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May 16, 2016

Chair Felicia Marcus and Board Members
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Sent via electronic mail to: Kathy.Frevert@waterboards.ca.gov

cc: Wade Crowfoot, Deputy Cabinet Secretary & Senior Advisor
Martha Guzman-Aceves, Deputy Legislative Secretary
Office of Governor Edmund G. Brown Jr.

Sent via electronic mail to: wade.crowfoot@gov.ca.gov

RE: Proposed Modification and Extension of Emergency Regulation for Statewide Urban Water Conservation

Dear Chair Marcus and Board Members:

We appreciate the work of State Water Board members and staff to develop and implement the emergency conservation regulations addressing urban water use in California. These regulations resulted in important water use reductions in many urban areas across the state. But the hard work is far from over, and we offer here specific comments and suggestions for modifying the proposed changes in these regulations. Although we saw near average precipitation this winter, and are in a moderately better position than we were last year, nearly 72% percent of the state remains in severe drought conditions and snowpack is at only half of average for this time of year. In addition, the National Oceanic and Atmospheric Administration (NOAA) reports there is a 71% chance of La Niña conditions this winter, which can mean a drier-than-normal winter. What's more, all seven components of the latest North American Multi-Model Ensemble (NMME) show a dry start for California's next rainy season. All of this makes a compelling case for not relaxing conservation standards as we head into the hottest, driest, and highest water using season of the year.

Generally, we believe that any further changes made to the emergency regulations for 2016 should reflect 2016 water conditions with an appropriate margin of safety to account for the uncertainty of future precipitation. These regulations originally were developed and are being implemented in the context of a State of Emergency declared by Governor Brown. The response of the public to date has largely been excellent, and maintaining public support and understanding of the need for individual and community action to conserve water remains important. Thus, any changes to the regulations should be in response to a change in conditions, rather than responses to special pleas from various water suppliers.

1) CONTINUED DROUGHT CONDITIONS DEMONSTRATE THE NEED FOR ONGOING CONSERVATION STATEWIDE.

Despite heavy rains in the northern areas of the state this winter, most of California is still experiencing drought conditions and conservation and efficiency improvements remain the cheapest, fastest, and most environmentally beneficial response. As of May 10, 2016, 72 percent of the State is in severe drought to exceptional drought conditions.¹ Approximately four percent is no longer experiencing drought conditions. Groundwater basins are still seriously depleted. In addition, the National Oceanic and Atmospheric Administration (NOAA) reports there is a 71% chance of La Niña conditions developing this winter, which can mean a drier-than-normal season. Moreover, all seven components of the latest North American Multi-Model Ensemble (NMME) show a dry start for California's next rainy season. All of this makes a compelling case for not relaxing conservation standards as we head into the hottest, driest, and highest water-using season of the year. Continued drought conditions throughout much of the state and uncertainty about near-term and long-term conditions demonstrate the need for continued conservation efforts across California.

In addition to much of the state still experiencing drought conditions, California is also experiencing a large water-supply deficit.² To cut that deficit, California would need to experience several more winters wetter than this one. Without continued mandatory conservation measures, California will not get rid of the deficit and secure its water supply, but will instead place the state in a very vulnerable supply position going into a predicated dry La Niña year. At the very least, given the water-supply deficit, mandatory conservation measures should continue until our state's supply and demand are brought back into balance.

If emergency drought conditions cease, we support suspension of emergency drought regulations, but changes to regulations should be based on data about water-supply conditions, and not financial and political dynamics. The data at the moment support a continuation of the mandatory conservation requirements.

2) STATEWIDE GUIDANCE AND MINIMUM MEASURES ARE CRITICAL TO VERIFY LOCAL IMPLEMENTATION OF MANDATORY MEASURES.

We are concerned that the proposed new self-certification framework, which would allow water suppliers to determine conservation targets based on local water-supply conditions, will lead to inconsistent, ineffective, and uncoordinated conservation responses. While water suppliers and communities have largely stepped up to meet and exceed mandatory conservation targets, some suppliers missed their targets by a large margin and other suppliers have questioned the need for conservation throughout the drought emergency.

If self-certification moves forward, the State Water Board must provide stronger and more detailed requirements to guide how agencies will perform their self-certification in a consistent and transparent manner. For example, the State Board should clarify that districts base the supply projections made under Section 864.5 (b)(1) and (e) on an assumption that there will be no temporary urgency change petitions or waivers of otherwise applicable water-quality standards. This is particularly necessary for water districts that are dependent on Central Valley Project and State Water Project supplies.

The draft regulations should be modified to ensure that those districts do not assume that they will receive an allocation in the next three years that mirrors the allocation that they received in 2014 and 2015. The

¹ United States Drought Monitor Report (May 10, 2016) available at <http://droughtmonitor.unl.edu/Home/StateDroughtMonitor.aspx?CA>.

² Ed Joyce, *California Drought: Too Soon To End Mandatory Conservation?*, (May 11, 2016), available at <http://www.capradio.org/72747>.

water supplies available to the Projects in those years were dependent on water-quality waivers that cannot and should not be repeated in the future, in part because the districts and the State Board must assume for planning purposes that the Governor’s executive order authorizing those waivers will expire, and in part because the harm from those waivers has now been widely acknowledged and should be avoided in the future even if the Governor’s emergency drought orders are extended.

We provide suggested additional language to the proposed regulations in italics below:

“Sec. 864.5

(b) Each urban water supplier’s conservation standard pursuant to this section shall be the percentage by which the supplier’s total potable water supply is insufficient to meet the total potable water demand in the third year after this section takes effect under the following assumptions:

(1) The next three years’ precipitation is the same as it was in water years 2013- 2015;

(2) The supplier’s total potable water demand for each of the next three years will be the supplier’s average annual total potable water production for the years 2013 and 2014;

(3) The supplier’s total potable water supply shall include only water sources of supply available to the supplier that could be used for potable drinking water purposes, *and shall reflect that the sources of supply (including wholesale, Central Valley Project, and State Water Project supplies) comply with all water quality and other requirements and do not assume temporary urgency change orders or other changes to applicable requirements;*

(4) Each urban water supplier’s conservation standard shall be calculated as a percentage and rounded to the nearest whole percentage point.

...

(e) Each urban water wholesaler shall calculate, to the best of its ability, and no later than June 8, 2016, the volume of water that it expects it would deliver to each urban water supplier in each of the next three years under the assumptions identified in subdivision (b), and post that calculation, and the underlying analysis, to a publicly accessible webpage.”

If self-certification moves forward, the State Water Board should also require a minimum conservation target. Regardless of variable water-supply conditions across the state, we are still in a drought emergency. At a minimum, all regions should have a conservation target of at least four percent.

Finally, self-certification and supporting data should be publicly available and posted in a timely fashion on the State Water Board’s website for third-party review.

3) THE STATE WATER BOARD SHOULD RETAIN THE HOSPITALITY REQUIREMENTS.

The May 9, 2016 proposed modifications to the emergency regulations remove the two hospitality requirements in promotion of water conservation (Sec. 864): serving drinking water in restaurants upon request only and to create signage in hotels to make daily laundering of towels and linens optional. However, there is no reason to scale back these requirements. To the extent that restaurants and hotels have already invested resources to develop processes, create signage and other collateral, and train employees to implement water conservation requirements pursuant to the emergency conservation regulations, there is no benefit to removing these requirements. Much like the prohibition on applying

potable water to driveways and sidewalks, they are common sense, no regrets changes to the way we use water. Restaurants and hotels are important venues to communicate with large numbers of both California residents and visitors about water conservation. The restrictions are justified given ongoing emergency drought conditions, and arguably belong in the long-term measures under development to meet the California Water Action Plan goal to make conservation a way of life.

California's water challenges are immense and extend far beyond the current drought. We have made tremendous strides toward making conservation a way of life in California and must build on this success to secure the sustainability and reliability of California's water resources.

We strongly support the long-term measures espoused in recent Executive Orders, but also want to see continued robust implementation of emergency regulations as needed. The Executive Order is a roadmap to make conservation a way of life in California, which the Governor has long advocated as a key goal in his Water Action Plan. As we reform conservation and efficiency regulations, it will be critical to ensure that water saved goes to communities and ecosystems that need it most.

Sincerely,



Sara Aminzadeh, Executive Director
California Coastkeeper Alliance



Tracy Quinn, Senior Policy Analyst
Natural Resources Defense Council



Heather Cooley, Water Program Director
Pacific Institute