



# Association of California Water Agencies

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April 22, 2015

Delivered by e-mail to: [Jessica.Bean@waterboards.ca.gov](mailto:Jessica.Bean@waterboards.ca.gov)

Jessica Bean  
Engineering Geologist  
State Water Resources Control Board  
1001 I Street, 24th Floor  
Sacramento, CA 95814

Subject: Comments on Mandatory Conservation Proposed Regulations Released on  
April 18, 2015

Dear Ms. Bean:

The Association of California Water Agencies (ACWA) appreciates this opportunity to comment on the State Water Resources Control Board (Water Board) staff's "Proposed Emergency Regulation" and its associated "Urban Water Suppliers and Proposed Regulatory Framework Tiers to Achieve 25% Use Reduction (Provisional)" released on April 18, 2015 (Proposed Emergency Regulation).

ACWA supports the Governor's Executive Order and its key provision to reduce potable urban water usage by 25 percent statewide over coming months. We continue to appreciate the effort Water Board staff is devoting to meeting with and soliciting input from ACWA and other stakeholders on ways to do this effectively.

ACWA appreciates that Water Board staff addressed a number of our comments from our March 13, 2015 letter on the Proposed Regulatory Framework dated April 7, 2015 (Framework). Our March 13 comment letter emphasized two core policy principles that are inherent in the Executive Order and the Administration's overall response to the drought and which need to be advanced by the Emergency Regulations:

1. Protect economic uses of potable water, while focusing efforts to substantially reduce water use for ornamental, lower-priority outdoor purposes;
2. Ensure fairness for communities statewide.

We offered a number of specific changes to address significant concerns raised by the Framework. On balance, Water Board staff addressed most of the "economic uses" concerns (such as the use of potable water for commercial agriculture in Sec. 865 (e), and deferring the Commercial, Industrial and Institutional (CII) implementation focus to local water agencies which are best positioned to determine how to avoid or mitigate local economic impacts), but many significant "fairness" concerns remain or have been exacerbated by the Proposed Emergency Regulation.

## **Remaining Concerns and Recommendations**

### **1. Climate Adjustment**

ACWA continues to believe that an adjustment for climate *must* be included in the Proposed Emergency Regulation. The principle of fairness requires a reasonable outdoor irrigation allocation that will necessarily be somewhat greater in the hotter climate zones. A residential lot of exactly the same size with exactly the same landscape and efficient irrigation technology will require more water for even minimal irrigation in a hot, interior climate zone as compared to in a cooler coastal location. A conservation standard where summertime temperatures top 105 degrees can't be based on the amount of water needed to irrigate landscapes where temperatures rarely exceed 75 degrees. The assigned conservation standard must account for climate and other factors that reflect local conditions. However, the indicator of residential gallons per capita per day (R-GPCD) that Water Board staff has used as the sorting mechanism in the Urban Water Suppliers and Proposed Regulatory Framework Tiers to Achieve 25% Use Reduction to establish the conservation standard, does not provide the needed adjustment. In fact, the use of average R-GPCD for July through September 2014 (in place of the one month "snapshot" of September 2014 R-GPCD in the previous proposal) shifts the burden even more to water suppliers located in hot climate zones.

In our March 13 letter we recommended a conceptual climate adjustment approach based on published evapotranspiration zone and water use data. Water supplier locations by climate zone would be determined and an adjustment factor for each climate zone would be applied to the water supplier's R-GPCD. This climate adjusted R-GPCD would be used to reorder the table and then reassign the conservation standard.

Incorporation of a climate adjustment is a key element to ensuring a broader support for the fairness of the conservation burden that is being assigned to water suppliers statewide. Since March 13 we have developed a detailed recommended approach and offer a climate adjusted version of the "Urban Water Suppliers and Proposed Regulatory Framework Tiers to Achieve 25% Use Reduction" table (Attached Spreadsheet). Attachment 1 describes the approach and methodology.

We are ready to work closely with Water Board staff in coming days to fully explain our approach to adding a climate adjustment and identify ways that it can be improved and incorporated into the Proposed Emergency Regulation.

#### **Recommendation:**

Incorporate the ACWA climate adjusted version of the "Urban Water Suppliers and Proposed Regulatory Framework Tiers to Achieve 25% Use Reduction" table into the regulation and amend the text of the Emergency Regulation Sec. 865 (c)(3) through (10) to reflect the results.

### **2. Exception Process**

Although Water Board staff has expressed its intention to administer its enforcement process with discretion to address specific problems that may be faced by local water agencies, we continue to recommend that an explicit "Exception Process" be included in the Proposed Emergency Regulation.

Including an exception process as an administrative element of the Proposed Emergency Regulation would allow water suppliers to present to the Water Board specific information and evidence supporting needed adjustments to address extenuating circumstances or unreasonable local impacts. Exception processes are commonly used by water suppliers to address specific hardship situations on a case-by-case basis when implementing mandatory conservation programs. An example of “extenuating circumstances” could be where a relatively small water supplier has a relatively large state agency water customer (such as a prison, highway or office complex) that consumes a substantial proportion of the water suppliers’ production but which has not reduced its water use despite local demands and state policy direction. Another example may be a situation in which local health and safety conditions are triggered. The “exception process” could require water suppliers to disclose proposed actions that would partially mitigate effects on overall water use reductions.

### **Recommendation**

Add language to the Proposed Text of the Emergency Regulation to provide for an administrative process where the Executive Director or his designee may issue exceptions to address specific hardship situations on a case-by-case basis, based on evidence submitted by water suppliers.

### **3. Credit for New Local Supplies**

ACWA continues to believe that the Emergency Regulations should include an incentive for bringing new local potable reuse or desalination supplies on-line since the drought was declared in 2013 or in the immediate coming months while this Emergency Regulation is in force. Although there are many longer-term water supply development opportunities which may be the proper focus of on-going local water supply planning efforts, credit for immediate actions to off-set potable water use as part of emergency drought response will help demonstrate to local rate-payers the wisdom of developing a diverse water supply portfolio.

### **Recommendation**

Add the following language to the Proposed Text of the Emergency Regulation:

*“Each urban supplier that adds a new drought-proof supply, such as potable reuse, seawater desalination, or other drought-proof potable water supplies may deduct the amount of water produced by the drought-proof supply from its total potable water production to meet the economic demands of the commercial, industrial, institutional sectors and agricultural use that is not excluded under section 865(e).”*

### **4. Water Supply Adjustment**

ACWA supports the proposal to allow for a lower Conservation Standard if a water supplier can demonstrate that they have adequate local surface water supplies. The Water Board’s Fact Sheet states that “these criteria relate to the source(s) of supply, precipitation amounts, and the number of years those supplies could last.” However, the Proposed Text of the Emergency Regulation unnecessarily limits use of this provision by inappropriately focusing it only on normal 2014 precipitation and not on the actual adequacy of the water supply. This should be remedied by amending the text to provide more appropriate and rigorous criteria.

**Recommendation:**

Add the following language to the Proposed Text of the Emergency Regulation:

*“Each urban water supplier whose source of supply does not include groundwater or water imported from outside the hydrological region, and is sufficient to meet all demands for three years with no additional recharge that received average precipitation in 2014 may, notwithstanding its average July – September 2014 R-GPCD, submit for Executive Director approval, a request to reduce its total water usage by 4% for each month as compared to the amount used in the same month in 2013. Any such request shall be accompanied by information showing that the supplier’s sources of supply do not include any groundwater or water imported from outside the hydrological region and that the supplier’s source of supply is adequate for three years without additional recharge, service area received average annual precipitation in 2014.”*

**5. Collective Conservation Standard**

ACWA supports including a provision in the Proposed Emergency Regulations authorizing formation of groups of water suppliers that could collectively achieve the assigned conservation standard, as described in the Water Board Fact Sheet. We encourage the State Water Board to authorize multiple jurisdictions to join together to form regional alliances that are assigned a collective conservation standard. We recommend that the State Water Board consider modeling the formation of regions based on the methodology that was developed by the Department of Water Resources for forming regional alliances to comply with SB x7-7. Regional alliances may allow for jurisdictions to leverage resources to develop common messaging and water conservation programs in response to the drought.

**Recommendation:**

Add a provision in the Proposed Emergency Regulations authorizing formation of groups of water suppliers that could collectively achieve the assigned conservation standard.

**6. Standardize Methods**

The Water Board staff should amend and standardize calculation methods for total production and service area population, and provide a method to account for bimonthly billing cycles and different numbers of days in each billing cycle. Water suppliers are aware of wide disparities in the way these data have been reported since July 2014. Water suppliers need to be assured that reported data used comparatively for regulatory and enforcement purposes are actually comparable. In fact, the assignment of the water supplier conservation standard is dependent upon this data and some agencies are already amending their reporting with this in mind. Although Water Board staff has correctly requested documentation to support these changes, the existing guidance should be augmented as needed to further standardize the methods.

**Recommendation:**

Establish a process to amend and standardize calculation methods for total production and service area population, and provide a method to account for bimonthly billing cycles and different numbers of days in

each billing cycle. We recommend that the Water Board accept and review water supplier data on an on-going basis, subject to adequate supporting documentation. Create a time-limited process during May in which data submitted before a date late in the month, and which is accepted by staff, will be used to revise the “Urban Water Suppliers and Proposed Regulatory Framework Tiers to Achieve 25% Use Reduction” table and recalculate the conservation standards, a final version of which would be published by June 1. During May, water suppliers would be subject to “provisional conservation standards” as adopted by the Water Board on May 5.

## **7. Waste and Unreasonable Use of Water**

ACWA recognizes and supports Water Board authority to conduct proceedings to “prevent the waste and unreasonable use of water” under Article X Section 2 of the State Constitution based on specific facts case by case. However, we are concerned that adding the clause “prevent the waste and unreasonable use of water” throughout the Proposed Emergency Regulations sets up a presupposition that any failure to achieve the conservation standards, or even procedural failures on the part of water suppliers is now a de-facto waste and unreasonable use of water and could provide the basis for proceeding against the water rights of those agencies. This raises unnecessary legal threats at a time in which the focus of the water community as a whole needs to be on effective actions to address the drought emergency.

### **Recommendation:**

We strongly recommend eliminating the clause “prevent the waste and unreasonable use of water” wherever it appears.

## **8. Alternative 25% Statewide Conservation Framework Proposed by Water Agencies**

ACWA has reviewed the “Alternative 25% Statewide Conservation Framework” proposed by a coalition of water agencies, including Irvine Ranch Water District, Eastern Municipal Water District, Western Municipal Water District, Moulton Niguel Water District, Rancho California Water District, Elsinore Valley Municipal Water District, and City of Corona. We are extremely impressed by this alternative and the way it appears to address the key policy objectives of the Governor’s Executive Order, which must be achieved by the Emergency Regulation. While it incorporates many elements of the Water Board staff proposal, it seems to better resolve some of the major equity concerns that have been identified by ACWA and so many water suppliers.

This alternative is designed to achieve the mandated additional 25% statewide reduction from 2013 potable use. It incorporates important policy and technical elements from the on-going 20x2020 conservation target setting process including the more robust and comprehensive metric of “gallons per capita per day” (GPCD). But it also uses the Water Board’s R-GPDC metric as an input to establish conservation standards. It adjusts for population growth by using average 2014-15 population and production to account for areas that have experienced growth since 2013. It includes elements that indirectly address climate zones, which as described above is a key policy objective for ACWA.

This alternative deserves serious consideration by Water Board staff and the Board itself. We recognize that the results it produces create a new set of “winners” and “losers,” but it may significantly boost the

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confidence of many in the water community that the results are based on a stronger analytical framework and have greater credibility.

**Recommendation:**

The Water Board staff should thoroughly review this alternative model for technical accuracy and seriously consider incorporating it or a modified version of this model into the Emergency Regulations.

Thank you for your consideration of these comments. ACWA will continue to work with the Water Board and our member water agencies to identify ways to effectively implement the Executive Order and the resulting Emergency Regulations. If you have any questions, please contact me at [daveb@acwa.com](mailto:daveb@acwa.com) or (916) 441-4545.

Sincerely,



David Bolland  
Special Projects Manager

cc: Honorable Felicia Marcus, Chair  
Honorable Frances Spivy-Weber, Vice Chair  
Honorable Dorene D'Adamo, Board Member  
Honorable Tam Doduc, Board Member  
Honorable Steven Moore, Board Member  
Mr. Tom Howard, Executive Director  
Ms. Caren Trgovcich, Chief Deputy Director  
Mr. Eric Oppenheimer, Director of the State Water Board's Office of Research, Planning and Performance  
Mr. Max Gomberg, Climate Change Advisor