



April 22, 2015

Felicia Marcus, Chair  
c/o Jessica Bean  
State Water Resources Control Board  
1001 I Street, 24th Floor  
Sacramento, CA 95812-2000

**Re: Comments on Revised Draft Emergency Regulation Implementing 25% Conservation Standard**

Dear Chair Marcus and Members of the Board:

On behalf of the Natural Resources Defense Council (NRDC), I am writing with regard to the revised Draft Emergency Regulation to implement the urban conservation standard called for in the Governor's April 1, 2015 Executive Order. We appreciate the opportunity to submit these comments to the State Water Resources Control Board (State Board or Board) in response to the request for additional feedback on the updated approach reflected in the revised draft regulation and the specific regulatory language.

First, we applaud the State Board for more than doubling the number of water reduction tiers from the previously proposed regulatory framework to more equitably allocate the conservation standards among urban water suppliers. This revised approach reduces the potential unfairness of the original proposal, which had greater differences in reduction targets for agencies with similar R-GPCDs that happened to fall on opposite sides of a tier boundary. Second, we also commend the Board for assigning a conservation standard based on a supplier's average July-September 2014 R-GPCD data, as opposed to only September 2014 R-GPCD figures. This new basis will more accurately reflect the amount of water used for landscape irrigation by urban water suppliers during the summer months.

Our additional recommendations for further improving the revised regulatory language are as follows:

**Exclusion of Commercial Agricultural Use**

The Board's proposed sweeping exclusion for potable water used for commercial agriculture from an urban water supplier's water production for purposes of setting conservation standards is a serious flaw in the emergency regulations. Several districts have high R-GPCD resulting in large part from the use of publicly supplied potable water to serve suburban ranchettes planted with avocados and citrus. While meeting the very broad definition of "commercial agriculture" in

Government Code section 51201, the large homes, tennis courts, and swimming pools interspersed with these small groves and irrigated horse pastures belie the essentially residential nature of this use of publicly supplied drinking water. Hobby farms and ranchettes are seen as a lifestyle choice by some California residents, a choice free to be made, but one that should not entitle their public water suppliers to exclude large quantities of drinking water from the targeted reductions that must be apportioned statewide if the State is to achieve the 25% reduction goal in urban water use under the Governor's Executive Order.

Upon adoption of the rule, each purveyor will retain considerable flexibility in how it goes about meeting its water use reduction target. Considerations of tree maintenance will undoubtedly come into play, and the needs of water-dependent commercial agricultural customers, such as nursery retailers and truck farms, will very likely be heard. At this stage of the drought, the Board ought not to employ an expansive definition of "commercial agriculture" to designate uses of publicly supplied drinking water that will "not count" for purposes of setting water use reduction targets for urban water suppliers.

### **Collective Conservation Standard**

While there may be opportunities for cooperation that could take advantage of some synergies between districts to further assist in meeting the overall urban reduction goal, flexibility ought not result in blurred responsibilities, confused administration, and ambiguous enforcement. Thus, we recommend the following provisions to govern the designation of a collective conservation standard:

- 1) Participating water suppliers must remain together for the duration of the drought emergency. Once entered, any collective conservation standard is binding upon all participants until the drought emergency is lifted by State action.
- 2) Governing boards must enact substantially the same authorizing resolutions.
- 3) Responsibility for any penalties for noncompliance must be shared.
- 4) All cooperative agreements must be filed with and approved by the State Board.

### **New Reporting Requirements**

#### *"Small" Water Suppliers*

The State Board defines "small water suppliers" as those with fewer than 3,000 "customers," and both DWR and the Board have interpreted "customers" to equate to "service connections." This means that the largest of these so-called "small" suppliers may actually be serving 9,000 to 10,000 people. However, there is no compelling reason to exclude public water suppliers of this size from the drought regulation's monthly water reporting. In the emergency regulation, the Board should, therefore, consider aligning its definition of "small water suppliers" with EPA's interpretation of small systems.

In addition to requiring bona fide small water suppliers (consistent with EPA's definition) to submit a single report on December 15, 2015 that provides their water production from June-

November 2015 and June-November 2013, the State Board should also require these suppliers to submit their updated production data 90 days after the effective date of the new emergency regulation. This additional reporting period will allow the State Board to assess whether small suppliers have ultimately met their ultimate conservation targets and to mandate specific conservation actions or impose enforcement actions if necessary.

#### *Commercial, Industrial, and Institutional Users*

Commercial, industrial and institutional (CII) facilities, which are not served by any public water supplier and use potable water should be required to submit reports on their potable water production every three months.

### **Conservation Standard for Other Water Suppliers**

#### *“Small” Water Suppliers*

As noted above, public water suppliers serving more than 3,300 people should not be characterized as small systems in this regulation, and should receive water use reduction targets based on their position within the R-GPCD tier matrix. Small water suppliers serving fewer than 3,300 people should be required to achieve a 25% water savings or limit outdoor irrigation to no more than two days per week, as proposed in the draft regulation.

#### *Commercial, Industrial, and Institutional Users*

The Board should consider a ban on the use of potable water for sprinkler irrigation of ornamental turf in CII sector. Such a ban would avoid a large quantity of highly visible nonessential potable water use in a customer class that may otherwise be difficult to address with simple percentage reductions. It would also speed the installation of water-efficient plant materials and more efficient drip irrigation systems. This ban should apply to any such use of potable water, whether by publicly supplied CII customers or self-supplied CII users.

### **Compliance Assessment and Enforcement**

The cumulative tracking method proposed in the Board’s Fact Sheet needs further clarification and more detailed explanation regarding its potential benefits. As the draft regulation currently stands, it not clear how the cumulative tracking approach is reflected in the regulatory language.

With respect to using Conservation Orders as enforcement tools, we maintain that the Board need not include a provision allowing for reconsideration. Offering an effective waiver provision may unintentionally result in agencies and customers focusing their attentions on reconsideration efforts, rather than on the actions needed to meet conservation standards. Furthermore, processing requests for reconsideration would likely occupy Board resources that could be better deployed elsewhere. While there are advantages in permitting a measure of flexibility in establishing and enforcing standards, this flexibility may be better manifested in the manner in which the Board takes other enforcement actions.

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## **Conclusion**

Thank you for the opportunity to provide comments on the revised Draft Emergency Regulation. If you have any questions or comments, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Edward R. Osann". The ink is black and the signature is written in a fluid, connected style.

Edward R. Osann  
Senior Policy Analyst  
Water Program