

LATE COMMENT



December 26, 2017



Chair Felicia Marcus and Board Members

c/o Jeanine Townsend, Clerk to the Board

State Water Resources Control Board

1001 I Street

Sacramento, CA 95814

Sent via electronic mail to: commentletters@waterboards.ca.gov

RE: Comment Letter – Prohibiting Wasteful Water Use Practices

Dear Chair Marcus and Board Members:

We appreciate the opportunity to comment on the proposed Regulation Prohibiting Wasteful Water Use Practices (Regulation). Our organizations have worked with the State Water Resources Control Board to promote water conservation and prevent the waste and unreasonable use of water for more than a decade. We want to adopt strong measures that make conservation a California way of life, not only during emergency droughts, but permanently. We offer comments herein aimed at maximizing the water savings potential of this Regulation and setting a strong precedent and foundation for future conservation and efficiency measures.

COMMENTS ON STAFF PROPOSAL

Generally, we support the November 1, 2018 staff proposal on permanently prohibited wasteful water use practices and have provided some additional comments below.

Issue: Drinking Water Upon Request

During the emergency drought, restaurants were required to serve water only upon request. In order to implement the restriction, restaurant staff throughout California were trained to implement the new rule, customers were educated about the new practice, and many restaurants created and displayed information about water conservation on menus, websites, and walls. The work has already been undertaken to

implement this practice, we do not see the wisdom in now abandoning it. Having restaurants serve water only upon request and explain the rationale for doing so is exactly the kind of change in practice that reflects our state's commitment to cultivate a strong water conservation ethic in every Californian.

Water savings from restaurants may be a small part of broader water needs and conservation and efficiency gains, but it costs nothing and is a valuable educational opportunity. Now that we are no longer in a state of emergency drought, restaurants can update their signage and content to reflect the many other reasons to value every drop of water—the fact that one million Californians do not have access to safe, affordable drinking water, the fact that our state faces a hotter, drier future with climate change, the fact that some of our rivers do not have enough water flowing through them to sustain salmon and other fish populations.

We believe that California restaurants are up to the challenge of implementing these reforms to conserve California's water resources and to make our state more resilient and sustainable. We urge the Board to make this a permanent restriction, alongside the other wasteful practices under consideration.

Issue: Exclusion of Recycled Water from Some Prohibited Practices

Article 2, Section 963(b)(1) specifies that the prohibition against washing down sidewalks and streets and running of ornamental fountains and other landscapes apply only to "potable water." Some stakeholders argue that recycled water be carved out from additional prohibitions, such as the median and turf restrictions. We oppose these and all exemptions for non-potable recycled water because it would suggest that our state values recycled water less, and that wasting recycled water or using it unreasonably is permissible. To the contrary, California invests heavily in recycled water and it must not be wasted.

Promoting efficient use of recycled water ensures that the recycled water available meets the needs of more people, thereby maximizing the value of those investments. When thinking about the balance between supply and demand management, we can look to the energy sector for guidance. In California, energy utilities have efficiency targets and a renewable portfolio standard. This approach maximizes the value of investments in renewables and opportunities to reduce greenhouse gas emissions. Likewise, water conservation and efficiency and recycled water are complementary, not competing, strategies that will allow us to meet our water sustainability goals more quickly and at lower cost.

Using water efficiently ensures that water supplies, including recycled water, are available to meet the needs of more people, maximizing the value of those investments and accounting for population growth. Improving water use efficiency can extend the lifespan of existing plants and delay costly upgrades of water treatment plants that would otherwise be necessary as a result of population growth, significantly reducing wastewater bills and capital costs.

It is critical that the prohibition of wasteful practices apply evenly to potable and non-potable water. Drawing a distinction between potable and non-potable water in these regulations would set a poor precedent that potable water must be conserved and used efficiently, whereas recycled water need not be used as carefully. We urge the Board to ensure that the prohibited practices apply to all types of water, unless health and safety needs require otherwise.

Issue: Irrigation of Turf on Publicly-Owned or Maintained Parkways

In regulating parkways and public street medians, concerns have been raised regarding accessibility to the sidewalk. Some cities, such as the City of Santa Monica, address these concerns by providing a list of approved drought tolerant plants and following existing parkway landscaping guidelines to ensure that parkways will still provide accessibility to foot traffic. This regulation could require cities, or other appropriate entity, to adopt a parkway landscape ordinance with an approved list of climate appropriate plants, or allow for the use of a default list provided by the State Board.

ADDITIONAL URBAN RECOMMENDATIONS

Upon review of existing water waste ordinances in communities in California and other states, we expanded on the proposed list of prohibited practices. In addition to the State Water Board's proposed language, we recommend that the state permanently prohibits practices that waste water, both potable and recycled, including:

- Sprinkler irrigation between the hours of 10am and 6pm except by use of a hand-held bucket or similar container, a hand-held hose equipped with a water shut-off nozzle or device, or for very short periods of time for the express purpose of adjusting or repairing an irrigation system.
- Application of water for dust or other pollutant suppression purposes other than by means of a hose fitted with a flow cut-off device or a vehicle fitted with sprinklers.
- Installation of non-recirculating systems in any new commercial in-bay or conveyer car wash.
- Installation of non-recirculating systems in any new commercial laundry system.
- Installation of single-pass cooling systems in buildings requesting new water service.

Many communities and water suppliers in California and other states already implement variations of these measures. For example, as of 2015, 33 water suppliers permanently prohibit vehicle washing except at facilities using recycled or recirculating water, and an additional 39 suppliers prohibit such uses in their Stage 1 drought restrictions. Similarly, 38 suppliers already prohibit single-pass cooling systems in new construction or on building requesting new water service at all times, and an additional 20 suppliers prohibit these systems in their Stage 1 drought restrictions. Finally, 31 suppliers prohibit the installation of non-recirculating systems in new commercial laundry facilities at all times, and an additional 11 suppliers prohibit these systems in their Stage 1 drought restrictions.

Proposal: Require retail water suppliers to develop and implement a local enforcement strategy to achieve the replacement of inefficient plumbing fixtures required by state law

Existing California law (Cal. Civil Code § 1101.1 et seq., enacted as SB 407 of 2009) requires all inefficient plumbing fixtures to be replaced with water-conserving plumbing fixtures in single family residential buildings by January 1, 2017 and in multifamily residential and commercial buildings by January 1, 2019.¹ In cases of properties undergoing major renovations and additions, enforcement of the

¹ In 1992, California enacted SB 1224 (Killea) setting efficiency standards for new plumbing fixtures sold or installed in the state after January 1, 1994, and the federal government adopted similar standards, also effective in

bill's requirements falls to local building code officials. In the case of all other existing buildings, SB 407 explicitly authorizes, but *does not require*, cities, counties, and water suppliers to enact local ordinances or policies to enforce the bill's provisions.² As a result of this non-mandatory enforcement responsibility, few, if any, local jurisdictions or water suppliers have adopted mechanisms and policies to ensure compliance with the requirements of SB 407.

Nevertheless, the law is clear that inefficient plumbing fixtures need to be replaced by dates certain and that enforcement power ultimately lies with local jurisdictions and water suppliers. The Board should help bridge this gap by requiring water suppliers to adopt a local enforcement strategy for SB 407. Such action is not only critical given the state's emergency state of drought, but also is in line with the spirit and directive of Governor Brown's April 25, 2014 Executive Order.

California has over 7 million single-family homes and over 3 million multifamily housing units built before 1994 and originally equipped with inefficient plumbing fixtures.³ Even allowing for accelerated replacement rates that may have been influenced by utility rebate programs, we estimate there are more than 6 million inefficient toilets remaining in more than 3 million single family homes, along with nearly 4 million inefficient showerheads and nearly 10 million inefficient faucets. Inefficient fixtures in multifamily and commercial buildings would be in addition to these numbers. Replacing all the inefficient toilets that remain in single-family homes could save roughly 90,000 acre-feet per year. Adding savings from showerhead and faucet replacement, and taking into account multifamily and commercial buildings as well, savings from plumbing replacement could yield 150,000 acre-feet or more per year. The Board should require retail water suppliers, alone or in collaboration with other water suppliers and/or local governments within their service area, to develop and implement a local enforcement strategy to achieve the replacement of inefficient fixtures required by state law. At a minimum, each retail water supplier should adopt procedures to ensure that all inefficient plumbing fixtures have been removed and replaced with water-conserving fixtures whenever there is a change of name on the customer account for a pre-1994 building. This will effectively achieve the same result as a retrofit upon resale ordinance because a transfer of property ownership usually results in a change of customer account for utility services;⁴ the difference is that the responsibility would be on water agencies, as opposed to realtors, to ensure compliance with the state water efficiency requirements. Most importantly, this proposal will provide at

1994. *See* Energy Policy Act of 1992, H.R. 776, 102nd Cong. § 123(f). SB 407 defines "noncompliant plumbing fixtures" as that class of fixtures that predates these standards from the early 1990s, specifically: (1) Any toilet manufactured to use more than 1.6 gallons per flush; (2) any urinal manufactured to use more than one gallon per flush; (3) any showerhead manufactured to have a flow capacity of more than 2.5 gallons per minute; and (4) any interior faucet that emits more than 2.2 gallons per minute. SB 407 also requires indoor plumbing fixtures to be replaced earlier than the dates identified above under certain circumstances, such as building additions and renovations that meet certain criteria.

² It should also be noted that nothing in the statute prevents a local jurisdiction from adopting an earlier deadline for the replacement of inefficient fixtures.

³ American Housing Survey, *Metropolitan Surveys for 1998, 2002, 2004*, micro data extracted with US Census DataFerrett web application.

⁴ There currently are at least 10 California jurisdictions that have retrofit upon resale requirements: Beverly Hills, Burbank, Cambria Community Services District, Los Angeles (City), Manhattan Beach, North Marin Water District, San Diego (City), San Francisco, Santa Cruz, and Santa Monica.

least one consistent statewide mechanism by which all water suppliers can help enforce the provisions of SB 407 for all pre-1994 residential and commercial buildings in the state.⁵

Replacement of inefficient plumbing fixtures has been long recognized in California as a type of water conservation strategy. Moreover, the Board's seven-factor test to determine whether a type of water use constitutes waste and unreasonable use would support a finding that the continued use of non-water conserving plumbing fixtures in pre-1994 residential and commercial buildings constitutes waste and unreasonable use of water in violation of the California Constitution. Requiring local strategies to implement SB 407 would curtail the waste and unreasonable use of water because it would require water suppliers to take additional measures this year to accelerate the replacement of inefficient fixtures in advance of SB 407's 2017 and 2019 deadlines, thereby ensuring that the state's water-saving goals are met in time.

BROADENING THE RULEMAKING

We are happy to see the Board act pursuant to the Constitutional mandate with respect to urban water use and develop regulations within the scope of the Governor's Executive Order B-37-16. However, as a state, we can and must, go beyond the practices identified in that Executive Order, developed during the drought and focusing narrowly on urban conservation and efficiency. As our state faces hotter and drier conditions and a future of more frequent and severe droughts, the Board must reconsider and act to address uses of water that are not reasonable and that are wasteful. We ask the Board to consider the development of wasteful and unreasonable prohibitions of agricultural and municipal water uses and to offer a timeline for doing so.

Agricultural water use accounts for approximately 80 percent of developed water supply in California and must be addressed pursuant to the Constitutional waste and unreasonable use mandate. For example, water diversions from impaired streams for agricultural use and extensive and unsustainable overdraft of groundwater.

Additionally, failure to reclaim and reuse treated wastewater and failure to use recycled water reasonably are also wasteful and unreasonable uses. The California Constitution recognizes that "[b]ecause of the conditions prevailing in this State the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare."⁶

Finally, water conservation and efficiency programs can and should be tied to satisfying the human right to water and needs for fish, wildlife, and recreation. In developing regulations to prohibit the waste and

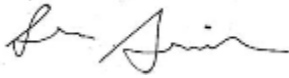
⁵ Other elements of a local strategy might include continued or expanded rebates, direct installation programs for low-income residences, replacements in public buildings, or compliance certifications for newly leased rental property.

⁶ [1] Cal. Const., Art. X, § 2.

unreasonable use of water, we must consider whether these savings benefit the human right to water and instream flow needs of rivers, streams, and wetlands.

A dry start to the winter season in California is a reminder that we do not know when our next drought could occur. We look forward to continued work with the State Water Resources Control Board to secure a sustainable and equitable future for all Californians.

Sincerely,

A handwritten signature in black ink, appearing to read "Sara Aminzadeh".

Sara Aminzadeh, Executive Director

California Coastkeeper Alliance

A handwritten signature in black ink, appearing to read "Heather Cooley".

Heather Cooley, Water Program Director

Pacific Institute

A handwritten signature in black ink, appearing to read "Tracy Quinn".

Tracy Quinn, Senior Policy Analyst

Natural Resources Defense Council