



**VIA ELECTRONIC MAIL**

April 14, 2016



Hon. 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  
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**Re: Comment Letter – Urban Water Conservation  
Workshop**

Dear Chair Marcus and Members of the Board:

California Water Association (“CWA”) submits the following comments on potential adjustments to the Extended Emergency Regulation adopted in February 2016. 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 potential adjustments.

The suggestions in this letter are limited to adjustments to the current Emergency Regulation. As CWA has stated in prior comments, CWA is opposed to permanent mandated reductions in water use. While targeted conservation standards may be appropriate during a drought emergency, they are not necessary or desirable once drought conditions subside. CWA continues to believe that if the State Board decides to consider permanent use restrictions, it should do so in a separate proceeding.

CWA was satisfied that the Extended Emergency Regulation adopted in February included provisions allowing for reductions in mandated conservation standards of up to 8% based on particular characteristics of the water system. Further adjustments, based on local conditions, are now warranted, in view of the significant improvement of statewide and certain local water supplies during the current water year.

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Hon. Felicia Marcus, Chair  
Members of the State Water Resources Control Board  
April 14, 2016  
Page 2 of 6

CWA recognizes that the salutary impacts of the 2016 El Niño weather pattern were far more significant in Northern than Southern or Central California and agrees with recent comments in the press from State Water Board members that caution is necessary in relaxing the current Emergency Regulation. Nonetheless, because of improved conditions in Northern California and the need to help water agencies and utilities maintain their credibility among customers, CWA urges the State Water Board to:

- reduce the mandated conservation standards for all water systems by a percentage reflecting the alleviation of statewide drought conditions;
- remove any caps on adjustments and credits allowed under the Extended Emergency Regulation adopted in February 2016;
- allow further reductions in mandatory conservation standards for water suppliers that can show they are no longer subject to significant water supply constraints due to the replenishment of their sources of supply;
- allow additional credits for any water system that previously has made substantial long-term investments to augment its water supplies; and
- continue promoting conservation efforts by all water users in California.

In its notice for the April 20, 2016 public workshop, the State Water Board sought comments on the following issues:

- What elements of the existing February 2016 Emergency Regulation, if any, should be modified and how so?
- How should the State Water Board account for regional differences in precipitation and lingering drought impacts, and what would be the methods of doing so?
- To what extent should the State Water Board consider the reliability of urban water supplier portfolios in this emergency regulation?

CWA addresses these issues in detail below. In doing so, CWA recommends that, at a minimum, the State Water Board modify the Extended Emergency Regulation to:

- adjust the mandated percentage reduction in total potable water production to reflect changed circumstances from when the first Emergency Regulation was implemented;
- allow local jurisdictions such as the Santa Clara Valley Water District to continue enforcing local conservation requirements, as appropriate;
- eliminate the cap on credits or adjustments to the conservation standards for urban water suppliers;
- reduce conservation mandates for water suppliers that no longer are subject to significant supply constraints due to the replenishment of their sources of supply, and

Hon. Felicia Marcus, Chair  
Members of the State Water Resources Control Board  
April 14, 2016  
Page 3 of 6

- clarify and extend the credits for water supply investments.

CWA appreciates being accorded this opportunity to provide input on the Extended Emergency Regulation and to suggest ways to make it fairer and more effective. It is important for the State Water Board to make changes that address inequities and reflect improved circumstances so as to maintain credibility with water users.

**1. What elements of the existing February 2016 Emergency Regulation, if any, should modified and how so?**

The most important modification to the Emergency Regulation is to adjust the mandated conservation standards in recognition of the amelioration of drought conditions. Since drought conditions have lessened significantly as compared to last year, the conservation standard for each urban water supplier should be reduced accordingly.

Previously, CWA recommended that the State Water Board incorporate a simple formula into the Emergency Regulation to adjust the mandated percentage reduction in total water production. CWA's suggestion was for specific reductions 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. It may be instructive to see how CWA's suggested formula would apply today.

The deficiency in the snowpack on April 1, 2015 was 95%,<sup>1</sup> but on March 30, 2016, it was 13%,<sup>2</sup> thus the deficiency has been reduced by 82 percentage points. The deficiency in reservoir storage was 36% as of the end of March 2015,<sup>3</sup> but it was 29% as of the end of March 2016. Assuming the appropriate weighting of snowpack and reservoir storage is 1:1, then the weighted average deficiency reduction would be the simple average of 82% and 7%, or 44.5%.

Therefore, applying this formula, the conservation mandate for each urban water supplier would be reduced by approximately 44%. So, if the conservation standard for 2015 for a particular water system was 8%, then the conservation standard for 2016 should be 56% of 8%, or 4% (rounded down from 4.48%). If the 2015 conservation standard for another system was 20%, then its conservation standard for 2016 should be 56% of 20%, or 11%. And for a water system with a 2015 conservation standard of 36%, the conservation standard for 2016 should be 56% of 36%, or 20%. As this example indicates, substantial across-the-board moderation of current

<sup>1</sup> <http://www.water.ca.gov/news/newsreleases/2015/040115snowsurvey.pdf>

<sup>2</sup> <http://www.water.ca.gov/news/newsreleases/2016/033016.pdf>

<sup>3</sup> <http://cdec.water.ca.gov/cgi-progs/reservoirs/STORAGE> (showing statewide reservoir storage at 71% of average as of March 31, 2016, report generated April 12, 2016).

Hon. Felicia Marcus, Chair  
Members of the State Water Resources Control Board  
April 14, 2016  
Page 4 of 6

conservation mandates is well justified by the State's improved water supply outlook.

Another element of the existing Emergency Regulation that should be modified is the severely constrained set of rules in Section 835(f) governing credits that may be allowed against the conservation standards imposed by Section 835(c). Urban water suppliers may be entitled to separate and distinct credits based on evapotranspiration higher than the statewide average, based on water-efficient growth in their numbers of customers, or based on prior investment in new, local, drought-resilient sources of supply, but the sum of all these credits may not reduce a water supplier's conservation mandate by more than eight percent (8%) nor may they reduce any water supplier's conservation mandate below eight percent (8%).

In the context of California's improved water supply outlook, it should no longer be necessary to impose these limits on the availability of credits against otherwise applicable conservation standards. If a water supplier is entitled to credits totaling more than eight percent, the applicable conservation standard should be reduced by the sum of those credits. And those credits should be applied in full, even if the result is a conservation standard of less than eight percent.

Finally, as several interested parties recommended in prior rounds of comments, the State Water Board should remedy the disconnect that remains in the Extended Emergency Regulation between the goal of preventing unreasonable *use* of water and the imposition of limits on water *production*. Indeed, Section 865(c)(3) requires urban water suppliers to reduce their *production* by specified percentages of amounts *used* in 2013. Obviously, production and use will always be different amounts. Most important, water suppliers cannot responsibly curtail production to meet their customers' diverse needs for water, and the Emergency Regulation should not order them to do so. Instead, as has previously been proposed,<sup>4</sup> each time the phrase "shall reduce its total potable water production" appears in Section 865(c)(1), (2), and (3), the phrase should be revised to read, "shall implement a customer water-use reduction program designed to reduce its total potable water production."

## **2. How should the State Water Board account for regional differences in precipitation and lingering drought impacts, and what would be the methods of doing so?**

CWA recommends that the Extended Emergency Regulation be modified to allow further reductions in conservation mandates for water suppliers that can show they are no longer subject to significant water supply constraints, due to the replenishment of their sources of supply. Some urban water suppliers rely entirely on local surface water or groundwater supplies, with little or

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<sup>4</sup> See, Great Oaks Water Company Comments to Proposed Emergency Regulation (April 28, 2015 Version), dated May 4, 2015, at 2-3.

Hon. Felicia Marcus, Chair  
Members of the State Water Resources Control Board  
April 14, 2016  
Page 5 of 6

no reliance on state or federal water delivery systems or other external sources. If the local resources of those suppliers have been fully restored – as is the case for certain water systems in Northern California and perhaps others in Central and Southern California – then no good reason is apparent for requiring such water suppliers to meet any of the conservation standards listed in Section 865(c) of the Extended Emergency Regulation.

Given the alleviation of statewide drought conditions and the substantial differences between the lingering drought conditions from region to region, it appears to CWA that any ongoing conservation mandates should be driven by local circumstances rather than by a top-down mandate. The Governor's 25 percent (25%) mandate of last year set an appropriate benchmark for the State Water Board's more finely tuned range of conservation standards for particular water suppliers. But with the need for any conservation mandate eliminated for much of the state and with the more liberal allowance of credits CWA has proposed, as well as the uncertain response of customers in a more normal water year, it will be difficult to predict what statewide level of conservation can or should be achieved. These factors justify de-emphasizing the achievement of a statewide conservation goal, which will be both less necessary and less compelling this year than it was in 2015.

**3. To what extent should the State Water Board consider the reliability of urban water supplier portfolios in this emergency regulation?**

Efforts made by urban water suppliers to augment their sources of supply should be recognized and rewarded in the setting of conservation standards. The Extended Emergency Regulation took an important step in this direction by allowing, in Section 865(f)(3), for credits against its conservation mandates for water suppliers who acquire, contract for, or invest in "a new local, drought-resilient source of supply, the use of which does not reduce the water available to another legal user of water or the environment."

Such credits should remain available. The Emergency Regulation set a March 15, 2016, as a deadline for applying for such credits. CWA requests that the deadline now be extended through the duration of the Extended Emergency Regulation.

CWA remains concerned that State Water Board staff may interpret the qualifications for such credits too restrictively. For example, the requirement that a project not reduce the water available to another user or the environment may be interpreted in a way that gives effect to the Board staff's original formulation of this exemption as applicable only to coastal wastewater

Hon. Felicia Marcus, Chair  
Members of the State Water Resources Control Board  
April 14, 2016  
Page 6 of 6

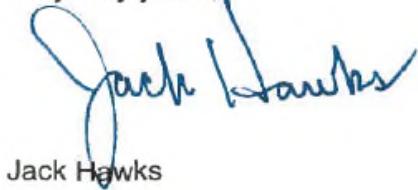
projects. CWA urges that water suppliers should receive credit, for example, for investing in indirect potable reuse, whether using coastal wastewater or not.

CWA again 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 allowing a credit in the form of a one-to-one reduction in the calculated amount of water that needs to be saved under the Emergency Regulation.

Aside from providing for credits against conservation mandates based on water suppliers' successes in augmenting their sources of supply, the State Water Board should not venture into assessing the reliability or adequacy of urban water supplier portfolios in the context of the Extended Emergency Regulation. The primary vehicle for participation by the State government in water supply planning is the role and expertise of the Department of Water Resources ("DWR") in overseeing water suppliers' periodic preparation and submittal of Urban Water Management Plans ("UWMPs") as well as the 20x2020 process pursuant to Senate Bill X7-7 (2009). The State Water Board should not seek to duplicate or supersede DWR's role.

CWA appreciates this opportunity to suggest adjustments to make the current Emergency Regulation more equitable and effective. CWA also looks forward to participating in the upcoming workshop.

Very truly yours,



Jack Hawks

cc: Hon. Catherine J.K. Sandoval, Commissioner, California Public Utilities Commission  
Wade Crowfoot, Deputy Cabinet Secretary, Office of Governor Edmund G. Brown, Jr.  
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