

December 19, 2016

VIA EMAIL: wue@water.ca.gov; commentletters@waterboards.ca.gov

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

The Honorable Mark Cowin, Director
California Department of Water Resources
P.O. Box 942836, Room 1115-1
Sacramento, CA 94236-0001

SUBJECT: Comments on “Making Conservation a California Way of Life” November 2016 Public Review Draft

Dear Chair Marcus and Director Cowin:

We would like to express our support to the State Agencies (SWRCB and DWR) regarding the Executive Order B-37-16 (EO) implementation process. However, we are many months into this process and the time for “emergency regulations” is well past. We understand that State Agencies are responding to the EO but we should be operating under normal administrative procedures for all non-drought elements of the EO. Our goal is to remain involved in shaping a successful framework to help California prepare for and respond to future droughts, and to promote the long-term efficient use of water. We have a number of areas of concern in the current proposal.

State agency staff carefully considered the Urban Advisory Group and other stakeholder input that resulted in significant refinements to the original proposed framework. We continue to oppose any policy changes that allow the State Agencies full control in setting future efficiency standards and performance measures. All current and future water-use target setting efforts must include a formal stakeholder process, allowing for input on technical considerations, sound research, and a full examination of unintended consequences. It should be remembered that this overall effort is an experiment of sorts and should be carefully approached to avoid to the best of our ability unintended consequences.

The conservation framework must take into account the “One Water” policy perspective, seeking a balanced and integrated approach to sustainable water management which should be measured in terms of BOTH water-use efficiency and the development of new supplies and storage. While the framework touches on this supply and demand linkage, we strongly encourage including a direct accounting for the development of locally sustainable, drought resilient supplies toward compliance.

We remain concerned that the uncertainty associated with unknown future conservation regulations will serve as a significant *disincentive* for the development of new sustainable supply sources and storage by local agencies, and we strongly believe this would be an unwise direction for California to take. As we learned in this recent drought, planning for the future includes considerable uncertainty. As such, several of our comments are aimed at directly accounting for new supply development while also improving water-use efficiency, as this combination will best serve us and water agencies throughout the State.

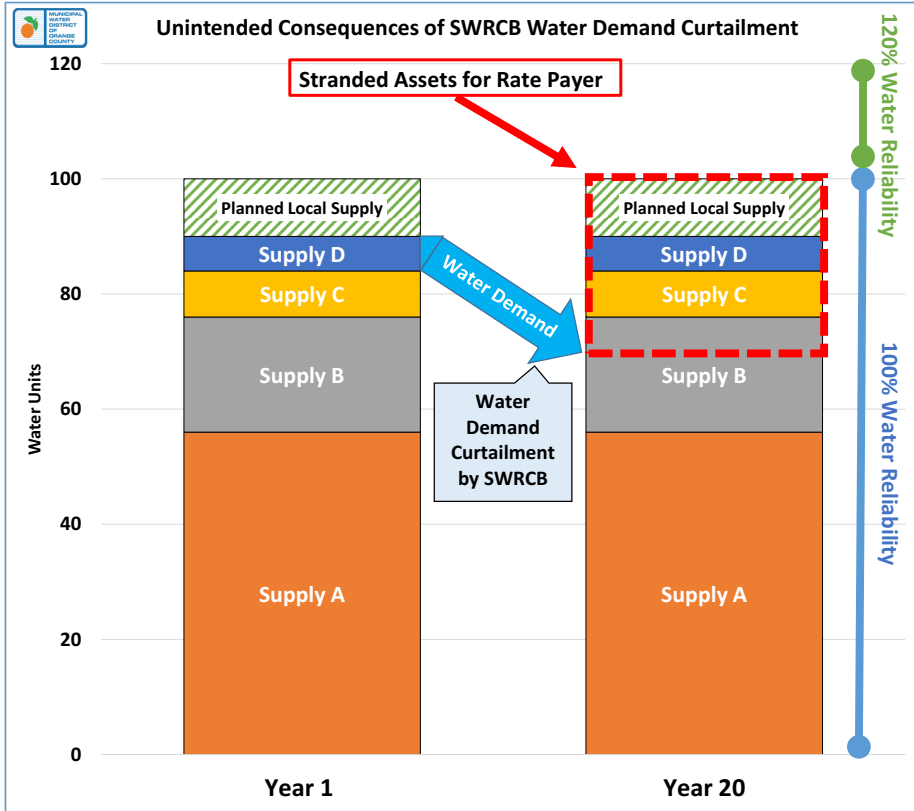
U.S. Supreme Court Justice Louis Brandeis, who served from 1916 to 1939, once said “The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding.” We believe this statement reflects the actions of the State Agencies in being well meaning (water use efficiency is to be embraced and we agree with this), but without understanding of the role local decision-making plays in water resources management. Many options exist to meet current and future water demands, including demand curtailment, development of recycled water or development of other new supplies such as ocean desalination. Unfortunately, the seemingly myopic perspective of the SWRCB goes only as far as demand curtailment and abruptly stops, even to the near-certain financial detriment of local agencies.

The “top down” proposal by the State Agencies can interfere with local decision-making regarding water supply projects and demand curtailment. The narrow vision of the State Agencies is for investments in demand curtailment ONLY. This concept ignores decisions that may be made locally. The situation could be that sufficient supply investments have already been made or already be planned. Additionally, demand curtailment may not be viewed locally as a permanent solution compared to a supply project that may be viewed as more proficient in meeting future reliability needs. Other supply decisions can be made to provide flexibility in future operations for providing reliability over and above current or planned supplies. The State Agencies’ proposed regulations will not allow any of these variations toward compliance. Our concerns can be outlined via three graphics and cases outlined below:

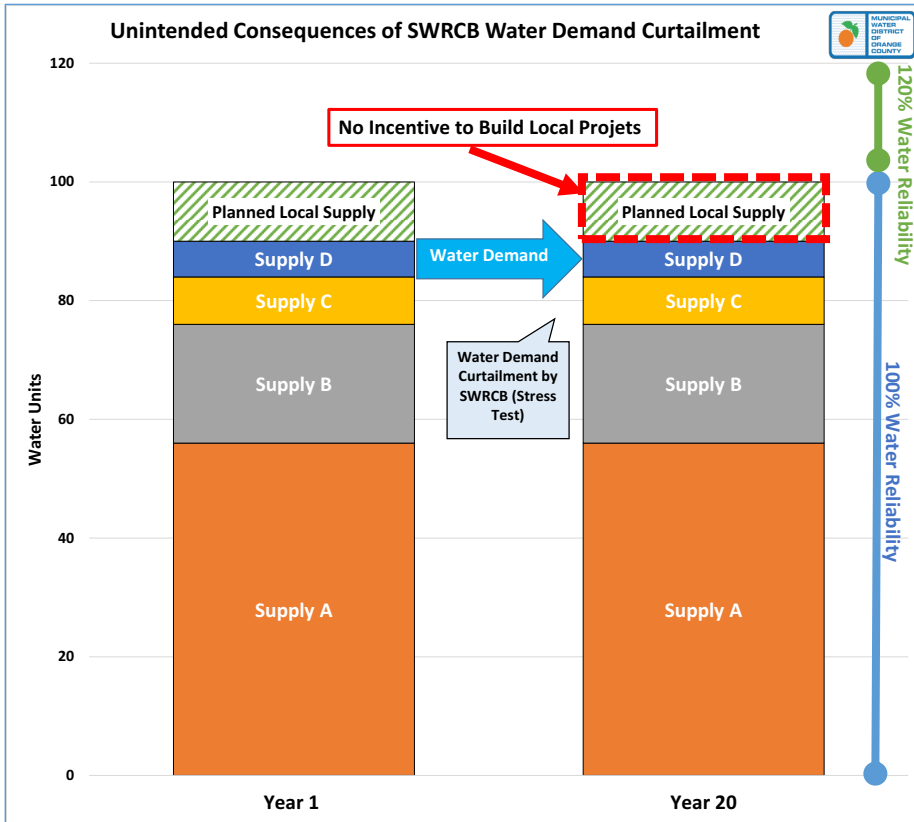
- Under Case 1, a water provider has already invested to supply 100 percent of the needs of the service area and has additional local supplies ready to meet future demands as they occur; the cost to meet future demands may be more or less than the cost to reduce demands, but this investment has already been made. The demand curtailment mandated by the State Agencies takes away the benefits of Supplies C & D entirely and partially takes away the benefits of Supply B. This results in the stranding of ratepayer assets because of the state required investment in demand curtailment even though the supplies are already in place.
- Under Case 2, the supplies meet the existing demands. The water provider has already made plans to invest in a new supply. Under the State Agencies’ mandate, there would be no incentive to proceed with the NEW investment because compliance with the regulations requires investments in demand curtailment.
- Under Case 3, future demands are met by future supplies and locally the supplies would be reliable, but out of compliance with the proposed regulations.

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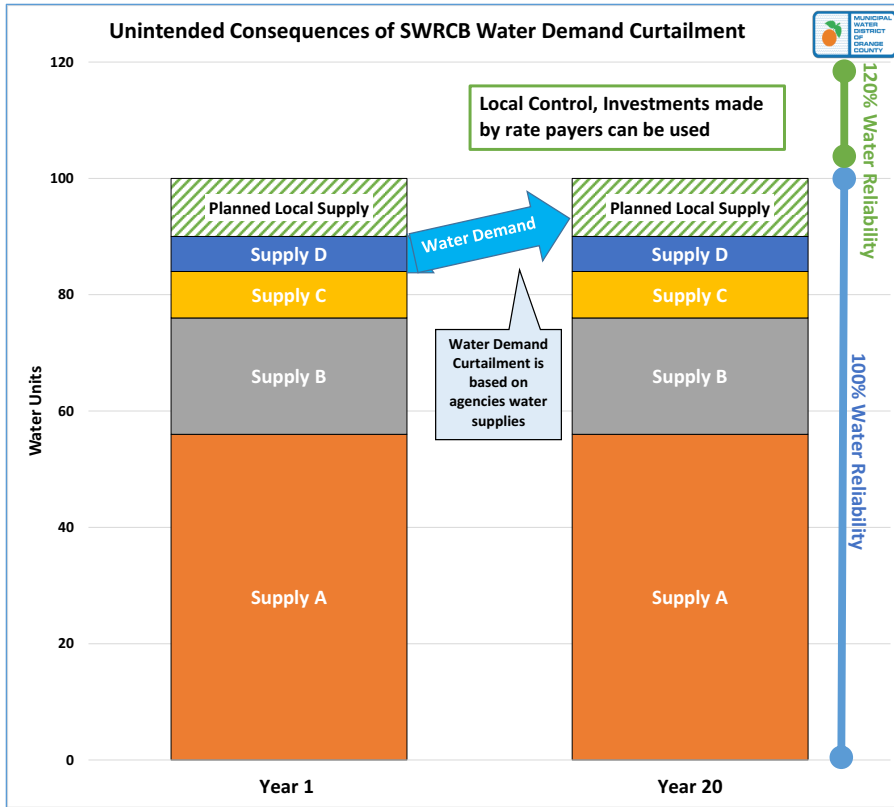
Case 1 – Unintended consequence results in stranding of existing and planned investments



Case 2 – There is no incentive to build NEW local projects



Case 3 – Local agency meets demands with planned supply option



We have identified the following areas of continued concern, which we look forward to resolving with the State Agencies in the final report (the citations in each comment refer to the relevant section(s) of the Public Review Draft).

Using Water More Wisely

Section 2.1 Emergency Conservation Regulations for 2017

- As the State Water Resources Control Board (SWRCB) considers extending the emergency regulation in January/February 2017, it must consider that many parts of the State are not experiencing emergency drought conditions due to significantly improved hydrologic conditions, development of drought resilient supplies, or both. The SWRCB should rescind the emergency conservation regulations for those areas with adequate supplies, and focus on communities that

require assistance in meeting the water demands of their community. The SWRCB could continue its “stress test” demand-reduction measures for areas in which supplies are inadequate in 2017 to meet normal demands.

Section 3.1 New Water Use Targets

General

- Alternative Target-setting Approach (Sections 3.1.1 and 3.1.2.) We continue to request that the State include optional approaches to the strengthened standards target-setting process that build on the elements of SB x7-7, as is directed by the EO. Expansion of the State agencies’ water budget based proposal to provide for alternative target-setting approaches that can be customized to unique local conditions, would be equally effective in reducing water use and would allow for alternative methods to reducing water demands that could be more cost-effective for some agencies to implement. This is particularly important for water agencies that lack resources or capacity to implement water budget programs, or for water agencies that would benefit from this additional flexibility.
- No Impact on Water Rights. The new water use efficiency program requirements must not adversely affect water rights or contracts held by water suppliers in California, and must explicitly recognize the ability of water suppliers to use or transfer the conserved water, pursuant to Water Code Section 1011. These provisions are already contained in Water Code Sections 10608 et seq. (SB x7-7), and must be maintained in any modifications thereto or in any new Water Code language to implement the Executive Order. We ask that language be added to the executive summary and introduction clearly stating the States intent to preserve water rights as the elements of the Executive Order are implemented.
- Sustainable Water Management. When setting water use standards, it is imperative for the State Agencies to recognize that water conservation alone is not going to result in a resilient supply that can manage severe shortages, which the State is likely to face in the future. As described in Governor Brown’s California Water Action Plan, an integrated and sustainable approach must include both water use efficiency and local supply development. When considering lowering the level of water use, the State must take into account the unintended consequences like reduced wastewater flows on local efforts to develop drought resilient supplies (indirect potable reuse), as mentioned in section 4.2.2 of the Public Review Draft.

Indoor and Outdoor Standards

- Water Use Efficiency Standards and Reporting (Section 3.1.3.) We support the proposal to establish 55 gallons per capita per day (GPCD) as the indoor use standard and the use of MWEL0 standards in place when landscapes were installed as the outdoor use standard for residential properties for determining compliance with the new efficiency targets in 2025. The landscape standard should be applied to irrigable areas of parcels. We were quite disappointed to learn of the State Agencies, proposal to only provide irrigable areas on a per agency basis. We support reporting on compliance with the 2025 targets in the 2025 Urban Water Management Plan. We do not support annual reporting on targets either before or after the 2025 Plan. Finally, while

we are open to considering lower water use standards for residential, landscape and water loss in future years, we insist that any such consideration be inclusive of sound research and a public stakeholder process with full consideration of the cost implications. Generally, we believe these types of decisions should be made at the local level.

- Indoor Standards Workgroup (Section 3.1.3.) Similar to the Landscape Area Measurement and CII Workgroups, which is to assist the State in further developing the standards, the EO agencies should form an Indoor Standards Workgroup to assist the State in evaluating the data and research to be utilized in determining the 2025 indoor standard. As part of this effort, the EO agencies must conduct a scientific evaluation to identify potential impacts on wastewater systems and recycled water/potable reuse production before the indoor water use standard is reduced.
- Landscape Area Measurement Data (Section 3.1.3.) We request that the State provide water suppliers either the detailed, verified landscape data for every parcel in a water agency that chooses to use the water use efficiency compliance method defined in the Public Review Draft or the funding for the agency to perform this analysis. Parcel level data will enable many agencies to develop efficiency targets for individual customers to easily identify and offer assistance to wasteful users. A significant amount of data and technical assistance, as well as dedication of precious fiscal resources, will be required to implement these standards. The process and methods to obtain and disseminate the data will need to be transparent and technically sound to ensure credibility with the public and local decision makers.
- Variances (Section 3.1.3.) We request the EO agencies develop and implement a variance process to allow for the establishment of indoor and outdoor water use standards according to a water supplier's unique conditions, such as providing more water than the average for large animals, swamp coolers, medical needs, etc. We ask that the draft framework include the development of variances and a variance process through a collaborative effort with water industry stakeholders.
- Recycled Water (Section 3.1.3.) The recycling and reuse of water is considered an efficient use of supplies and therefore should be removed from the water production calculations for determining compliance with 2025 targets, consistent with SB x7-7 (as is noted on pages 3-2 and 3-3 of this report). This approach will ensure incentives for the continued development of recycling and potable reuse projects, which are critical to a resilient and sustainable water supply future for California.

Commercial and Industrial Performance Standards

- Commercial, Industrial, and Institutional (CII) Performance Measures (Section 3.1.3.) We support the exemption of CII water uses from volumetric targets. We conceptually support the establishment of performance measures for the CII sector but recommend that a CII workgroup with representative members from a broad spectrum of industries be engaged in the establishment of performance measures rather than by dictate in this report. Participation by CII stakeholders and with water supplier representatives will help ensure Performance Measures are appropriate, effective and result in efficient water use without impairing

economic activity. Further, we believe the stakeholder process is essential for achieving long-term support of Conservation as a Way of Life in the CII sector. The development of Performance Measures should build on the CII taskforce report completed in 2013. We also request the language concerning audits be revised to read:

Work with willing CII customers to conduct representative water-use audits or water management plans for CII accounts over a specified size, volume, or percentage threshold or an equivalent measure (i.e. rebate or performance based incentives) determined by the CII workgroup.

Water Loss

- Water Loss Requirements (Sections 2.3.3 and 3.1.3.) The Draft describes the requirements of SB 555 and the actions planned by DWR, CPUC and the SWRCB in Section 2.3.3, including potential loss standards and enforcement tools. We do not support including water loss requirements in overall efficiency targets, as doing so creates an unnecessary, redundant and potentially conflicting compliance requirement.

Implementation and Enforcement

- Legislative Role in Updates to Water Use Targets (Section 3.1.3.) Any revisions of the standards and CII performance measures beyond the 2025 compliance period must only be implemented through future legislation. The role of the Legislature in crafting and refining California's water use policies and water use efficiency standards is critical, as is the role of the legislature in providing agency oversight and accountability.
- Enforcement Measures (Section 3.1.4.) The consequences for a water supplier that fails to meet its 2020 water use efficiency standard consist of that water supplier becoming ineligible for State grant or loan funding. Water Code Section 10608.56 includes additional provisions that condition the imposition of such sanctions. We believe that these sanctions provide for more than adequate incentive for water suppliers to achieve the water use efficiency standards proposed in the Public Review Draft and that any other financial penalties or enforcement processes would be unnecessary and counterproductive.
- Timeline Feasibility (section 4.3.) The EO agencies have proposed a significant number of important tasks to be completed between 2017 and 2018. We request that the State provide additional details on specific timelines and hold a workshop to ensure the schedule is realistic by seeking input from water suppliers regarding the possible impacts/constraints on water agency staffing and budget.

Eliminating Water Waste

Section 2.2 Monthly Reporting and Permanent Prohibition of Wasteful Practices

- Existing Authority (Section 2.2.3.) The Public Review Draft notes that the EO agencies plan to implement monthly reporting requirements and permanent water use prohibitions through existing authority. We request that the State provide more detailed information about the specific statutes that provide this authority.
- Stakeholder Input (Section 2.2.3.) A stakeholder workgroup should be formed as part of the rulemaking process to ensure the monthly reports are valuable to the state and public and that the statewide permanent prohibitions are appropriate for communities throughout the state.

Strengthening Local Drought Resilience

Section 3.2 Water Shortage Contingency Plans

- Updated Contents of the Urban Water Management Plans (Section 3.2.3.) To acknowledge the benefit of developing drought resilient, hydrologically independent supplies consistent with the California Water Action Plan, we request that the following be added below 2. *Evaluation Criteria*:
 - e) *Drought resilient, hydrologically independent supplies such as potable reuse, recycled water and desalination are considered fully reliable under all historical drought hydrology and plausible climate change effects.*
- Contents of the Water Shortage Contingency Plans (Section 3.2.3.) This section should be clarified to acknowledge that in some cases where water suppliers have in place or may invest in drought resilient, hydrologically independent supplies, these agencies may not experience shortages under drought conditions. In light of this, we recommend the following language be added to 4. *Shortage Levels. Evaluation Criteria*:
 - o *Water suppliers with a substantial portfolio of drought resilient, hydrologically independent base supplies may not experience shortage conditions due to drought or climate change. Water suppliers with validated, reliable, base water supplies of this type shall only be required in WSCPs to address shortage levels up to the maximum percentage that can be feasibly caused by dry hydrologic conditions.*
- Additional Dry Year Analyses (Section 3.2.3). We do not support the State's proposal to require "one or more <additional> dry years" to be analyzed as part of the annual water budget forecast. We would support an analysis of one additional dry year in the forecast, if conditions require a water supplier to implement its water shortage contingency plan.
- Water Shortage Contingency Plans (page 3-13). It must be made clear that should an agency implement its defined shortage response actions (SRA's) that effectively move the agency out of a shortage condition, then there is no need for the agency to declare an emergency, or be considered to be in an emergency shortage condition by the DWR or SWRCB.

Additional Comments

The proposed framework should clearly specify which reporting requirements apply to urban water wholesale suppliers and which ones apply to retail suppliers. The report uses the term "urban water suppliers" without distinguishing between wholesale and retail suppliers. It would be helpful to clearly define sets of requirements that appropriately apply to the different roles and responsibilities of wholesale versus retail water suppliers.

The proposed framework should allow local water suppliers to determine the necessity and timing for a water shortage emergency declaration under CWC Section 350. Standardized shortage levels and locally-appropriate actions can make sense for State reporting. However, on page 3-14 item 8, the State appears to mandate that a water supplier declare a water shortage emergency and implement actions described in CWC Section 350, et seq., when it enters into Shortage Level 3 or higher. Each local water supplier may have unique tools and drought management actions defined in its water shortage contingency plan and should have the flexibility to determine when a water shortage emergency declaration is appropriate. This approach would be consistent with CWC Section 350, et seq., which grant water suppliers discretion in implementing those statutes.

Thank you for the opportunity to comment. We will continue to collaborate with State agency staff to develop a framework by the January 2017 deadline that meets the objectives of the EO while preserving local water supplier authority and providing flexibility in implementation.

Sincerely,

Robert J. Hunter

Cc:

The Honorable Frances Spivy-Weber, Vice Chair, State Water Resources Control Board

The Honorable Dorene D'Adamo, Member, State Water Resources Control Board

The Honorable Steven Moore, Member, State Water Resources Control Board

The Honorable Tam Doduc, Member, State Water Resources Control Board

Ms. Kim Craig, Deputy Cabinet Secretary, Office of Governor Edmund G. Brown Jr.

Mr. Tom Howard, Executive Director, State Water Resources Control Board

Mr. Eric Oppenheimer, Chief Deputy Director, State Water Resources Control Board

Mr. Gary B. Bardini, Deputy Director, Integrated Water Management, Department of Water Resources

Mr. Kamyar Guivetchi, Manager, Statewide Integrated Water Management, Department of Water Resources