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The Honorable Felicia Marcus, Chair
and Members of the State Water Resources Control Board
c/o Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Subject: "Comments on Proposed Extended Emergency Water Conservation Regulation"

Dear Chair Marcus and Members of the Board:

The Association of California Water Agencies (ACWA) appreciates this opportunity to provide comments to the State Water Resources Control Board (State Water Board) on the proposed "Extended Emergency Water Conservation Regulation" (Proposed Extended Regulation), released for public review on January 15, 2016. ACWA represents over 430 public water agencies which are responsible for delivery of over 90% of the water used for residential, commercial and agricultural purposes in California. Water agencies statewide are continuing to play a key role in the successful implementation of the 2015 Emergency Water Conservation Regulation (Emergency Regulation) to address the ongoing drought. ACWA understands that the February 13 expiration of the existing Emergency Regulation is driving consideration of the Proposed Extended Regulation at this time, despite uncertainty about how this winter's precipitation may mitigate the severity or duration of the ongoing drought. We recognize that the State Water Board is proposing to extend the Emergency Regulation in a modified form, effective for another 270 days through October 2016, and intended to incorporate "insights gained," as authorized by the Governor's most recent Executive Order B-36-15.

ACWA appreciates the State Water Board's acknowledgement in the Proposed Extended Regulation of the importance of climate and growth adjustments to address acute equity issues associated with the existing Emergency Regulation and the importance of providing credits for drought-resilient supplies. Past investments in local drought-resilient water supplies such as ocean and brackish groundwater desalination, surface and groundwater storage and conjunctive use projects, and indirect potable and direct non-potable recycled water supply projects have secured California's ability to meet the challenges of this drought so successfully. We are thankful that staff has proposed some "modest" adjustments (as the State Water Board staff itself characterizes them) to recognize climate and growth issues and the need for some credit for drought-resilient supplies. However, ACWA believes that key changes to the

Proposed Extended Regulation are still required to make these adjustments meaningful in practice.

The required key changes are:

- Remove the caps of 4% for the climate adjustment, and 8% on drought-resilient supplies, and the overall cap of 8% to fully address the current equity issues and the disincentive for further investment in drought-resilient supplies.
- Remove the 2013 project start-date as qualifying criteria for drought-resilient supplies as it cuts off significant pre-drought investments and does not recognize the funding and planning cycle that has positioned California to meet the challenge of this drought.
- Expand the definition of “drought-resilient supplies” to clearly include brackish groundwater desalination, surface and groundwater storage and conjunctive use projects, and direct non-potable recycled water supply projects.

Needed refinements:

- Modify the climate adjustment method as more fair and effective in recognizing the variation in water demand associated with climate difference across the state.
- Modify the growth adjustment method so that it is easier to calculate and is more effective.
- Preserve the Commercial Agricultural Exemption without adding the unnecessary additional administrative burden of imposing and verifying the proposed \$1000 agricultural sales threshold.

Additional considerations:

- Add a Regional Compliance Option, develop measurable objective to assess if the Emergency Regulation should be subject to further adjustments or should be rescinded in May.

We appreciate efforts to improve this Emergency Regulation, but it should not be considered for any future use beyond the current emergency and we look forward to working pro-actively in collaboration with the Administration, State Water Board, and the Department of Water Resources (DWR) on a long-term water use efficiency policy and drought contingency approach that will be effective, less costly for water agencies and water users, and will require less ongoing administrative burden for the State Water Board.

Remaining Fundamental Concerns

ACWA believes that the State Water Board should not adopt the Proposed Extended Regulation without modifying it to address the remaining fundamental concerns described below.

1. Remove the Caps on Adjustments and Credits

ACWA appreciates the staff's recognition of the need for a climate adjustment and credits for drought resilient sources of supply and appreciates the movement from an initial staff proposal of a total cap of 4 percentage points up to 8 percentage points and the cap for drought-resilient supply credits from 4 percentage points up to 8 percentage points. We still believe that this cap will severely restrict the benefits received from investments in drought-resilient sources of supply and that these caps will undermine the momentum that has built over decades in California in local and regional water supply planning and development. The caps should be removed to help better align with the comprehensive policy approach of the Governor's California Water Action Plan (The Plan). In The Plan the administration has recognized that a comprehensive set of actions is needed to improve water supply reliability.

ACWA continues to believe water agencies should receive *both* climate and growth adjustments *and* full drought-resilient supply credits where local climate conditions and past supply investment actions warrant, allowing the climate adjustments and supply credit mechanisms to operate independently and achieve their separate policy objectives.

2. Expand Qualifying Drought Resilient Sources of Supply Credit

Although the Proposed Extended Regulation acknowledges the need to provide credits for drought resilient supplies, qualifying projects are too narrow in scope and limited in benefit to be meaningful in practice statewide. We believe the three proposed limitations for qualifying drought-resilient sources of "potable water production," "developed since 2013," and "which does not reduce water available to another legal user or the environment", will together effectively preclude credit for most locally significant water supply reliability investments. ACWA opposes using the 2013 project start-date as qualifying criteria on projects as it cuts off credit for most drought contingency investments and does not recognize the funding and planning cycle that has positioned California to meet the challenge of this drought. This approach to severely limit qualifying drought resilient sources of supply is also in direct contradiction with the "all-of-the-above" comprehensive approach advocated in the Governor's California Water Action Plan. The Proposed Extended Regulation should be revised to remove these qualifiers and explicitly include other drought-resilient supplies that are available, such as brackish groundwater desalination, surface and groundwater storage and conjunctive use projects, and direct non-potable recycled water supply projects (see the attached *Examples of Local Drought-Resilient Supplies That Should be Recognized in California's Drought Response Strategy in 2016*, which includes further rationale to support an expanded approach to defining qualifying drought resilient sources of supply).

Areas That Need Refinement

1. Modify the Climate Equity Adjustment

ACWA appreciates the inclusion of the climate equity adjustment factor. However, but limiting this adjustment as proposed does not justly recognize the influence of climate on outdoor water use because it does not adequately incorporate population density considerations. This is especially true for the summer months that were used to set the Conservation Standards. In the Workgroup a technically sound method for adjusting Conservation Standards was presented. Examples were provided that demonstrated the need for the adjustment and the improvement in equity the proposed adjustment provided. The Emergency Regulation should include a climate adjustment that fully accounts for the impact of climate as presented to State Water Board through the Workgroup process and during the December 7 workshop.

The Emergency Regulation should also avoid using an “average” of statewide evapotranspiration (ET) (which includes unpopulated areas that have little population or applied water) for setting urban water Conservation Standards. We recommend that the population-weighted statewide average ET be used as baseline to compare against an agency’s ET. We also recommend agencies with a range of climates across their service area be allowed to use population weighting to calculate the agency’s ET. This will more equitably reflect the climate deviation across the populated the urbanized areas of the state where the conservation regulations are actually being applied. This methodology was reflected in one of the Workgroup recommendations presented to State Water Board.

Finally, although we appreciate the option for water suppliers to “customize” their local ET using CIMIS station data, this proposal imposes a burdensome practical limitation in that it requires 5 years of CIMIS stations data. CIMIS station ET readings can commonly experience periods of inactivity for various reasons such as maintenance requirements or inadequate recording conditions. To illustrate this point, CIMIS website currently shows that 96 of the total 244 (39 percent) CIMIS stations are inactive. This highlights the need to decrease continuous period of record in order to not unfairly disqualify a large percentage of water suppliers from utilizing accurate historical CIMIS station data to calculate their adjustment. A 3 year continuous period of record will address this significant inequity concern, while still maintaining SWRCB’s objective to ensure robust and reliable data is used for the adjustment.

2. Modify the Growth Adjustment

ACWA appreciates the staff’s recognition of the need to adjust the Conservation Standard to account for growth experienced by some water suppliers since 2013. But as mentioned in our previous letter on the Proposed Framework, the staff’s proposed method of calculating a growth adjustment and does not properly recognize or adjust for the impacts of growth on an agency’s ability to meet its Conservation Standard. Additionally, the proposed method is

dependent on residential landscaped area information that is not readily available for many water agencies. Even for those agencies that have landscaped area data or estimates, the methods used to acquire this information vary significantly so the resulting growth adjustment could vary somewhat between water agencies. Finally, using the state standard irrigation application rate of 55% of local ET (which was adopted in 2015) does not correctly reflect the state landscape standards or ordinances that were in place when the growth actually occurred. Development from 2013 to 2015 was required to comply with a standard that allowed 70% of local ET. All of this significantly reduces the effectiveness of the growth adjustment. We recommend using a more equitable method of applying the growth adjustment as proposed in one of the Workgroup recommendations presented to State Water Board.

We also recommend that both the growth and climate equity adjustments be applied to a water supplier's current Conservation Standard before any adjustments for sustainable supplies are made. Equity adjustments account for various conditions that impact residential water use across the state.

3. Preserve the Commercial Agricultural Exemption

ACWA continues to support preserving the Commercial Agricultural Exemption as contained in the existing regulation to protect commercial agricultural activity that is dependent on potable water supplies. In absence of any evidence of abuse, imposition of a \$1,000 threshold as proposed by staff adds a new and unnecessary administrative burden on farmers, water suppliers and the State Water Board.

Other Comments

1. Regional Compliance

ACWA continues to support development of a Regional Compliance Option as has been consistently advocated by water agencies to allow participating water suppliers to achieve significant administrative and public outreach efficiencies. The State Water Board should incorporate this compliance option into the Extended Regulation and then empower the resulting voluntary regional alliances to deliver the compliance results that they believe they can produce.

2. Develop Measurable Objectives to Inform Action to Address Above-Normal Precipitation

ACWA supports development of specific measurable objectives to inform reconsideration of the Emergency Regulation in May in response to expected above-normal precipitation in February and March. ACWA supports the State Water Board's Proposed Resolution, Item 5 directing staff to "monitor and evaluate available data on precipitation, snowpack, reservoir storage levels, and other factors and report back to the Board in March and April, 2016 and, if

conditions warrant, bring a proposal for rescission or adjustment of this regulation to the Board no later than the second regularly-scheduled May 2016 Board meeting.” We believe such a proposal needs to be firmly based on measurable objectives to support proposed adjustments to scale back mandatory Conservation Standards for water agencies, or support rescission of the Emergency Regulation statewide or in areas of the state where conditions call for an end to the mandatory water use restrictions. Continuing to ask Californians to sustain heroic water conservation efforts that are disproportionate to the actual need or immediate water supply conditions will undermine the credibility of the Administration and California’s public water agencies and may make it much harder to generate the required response should emergency conditions re-emerge in the future.

Transition to Long-Term Water Use Efficiency and Drought Preparation and Response Approach

We appreciate the State Water Board’s acknowledgement that the original Emergency Regulation was developed quickly to implement an emergency Executive Order. Although the 2016 Emergency Regulation may be adjusted marginally (as proposed by the State Water Board), or more extensively (as proposed by ACWA and many water agencies), it cannot fully address all of the factors that impact efficient water use across the state. Urban water suppliers are engaged in a long-term effort to improve water use efficiency and will continue to implement plans and programs at significant cost in coming years to achieve water use reduction targets which they have set in their Urban Water Management Plans. Rather than trying to continue to use the emergency regulation process further, ACWA looks forward to collaboration with the Administration, the State Water Board, and the Department of Water Resources on a long-term water use efficiency policy and drought preparation response approach. Such an approach must fully consider existing and future investments in sustainable and emergency supplies, and long-term water use efficiency efforts. We look forward to the discussions on the long-term approach.

Thank you for considering these comments. ACWA continues to appreciate the significant attention the State Water Board has been giving to the proposed extension of the Emergency Conservation Regulation. I am available to discuss these comments at daveb@acwa.com or (916) 441-4545.

Sincerely,



David Bolland
Special Projects Manager

The Honorable Felicia Marcus, Chair

Page 7 of 7

January 28, 2016

cc: Mr. Wade Crowfoot, Deputy Cabinet Secretary, Office of Governor Edmund G. Brown Jr.
Mr. Tom Howard, Executive Director, State Water Board
Mr. Eric Oppenheimer, Chief Deputy Director, State Water Board
Mr. Max Gomberg, Climate Change Mitigation Strategist, State Water Board
Mr. Timothy H. Quinn, Executive Director, ACWA
Ms. Cindy Tuck, Deputy Executive Director for Government Relations, ACWA