



February 14, 2018

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](mailto: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 times of emergency droughts, but permanently. We are disappointed that the Board has dismissed our previous recommendations to prohibit certain wasteful (but common) practices that are already designated as unlawful.<sup>1</sup> Nevertheless, we offer comments herein aimed at maximizing the water savings potential of the latest draft of this Regulation and setting a strong precedent and foundation for future conservation and efficiency measures.

Issue: Use of Newly Defined Term “Incidental Runoff” on Enforceability

One of the most recognizable and persistent forms of water waste throughout the state is the overspray and runoff from landscape irrigation systems. While there are many factors that can contribute to runoff and overspray, the great majority of systems operate without producing such waste, and no property owner or manager has the right to waste water in this manner. The Board’s emergency water waste regulations flatly prohibited this practice, as do many local ordinances still on the books.

The newly proposed Regulation would severely weaken this prohibition against an obvious form of waste by inserting a broad allowance for so-called incidental runoff. “Incidental runoff” is defined as “unintended amounts (volume) of runoff, such as unintended, minimal overspray from sprinklers that escapes the area of intended use. Water leaving an intended use area is not considered incidental

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<sup>1</sup> For example, in both oral and written comments in this and previous dockets, we have recommended that continued use of inefficient plumbing fixtures that are prohibited by SB 407 (2009) and irrigation in excess of maximum levels established by the Model Water Efficient Landscape Ordinance (Cal. Code Regs. tit. 23, § 495) be designated as wasteful uses of water.

if it is part of the facility or system design, if it is due to excessive application, if it is due to intentional overflow or application, or if it is due to negligence.” The Regulation then goes on to prohibit “the application of water to outdoor landscapes in a manner that causes *more than incidental* runoff such that water flows onto adjacent property, non-irrigated areas, private and public walkways, roadways, parking lots, or structures.”

The definition and use of the term ‘incidental runoff’ imply that both intent and quantity would be required to determine a violation. An argument might be made that this is purely a volumetric prohibition rather than an issue of intent, but the examples given undercut that argument.

Assuming the prohibition contains both a volumetric and an intent requirement, in order to enforce for overspray onto a sidewalk or roadway, an enforcement official would first have to prove the overspray is not incidental.

In its simplest form, “incidental runoff” means “unintended amounts of runoff.” Based on this definition, to prove that it is not incidental, an enforcement official will have to prove the overspray is not unintended. In order to prove it is not unintended, the enforcement officer could show (based on the examples) that the runoff is:

- Part of the facility or system design (requiring an understanding of the facility or system);
- Intentional (requiring an understanding of the person’s state of mind); OR
- Negligent (presumably, this means that a reasonable person should have known it was going to run off, although this is not defined);

Once it is shown that it is not unintended, the enforcement officer will have to show that the runoff is: “more than incidental.” Based on the example in the definition, this mean that the runoff is more than “minimal.” Unfortunately for the enforcement officer, “minimal” is not defined in terms of volume or flow rate.

Therefore, limiting the prohibition to runoff that is more than “incidental” and defining “incidental runoff” in a manner that is quite vague will make enforcement virtually impossible, and thus the deterrent effect of the regulations virtually negligible. And by broadly removing runoff and overspray that is “incidental” from any categorization as wasteful, it has the effect of removing any obligation on water suppliers to take steps to curtail a wasteful use that is widespread and easily observable in the public space.

We urge that the Board strike the term “incidental runoff” entirely, or at the very minimum revise the definition to allow this provision to be truly and practically enforceable.

#### 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: Support for Prohibition of Turf on Public Street Medians and Landscape Between a Street and Sidewalk

We support efforts to prohibit the irrigation of turf on public street medians and the landscapes located between a street and sidewalk, sometimes referred to as “parkway strips.” As stated above, we believe that potable and recycled water should be treated equally in this Regulation and while we are advocating for the prohibition to also apply to recycled water in existing medians and parkway strips, we appreciate that the Regulation aims to prohibit the future installation of recycled water irrigation systems in public medians and parkways for the purpose of irrigating turf.

We note that the current draft changes “publicly owned OR maintained” to “publicly owned AND maintained.” The wasteful nature of turf irrigation in parkway strips does not differ based on the entity with maintenance responsibility. This change significantly reduces the number of parkway strips that come under this Regulation, because many publicly owned parkway strips are not maintained by public agencies. We strongly recommend that the prior formulation, “publicly owned OR maintained,” be restored.

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 "Tracy Quinn".

Tracy Quinn, California Director of Water Efficiency  
Natural Resources Defense Council

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 blue ink, appearing to read "Kyle Jones".

Kyle Jones, Policy Advocate  
Sierra Club California