

July 21, 2017

The Honorable Robert M. Hertzberg
Chair, Senate Natural Resources & Water
The Honorable Eduardo Garcia
Chair, Assembly Water Parks & Wildlife Committee
State Capitol
Sacramento, CA 95814

Dear Chair Hertzberg and Chair Garcia:

RE: Successor Legislation to Assembly Bills 1667, 1668 and 1654

On behalf of the California Water Association (CWA), I am pleased to respond to Senator Hertzberg's invitation to provide input to the respective Senate and Assembly Committees responsible for ensuring that substantive policy legislation imposing fair and equitable water-use efficiency and water shortage contingency planning regulations are enacted in 2017. It is essential that the legislation implementing the Governor's Executive Order B-40-17 and the April 2017 five-state agency report, "Making Water Conservation a California Way of Life (Way of Life report)," incorporates the interests of the principally affected parties, the state's public water suppliers and their customers.

CWA represents more than 100 public water utilities in California that are regulated by the California Public Utilities Commission (CPUC), and its members provide safe, reliable, high-quality water service to approximately 6 million Californians. As a point of reference, CWA was an active participant in the Urban Stakeholder Group that provided counsel and input into the development of the Way of Life report, and was a strong supporter of two of the original bills implementing the report, AB 968 and AB 1654.

This letter will summarize CWA's principal concerns with AB 1667 and will then provide its recommendations for the legislative process going forward. CWA appreciates the fact that both of you are moving forward the legislation on these two critical subject areas through the legislative policy process.

Because legislation on water use efficiency and drought management planning is a high priority of the Governor in 2017, and because AB 1667 and AB 1668 reflects the Governor's Trailer Bill Language, CWA also appreciates the need for the final bill to balance the needs and preferences of the legislature, the water utility community, and the Governor's preferences. CWA considers the letter being submitted today by the broad coalition led by the Association of California Water Agencies (ACWA), to which CWA is a signatory, to be the vehicle that has the best opportunity to accomplish that objective.

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Concerns with AB 1667

Water Use Efficiency

CWA's concerns mirror those of the chief consultant's analysis for the Senate Natural Resources and Water Committee. Specifically, CWA considers the following provisions in AB 1667 to be in need of revision:

- Sec. 10608.20 (k) – *Nothing in this part limits the authority of the board to adopt standards for water conservation that are in addition to, or exceed, the standards provided under this part.* The shift of responsibility over water-use efficiency and water conservation from the local water utility to the State Water Resources Control Board (SWRCB or State Board) is misguided for at least two reasons:
 1. Any water-use efficiency/conservation regulations will directly affect the behavior and household budgets of California citizens. If compliance with the standards and regulations stopped with the utility, state agency authority would be appropriate. However, since the water-consuming behavior of the voting public must be altered and managed, and since the utility will be the conduit for altering that behavior in order to comply with the regulations, it should be the legislature that sets the standards for water conservation. The State Board should have the authority (and the mandate) to develop the technical and functional regulations for reporting, compliance, and enforcement of the standards set by the Legislature, but not the authority to revise the standards.
 2. Enforcement of water-use efficiency regulations will impose pressure on water utility rates and threats on the stability of the utility's financial condition, both of which will have a direct impact on customers. Because the water utility industry is predominantly a fixed cost/capital-intensive business, water rates will necessarily rise because reduced water consumption means there are less billing units (e.g., a 1,000 gallons or a 100 cubic feet equals a billing unit) over which to spread those fixed costs, thereby forcing the reduced billing units to absorb a higher portion of fixed costs). The decision to create a public policy environment that forces local utilities and water agencies to raise rates to customers should rest with the legislature, not a state regulatory agency.

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- *Chapter 9 – Section 10609: Urban Water Conservation Standards and Reporting*

While CWA doesn't object to the intent of Section 10609, it does have concerns with the blanket authority conveyed to the State Board with respect to water budget-based planning and long-term standards, the application of the goals/standards/targets to water rights, the lack of stakeholder input into development of performance measures for commercial, institutional and industrial water users, and the lack of consideration of customer behavior in enforcement requirements. In all these instances, legislative oversight is lacking, CEQA exemptions are prevalent, preemption of existing requirements is a problem, and the water rights legal structure is conflicted.

Additionally, because the CPUC's jurisdictional authority over the regulated water utilities with respect to rates, terms of service, operations, and water quality (the latter shared with the SWRCB's Division of Drinking Water) overlaps with many of the provisions in AB 1667, it is important for CWA's members that the legislation empowering the ultimate water-use efficiency and drought management regulations affords the CPUC and its jurisdictional utilities the necessary flexibility to adjust to the particular conditions of these utilities.

CWA disagrees with the lack of a full credit for recycled water that ultimately will have a potable reuse application. Targets and standards should include a credit and consideration for all types of drought-resilient supplies, including recycled water for non-potable reuse (e.g., irrigation), indirect potable reuse, and direct potable reuse, as well as ocean and brackish water desalination, aquifer storage and recovery, stormwater capture, etc. These latter supplemental supplies should not be excluded in the calculation of the credits for types of water that displace or enhance potable water supplies.

With respect to compliance, CWA agrees with the committee analysis that the simple annual progression of information orders, notices, conservation orders, and cease and desist orders (CDOs). As the analysis notes, "the annual data are likely to be fairly noisy given weather fluctuation, economic cycles, etc., so two or three years of data are not likely to tell much about progress towards meeting the standards ... it might take some [water] agencies a year or two to develop and then begin implementing a plan to achieve the standards; so an agency might actually be making progress, it just hasn't shown up in the water use data yet." For these reasons, CWA suggests at least two years of experience with the new standards before an enforcement regime is imposed.

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And, frankly, because the compliance involves the complete cooperation of customers, CDOs against the water agency or utility for the actions of their customers should not be a critical component of enforcement of water-use efficiency standards. The emphasis should be on education and corrective action, not CDOs.

Water Shortage Contingency Plans

As the committee notes, Chapter 10's command-and-control approach in AB 667 is too regimented. It isn't necessary for Water Shortage Contingency Plans (WSCPs) to contain progressive stages at 10 percent increments. This is especially true for CPUC-regulated water utilities who have legally binding tariff rules that govern the relationship between the utility and its customers. Specifically, Tariff Rule 14.1 and accompanying Schedule 14.1, which constitute the regulated utilities' WSCPs, are fully sufficient for drought management purposes, and, by virtue of the regulated utilities' superlative performance during the 2012-2016 drought emergency, proved wholly capable of fulfilling any drought management needs. The provisions of AB 1654 (Rubio) dovetailed nicely with the CPUC's drought management directives, and that legislation is the preferred drought management vehicle for CWA and its members.

CWA points to the coalition letter's provisions as the source for the appropriate legislative language for any associated amendments to the Urban Water Management Plan Act.

CWA supports the 10 policy principles (shown below) of the ACWA-led coalition signatories that underpin legislation addressing water-use efficiency standards and drought management planning. CWA urges the legislature to fully consider the detailed supporting points in adopting legislative language that reflects these principles.

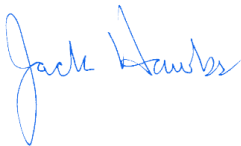
1. Preserve the Legislature's authority over long-term water use efficiency target setting. State agencies should **not** be granted the authority to set and revise water use efficiency targets. Commercial, industrial, and institutional (CII) performance measures must be determined by a broad stakeholder task force and not state agencies.
2. Ensure that any water use efficiency target setting approach is flexible to account for the diversity among California's communities and the urban retail water suppliers that serve them. Legislation [should] include alternative pathways or functional equivalents to compliance, variances, and criteria for the data to be collected.
3. Protect water rights and preserve a water supplier's ability to use water it has a right to access.
4. Protect and create incentives for the further development of potable reuse and recycled water.

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5. Provide for appropriate, progressive enforcement authority that accounts for urban retail water suppliers' authorities and responsibilities relative to their customers. The focus should be on corrective action instead of cease-and-desist orders.
6. Preserve local decision-making to determine actions to avoid or mitigate shortages. The state should not dictate what actions are to be taken at any stage or specific actions that must be included in a water shortage contingency analysis.
7. Preserve and encourage investments in resilient water supplies. Potable reuse, recycled water, and desalination should all be considered fully reliable.
8. Ensure that annual water supply and demand assessments are based on and accurately reflect local conditions.
9. Maintain the existing legislative intent and challenge period for urban water management plans.
10. Recognize that energy use is only one aspect of water supply planning.

CWA appreciates the opportunity to offer these observations and suggestions to the legislature. Please feel free to contact CWA's Senior Policy Advisor, Jennifer Capitolo of Nossaman LLP at jcapitolo@nossaman.com, or 916.930.7706, if you have further questions.

Sincerely,



Jack Hawks

Cc: The Honorable Members, Senate Committee on Natural Resources and Water
The Honorable Members, Assembly Committee on Water, Parks, and Wildlife
The Honorable Members, Assembly Water Conservation Working Group
Mr. Kip Lipper, Chief Policy Advisor, Office of the Senate President Pro Tem
Mr. Alf Brandt, Senior Counsel, Office of the Assembly Speaker
Mr. Dennis O'Connor, Principal Consultant, Senate Environmental Quality Committee
Ms. Catherine Freeman, Chief Consultant, Assembly Committee on Water, Parks, and Wildlife
Mr. Ryan Ojakian, Senior Consultant, Assembly Committee on Water, Parks, and Wildlife
Mr. Michael Bedard, Chief of Staff, Office of Senator Robert Hertzberg
Mr. Todd Moffitt, Consultant, Senate Republican Caucus
Mr. Robert Spiegel, Consultant, Assembly Republican Caucus
Ms. Kim Craig, Deputy Cabinet Secretary, Office of the Governor
Mr. Gordon Burns, Undersecretary, CalEPA