



December 19, 2016

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P.O. Box 942836, Room 1115-1
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The Honorable Felicia Marcus, Chair
State Water Resources Control Board
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Sacramento, CA 95814

The Honorable Michael Picker, President
California Public Utilities Commission
505 Van Ness Avenue
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The Honorable Karen Ross, Secretary
California Department of Food and Agriculture
1220 N Street
Sacramento, CA 95814

The Honorable Robert Weisenmiller, Chair
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

Delivered by email: wue@water.ca.gov

Subject: California Water Association Comment Letter – Making Water Conservation a California Way of Life, Implementing Executive Order B-37-16 (Public Review Draft)

To the Honorable Members of the Executive Order Agencies:

On behalf of the California Water Association ("CWA") and its more than 100 investor-owned, CPUC¹-regulated member water companies, thank you for the opportunity to provide comments on the November 30, 2016 Public Review Draft of the report, *Making Water Conservation a California Way of Life* (the "Draft Report"), produced by the five state agencies (the "EO Agencies") that Governor Brown directed in Executive Order B-37-16 (the "Executive Order" or "EO") to develop a

¹ California Public Utilities Commission.

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permanent framework for achieving long-term efficient water use and meeting drought preparedness goals.

I. SUMMARY OF COMMENTS

As a designated member of the Urban Advisory Group (“UAG”) convened by the EO Agencies, CWA engaged in the process to develop the permanent framework that is the subject of the Draft Report. CWA notes that the EO Agencies produced a Draft Report consistent with the direction established by the staff with the UAG during its development. The Draft Report clearly recognizes the retail water suppliers’ need to retain flexibility in carrying out their individual responsibilities under the permanent framework – a theme expressed early and often by CWA and other members of the UAG. If there is one lesson to be learned from all of the State action during the current drought, it is that “one size does not fit all” and that water conditions across the State can vary as much as California’s well-known microclimates. CWA is also pleased that the Draft Report includes specific elements for which CWA advocated in the UAG forum.²

CWA also recognizes that, even when initially completed, the permanent framework is a high-level policy plan that will be further developed and refined through administrative and legislative processes. Accordingly, CWA does not seek, through these comments, to address all of the many details and specifics that will be required to actually implement the proposed permanent framework. However, because the Draft Report will set the course forward, by this letter, CWA is raising its member companies’ issues of concern and is offering certain recommended revisions to the Draft Report.

As detailed more fully below, CWA’s recommendations emphasize the need for practical, water retailer-specific goal-setting, procedural transparency, and rational implementation of the state’s new water use efficiency and drought management policy. CWA also suggests revisions where necessary to clarify how the permanent framework might apply differently to CPUC-regulated water providers than to their public agency counterparts.

² These elements include, especially: (1) a reasonable compliance timeline that acknowledges that “improved water use efficiency on a statewide scale will take time;” and (2) performance-based measures for the Commercial/Institutional/Industrial (“CII”) customer class (rather than volumetric or budget-based targets), in light of the “substantial diversity” in businesses and institutions statewide.

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II. COMMENTS, CONCERNS AND RECOMMENDATIONS

For ease of reference and revision, CWA's comments are listed below in the order in which the bulk of the discussion on such topic appears in the Draft Report.

A. The CPUC Has Already Approved Resolution W-5119 on Leak Detection.

On page 1-2, the Draft Report indicates that the CPUC is directed to prepare a resolution on minimizing leaks. This same paragraph makes the confusing statement that "the CPUC is not in a regulatory capacity" On December 1, 2016, consistent with the Executive Order, the CPUC approved Resolution W-5119, acknowledging the work the Class A investor-owned water utilities have done in keeping non-revenue water percentages stable and encouraging further efforts to minimize leaks.

For clarity and accuracy, CWA recommends that the Draft Report be updated to reflect the CPUC's recent action by revising the second full paragraph in column 2 on page 1-1 as follows:

~~On December 1, 2016, the CPUC is directed to prepare~~ approved Resolution W-5119, a ~~consistent~~ resolution on minimizing water leaks for implementation by its investor- owned utilities that is consistent with the directive in EO Item 6. ~~The CPUC is not in a regulatory capacity;~~ See Section 2.3 for information on this directive.

B. Breaking Down Non-Revenue Water by Class A Water Utilities.

The Draft Report, on page 2-5, states: "Class A Water Utilities do not currently have the capability to break down their non-revenue water number into the components as defined by AWWA, instead reporting this number as a total percentage using AWWA's water loss audit software." This is not an accurate statement. Class A Water Utilities do have this capability and have been utilizing the AWWA methodology for years.³ Class A Water Utilities have been reporting water loss percentages because that is the data considered relevant to ratemaking. CWA requests that the Draft Report be revised to more accurately reflect the current state of non-revenue water analysis by making the following revisions to the third full paragraph of column one on page 2-5:

As evidenced in Table 2-1, non-revenue water is made up of multiple components, with system leaks being one component. ~~Class A Water Utilities do not currently have the capability to break down their non-revenue water number into the components as defined by AWWA⁴, instead reporting this number as a total percentage using AWWA's water loss audit~~

³ California PUC Decision 07-05-062 (May 24, 2007), at 28 ("Water utilities shall be required to comply with the M 36 manual . . . as they are stated currently and to further comply when revised.")

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~~software. However,~~ Class A Water Utilities provide several additional metrics related to system leaks in their GRC applications,⁴ including the following: [as listed on page 2-5]

C. Future Water Use Targets Should Be Based on Research, Data and a Comprehensive and Transparent Process.

The Draft Report assumes that individual water use targets for each residential application will necessarily decrease over time – *e.g.* that final targets will necessarily be lower than interim targets.⁴ But reasonable water budgets that correlate to efficient water use will depend on a number of factors, including technological advancements in water-use efficiency. The Draft Report should be revised to remove the predisposition towards reducing the targets over time. Instead, the Draft Report should make it clear that future water use targets will be set based on then-current research, data and feedback from affected stakeholders. At a minimum, the Draft Report should note that any future reductions in the targets for water use must be accompanied by commensurate advancements in technologies.

It is CWA's view that standards set beyond 2025 will have impacts on the affordability of water, on the quality of life in California communities, and on the state's economy. These decisions appropriately deserve a higher level of transparency and involvement, and should be made through the legislative process.

D. Budgeting for Parks and Playfields.

As Californians embrace conservation as a way of life by converting their lawns and yards into drought-friendly landscapes, individuals and families will almost certainly seek out communal "backyards" for recreation – parks and playfields, for example. It is important, therefore, that when ascertaining outdoor water use budgets, these special landscape areas be given the fullest complement of water so as to ensure that these essential community assets are properly preserved and maintained for our customers. CWA appreciates that the state intends to classify these special landscape areas with an ETo of 1.0.⁵ The state also should consider prioritizing support for recycled water projects that reduce the use of potable water by such facilities.

⁴ Draft Report, at 3-5, 3-6.

⁵ Draft Report, at 3-7.

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E. The CPUC Should Define the Content of the CPUC-Regulated Water Utilities' Water Shortage Contingency Plans.

The Draft Report sets forth, with some specificity, proposed new requirements for a water supplier's Water Shortage Contingency Plan ("WSCP").⁶ While the Draft Report indicates that new statutory authority will be required to institute the expanded requirements, it does not acknowledge the role of the CPUC in developing plans for water use restrictions or rationing. For many of the Class A and Class B CPUC-regulated water utilities, the functional equivalent of a WSCP is its Tariff Rule 14.1. Unlike the WSCP, however, the tariff rules are part of the legal foundation that governs the relationship between the companies and their respective customers. For that reason, it is essential that the CPUC-regulated water utilities continue to adhere to the CPUC's policies and orders with respect to the content of those tariff schedules. To achieve this, CWA requests that the Draft Report be revised to acknowledge the need to defer to the CPUC on the specifics of the language included in the investor-owned water utilities' Water Shortage Contingency Plans.

F. Californians Cannot Be Expected to Adopt the Worst-Case Scenario as Their "Way of Life."

The Draft Report takes a "worst-case-scenario" approach to preparing for future drought conditions; a case in point is the requirement that water suppliers undergo an annual Water Budget Forecast to assess shortage risks for the current year and one or more dry year(s). But California won't always be in a state of drought, and while preparedness is a virtue, drought fatigue is a genuine threat to mobilizing customers and communities in times of true emergency. The permanent framework should take a more evenhanded approach that better reflects the variability of California's water supply conditions by eliminating or tempering drought-response requirements that are not needed when a system(s) or region(s) is not actually facing emergency conditions and has adequate supply to meet demand. To that end, CWA recommends that the Draft Report be revised to specify that the Annual Water Budget Forecast requirement only applies when conditions warrant (e.g. the Governor has declared a state of drought emergency).

G. The Draft Report's Directives Regarding Improving Drought Planning for Small Investor-Owned Water Utilities Should Be Clarified.

The Draft Report directs DWR to work with counties to "facilitate improved drought planning for small water suppliers and rural communities."⁷ CWA supports the efforts to assist

⁶ Draft Report, at 3-11.

⁷ Draft Report, at 3-16.

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small systems, as resource-related constraints can make such investments of time and skill difficult for the utilities to implement. However, CWA notes that, for small investor-owned water suppliers, it is the CPUC, not the counties, that has jurisdiction to determine how such utilities and their ratepayers should plan for future droughts. CWA recommends that the final report clarify this jurisdictional distinction and apply the same principles proposed for small systems vis-à-vis the counties to the CPUC with respect to the small investor-owned water utilities.

Also relevant to small systems, the Draft Report makes the statement that groundwater sustainability agencies (“GSAs”) formed under the Sustainable Groundwater Management Act (“SGMA”) “will need to incorporate appropriate drought planning and response measures to adequately protect small water suppliers and rural communities from possible future shortages.”⁸ CWA submits that drought planning for specific water systems is not in the purview of the GSAs and, as noted above, the CPUC has jurisdiction to direct the small CPUC-regulated water utilities to take steps to protect against water supply shortages. CWA recommends that the Draft Report be clarified by eliminating this reference.

H. The Draft Report Should Better Encourage Water Suppliers to Develop Resilient Water Supplies.

The Draft Report’s framework for achieving water use efficiency targets and preparing for drought relies heavily on water-use reduction-based strategies. Although the EO Agencies intended for the Draft Report to provide “flexibility for retail water suppliers in carrying out their local responsibilities,”⁹ the Draft Report misses an opportunity to promote that flexibility by not doing enough to encourage water suppliers to develop resiliency in their water supply portfolios. Water suppliers should be encouraged to make investments in “drought-proof” and drought-resilient supply sources, and the Draft Report should be revised to reflect balance between these complementary approaches to drought preparedness. As it stands, the current emphasis on demand reduction may dissuade future investments in drought resilient supply projects. The Draft Report should remove this disincentive by making an affirmative statement that investments in drought resilient supplies contribute positively toward the water supplier’s compliance record with respect to its system-wide water-use target.

I. Viable Utilities and Affordable Water.

The state has asked water systems and their customers to step up in a big way in response to the historic drought conditions of the last five years, and the proposed permanent

⁸ Draft Report, at 3-16.

⁹ Draft Report, at 1-9.

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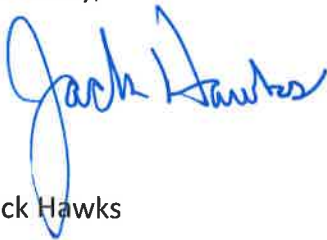
framework will put even more pressure on utilities, residents, and businesses to monitor and change consumption behavior. Implementing EO B-37-16, as contemplated in the Draft Report, will mean substantial new regulatory activities for water suppliers and should trigger new infrastructure investments to secure drought resilient water supplies and minimize water losses, as well as absorbing costs to maintain the water budget program and targets, enforce compliance by customers and implement the performance measures and other requirements for commercial, institutional and industrial customers.

Combined with the costs associated with new and more stringent water quality and discharge requirements, the state's mandatory consolidation program, and the ongoing implementation of the human right to water law, there are even more challenges to providing safe, reliable, high quality water at just and reasonable rates¹⁰ than ever before. Given these conditions, and the expectation that the permanent framework will fundamentally change how Californians view their use and entitlement to water, it is necessary to balance the state's efficiency objectives with the need to maintain financially viable utilities and to keep water affordable. While the Draft Report is limited to addressing efficiency and drought, it will be important for policymakers to balance these competing policy goals when deciding how to implement EO B-37-16 in the coming months and years.

III. CONCLUSION

CWA appreciates this opportunity to provide comments on the Draft Report and urges the EO Agencies to finalize the Draft Report consistent with the recommendations presented above. If you have any questions, please feel free to contact me at jhawks@calwaterassn.com or (415) 561-9650.

Sincerely,



Jack Hawks

cc: The Honorable Frances Spivy-Weber, Vice Chair, State Water Resources Control Board
The Honorable Dorene D'Adamo, Member, State Water Resources Control Board

¹⁰ For the CPUC-regulated water utilities, Public Utilities Code Section 451 applies and provides, in part: "All charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable."

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The Honorable Steven Moore, Member, State Water Resources Control Board
The Honorable Tam Doduc, Member, State Water Resources Control Board
The Honorable Catherine J.K. Sandoval, Commissioner, California Public Utilities Commission
Ms. Kim Craig, Deputy Cabinet Secretary, Office of Governor Edmund G. Brown Jr.
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