



October 17, 2023

Submitted via: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

Mr. E. Joaquin Esquivel, Chair  
State Water Resources Control Board  
1001 I Street, 24th Floor  
Sacramento, CA 95814

Re: Comment Letter – Proposed Regulations on Making Water Conservation a California Way of Life

Dear Chairman Esquivel,

The undersigned organizations appreciate the opportunity to provide comments to the State Water Resources Control Board (State Water Board or Board) on the Proposed Regulations for Making

Conservation a California Way of Life (Regulations). We are a group of water suppliers who are subject to, and who have been actively involved in the development of, the Regulations that the State Water Board is charged with adopting pursuant to SB 606 and AB 1668 (together, the 2018 conservation legislation). All of us have a long-standing commitment to water use efficiency, as demonstrated by the substantial decreases in total and per capita water use that our customers have achieved, most at levels well beyond 20 x 2020 targets. We support the intent of the legislation to make conservation a way of life with cost effective water conservation programs that would achieve even greater efficiencies that we have already achieved.

Thank you also for the opportunity to provide comments at the Board workshop on October 4. It was a marathon session, and we appreciate the willingness of the Board to allow speakers from around the state to present information about the ways the Regulations would affect their operations, and the Board members staying to listen throughout. We also particularly appreciate the comments that various Board members made about the cost, feasibility, and timing of actions that water agencies will be required to take to meet the proposed Regulations, and more importantly whether or not our customers would be able to cost-effectively implement the measures that the Regulations would require. After all, it is the actions of our customers that will ultimately determine our ability to comply with the Regulations.

The Association of California Water Agencies (ACWA) has prepared and submitted a more comprehensive and detailed set of comments on the Regulations. We support most of the recommendations made in that letter, and some of the signatories to this letter are also signatories to the ACWA letter. This letter includes the few elements of the Regulations that are in addition to, or differ from, ACWA's comments. We are also providing in the attachment our recommended edits to the proposed Regulations. Before describing those elements and edits, we would like to draw the Board's attention to a recent report prepared for Mesa Water District by M.Cubed, which reviews the information provided in the Standardized Regulatory Impact Analysis (SRIA). That report is available at this link: [Mesa Water SRIA Review Tech Memo Final Sept 28.2023.pdf](#)

The SRIA estimates that the Regulations will impose at least \$13 billion in costs on California residents and businesses to meet these standards. However, according to M.Cubed's analysis, these costs are significantly underestimated. More significantly, the SRIA's projected benefits of \$15 billion not only double-counted \$4.5 billion in cost shifts, but the remaining \$10.5 billion in benefits is estimated from an erroneous projected reduction in water purchase costs. Using a sales-weighted adjustment to average costs to compute a more accurate statewide picture of potential savings, M.Cubed's calculations resulted in a 50% reduction in the SRIA's asserted benefits. San Juan Water District reviewed in more detail the cost data provided by its retail water agency customers, and their reduced wholesale water purchase costs would only be approximately 25% of the figure used by the SRIA. Many water agencies continue to adjust their fixed and variable rates to ensure that fixed costs remain funded. However, the actual reduction in water purchase costs underlying the SRIA's estimate of benefits may well more closely reflect the figures in San Juan's customer group, due to the fact that San Juan's current wholesale rates include fixed costs that comprise approximately 75% of the total price of their wholesale water supplies.

## COMMENTS ON SPECIFIC ELEMENTS OF THE REGULATIONS

### **Outdoor standards apply to “irrigable” lands**

The proposed Regulations limit the applicability of the outdoor standard to irrigated acreage, unless Board staff approve an additional 20% maximum of non-irrigated area that has become irrigated. This approach is not authorized by and is inconsistent with the statute, which states:

“The department, in coordination with the board, shall conduct necessary studies and investigations and recommend, no later than October 1, 2021, standards for outdoor residential use for adoption by the board in accordance with this chapter...

The standards shall apply to irrigable lands.” (Water Code §10609.6(a)(2)(B)) (emphasis added)

Notably, too, the primer prepared in 2018 by the Department of Water Resources (DWR) and Board staff also clearly note this statutory construct. On page eight of the primer, the following description is provided:

“Standards for outdoor residential water use that apply to residential irrigable lands, including provisions for swimming pools, spas, and ornamental water features that are artificially supplied with water, and incorporating principles of the Model Water Efficient Landscape Ordinance (MWELO) (CWC §10609.6)”. (emphasis added)

**Recommendation 1 – revise the references in the outdoor standard (including in the definition of residential landscape area) to “irrigable lands” and adjust the acreages used for determining outdoor usage budgets for all agencies accordingly.**

### **The Board can only adopt one regulatory standard**

The framework proposes to establish a series of outdoor landscape standards, starting with a landscape efficiency factor of 80% through June 30, 2030, then changing to 63% from that point in time through June 30, 2035, and then changing again thereafter to 55% for residential landscapes and 45% for CII landscapes. The 2018 legislation clearly states the Legislature’s intent to limit the Board’s authority to adopting a “one-time” standard, with promulgation of any future standards requiring specific additional authority to be provided to the Board by the Legislature. This limitation is described in Water Code §10609(b)(4):

“This chapter preserves the Legislature’s authority over long-term water use efficiency target setting and ensures appropriate legislative oversight of the implementation of this chapter by doing all of the following... Providing one-time-only authority to the department and board to adopt water use efficiency standards, except as explicitly provided in this chapter. Authorization to update the standards shall require separate legislation.” (Emphasis added.)

Furthermore, the Legislature states that the landscape efficiency factor values should reflect a factor that allows for “the amount of water necessary to efficiently irrigate both new and existing landscapes.” (Water Code Section 10609.9 – emphasis added). As described by numerous speakers at the October 4

workshop, and in multiple written comments regarding both the proposed framework for these Regulations released by Board staff in March 2023 and the recommendations submitted to the Board by the Department of Water Resources, the proposed 2035 standard would not provide adequate water supplies to existing landscapes.

**Recommendation 2 – revise the outdoor standards to specify that there will be one standard that uses an evapotranspiration adjustment factor of 0.63, to be applied to irrigable lands, starting in 2035.**

### **CII Program Reporting Must be Feasible**

ACWA is providing important comments and suggested edits on the requirements in the Regulations related to the appropriate scope of activities and responsibilities of water suppliers for commercial, industrial and institutional (CII) performance measures. As noted in Water Code Section 10608.12(n), performance measures include educational and outreach activities, audits, plans, and similar actions that can be conducted by water suppliers. Section 975(d)(3) of the Regulations contains citations to sections of the Regulations that don't exist, but it appears that the intent of that section is to seek information about the activities that water suppliers conduct to educate and interact with the CII account holders that are in the top 20% of water use category and the top 2.5% of water use category defined in Sections 974(c) and (d), respectively.

Water suppliers can provide information to CII customers about best management practices, but only the CII customers can actually implement them. Consequently, the reporting requirements in Section 975(d)(3) should be limited to the information that water suppliers can provide about their activities. Collecting information about activities conducted by CII customers, such as their implementation of best management practices, would be contingent upon the cooperation of CII customers, and may well not even be possible. Similarly, estimates about the amount of water saved would be speculative, at best, while increased agency costs would be certain.

**Recommendation 3 – delete Sections 975(d)(3)(C) and (D).**

### CLOSING REMARKS

Thank you again for the opportunity to provide comments to the State Water Board as it begins its formal rulemaking. We also very much appreciate the State Water Board staff's engagement with the water community. We look forward to collaborating further with the Board and staff to develop a regulatory framework that will reasonably, cost-effectively, and feasibly advance our shared goal of Making Water Conservation a California Way of Life in a manner that recognizes and accounts for every agency's unique circumstances, as well as the related costs and benefits of seeking each additional increment of water use efficiency.

Sincerely,

Larry B. McKenney, General Manager  
Amador Water Agency

Joe Duran, General Manager  
Orange Vale Water Company

Kristina Budak, P.E., Water Resources Director  
City of Bakersfield

David Coxey, General Manager  
Bella Vista Water District

Tony Goff, General Manager  
Calleguas Municipal Water District

J. M. Barrett, General Manager  
Coachella Valley Water District

Tom Moody, Director of Utilities  
City of Corona

Michael Moore, General Manager / CEO  
East Valley Water District

Greg Thomas, General Manager  
Elsinore Valley Municipal Water District

Jack Bebee, General Manager  
Fallbrook Public Utility District

Chris Berch, General Manager  
Jurupa Community Services District

Dave Pedersen, General Manager  
Las Virgenes Municipal Water District

Paul E. Shoenberger, P.E., General Manager  
Mesa Water District

Brian Macy, Interim General Manager  
Mission Springs Water District

Michele Donzé, General Manager  
Myoma Dunes Water Company

Kimberly A. Thorner, General Manager  
Olivenhain Municipal Water District

Dennis D. LaMoreaux, General Manager  
Palmdale Water District

Brent Byrne, General Manager  
Quartz Hill Water District

Kim Domingo, PE, General Manager  
Rosamond Community Services District

Tom Coleman, General Manager  
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Miguel J. Guerrero, P.E., General Manager  
San Bernardino Municipal Water Department

John Mulligan, Public Works Director  
City of Sanger

Paul Helliker, General Manager  
San Juan Water District

Matthew Litchfield, P.E., General Manager  
Three Valleys Municipal Water District

Gary Arant, General Manager  
Valley Center Municipal Water District

Van Grayer, General Manager  
Vaughn Water Company

Greg A. Hammett, General Manager  
West Kern Water District

## ATTACHMENT

### Requested edits to proposed regulations

#### § 965. Definitions

...

(xx) “Residential landscape area” (RLA) means residential Irrigable Irrigated-area plus approved Irrigable Not Irrigated-area, in square feet.

#### § 968. Outdoor Residential Water Use Standard

(a) (1) Through June 30, 2030~~05~~, the standard for efficient residential outdoor use (Soutdoor) shall be a landscape efficiency factor of 0.80.

~~(2) Beginning July 1, 2030, and through June 30, 2035, the standard for efficient residential outdoor use shall be a landscape efficiency factor of 0.63.~~

~~(3) Beginning July 1, 2035, the standard for efficient residential outdoor use shall be a landscape efficiency factor of 0.5563.~~

...

(b) (2) Residential landscape area includes, for each supplier:

~~(A) The supplier’s unique square footage of Irrigable Irrigated-area provided by the Department to the Board on October 3, 2022, or any updates thereafter, minus any landscape area that the Department categorizes as residential but that the supplier categorizes as CII.~~

~~(B) Through June 30, 2027, a supplier may include in its residential landscape area up to twenty percent of the supplier’s unique square footage of Irrigable Not Irrigated-area provided by the Department to the Board on October 3, 2022, if the supplier’s actual urban water use for the reporting year, calculated in accordance with section 10609.22, is greater than the urban water use objective calculated pursuant to section 966 without inclusion of Irrigable Not Irrigated-area.~~

#### § 975. Reporting

...

(d) No later than January 1, 2024, and by January 1 every year thereafter, each urban retail water supplier shall submit to the Department and the Board, for the previous state fiscal year, on a form provided by the Board, the following:

...

(3) Relevant and supporting data pursuant to section 974, including:

(A) The number of customers that exceed the threshold defined in section 974(a)(2).

(B) The number of customers for which the supplier has provided the information required pursuant to section 974(a)(2).

~~(C) For each of the classification categories specified in section 972 (a) and (b), the number of customers exceeding the threshold defined in section 974 (b), as well as the following:~~

~~(i) The practices implemented pursuant to section 974(b)~~

~~(ii) The implementation status of those practices~~

~~(iii) The estimated water saved as a result of those practices~~

~~(D) The number of customers that exceed the threshold defined in sections 974 (c) as well as the following:~~

~~(i) The practices implemented pursuant to section 974(b)~~

- ~~(ii) The implementation status of those practices~~
- ~~(iii) The estimated water saved as a result of those practices.~~