

Paul Ortega, President (Division 4)
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Kristin Bloomer, Director (Division 5)
Steve Grasha, Director (Division 1)



Steve L. Johnson, General Manager-Chief Engineer
Best, Best & Krieger, General Counsel
Krieger & Stewart, Consulting Engineers

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Submitted via email: commentletters@waterboards.ca.gov

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

Dear Ms. Tyler,

Desert Water Agency (DWA), a retail water provider and groundwater manager in the Coachella Valley, appreciates the engagement by staff and Board in developing the proposed regulations.

DWA recognizes the State Water Board's ongoing work to understand our concerns and is grateful for the engagement. DWA still has concerns with the proposed regulation, but appreciates the significant changes made to sections, such as the alternative compliance pathways, outdoor standard, and variances. Even with the changes, the targets set in the revised draft regulation on "Making Conservation a California Way of Life" are still going to be a big lift for arid regions and will require significant investments from our community, which is disadvantaged.

We request that the State Water Board recognize feasibility, cost-effectiveness, and unintended consequences. We support the comments that the Association of California Water Agencies (ACWA) submitted and offer the following recommendations:

1. Alternative Compliance Pathways Should Remain as Proposed

Alternative compliance pathways as currently proposed still require large savings from water agencies while providing opportunities for agencies with the largest required changes to implement programs effectively. The alternative compliance pathways offer opportunities for disadvantaged communities to smooth out the effects of administrative and conservation program costs. Reducing water use by an average of 1-2% per year is not a simple task. It requires tremendous investment in public outreach and conservation programs to help affect change in attitudes toward water use. However, the reduction also addresses the challenges of more extreme weather in the future. DWA supports the ambitious goals of the alternative compliance pathways and would appreciate clarification on which year to use for median household income (MHI) to determine alternative compliance eligibility.

2. Outdoor Standard Change to 0.63 Landscape Efficiency Factor (LEF) Should Occur in 2035

Per person, DWA customers are already using 37% less than in 2009, with great participation from a broad cross-section of the community. According to the provisional data and in addition to previous efforts, the current draft will require DWA to reduce overall use by 29%. Moving the reduction of the outdoor efficiency standard to 0.63 LEF in 2035 provides water suppliers the time and flexibility needed to implement effective programs and reach out to customers. Time will allow DWA to mitigate the impact of unintended consequences on disadvantaged communities and tree health.

3. VariANCES Should Remain as Proposed in the Revised Draft Regulation

State Water Board staff simplified variances in the revised draft regulation and reduced the reporting frequency needed to qualify for variances. DWA supports the updates and welcomes additional changes to simplify variances where reasonable. The changes address our concerns about complexity, reporting, and the effect needed to qualify. DWA also brought concerns to State Water Board staff that some Coachella Valley agencies, known for large seasonal populations, would not qualify for the seasonal variance as proposed in the first draft of the regulation. It should be noted that variances do not provide for “extra” water use, but rather accurately provide for the real-world conditions on how water is used that are more specific to each water supplier.

4. Qualifying Pools as a Special Landscape Area Should Remain as Proposed

Existing pools are permanent landscape features in our arid region. Thousands of pools are already installed and are used year-round. DWA strongly supports the transition to allowing pools to be counted as special landscape areas with a 1.0 landscape efficiency factor without discount or sunset. DWA is grateful for the workgroup process that led to this outcome.

5. The Buffer for Irrigable, Not Irrigated (INI) Areas Should Be Permanent

DWA appreciates the changes made to allow INI areas to be counted until new updated residential landscape area data are available. However, the Department of Water Resources (DWR) recommendation remains to include these areas in perpetuity. This is especially vital in arid regions like ours. There remain significant data limitations in the outdoor water use standards. These include limited spatial availability of CIMIS stations leading to estimated weather values such as evapotranspiration or effective precipitation. In addition, flyovers to calculate the residential landscape area data are challenged by several factors. These include xeriscape identification, resolution of imagery, water use identification by time of day, and water use identification by time of year, among others. These can significantly alter the accuracy of the data. For example, the water use being detected by the flyovers is highest in summer, but this is also when evaporative and percolative processes leave the ground wet for the shortest period in our hot and dry desert. This 20% should not be viewed as additional, but as an area that is being irrigated. DWR recommended inclusion of a 20% INI buffer in perpetuity to account for these types of data inaccuracies and DWA strongly recommends permanent inclusion. This would also make the regulation consistent with existing law. DWA appreciates the efforts to better account for data errors throughout the revised draft regulation but recommends further steps. To account for overall data accuracy, a Data Error Adjustment (DEA) should be implemented as a percentage, mirroring the implementation in the Water Loss component of the overall budget.

6. Outdoor Standard Should Remain at 0.63 LEF

A LEF of 0.55 based on the Model Water Efficient Landscape Ordinance (MWELO) design standards remains a difficult goal to achieve for both residential and commercial, industrial, institutional (CII) dedicated irrigation meter (DIM) water use. Water agencies fund expansive public outreach and water conservation programs aimed at promoting efficiency in outdoor water systems. However, water agencies do not control how systems are managed or operate over time. The design standards of MWELO do not reflect natural degradation of irrigation systems, variability in weather, or natural human error in managing irrigation systems.

These standards do not reflect real-world conditions for individual sites and are even more difficult to achieve on a supplier level. DWA urges the State Water Board not to reduce the outdoor efficiency standards as proposed in 2040. If technological advancements in design and equipment yield better performance, legislators may be inclined to direct the State Water Board to push for more savings.

7. Effective Precipitation Should Be Removed

Effective precipitation unfairly penalizes regions where the rainy season is short. Most rain falls in the months when irrigation use is the least. Rain can also fall in quick succession leading to more water percolating than can be utilized by plants. Plants need the most water during the hot and dry summers months when effective precipitation is the lowest. Effective precipitation complicates the calculation of the outdoor budget and does not characterize supplier level water use. DWA recommends that effective precipitation be removed.

8. Reporting Should Be Allowed on Both a Calendar Year and Fiscal Year Basis

The language of the report, as currently proposed, requires reporting on January 1 of each year on the conditions of the previous state fiscal year. Flexibility should be written into the regulation to allow reporting both based on the previous state fiscal year and on the previous calendar year. DWA already reports to other state agencies on a calendar year basis regarding water loss, water consumption, water production, and recycled water use, among others. Allowing reporting in both the fiscal and calendar year would reduce duplicative reporting efforts and administrative costs. DWA recommends adding to the regulation the ability to report on information for either the previous fiscal or calendar year as is specifically noted in the legislation.

9. Suppliers Should Only be Required to Offer, Not Implement, Programs

There is language in the revised draft which states that suppliers will implement programs. This could imply that suppliers bear responsibility for how programs perform at individual customers' properties. DWA recommends this language be revised so that suppliers are required to offer the programs, but not implement them on the customer's behalf.

10. Compliance Should be Changed Based on Data Availability

The landscape measurement data to calculate which large landscapes are included in an agency's budget relies on Department of Water Resources data which may be delayed. DWA recommends having this calculation contingent on data availability to ensure landscape area for commercial properties is available for those who cannot identify all existing CII connections associated with large landscapes.

11. The Term Key Business Activity Indicators (KBAI) is Poorly Defined in the Regulation

A new term, Key Business Activity Indicators, is referenced, but not defined in the regulation itself as it relates to CII best management practices (BMPs). DWA recommends the State Water Board address the ambiguity regarding this term. It is important to note that there is significant variability in water use, even within a single classification category, a single supplier service area, and between suppliers. A range would be appropriate here.

12. Disadvantaged Communities Still Face Cost Consequences

The regulation, as proposed, remains aggressive in the water use budgets it sets. This aggressive water use objective will make water less affordable and have the greatest effect on disadvantaged communities like the one DWA serves. Effects can be mitigated, but not removed, by allowing greater flexibility, such as that proposed in the revised draft regulation. DWA recommends further flexibility and technical and financial assistance, specific to disadvantaged communities, to help offset the effect of the revised draft regulation.

13. Inland and Small Communities Continue to Struggle with Compliance

Inland regions, which generally have hotter and drier climates than coastal communities, are facing higher reductions. This is likely due to limitations in spatial availability of weather data, in addition to limitations in flyover landscape area data. Evapotranspiration and effective precipitation data are limited by availability of CIMIS stations. This leads to an error, in that regional information is informing supplier-level budgets. Further, flyover landscape area data has inherent flaws in both resolution identifying xeriscapes and identifying where water is used. The data needs to identify planted desert landscapes, as opposed to natural desert landscapes, which is inherently difficult. In addition, the measurement data identifies landscape based on water use. There is a high degree of variability based on both the time of day and time of year that the flyovers are conducted. Inland and smaller communities continue to have disproportionately higher objectives that create struggles with compliance. DWA requests that the State Water Board recognize data shortcomings informing the objectives of inland and small communities.

14. Tree Health Remains a Concern

Transitioning landscapes to a more climate-appropriate alternative is invariably a stressful process for existing trees. There are several ways to mitigate the stress of this process which DWA promotes and recommends constantly through public outreach, customer engagement, and written or recorded materials. However, it should be noted that aggressive reduction of the outdoor standards could have adverse effects on tree populations. Especially as grass plantings nearby can lead to shallow root systems and the naturally hot weather of the Coachella Valley can increase the difficulties of any landscape transformation. DWA recommends that the State Water Board carefully consider tree health when considering any reductions to the outdoor water use standard. The largest city that DWA serves is in the process of obtaining Tree City status and DWA supports that effort in principle – and would like to support the program in practice if the regulations allow flexibility to protect urban tree canopy.

Thank you for your time and consideration. If you have any questions about the comments offered, we welcome the opportunity to discuss them in more detail.



Steve L. Johnson
General Manager
sjohnson@dwa.org | 760-323-4971 ext 140
Desert Water Agency | www.dwa.org/save

CC: The Honorable E. Joaquin Esquivel, Chair, State Water Resources Control Board
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
Eric Oppenheimer, Executive Director, State Water Resources Control Board
Jonathan Bishop, Chief Deputy Director, State Water Resources Control Board