





December 19, 2016

Chair Felicia Marcus and Board Members
State Water Resources Control Board
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RE: Public Review Draft (November 2016) Implementing Executive Order B-37-16

Dear Chair Marcus and Board Members:

We commend the State for its timely development of a proposal that offers a reasonable, flexible framework for implementing Governor Brown's Executive Order B-37-16 to make water conservation a way of life in California (Draft Report or Draft). We also want to thank the Agencies charged with implementing the Executive Order (EO) for working with our organizations in a collaborative process through the Urban Advisory Group (UAG). The undersigned forty-nine entities represent a broad cross-section of business, environmental justice, climate change advocacy, and environmental constituencies in California. We collectively offer these comments to highlight areas of the framework that we strongly support and hope to see reflected in the Final Report, as well as a few areas that should be strengthened. These comments focus on those parts of the Draft Report addressing municipal water systems; we do not address agricultural water use.

While the Draft Report provides a strong foundation, we urge the State to provide additional clarity and specificity to the proposal so that the Final Report can appropriately set the stage for a new water conservation framework that ensures effective and efficient administration and enforcement of permanent conservation regulations; recognizes the human right to water and directs resources to disadvantaged communities; provides tangible benefits for California's aquatic ecosystems; addresses financial challenges for utilities associated with the transition to increased water use efficiency; and promotes sustainable water solutions that build climate resiliency.

The Draft Report suggests that the State, and the State Water Resources Control Board (Water Board) in particular, may not currently have the requisite legal authority to undertake a number of the recommended actions, including developing water loss targets, performance-based standards, and quantifiable measures for agricultural efficiency. However, the Water Board and Department of Water Resources (DWR) are clearly empowered to carry out these tasks pursuant to the California Constitution and Water Code Section 275, which delegates broad authority to the Water Board and DWR to take "all appropriate proceedings or actions" to prevent waste or unreasonable use. A substantial body of case law also establishes that the State has considerable authority to

regulate the use and reporting about water in conjunction with its role to ensure efficient use of water supplies. We recommend that you revise the Draft to clarify that the State has sufficient legal authority to take the actions identified in the framework.

1. Standards/Targets

The Executive Order directs the Water Board and DWR to develop new standards that “generate more statewide water conservation than existing requirements, and shall be based on strengthened standards” for (1) indoor residential per capita water use; (2) outdoor irrigation; (3) commercial, industrial and institutional (CII) water use; and (4) water loss through leaks. The Draft Report puts forth a framework for the development and implementation of those standards. We are supportive of the framework but feel that it could be strengthened in the interest of reaching the EO’s objectives. In that spirit, we offer the following recommendations:

- **Apply water use standards and targets to all types of water, including recycled water:** Within the Public Review Draft, water use standards and targets are applied to all *forms* and *uses* of water. We strongly agree with this approach and urge the state to maintain it in the Final Report. Efforts to manage water demand and water supplies should be separated to maximize the value of those investments. There are numerous incentives (financial and non-financial) to expand water supplies in California, including Proposition 1 and water reuse and stormwater capture goals. Water conservation and efficiency promote the efficient use of *all* water resources in California, including recycled water, and help to ensure that we maximize the *value* of these investments.
- **Develop indoor residential and outdoor standards by 2018, with formal adoption in 2020:** The Draft Report puts forth a timeline for the development and implementation of the water use standards and targets, calling for the EO Agencies to recommend final 2025 compliance standards for indoor residential and outdoor standards and develop regulations and guidelines for the implementation of the CII measures by 2018. It also calls for the EO Agencies to complete rulemaking and adopt final 2025 compliance standards for indoor residential, outdoor, and water loss standards in 2020. We urge the state to maintain this timeline, as it balances the need to build on existing opportunities while providing sufficient time for conducting studies to inform the process.
- **Collect information on all elements of the water use standards and targets:** Implementation of the EO presents an unparalleled opportunity for the State and water providers to compile information about the efficacy of various efficiency and conservation strategies across different regions. We urge the state to develop a robust reporting framework in the Final Report that includes opportunities and incentives for water suppliers to report on their performance for each element of the standard, i.e., indoor residential use, outdoor irrigation, and water losses. This would allow the State to better evaluate where progress is being made and what additional actions may be needed to help water suppliers achieve their targets. Further, making these data available to the water suppliers and public in a timely manner, and in a format that can be easily analyzed, would provide considerable value in advancing the Governor’s broader goal of accelerating and expanding water conservation statewide.
- **Identify sources of financial and other assistance and outline a transparent enforcement framework:** The Draft Report correctly identifies the Water Board as the primary agency charged with enforcing the new standards, consistent with the Board’s mission and role as the agency responsible for ensuring the efficient use of water. However, the framework is vague as to how the conservation targets will be enforced. We recommend that the Draft Report be revised to establish a mechanism for water providers to compile and submit data evaluating progress toward meeting new and existing requirements to the Water Board, who should evaluate compliance on an ongoing basis and maintain independent enforcement authority. Separately, the Final Report should specify the types of technical and financial assistance that

DWR, in coordination with the Water Board, will be able to provide to help utilities meet these requirements.

2. Financial and Technical Assistance

The Draft refers throughout to “technical and financial” assistance that the State will provide to utilities in connection with implementation of the different aspects of EO Framework, and we concur that such assistance is critical to ensuring successful implementation of the Governor’s conservation vision. However, with limited exceptions, the nature and extent of this support is unspecified. It would be very valuable to water providers, as well as the public, for the framework to delineate the particular technical and financial assistance that the State expects to be able to provide to water suppliers to help them navigate this transition.

With regard to financial assistance, the Draft lists water bonds enacted within the last 16 years as the primary source of potential State support. We recommend that the EO agencies identify the total amount of funding reasonably likely to be available to support water providers *specifically for purposes of implementing the EO going forward* from these sources. It would also be useful for the State to consider establishing an aggregated “1-stop” for utilities seeking financial support for EO implementation. It may also be beneficial for the State to consider issuing guidance further clarifying the circumstances under which SRF funds can be deployed for EO implementation measures.

Similarly, the draft would benefit from greater clarity and precision about the types of technical assistance that the State is planning to provide to water providers in implementing the EO beyond the programs already in place to address water losses. Many water providers would benefit from compliance assistance, referred to in several places in the draft, so it would be very valuable for the EO agencies to provide greater detail on what such assistance would entail. We recommend that the next version of the framework document provide a menu of technical assistance options and subject areas.

3. Shortage Contingency Plan

The EO directs DWR to “strengthen requirements for urban Water Shortage Contingency Plans, which urban water agencies are required to maintain. These updated requirements shall include adequate actions to respond to droughts lasting at least five years, as well as more frequent and severe periods of drought. While remaining customized according to local conditions, the updated requirements shall also create common statewide standards so that these plans can be quickly utilized during this and any future droughts.”

The Draft includes several new requirements and recommendations that we would like to address. First, we agree that it will be very valuable for water suppliers to evaluate the impact of plausible climate change effects on existing supplies and demands. This is essential and has been missing from other planning documents. We are also pleased that DWR is committing to review the Water Shortage Contingency Plans for both completeness *and* adequacy; this increases the likelihood that these plans will be meaningful and effective. We offer two additional recommendations to improve future Water Shortage Contingency Plans:

- **Revenue Stability Best Practices.** A key utility concern in connection with the emergency drought regulations was the potential impact of those regulations on revenue and water agencies’ financial health. Making conservation a way of life in California, to a certain extent, means supporting water suppliers as they grapple with revising their business models to reflect the transition to greater efficiency. We recommend that DWR conduct an analysis on the challenges and best practices that water utilities can employ for maintaining financial stability during periods of water shortage, and to develop a methodology by which water suppliers could demonstrate that they have adequate mechanisms in place to ensure revenue stability going forward, such as, for example, rate stabilization funds.

- **Estimating Savings from Demand Reduction Actions and Standardized Demand Management Phases.** The Draft Plan also requires water suppliers to develop a series of progressive shortage response actions (SRAs) that include a locally appropriate mix of short-term water efficiency and/or demand reduction actions, supply augmentation, and/or operational changes necessary to respond to actual or predicted shortage conditions. We recommend that water suppliers be incentivized to develop standardized demand reduction stages, such that a Level 1 demand reduction would be equivalent to a 10% reduction in demand while a Level 2 demand reduction would be equivalent to a 20% reduction in demand. Further, water suppliers should be required to specify the consumption reduction methods to be implemented at each stage. Standardized demand reduction stages would provide both the public and the state with a better understanding of the actions being taken at the local level.

4. Disadvantaged Communities

We are pleased to see that the Draft Report focuses on preparation for future shortages in a way that addresses the needs of vulnerable communities. We appreciate the stated intention in the Executive Order and Draft Report to specifically consider the needs of small suppliers and rural communities, however the requirement for “improved drought planning” is insufficient. Many smaller systems and private domestic wells lack the capacity to develop their own drought or water shortage contingency plan and require more than an emergency plan for responding to drought conditions after they appear. We are encouraged by the fact that the state agencies endeavored to incorporate a more complete framework, which includes monitoring, assessment and planning for both preventative and corrective actions in the Draft Report. Unfortunately, the Draft Report does not contain a timeline for developing roles and responsibilities of local and state agencies nor enforcement mechanisms. These key components are to be determined as “development progresses.” We recommend that the EO agencies develop and adhere to a timeline in order to ensure small and rural communities are not left behind.

We look forward to working with the EO agencies to address outstanding details to ensure that the Final Report issued in January serves as an effective roadmap to make conservation a California way of life.

Sincerely,

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