



October 17, 2023

Submitted via email: commentletters@waterboards.ca.gov

Attn: Ms. Courtney Tyler
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Subject: Comment Letter—Proposed Making Conservation a California Way of Life Regulation

Honorable Chair Esquivel,

Desert Water Agency (DWA), a retail water provider to roughly 74,000 people and groundwater manager in the western Coachella Valley, appreciates the engagement by staff and Board in developing the proposed regulation.

DWA recognizes the State Water Resources Control Board (State Water Board) staff and Board members' ongoing work to understand our concerns. DWA supports providing safe, clean, reliable, sustainable, and affordable water to Californians and appreciates the important part that water use efficiency plays in this. We are dedicated to advancing water conservation.

Desert Water Agency has provided rebates for water-efficient devices and projects for more than a decade. This year alone, DWA budgeted about \$5 million in conservation incentives. For a water agency with roughly 23,000 connections, this is a huge commitment.

DWA encourages the State Water Board to revise the draft regulation to allow for more flexibility so that water savings can be achieved more efficiently and affordably. DWA is committed to long-term efficiency and wants to ensure goals are attainable without causing blight, ineffective processes or unduly impacting low-income customers. DWA offers the following recommendations:

OVERARCHING COMMENTS

1. The draft regulation results in an objective that is too aggressive for DWA

By the State's Objective Exploration Tool, it appears DWA will be required to reduce water use by more than 20% in 2025, 30% by 2030 and 34% by 2035. In order to meet that objective we would have to do the equivalent of removing 22,000 front yards (we only serve about 21,000 residential accounts) or removing all of the grass at one of our largest parks more than 30 times over. DWA is not even certain that there is that much residential grass within its service area to remove.

We appreciate the invitation to work with your team to identify why Desert Water Agency's objective is so much lower than current use. We met with your team but have yet to reach any conclusions that would result in compliance with the draft regulation.

We fear complying with the draft regulation would fundamentally change our community and economy. Our community revolves around tourism and second homes. The year-round, low-income workforce that supports tourism could be heavily impacted. **DWA asks that the State Water Board consider working with outliers to facilitate compliance before adopting a final regulation.**

2. Aggressive water use objectives will make local water less affordable

DWA cannot meet the objective set forth in the draft regulation without significantly increasing rates. The draft regulation would require additional staff resources and program dollars in addition to more punitive customer-facing measures. These additional costs will drive rates up. Currently, DWA uses a fixed-rate structure without water budgets or tiers.

Compliance concerns may push DWA to adopt another rate structure, which would require time, cost, potential liability and additional staff demands. Rushing this process increases those impacts. **DWA asks that the State Water Board extend the compliance period.**

3. Inland communities and smaller districts are struggling with compliance

Outdoor water use and the factors associated with it (ET, LEF) are a top factor for DWA given its climate and outdoor demands. The State Water Board staff analysis presented at the October 4 workshop suggests that inland communities and smaller water districts disproportionately have objectives that are higher than their recent water use.

Strict outdoor standards are amplified for water providers in arid inland communities with high outdoor water demands. Additionally, district boundaries are generally arbitrary. Smaller providers may have more uniform water-use profiles and would not benefit from averaging out across a large service area. This could result in adjacent communities with similar water use patterns being impacted differently because of the size and boundary lines of the water agency that serves them.

DWA is concerned with its ability to comply. **DWA requests that the State Water Board provide for alternative compliance pathways.**

4. Eliminate portions of the regulation that address non-functional turf

Non-functional turf prohibition has been addressed in AB 1572 which the Governor signed on October 13. **DWA recommends that the State Water Board remove non-functional turf language from the draft regulation.**

The 2018 legislation may also limit the State Water Board in adjusting standards over time. The State Water Board should align any outdoor standard changes (currently proposed at the fiscal year) with legislated timelines on indoor water use requirements (calendar-year basis). **DWA recommends that the State Water Board not reduce the LEF in 2030 and 2035, but rather allow the legislature to assess the need for future reductions after the preliminary compliance period.**

5. Tribal sovereignty may limit supplier compliance

DWA's service area is roughly 50% tribal reservation land. Though DWA may require budgets or punitive measures for some of its customers in order for DWA to meet its State-imposed objective, DWA is limited in its authority on reservation land. **DWA suggests that the State Water Board consider unique factors like Tribal sovereignty in developing flexible alternative compliance pathways.**

6. Consider a Data Error Adjustment (DEA) for overall compliance

A buffer will allow water suppliers to have more flexibility to work toward the objective even while data such as the CII and Parkway Landscape Aerial Measurement (LAM) data is not available and on-the-ground circumstances change. A compliance range may allow more flexibility for suppliers who are struggling to comply due to myriad circumstances. **DWA asks that the State Water Board consider the Data Error Adjustment recommended by ACWA.**

OUTDOOR WATER USE STANDARD

7. Remove effective precipitation from the draft regulation

Effective precipitation is a variable that is difficult to plan around. The inclusion of effective precipitation in the outdoor standard is inconsistent with real-world irrigation practices. Precipitation most often falls when it is least useful and, in our region, can be very flashy. Occasional heavy rainfall storms often yield excessive runoff and may not provide the assumed benefits. Our typical light precipitation is prone to evaporation and may not be sufficient to reach the root zone of plants. The effective precipitation measure also does not account for varying soil types. Additionally, MWELO does not use effective precipitation. **DWA recommends that the State Water Board remove effective precipitation from the draft regulation and outdoor standard.**

8. Keep the LEF at 0.8 to reflect real-world circumstances

The MWELO design standards are a difficult goal for both residential water use and CII DIM water use. They are design standards. Many older residential landscapes were not designed under MWELO and even with upgrades, like efficient nozzles, will still not meet 0.63 or 0.55 standards. While irrigation and landscape can be properly designed on new sites, it is difficult to control real-world conditions like wind and system breaks or leaks. New properties routinely do not meet these standards.

The assumed irrigation efficiency of 0.8 used in calculating the Landscape Efficiency Factor (LEF) should be lowered. The irrigation efficiency of 0.8 used in calculating the LEF is difficult to achieve at a supplier-level scale and not accurate to real-world conditions. Even under the design standard of MWELO, irrigation efficiency is 0.75 for efficient spray sprinklers and 0.81 for drip irrigation. Real-world conditions may be significantly worse. **DWA urges the State Water Board to retain a 0.8 LEF factor for the life of the regulation.**

9. Make the 20% Irrigable not Irrigated (INI) buffer permanent

The LAM data reflects a moment in time and it includes data errors. Since there is no firm schedule for new (or real-time) LAM data, sunseting the INI buffer does not make sense. Many residential properties irrigate right-of-way areas, which are not included in their parcel areas. Additionally, the low quality of the underlying County parcel data is a significant challenge and DWR did not make all changes that DWA requested. Home turnover and new construction, some of which will not be subject to MWELO, also changes demand. **DWA recommends that the State Water Board revert to the DWR recommendation to use the 20% INI buffer.**

10. Provide residential LAM data viewable at a per-parcel level

Examining discrepancies in the LAM data at a per-parcel level may help DWA better understand conservation opportunities. DWA observed several issues in the limited set of parcels DWR provided for review as they processed and categorized desert landscaping and palm trees. Having access to this data in a viewable form will help DWA decide whether to invest in its own mapping and analysis. **DWA recommends that the State Water Board work with its partners to make parcel-level mapping available to all water suppliers subject to the draft regulation.**

11. Make the ETAF for pools permanent at 1.0

DWA has thousands of residential swimming pools, many of which are used nearly year-round. Swimming pools are open water bodies at full risk of evaporation and should be accounted for appropriately with a 1.0 ETAF factor. Pool covers are least used when evaporation is at its highest – additionally, the high temperatures in our region make pool covers problematic for algae growth. Local pool professionals do not recommend pool covers for that reason.

Pools need to be drained and refilled every few years to maintain a healthy chemical balance.

Existing pools are permanent landscape features and a huge component of property value for homes in the region. **DWA recommends that the State Water Board give pools a 1.0 factor without discount or sunset.**

12. Special Landscape Areas (SLAs) should be removed from the yearly approval process

An annual reporting process will create an administrative burden to report sites that generally remain consistent over the years, such as recycled water sites. **DWA recommends that the State Water Board eliminate the requirement for annual confirmation of SLAs.**

COMMERCIAL, INDUSTRIAL AND INSTITUTIONAL STANDARDS AND MEASURES

13. Provide time to review state-provided CII and Parkway LAM data

Suppliers should have time to integrate the more refined CII and Parkway LAM data before enforcement begins. **DWA recommends the State Water Board extend the compliance timeframe.**

14. Offer flexibility on CII classification and Best Management Practices (BMPs)

Interim schedules for CII Classification may make the process more expensive and/or burdensome for agencies. The State Water Board could meet its goal of 100% classification by 2030 without requiring interim milestones.

DWA suggests that the State provide guidance on CII classification related to Energy Star Portfolio Manager Categories. Correlating Energy Star and NAICS/SIC categories is likely to simplify classification for agencies and this work is more efficiently accomplished at the state level.

The draft regulation requires suppliers to “employ” actions and technologies for large landscapes. The term “employ” implies that suppliers will take up an action on a customer’s behalf. Suppliers may offer programs, rebates, incentives and in-lieu technologies, but suppliers cannot require the customer to act or implement in-lieu water use technologies.

The 80th percentile threshold should apply to all CII customers and not individual CII classification to account for the unique uses of water in each service area. **DWA recommends that the State Water Board offer agencies more flexibility on CII BMPs to reflect local circumstances.**

15. Remove requirements related to disclosable buildings

Disclosable buildings are currently identified through reporting to the California Energy Commission. Identifying all buildings with a floor space above 50,000 square feet by January 1, 2025, beyond the limited number already reporting relies on information that is not readily available.

Providing additional monthly information regarding water use to owners of disclosable buildings is likely to be a duplicative administrative effort with limited water savings given that the size of a building is not necessarily correlated with its water use. **DWA recommends that the State Water Board remove any requirements related to disclosable buildings.**

16. Simplify in-lieu technology requirements

Many water agencies, including DWA, have existing water use efficiency programs for mixed-use meters. These existing programs should count toward in-lieu requirements. Various pathways should be available to meet the in-lieu technology compliance approach.

Additionally, DWR recommended suppliers implement one in-lieu technology. However, the draft Regulation would require suppliers to implement two in-lieu technologies. Requiring two is duplicative and does not necessarily generate more savings. **DWA requests that the State Water Board update the draft regulation to reflect ACWA's suggested redlines for in-lieu technology requirements.**

17. Mixed-used meter requirements require more time and flexibility

Language regarding the quantification of volume of mixed-use meter (MUM) usage should be removed. The timeline for the installation of dedicated irrigation meters and in-lieu technologies should be extended by five years to allow the use of CII LAM data.

The threshold for conversion of large landscapes from MUMs to Dedicated Irrigation Meters (DIMs) is too low. The current threshold of 500,000 gallons per year has the potential to capture many meters with limited outdoor landscaping, especially in a warm climate zone.

The conversion or implementation of in-lieu technologies is likely to be a significant cost for these properties and may come without any water conservation benefits. **DWA suggests that the State Water Board revise MUM requirements in the draft regulation to focus on water savings and facilitate compliance.**

ALTERNATIVE COMPLIANCE

18. Provide a simplified Alternative Compliance Pathway immediately

In the draft regulation, the Alternative Compliance Pathway begins in 2035. Alternative pathways should begin in 2025 since many agencies struggle with compliance from the outset. Variances are not a mechanism for alternative compliance. They are a part of agencies' budgets per the 2018 legislation.

For outliers like DWA, **the State Water Board should offer alternative pathways to those demonstrating commitment to conservation programs and gains.**

19. Recognize data issues

DWA has noticed issues with the data being used to develop its objective as approximated in the Objective Explorer Tool. The evapotranspiration appears to be artificially low compared to our neighbors. DWA does not have any CIMIS stations within its boundaries and the data being used appears to leverage stations that are less representative of conditions within the Coachella Valley floor. DWA hopes to provide local data for CIMIS stations within the Coachella Valley.

Additionally, the tool appears to include DWA's seasonal population, which is used in eAR and SAFER reporting. This means that DWA may not be eligible for a variance due to the draft regulation's 5% threshold and the tool projects currently a larger objective than would be permissible.

DWA has worked with DWR on concerns related to LAM data. The underlying County codes are inconsistent and the classification of desert landscape appears to be problematic. DWA was a pilot agency and the more recent data collected showed a decrease in both irrigable irrigated and irrigable not irrigated categories, which was inexplicable to DWA. **DWA requests that the State Water Board recognize data shortcomings as a rationale to support more expansive alternative compliance.**

20. A tree count should not be a supplier's responsibility

DWA does not have a mechanism to conduct a count of trees within its service area, nor would it qualify for Tree City USA recognition since DWA is not a city. **DWA suggests that the State Water Board remove those requirements for alternative compliance eligibility.**

VARIANCES

21. Make variances easier to obtain and retain

For agencies like DWA with a high percentage of outdoor use, indoor variances are nearly impossible to obtain under the draft regulation. The 5% threshold for each variance is too high. Palm Springs is known for seasonal population, yet our data suggests that DWA still wouldn't get a variance because it only accounts for 3-4% of its total objective.

Yearly reporting for variance qualification may be excessive for conditions, like evaporative cooler use and seasonal population, which are not likely to change substantially from year to year. DWA would prefer to leverage this staff time to administer customer-facing programs.

DWA requests that the State Water Board allow any agency over its objective to apply for any combination of variances regardless of what percentage of the objective they represent.

DWA also requests that the variances be valid for a five-year period.

22. Simplify variances

DWA may consider exploring its variance eligibility but many of the variances are so complicated and resource-intensive that they may not be an effective use of staff resources based on the uncertain outcomes. DWA welcomes technical support on determining variance eligibility. **DWA asks that the State Water Board simplify variance criteria and provide technical support to agencies struggling with compliance.**

23. Account for local factors that do not have existing variances

There is currently no variance available to account for dust storms that have become increasingly frequent in our region. Residents use water to wash down surfaces like hardscape and solar panels after dust storms that occur on a regular basis, sometimes multiple times in a single week. There is no component of the objective to account for this water use.

Where water uses can be proven to be beneficial to the health and safety of people, wildlife, or urban trees they should be considered for variances. The dust is not a simple aesthetic issue but can pose slip hazards, which our elderly population is especially vulnerable to. There is air quality data on PM10 levels that may be used to help determine how frequently water use is required but limited information on how to quantify the associated demand.

DWA recommends that additional simplified variances or a flexible alternative compliance pathway allow for unique circumstances like dust cleanup.

IN CLOSING

We appreciate and share the State Water Board's vision for a more efficient tomorrow. We are also grateful for your staff's involvement in helping agencies understand the draft regulation and the intent behind various elements. We welcome changes to the draft regulation that will facilitate community-friendly compliance.

If you have any questions about DWA comments, please contact us. We look forward to continued partnerships with our customers to achieve water conservation goals, including those set forth in the 2018 Water Use Efficiency Legislation.

Thank you for your time and consideration,

Mark Krause
General Manager
mkrause@dwa.org | 760-323-4971 ext 110
Desert Water Agency | www.dwa.org/save

CC: The Honorable Dorene D'Adamo, Vice Chair, State Water Resources Control Board
The Honorable Laurel Firestone, State Water Resources Control Board
The Honorable Sean Maguire, State Water Resources Control Board
The Honorable Nichole Morgan, State Water Resources Control Board
Ms. Eileen Sobeck, Executive Director, State Water Resources Control Board
Eric Oppenheimer, Chief Deputy Director, State Water Resources Control Board