



June 4, 2024

Submitted via: commentletters@waterboards.ca.gov

Courtney Tyler
Clerk to the State Water Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Re: Comment Letter — Proposed Making Conservation a California Way of Life Regulation

Dear Ms. Tyler,

The Association of California Water Agencies (ACWA), the California Municipal Utilities Association (CMUA), the California-Nevada Section American Water Works Association (CA-NV AWWA), and the California Water Association (CWA) appreciate the opportunity to provide comments to the State Water Resources Control Board (State Water Board) on the May 20, 2024 version of the proposed Making Conservation a California Way of Life Regulation (Regulation). ACWA represents over 470 local public water agencies that supply water for domestic, agricultural, and industrial uses to over 90% of California's population. CMUA represents over 60 public water agencies that deliver water to over 75% of California. CA-NV AWWA's membership in California includes some 470 utilities and approximately 4,700 individual water professionals. CWA is the statewide association representing the interests of 94 drinking water utilities subject to the jurisdiction of the California Public Utilities Commission.

ACWA, CMUA, CA-NV AWWA, and CWA appreciate State Water Board staff and the Board Members' substantive engagement with *all* interested parties during this rulemaking to understand both the technical and policy considerations as it continues to refine the Regulation. State Water Board staff have committed significant time over the past several years engaging with the Department of Water Resources (DWR) in its efforts to develop recommendations to the State Water Board, and during the formal rulemaking. We appreciate that State Water Board staff have joined water suppliers' working group meetings, convened 21 working group meetings of diverse interested parties during November and December 2023, held numerous workshops and written comment periods, and met with interested parties.

The final Regulation will have significant cost implications to water suppliers and their customers, and fundamentally change the way that Californians use water. We appreciate the State Water Board's willingness to engage with water use efficiency practitioners to develop a more feasible regulation. We believe that the Regulation, which proposes an outdoor landscape efficiency factor of 0.55 by 2040, coupled with other comprehensive water use efficiency measures, will meaningfully advance water use efficiency in California. We believe that the amendments that have been incorporated through the multiple iterations of the Regulation, including extended timelines for the outdoor water use standards

and changes to the alternative compliance pathways and commercial, industrial, and institutional (CII) Performance Measures, will provide important compliance tools for suppliers facing challenging water use objectives.

We offer the following comments on the proposed Regulation, as well as recommendations regarding the enacting resolution. As we near the State Water Board's consideration to adopt a final Regulation, we ask that the considerations important to water suppliers be included in the enacting resolution, such as an enforcement policy that recognizes changes in data quality and suppliers' good faith efforts, a directive for the State Water Board to monitor and assess implementation, and clarification on processes for updating new landscape area measurement data. We are happy to work with staff on resolution language in advance of the Board hearing to consider adoption.

1. SUGGESTED CHANGES RELATED TO REPORTING PROVISIONS:

- a. Amend the Regulation to Allow for Reporting of Both Fiscal and Calendar Year, Consistent with Water Code §10609.20(b).

Consistent with our recommendations in both our October 10, 2023 and March 25, 2024 comment letters, we urge the State Water Board to adopt a final Regulation that adheres to the legislative requirements of AB 1668 and SB 606 (2018). Water Code § 10609.20 subdivision (a) provides that each urban retail water supplier shall calculate its urban water use objective no later than January 1, 2024, and by January 1 every year thereafter. Subdivision (b) authorizes water suppliers' calculations to be based on conditions for the previous calendar or fiscal year. This language was heavily negotiated during the legislative process among interested parties to provide suppliers with the discretion to report on either reporting cycle.

The proposed Regulation would require each urban retail water supplier to calculate its urban water use objective based on the suppliers' water use conditions for the previous state fiscal year. As we have previously commented, a regulation cannot limit the flexibility that a statute specifically allows. Selecting a single calendar or fiscal year will impose significant challenges, particularly for the State Water Board's adopted Water Loss Regulation, which allows water loss audit reporting on either a calendar or fiscal year. While we understand the State Water Board's desire to require suppliers to report on a unified reporting cycle, the regulation illegally limits the flexibility granted in statute. **The proposed Regulation should be amended to provide the flexibility for urban retail water suppliers to calculate their urban water use objective based on fiscal or calendar year, consistent with the law.**

- b. Allow For Data Adjustments.

Improved data quality and submittal of high-quality data is an important goal of this Regulation. **The State Water Board should work with agencies to allow for resubmittal or updating of previously submitted data if more accurate data becomes available.** We note that this language could be included in the adopting resolution, rather than the final Regulation.

2. SUGGESTED CHANGES TO TREES PROVISIONS:

- a. Retain the New Variance for Existing Trees, while Modifying Requirements that will Limit Suppliers' Utilization.

We strongly support the revised Regulation's inclusion of a variance for existing trees, with a proposed LEF of 0.63 in 2040 and beyond for tree canopy in residential and commercial, industrial and institutional (CII) dedicated irrigation metered (DIM) properties. We have consistently raised concerns regarding the unintended impacts to trees of an LEF of 0.55. We additionally note that the State has established numerous policies that protecting tree health is a priority, and AB 2251 (Calderon, 2022) set an important statewide target to achieve a 10% increase in tree canopy cover in urban areas by 2035, with priority for increasing tree canopy cover in disadvantaged and low-income community and low-canopy areas. We support a final Regulation that will protect canopy of existing trees while achieving long-term water use efficiency.

As the Regional Water Authority (RWA) notes in its comment letter and redline edits, **the supplier requirements for this tree variance are so stringent, it will only be obtainable for those most well-resourced suppliers, resulting in inequity throughout the state.** For example, to qualify for the new variance, water suppliers would be required to conduct detailed tree inventories to identify existing tree canopies in their service areas. While municipal suppliers may have access to certified arborists and staffing to conduct these tree surveys, standalone water suppliers do not, and would therefore be required to expend significant resources just to potentially qualify for the variance. Furthermore, the variance requires water suppliers to demonstrate that they have caused or compelled the conversion of high-water use landscapes to climate-ready landscapes. Maintenance of tree health should not be dependent on customers' willingness to implement turf conversions, which is not a requirement in the legislation and is largely out of a supplier's control. This is first and foremost a water efficiency regulation, not a landscape transformation regulation.

We propose the following variance process instead of the currently proposed requirements:

- i. A supplier seeking the variance submits to the State Water Board an analysis that quantifies the irrigation needs of existing trees, evaluates how those needs are being met, and demonstrates how the variance will be beneficial to maintaining or improving tree canopy health to avoid tree mortality.
- ii. The analysis shall be based on aerial imagery data provided by DWR or of similar quality if provided by the supplier, supplier water demand meter data or estimates and a broadly accepted with the industry or peer reviewed tree health evaluation methodology.
- iii. This methodology may include an inventory of existing trees within the supplier's service area, methodology review by a certified arborist, and/or partnership with local tree related organizations or academic institution.

b. Retain the Increased Budget for New Climate Ready Trees.

We appreciate and support increasing the new climate-ready tree landscape budget area from one foot to four feet and the addition of number of watering days to provide a more achievable irrigation budget.

3. **SUGGESTED PROVISION TO CLARIFY NEWLY CONSTRUCTED CII LANDSCAPES WITH DEDICATED IRRIGATION METERS (DIMS):**

The proposed Regulation would establish the standard for CII landscapes with DIMS that are newly constructed would be an LEF of 0.45. The proposed Regulation would also require suppliers to quantify the measured total square footage of the irrigated area of CII landscapes with DIMs by July 1, 2028. **We recommend that CII DIMs added after July 1, 2028, are considered newly constructed.**

4. **SUGGESTED PROVISIONS TO ENACTING RESOLUTION - REQUEST TO MAKE PUBLICLY AVAILABLE IN ADVANCE OF BOARD ADOPTION:**

We understand it may be the intent of the State Water Board to address several issues through the enacting resolution that will accompany the final Regulation. **To ensure transparency to all interested parties and minimize confusion at the hearing where the Board will consider the adoption of the Regulation, we request that the proposed resolution language be posted publicly in advance of the Board hearing, and that we have an opportunity to clarify language with staff prior to the hearing.** We encourage State Water Board staff to work with interested parties to incorporate the following considerations into the resolution to the extent feasible.

a. Include Language to Clarify Progressive Enforcement and Enforcement Discretion.

At the March 20, 2024 State Water Board Workshop, the Board discussed including language in the enacting resolution that would clarify progressive enforcement. We strongly support the inclusion of this language, particularly given the proposed modified compliance date of 2027, which we also strongly support. As noted in our March 2024, comment letter, we assume that the intent of 2027 compliance includes written notices in 2028, conservation orders in 2029, and civil liabilities in 2030 consistent with steps and phases of the enacting legislations' progressive enforcement. However, the Regulation language is currently vague, and further clarity in the enacting resolution would improve transparency to all interested parties is requested.

In addition to the need for clarity on progressive enforcement, **we request that the State Water Board make clear in the enacting resolution that it will utilize enforcement discretion for suppliers that are making a good faith effort to comply with the Regulation, including in achieving its water use objective, the CII Performance Measures, and reporting requirements.** Over the next couple of years, the State will receive updated data from suppliers and DWR that could impact suppliers' compliance with the Regulation, including:

- DWR's upcoming deliverable of CII landscape areas with dedicated irrigation meters,
- Changes in landscape area measures and how INI data limitations will be recognized, and
- Uncertainty of annual outdoor budgets due to weather and effective precipitation.

Additionally, as we've noted, suppliers have a limited set of tools to incentivize customers to use water more efficiently. Water suppliers may plan for and implement comprehensive efficiency programs, and still not comply with the Regulation. We request that the State Water Board recognize good faith efforts and barriers to implementation outside of suppliers' control before taking enforcement actions.

- b. Clarify Updated Landscape Area Measurement Data Should Be Calculated Using a Combination of Aerial Imagery and Water Use, and Data Limitations can be Reflected in Suppliers Updated Landscape Measurement Data.

We appreciate that the State Water Board's revised Regulation allows for updated aerial imagery and landscape classification. We want to work with the State Water Board and DWR to better understand landscape classifications and develop an appropriate methodology to classify landscape area as it relates to urban retailer water suppliers' actual water use of existing landscapes. Any new landscape area measurement data should be calculated using a combination of aerial imagery and water use to ensure all water use data is incorporated. New data should be analyzed to determine the accuracy and associated limitations and the enacting resolution should make clear that the State Water Board has the authority to reflect those errors in suppliers' updated landscape area measurement data.

- c. Direct Staff, in Partnership with Suppliers, to Monitor and Assess the Implementation of the Regulation, with Particular Consideration of Unintended Impacts to Shade Trees and Low-income Customers.

SB 606 (Hertzberg) required the Legislative Analyst's Office (LAO) to assess the implementation of urban water use efficiency standards and urban water supplier reporting by submitting a report by January 10, 2024, to the appropriate policy committees of both houses of the Legislature and the public. In January 2024, the LAO submitted the report in accordance with SB 606. Due to delays in the timeline for implementation of the urban water use efficiency framework, the LAO's report was released prior to the State Water Board's adoption of the Regulation. Consequently, the LAO's report was unable to assess the implementation of the Regulation, per the intent of SB 606.

Monitoring and assessing the implementation of the final Regulation is warranted given that this Regulation is an important element of the State's Water Supply Strategy and will have significant expected implementation costs on water suppliers. **We recommend the State Water Board include language in the enacting resolution to**

direct staff to monitor and report back to the Board in 2031, 2037 and 2042 on compliance, cost, water savings, impacts to tree canopy and low-income customers, and general challenges and barriers to implementation of the Regulation. We recommend that staff partner with suppliers to convene a Demand Reduction Monitoring and Assessment Advisory Group to gather the necessary data and incorporate DWR's studies on indoor water use and CII-DIM data.

- d. Direct State Water Board Staff to Work with Suppliers on Accurate SB X7-7 Data Determinations.

The State Water Board should work with suppliers to ensure that in 2040 there is the ability to adjust the data to have more accurate SB X7-7 determinations and to account for changed conditions (e.g. population, recycled water, CII customers).

- e. Direct State Water Board Staff to Develop Guidance, in Partnership with Suppliers and other Interested Parties, on Submitting Variances, Temporary Provisions, Equivalent or Superior Quality Data, and Reporting.

The State Water Board should work with interested parties to develop tools that can guide suppliers to meet the regulatory requirements, including submitting requests for variances, temporary provisions, equivalent or superior quality data, and reporting.

Additionally, the State Water Board should work with interested parties on an ongoing basis to identify opportunities to refine the SAFER Clearinghouse and advance goals for streamlined and centralized water reporting. We continue to express concerns with duplicative reporting to both the State Water Board and DWR and urge the two agencies to work together to minimize redundant reporting, consistent with the goals of AB 1755 (Dodd, 2015) The Open and Transparent Water Data Act.

5. ADVOCATE FOR FUTURE DATA UPDATES, AND TECHNICAL AND FINANCIAL ASSISTANCE.

We recognize the constraints with the current State budget. However, the State has identified the goals of long-term water use efficiency as important for long-term climate resilience. Water suppliers will work diligently to budget, create innovative programs, hire and train staff, and develop regional and statewide to overcome funding constraints. However, we urge the State Water Board to continue to elevate the need within the Administration for state investment in future and reoccurring data, as well as state financial and technical assistance.

- a. Standardized Regulatory Impact Assessment.

Prior to adoption of a final Regulation, we request the State Water Board release a revised Standardized Regulatory Impact Assessment (SRIA). The purpose of the SRIA is to provide policymakers, the regulated community, and other interested parties with a tool to transparently assess proposed regulations to inform decision making. Thus, a revised SRIA should be provided during the public comment period. Additionally, it is an important tool to help inform the Administration's budget decisions and financial assistance tools, including a climate resilience bond which is being discussed now.

6. SUPPORT FOR CHANGES IN PREVIOUS VERSIONS:

As discussed in our [March 25, 2024, Comment Letter](#), ACWA, CMUA, CA-NV AWWA, and CWA remain in strong support of the following changes to the proposed Regulation. We urge the State Water Board to retain these changes in the final Regulation that it adopts.

- Changes to timelines,
- Changes to alternative compliance,
- Inclusion of irrigable, not irrigated area,
- Technical changes to the outdoor water use efficiency standards, CII performance measures, variances, and bonus incentives.

We appreciate the opportunity to provide these written comments to the State Water Board on the proposed Regulation. We ask for the opportunity to work collaboratively with the State Water Board on provisions to clarify and streamline reporting and compliance, and we look forward to the finalization of this regulation so the true work of Making Conservation a California Way of Life can begin. Please do not hesitate to contact Chelsea Haines at ChelseaH@acwa.com or (916) 206-4078 if you have any questions regarding our input.

Sincerely,



Chelsea Haines
Regulatory Relations Manager
Association of California Water Agencies



Andrea Abergel
Manager of Water Policy
California Municipal Utilities Association



Sue Mosburg
Executive Director
California-Nevada Section, AWWA



Jennifer Capitolo
Executive Director
California Water Association

CC: The Honorable E. Joaquin Esquivel, Chair, State Water Resources Control Board
The Honorable Dorene D'Adamo, Vice Chair, State Water Resources Control Board
The Honorable Laurel Firestone, State Water Resources Control Board
The Honorable Sean Maguire, State Water Resources Control Board
The Honorable Nichole Morgan, State Water Resources Control Board
Mr. Eric Oppenheimer, Executive Director, State Water Resources Control Board
Mr. James Nachbaur, Director, Office of Research, Planning and Performance, State Water Resources Control Board
Ms. Charlotte Ely, Supervisor, Conservation and Efficiency, State Water Resources Control Board
Mr. Dave Eggerton, Executive Director, Association of California Water Agencies
Ms. Cindy Tuck, Deputy Director, Association of California Water Agencies