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VIA EMAIL: commentletters@waterboards.ca.gov

December 21, 2017

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814



Subject: "Comment Letter – Prohibiting Wasteful Water Use Practices"

Dear Ms. Townsend:

The Association of California Water Agencies (ACWA) appreciates this opportunity to provide comments on the State Water Resources Control Board's (State Water Board) proposed draft regulation to permanently prohibit certain "wasteful water uses." The proposal is intended, in part, to replace similar prohibitions that were part of the emergency drought response regulation which recently expired on November 25, 2017.

ACWA represents approximately 440 public water agencies responsible for delivery of over 90% of the water used for residential, commercial and agricultural purposes in California. ACWA's member water agencies have institutionalized water conservation practices and promoted the wise use of California's water resources long before the recent drought, during the drought, and have continued to do so since the drought was declared to be over last spring. As the State Water Board itself knows, most of California's urban water suppliers have already locally prohibited many of the "wasteful water uses" which were included in the emergency drought response regulation and are now proposed for permanent statewide prohibition. Therefore, as the State Water Board's own analysis suggests, potential additional annual water savings associated with the State Water Board proposed prohibitions would be essentially inconsequential (a "drop in the bucket" as characterized by the staff), and action on a statewide basis could therefore be considered unnecessary from a practical perspective.

Although many of the proposed prohibitions make sense in principle and are already locally well-implemented and generally supported by Californians, urban water suppliers have concerns about some of the more prescriptive details of the staff proposal. We recommend that some of the proposed prohibitions be amended and others dropped, as described below and in other water agency comment letters being submitted separately.

In addition, and as explained further below, ACWA shares a more general concern with many urban water agencies statewide about the State Water Board's intention to use its general authority to prevent "waste and unreasonable use" as a means to categorically prohibit certain water use practices without consideration of specific water use circumstances as required by law. Instead, we support reframing the State Water Board's action as requiring water users to

eliminate inefficient water use practices and maximize the beneficial use of water through increased water conservation.

Proposed Prohibitions

Proposed Prohibitions that ACWA Supports

ACWA supports the following proposed prohibitions based on the principle of beneficial use, where water users are expected to manage their application of water to achieve the intended use without purposeless “waste”:

- **Runoff from outdoor landscapes “...in a manner that causes runoff such that water flows onto adjacent property, non-irrigated areas, private and public walkways, roadways, parking lots, or structures.”**
- **Uncontrolled flow from “...a hose that dispenses water to wash a motor vehicle, except where the hose is fitted with a shut-off nozzle or device attached to it that causes it to cease dispensing water immediately when not in use.”**
- **“Use potable water in an ornamental fountain or other decorative water feature, except where the water is part of a recirculating system.”**
- **“Operators of hotels and motels shall provide guests with the option of choosing not to have towels and linens laundered daily. The hotel or motel shall prominently display notice of this option in each guestroom using clear and easily understood language.”**

Proposed Prohibitions that ACWA Supports with Amendments

ACWA supports the following proposed prohibitions with the amendments indicated in *italic* and ~~strikeout~~, (or functionally equivalent amendments as proposed by others), based on the need to preserve local discretion to administer the measures to address local conditions:

- **“Apply potable water directly to driveways and sidewalks” *...unless necessary to address a health and safety need.*** This amendment provides needed local flexibility to make necessary management decisions and eliminates a too prescriptive constraint posed by the term “immediate” in the staff proposal.
- **“Apply water to irrigate turf and ornamental landscapes during and within 48 hours after measurable rainfall ~~of at least one-tenth of one inch of rain~~”.** This amendment restores needed local flexibility to balance highly localized and variable rainfall patterns, site-specific landscape irrigation needs, and the technical limitations of rain sensors and irrigation controllers. This amendment is also in keeping with the wording of the previous emergency drought prohibition, which was effectively administered by local water suppliers.

Proposed Prohibitions that ACWA Opposes

ACWA opposes the following proposed prohibitions as being unnecessarily burdensome or too prescriptive. We believe that the effectiveness and details associated with these provisions are best left to the judgment of local water suppliers, based on local needs and conditions:

- **“Serve drinking water other than upon request in eating or drinking establishments, including but not limited to restaurants, hotels, cafes, cafeterias, bars, or other public places where food or drink are served and/or purchased.”** This is widely considered to be an effective emergency drought public education messaging tool, but it should be deployed as determined by local water suppliers in the appropriate local water supply context to retain its effectiveness.
- **“Irrigate turf on public street medians or publicly owned or maintained landscaped areas between the street and sidewalk, except where the turf serves a community or neighborhood function.”** Irrigation of turf with potable or recycled water in any landscape context in California is not now, nor should it be considered *per se* a “wasteful” use of water. Although the recently expired emergency regulation included such a prohibition as a temporary emergency response to the drought, as directed by Executive Order B-37-16 this prohibition was limited to irrigation of turf *on medians with potable water*. The current staff proposal prohibits *all irrigation of turf* (including use of recycled water) and extends it from only medians to landscaping on adjacent parkways (so-called “verges”) within public rights of way. Such a retroactive prohibition on a permanent basis statewide is unreasonable, and (as shown in the State Water Board’s own analysis) would not result in enough water savings to justify the high cost of this unfunded state mandate. Landscaping and maintenance decisions associated with medians and adjacent parkways are subject to widely varying local considerations and expectations statewide. Local entities must already comply with the Model Water Efficient Landscape Ordinance (MWELO), or their equally effective local landscape ordinances, with regard to new landscapes and irrigation standards. As recognized by the staff proposal, local entities should exercise final judgment for determining “community or neighborhood function” of turf in specific circumstances. But, as described in many other comment letters from water agencies statewide, the specific cost implications and site-specific considerations associated with landscaping and irrigation of medians and parkways (including use of recycled water and irrigation methods to keep trees alive) renders imposition of a general statewide prohibition of this type highly burdensome and too prescriptive.

Opposition to Use of the “Waste and Unreasonable Use” as the Legal and Policy Basis for Action

ACWA agrees with the legal and policy arguments presented by the comment letter submitted by San Francisco Public Utilities Commission (SFPUC) in opposition to the State Water Board’s



proposed use of its authority to prevent waste and unreasonable use to enact the proposed prohibitions. We are aware that similar arguments are made in comment letters submitted by several other water agencies and entities. We agree with SFPUC that use of the proposal to declare certain water uses and practices *per se* “wasteful and unreasonable” by regulation “is contrary to law, inequitable to water right holders affected by the regulation, and contrary to the current state policy of encouraging water conservation without affecting water rights”.

ACWA urges the State Water Board to reframe this proposal as requiring water users to eliminate inefficient water use practices and maximize the beneficial use of water through increased water conservation, as proposed in SFPUC’s letter.

Thank you for your consideration of these comments. I am available to discuss them by email or phone at daveb@acwa.com or (916) 441-4545.

Sincerely,

A handwritten signature in black ink that reads "David E. Bolland". The signature is written in a cursive, slightly slanted style.

David Bolland
Director of State Regulatory Relations

cc: Michael Lauffer, Chief Counsel, State Water Resources Control Board
Eric Oppenheimer, Chief Deputy Director, State Water Resources Control Board
Max Gomberg, Climate and Conservation Program Manager, State Water Resources Control Board