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Re: Comments of the California Water Association on the Draft Update to Standard Practice U-40-W (Instructions for Water Conservation, Rationing and Service Connection Moratoria)

Gentlemen:

In accordance with the instructions accompanying the draft Standard Practice U-40-W (the "Standard Practice"), circulated to interested parties on January 24, 2014, California Water Association ("CWA") hereby submits the following recommendations and comments. CWA is a statewide association that represents the interests of investor-owned water utilities subject to the Commission's jurisdiction.

I. **Background**

California is facing what may turn out to be the driest year in its recorded history. Given the current state of drought, CWA understands the urgent need for the Commission to move quickly to put in place up-to-date procedures and guidance regarding voluntary conservation measures and mandatory rationing. Accordingly, CWA supports the efforts of the Commission's Division of Water and Audits ("DWA") to update Standard Practice ("SP") U-40-W, and offers the following comments intended to enhance the efficient and transparent

operation of the instructions contained therein, including especially, those relevant to advice letter filings and memorandum account treatment. In addition, CWA's comments: (a) urge against the formal adoption of the standard practice itself by the Commission, as standard practices are intended to serve as guidance developed by DWA, not as "adopted Commission document[s];" and (b) request the Commission decline to require the water companies to penalize customers through use of conduct-related fines.

## **II. The Proposed Tiers for Advice Letter Treatment Are Appropriate, But the Events Authorized by the Respective Filings Should Be Clarified.**

CWA agrees that it is appropriate for the review and disposition of water company requests to incorporate Rule 14.1 and/or Schedule 14.1 into its tariff be delegated to the Water Division, and that such requests should be made by Tier 2 advice letter. CWA also agrees that a Tier 1 advice letter should be used to trigger the mandatory rationing procedures contained in a previously approved and incorporated Schedule 14.1. CWA recommends, however, that SP U-40-W be revised to resolve the following ambiguities.

### **A. Public Participation Meeting Requirement**

The draft Standard Practice should be revised to more clearly set forth the public meeting requirements associated with the revised rules. CWA suggests the following clarifications be made to address the issues set forth below:

- Based on the sample Rule 14.1, Section E, "Publicity," it is clear that the "public meeting" is intended to be held after filing a Tier 2 advice letter to authorize Schedule 14.1, but before the time that the Schedule is actually added to the tariff. If that is the case, Section 1's directive that the utility hold a public meeting "prior to implementing Schedule 14.1 mandatory rationing," should be modified to state that such hearing must be held "after the filing of a Tier 2 advice letter to request Schedule 14.1 be added to the tariffs, but prior to adding such Schedule 14.1 to the tariffs."

- Section 1 indicates that the "utility must hold" the requisite "public participation meeting," but the notice appended to the draft Standard Practice (which lacks a cover page indicating that it is Appendix D, but is referred to internally as "Appendix D") describes an "informal" "public meeting" conducted by Commission Staff that is tied to filing of the Tier 2 Advice Letter requesting authorization to add Schedule 14.1 to the tariffs. The draft Standard Practice should be revised to eliminate this internal inconsistency. CWA recommends accomplishing this by: (1) replacing references to "public participation meeting" with "public meeting"; and (2) modifying SP Section 1 to require that the utility arrange for and notice a public meeting under the auspices of DWA staff, with DWA staff to conduct the meeting, if available.

### **B. "Implement" versus "Activate"**

The Standard Practice uses several terms to refer to either the incorporation of a Schedule 14.1 into a tariff, or the triggering of the mandatory rationing described in a Schedule 14.1. These terms include the following, or forms of the following: "to add", "implement", "establish", "institute", "authorize", and "activate." The inconsistent use of these various terms creates an undesirable ambiguity. The use of "activate" is straightforward; "institute" appears to mean the same as activate; and "establish" and "authorize" appear to be used to add the Schedule 14.1 to the utility's tariffs. The terms "implement", "implementation", or

“implementing”, are used in excess of 20 times and are used indiscriminately to mean “to trigger” a Schedule 14.1’s procedures and also “to add” a Schedule 14.1 to a utility’s tariff.

CWA recommends the Standard Practice be revised to use consistent terminology in this regard, particularly in Section 1 of the draft. CWA recommends revising the statement of advice letter treatment set forth in Paragraph 1 of the Draft Standard Practice, as follows:

The procedural steps for instituting conservation measures are as follows:

- A utility requesting to add Rule 14.1 and/or Schedule 14.1 to its tariffs shall file a Tier 2 advice letter;
- Activation of voluntary conservation measures requires notifying the Director of DWA via a letter in both hard-copy and e-mailed formats.
- Activation of mandatory rationing or a greater stage of mandatory rationing requires the filing of a Tier 1 advice letter.
- Customer notification for each of the above, including the required public meeting convened after the filing of a Tier 2 advice letter requesting Schedule 14.1 be added to the tariffs, but prior to adding such Schedule 14.1 to the tariffs, shall be through bill insert or direct mailing.

#### **C. Tier 1 Advice Letter Treatment to Modify an Existing Schedule 14.1**

The draft Standard Practice is silent on the proper procedure for modifying an existing, previously approved Schedule 14.1. A water company may need, for example, to revise its Schedule 14.1 to tie mandatory rationing to groundwater levels rather than to actions taken by its water wholesaler to limit deliveries. CWA suggests that the appropriate mechanism to accomplish this type of revision is a Tier 1 advice letter, as was authorized for Golden State Water Company (“Golden State”) in Commission Resolution (“R”) W-4871 (see Ordering Paragraphs 3 and 4). Accordingly, Section 1 of the Standard Practice should be revised to include the following statement in the procedural steps for instituting conservation measures:

A utility requesting to modify an existing Schedule 14.1 in its tariffs shall file a Tier 1 advice letter;

### **III. The Standard Practice Should Not Be “Adopted” By the Commission.**

The instructions accompanying the January 24, 2014 -revised Standard Practice indicate that “[o]nly when the Commission acts does SP U-40-W become an adopted Commission document,” and specify that the Standard Practice itself will be presented to the Commission for approval. A standard practice is not, however, a Commission resolution or decision. A standard practice is defined by General Order (“GO”) 96-B as a “Water Division document that provides procedural guidelines (1) to the public and Utilities for preparing, and filing with the Water Division or the Commission, various documents, including formal applications and advice letters, and (2) to Staff for reviewing such documents and creating

Water Division work products.”<sup>1</sup> Putting the Draft Standard Practice before the Commission for a vote conflicts with the advisory nature and purpose of these guidance documents and sets an inappropriate precedent for giving all standard practices the force of a Commission order.

Moreover, the DWA instructions conflict with the process set forth in SP U-1-W, which specifies how a Standard Practice should be created and the procedure by which a Standard Practice may be revised. No adoption by the full Commission is required or authorized. SP U-1-W provides that a revised standard practice is to be finalized and issued by the Director of the Water Division once suggested changes and comments from interested parties are considered.

Instead of seeking Commission approval of the revised Standard Practice itself, Water Division should prepare a draft resolution that details the proposed new procedures and policies. If and once adopted by a vote of the Commission, those directives, as well as any other updates – whether ministerial or already embodied in some underlying Commission order – could be incorporated into a revised and updated SP U-40-W, following the typical procedure.

Water Division also may elect to expedite the processing of such a resolution pursuant to Commission Rule 14.6, which permits a reduction or waiver of review in an “unforeseen emergency situation.” Rule 14.6 authorizes such action where an emergency matter requires a decision by the Commission “more quickly than would be permitted if advance publication were made on the regular meeting agenda.” California is currently in a state of drought emergency. With 2014 projected to be the driest year on record, threats to public health and safety are bone fide. Governor Brown, in his January 17, 2014 emergency proclamation, instructed local urban water suppliers and municipalities to “implement their local water shortage contingency plans immediately.” Accordingly, the Commission properly may approve a resolution containing up-to-date instructions for water conservation and rationing on an emergency basis.

#### **IV. The Water Companies Should Not Be Required To Issue Conduct-Based Fines.**

The draft Standard Practice appears to require the water companies to fine their customers for non-volumetric “non-essential or unauthorized” water use “infractions” – or what CWA considers to be conduct-based fines. CWA is concerned that the water companies not be compelled to issue conduct-based “penalties” or “fines” to its customers. Implementation of tiered rates and other rate design mechanisms by the water companies appropriately help shape customer behavior and develop good usage practices. However, an obligation to issue a fine to a customer hosing off his driveway or to inspect the hose of a customer washing her car for a positive action shut-off nozzle may exceed what some consider to be the appropriate role of the private water company by improperly assigning it a law enforcement role. Moreover, it may create a risk for the water companies to be accused of discriminatory practices where certain customers are fined and others are not. As currently drafted, the Standard Practice can be interpreted to compel the water companies to institute a conduct-based fine schedule. CWA strongly recommends that the utilities have discretion in determining whether to employ conduct-based penalties and suggests revising Section B.1.d.i of Appendix B (Sample Rule 14.1) to clarify any ambiguity to that effect, as follows:

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<sup>1</sup> GO 96-B, Water Industry Rules, Section 1.10; see also SP U-1-W, *Creating and Modifying Standard Practices Under General Order 96-B*, Paragraph 1.

## B. STAGED MANDATORY RATIONING OF WATER USAGE

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6. Water use violation levels, written warning levels, associated fines, and/or exceptions procedures,

The revised SP U-40-W also proposes to require the water companies to fine a customer exceeding one's volumetric allotment. CWA does not oppose implementing enhanced price signals tied to over-usage during drought conditions, but recommends that, for the reasons specified above, the water utilities have the discretion to assess such amounts as "surcharges" or "overuse premiums," rather than as "penalties" or "fines."

### **V. The Scope of Permissible Memorandum Account Treatment Authorized By the Commission Should Be Clarified.**

The draft Standard Practice authorizes the use of memorandum accounts to track expenses, lost revenues and fine (or surcharge) amounts derived from the implementation of these rules. CWA recommends clarifying SP U-40-W with respect to memorandum account treatment, as follows:

- The draft Standard Practice should be revised to clarify that eligibility for memorandum account treatment for lost revenues and expenses related to voluntary conservation efforts is not predicated on the addition of Schedule 14.1 to the tariff.
- Some, but not all, of the Class A and B water companies have full-decoupling Water Revenue Adjustment Mechanisms ("WRAMs"), which enable those companies to track changed revenues due to variations in sales. The draft Standard Practice should be revised to clarify that companies with WRAMs are still eligible to request memorandum accounts to track expenses and surcharge (or fine) amounts.
- The Section I heading, "Recovery of Lost Revenue" is too narrow and should be renamed to encompass the broader topic of memorandum account treatment for lost revenues, expenses and surcharge (or fine) amounts.

### **VI. Appendices B and C of the Standard Practice Should Not Be Considered Minimum Criteria.**

The draft Standard Practice should be revised to strengthen language clarifying that the sample Rule 14.1 and sample Schedule 14.1 appended to the draft as Appendices B and C are to be considered examples rather than minimum criteria. A water company should have the flexibility to include other program criteria for mandatory rationing into its Schedule 14.1 as the programs will need to be tailored to the specific customer service areas and circumstances of each of the companies to be most effective in terms of conservation and least disruptive in terms of impacts on service to customers. For example, while the Appendix C Schedule 14.1 does not contain a provision for water banking, which would allow a customer to "bank" usage savings against future months of over-usage, a water company's requested Schedule 14.1 containing such a provision should not be rejected on that basis. Conversely, a water company that declines to implement conduct-based fines as part of its Schedule 14.1, should not be required to add such a provision in order to have its advice letter approved. Therefore, CWA suggests making at least the following revisions:

- The last sentence of SP Section 3 should be revised to read: “Appendix C, “*Schedule Rule 14.1 Example, Staged Mandatory Water Rationing Plan*,” is an EXAMPLE of what should be included in such a Tariff Rule 14.1, *and may be modified to fit the needs of the utility and its particular water shortage situation.*”
- SP Section 25 should be revised to read: “An example of a staged mandatory rationing plan, *which may be modified to fit the needs of the utility and its particular water shortage situation*, is attached as Appendix C, “*Schedule 14.1 Example.*”

Furthermore, for avoidance of doubt, language should be added to specify that existing, previously-approved water company Rules 14.1 and Schedules 14.1 are not made ineffective by the modifications to the example Rules and Schedules in the proposed-to-be updated Standard Practice.

### **VIII. Conclusion**

For the reasons stated above, CWA respectfully requests a resolution be prepared in accordance with Section III of these comments and that the draft Standard Practice be modified as set forth above.

Respectfully submitted,

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