduce or suspend the mandatory conservation standards based on precipitation,

snowpack and reservoir storage in April 2016. If above-normal rainfall alleviates drought conditions as expected, the Emergency Conservation Regulation needs to include a “reopener” mechanism to adjust accordingly, thereby preserving public support for the regulation. These fundamental concerns and suggestions for refinements, are explained below.

Fundamental Concerns

The success with which California has weathered the current drought is in no small measure due to the far-sighted investments that have been made by local water agencies over past decades in both demand management and water supply. The Extended Regulation needs to be crafted to achieve a much better balance than the current regulation, which is entirely dependent upon mandatory water rationing to significantly reduce demand. The Extended Regulation for 2016 must address the following three fundamental concerns raised by the staff’s Proposed Framework.

1. Remove the Caps on Adjustments and Credits

ACWA appreciates the staff’s recognition of the need for a climate adjustment and credits for drought resilient sources of supply. But imposing a total cap of up to 4 percentage points for adjustments and credits, as proposed by staff, would severely restrict the benefits received from investments in drought resilient sources of supply. ACWA opposes this approach which could undermine the momentum that has built over decades in California in local and regional water supply planning and development and create a threat to the success of the Governor’s California Water Action Plan. The plan relies on implementation of a comprehensive suite of actions – not just water conservation.

For example, under the staff’s proposal an inland agency with a 2015 Conservation Standard of 36 percent could receive a 2016 Conservation Standard of 32 percent. In other words, the staff’s proposal recognizes climate and local investments, but only to the tune of 10 percent of its drought management effort (the 4 percent cap is approximately 10 percent of the 36 percent mandate). That means the remaining 90 percent still has to come from demand reduction. For agencies situated in a warmer inland area, the climate adjustment alone will just about use the 4 percent cap, leaving *no* credit for local investments in drought preparedness.

Instead water agencies should receive *both* a climate adjustment *and* full credit for drought resilient supplies where local climate conditions and past supply investment actions warrant. The Extended Regulation should not include any total cap as proposed in the Proposed Framework, allowing the climate adjustments and supply credit mechanisms to operate independently and achieve their separate policy objectives. Further, there should not be caps on the climate adjustment or the drought resilient sources of supply credit.

2. Expand the Drought Resilient Sources of Supply Credit

The Proposed Framework properly acknowledges the need to provide credits for drought resilient supplies, but the credits proposed are too narrow in scope and limited in benefit. We are concerned that the proposed limitations on drought resilient sources of supply to coastal wastewater or desalinated water developed since 2013 do not recognize the importance of many locally significant water supply reliability investments. The proposal Regulation should be revised to remove the “coastal”

restrictions and explicitly include other drought resilient supplies that are available, such as the desalination of brackish groundwater, groundwater banks and conjunctive use projects, and non-potable recycled water supplies.

And, as stated above, the 4 percentage points cap for drought resilient sources of supply should be removed entirely and full credit should be provided were it is warranted.

3. Add a Provision to Address Above-Normal Precipitation

Although the Proposed Framework is silent concerning how the State Water Board intends to address expected above-normal precipitation in the coming months, the Extended Regulation should proactively address this likely scenario. The Extended Regulation should include a provision to reduce the Conservation Standards or suspend the emergency regulation in April if above-normal statewide precipitation and snowpack conditions are projected to recharge reservoir storage and mitigate drought conditions for the summer of 2016. Although above-normal precipitation this winter is not likely to bring an end to the drought entirely, 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. Should dry conditions re-appear next winter, Californians and their water suppliers have demonstrated their ability to rapidly re-implement mandatory water use reductions if they are needed in spring of 2017.

Suggestions to Address Additional Concerns

The staff's Proposed Framework raises additional concerns that should also be addressed.

1. Modify the Climate Adjustment

ACWA appreciates staff recognition of the need to adjust the Conservation Standard to account for climate. However, the staff proposed method for climate adjustment is based on comparing the average July through September evapotranspiration (ET) for the water supplier service area to the state average. Using this simple average for the state does not provide an accurate reflection of the population using the water agencies. Using the simple average artificially increases the average because it gives the same weight to each of the 18 ET zones, regardless of population or water use. In particular, the current calculation provides no relief for the agencies in the inland ET Zone 8, which is considerably hotter than Zones 1-6. ACWA recommends revising the method of calculation so that agencies in Zone 8 are provided some climate adjustment by means of a population weighted average. Alternatively, this could be accomplished by revising the table to provide a 2 percent reduction in conservation standard for agencies with ET that deviates from the average ET by 2 percent to less than 10 percent. As with other adjustments to the Conservation Standards is essential that the State Water Board avoid provisions in the Extended Emergency Regulation that would result in redirected impacts to other water agencies.

2. Modify the Growth Adjustment

ACWA appreciates the staff's recognition of the need to adjust the Conservation Standard to account for growth experienced by some water suppliers since 2013. However, the method outlined in the Proposed Framework is dependent on residential landscaped area information that is not readily available for many water agencies. Even for those agencies that have landscaped area data or estimates, the methods used to acquire this information vary significantly so the resulting growth adjustment could vary somewhat between water agencies. Instead, the Extended Regulation should incorporate a revised methodology for the residential calculation using average gallons per residential connection February-October 2015 (as is proposed for the commercial, industrial, and institutional sector). The average gallons per residential connection could be easily calculated using Residential Gallon Per Capita Per Day (R-GPCD) divided by the number of new residential connections. This resulting calculation would be easier to make and verify and would be unlikely to vary substantially from the results obtained from a more burdensome landscaped area approach. Additionally, the current proposal multiplies the percent of new demand by the original conservation requirement to make an adjustment to the conservation standard. This significantly reduces the effectiveness of the growth adjustment. We recommend using a more equitable method of applying the growth adjustment by subtracting the percent of new demand from the conservation requirement. This will fairly account for growth and prevent the penalization of areas with growing economic development.

3. Preserve the Commercial Agricultural Exemption

The existing Commercial Agricultural Exemption has worked as intended to protect commercial agricultural activity that is dependent on potable water supplies. This exemption process should be preserved, and in absence of any evidence of abuse, imposition of a \$1000 threshold as proposed by staff would add a new and unnecessary administrative burden on farmers, water suppliers and the State Water Board.

4. Incorporate the Regional Compliance Option

The Regional Compliance Option previously advocated by water agencies was proposed to achieve the same water savings as would be required by the participating individual water agencies. It is based on a currently successful model of "regional alliances" as administered by the Department of Water Resources (DWR) to implement SB7X7 (2009), and it would empower participating water suppliers to achieve significant administrative and public outreach efficiencies. The reasons given by staff in the Proposed Framework for rejecting this option as potentially impeding enforcement action or accountability by individual water agencies are fully addressed by this proposal. The State Water Board should incorporate this compliance option into the Extended Regulation and then allow the resulting voluntary regional alliances to deliver the compliance results that they believe they can produce. Again, there is essentially no down-side risk to the program by empowering water suppliers with this compliance option.

The Honorable Felicia Marcus, Chair

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Thank you for your consideration of these comments. ACWA continues to appreciate the significant attention the State Water Board has been giving to the Emergency Conservation Regulation, and we stand ready to answer questions or otherwise constructively inform development of the Extended Regulation after its release for public review in coming weeks. I am available to discuss these comments at daveb@acwa.com or (916) 441-4545.

Sincerely,



David Bolland
Special Projects Manager

cc: Mr. Wade Crowfoot, Deputy Cabinet Secretary, Office of Governor Edmund G. Brown Jr.
Mr. Tom Howard, Executive Director, State Water Board
Mr. Eric Oppenheimer, Chief Deputy Director, State Water
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