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June 4, 2024

Submitted via email: [commentletters@waterboards.ca.gov](mailto: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, values the continued engagement by State Water Resources Control Board (State Water Board) staff and Board in developing the proposed regulations.

DWA recognizes and commends the State Water Board's ongoing work to understand our concerns and is grateful for the changes seen thus far. 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. The changes in the most recent version, codifying the importance of the urban tree canopy in California, are helping improve the regulation further. The regulation as proposed in the current draft of "Making Conservation a California Way of Life" is still going to create adverse effects that will be disproportionately borne by hot and arid communities despite the changes. DWA serves many disadvantaged communities and many customers are fixed-income seniors; as such, this regulation will have unintended consequences through increased water rates and cost of programs.

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. The Threshold of Significance to Qualify for the Tree Variance Should be Removed**

The addition of a variance for existing trees for both residential and CII-DIM (Commercial, Industrial, Institutional-Dedicated Irrigation Meter) customers is greatly appreciated. Desert Water Agency has not conducted a recent tree survey. However, the Coachella Valley Association of Governments partnered with researchers from Cal Poly San Luis Obispo to use a tree detection tool. The tool found 117,301 trees in Palm Springs (nearly entirely served by DWA) and 58,727 trees in Cathedral City (partially served by DWA). Further, the City of Palm Springs is pursuing Tree City USA status and DWA would like to be an active partner in this effort.

The currently proposed calculation does increase the budget to allow for water for maintenance of these trees. However, the threshold of significance being set at 5% of the individual budget means that DWA is at risk of not being able to count our tree canopy towards our objective. The trees in desert regions are vital to providing shade and mitigating extreme weather. Setting a threshold of significance for these means that arid regions may have their trees counted less than other portions of California. The currently proposed variances also require significant work including tree surveys, identifying water needs and types of trees, separating trees into residential and commercial, and identifying tree canopy areas. DWA strongly supports



trees, however, undergoing this work to ultimately not qualify for the variance would be detrimental to the intention of protecting tree health. **DWA strongly recommends the removal of the 5% threshold of significance for the tree variance on both residential and CII-DIM properties.**

2. Other Tree Detection Methods Beyond Tree Surveys Should Be Valid for the Variance

The methodology proposed toward counting both residential and CII-DIM trees weighs heavily toward in-person field assessments. This is a tremendous challenge due to difficulty accessing properties outside of those open to the public. Further, DWA has no staff qualified to conduct these assessments and would need to seek outside assistance. **DWA strongly recommends the Board consider amending the requirements to limit the need for resource intensive tree surveys beyond public properties and accept other methods such as aerial imagery.**

3. The Increased Budget for New Climate Ready Trees Should Remain as Proposed

DWA appreciates the increased budget for new climate ready trees to four feet with consideration of watering days especially given difficulties establishing new trees in arid climates.

4. Alternative Compliance Pathways Should Remain as Proposed

DWA acknowledges the clarification provided on which year to use for median household income (MHI) to determine alternative compliance eligibility.

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

DWA appreciates the changes in the previous version 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 the Palm Springs area. 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. **DWA strongly recommends permanent inclusion of the DWR recommended 20% INI buffer in perpetuity to account for these types of data inaccuracies.** This would also make the regulation consistent with existing law.

6. A Data Error Adjustment Should Be Implemented

DWA recognizes the efforts to better account for data errors throughout the previous draft of the regulation but recommends further steps. To account for overall data accuracy, **DWA supports a Data Error Adjustment (DEA) that should be implemented as a percentage, mirroring the implementation in the Water Loss component of the overall budget.**

7. 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 to a similar extent by 2040. 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.

8. 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 CII-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.

9. 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 at its 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 summer 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.**

10. 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.**

11. 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.**

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, along with 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 reduction levels. 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 the resolution when identifying xeriscapes and in 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.

#### Conclusion

DWA appreciates the State Water Board's continued consideration of our input throughout the rulemaking process. DWA is also a signatory and supportive of the comments submitted by the Coachella Valley Regional Water Management group letter.

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. Additional staff contacts are Clark Elliott, Conservation Manager, at (760) 323 4971 ext. 279 or [celliottdwa.org](mailto:celliottdwa.org).

Sincerely,



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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  
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