



Sent via email: Commentletters@waterboards.ca.gov

October 12, 2023

Chairman E. Joaquin Esquivel
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

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

Dear Chairman Esquivel:

On behalf of Water Reuse California (WRCA), we are pleased to submit comments on the draft Making Conservation a California Way of Life Regulation (conservation regulation). WRCA represents 220 public agencies, consulting firms, and companies dedicated to expanding the use of recycled water in California.

After four years of working on the reuse components of the regulations, firstly with the Department of Water Resources (DWR) and now with the State Water Resources Control Board (State Board), it appears several issues have been addressed in the draft regulation. Rather than acknowledging these changes, this letter will focus solely on the outstanding issues – and new issues that have been raised due to proposed provisions – WRCA would like to see revised in the final draft regulations.

Special Landscape Areas (Recycled Water) Should Not be Treated as a Variance

The current draft regulations treat landscapes irrigated with recycled water (SLAs) similar to a variance or temporary provision – subject to the same extensive annual reporting requirements contained in Section 968 (i) and specifically subject to annual approval or denial by the State Board for inclusion into an agency's Water Use Objective.

The authorizing statute for the regulations (AB 1668 and SB 606, 2018) clearly contained a State Board approval process for variances. This is not the case for SLAs. This potential for State Board denial of SLA landscapes was never discussed during the 2018 development of the statute or in the two-year DWR stakeholder process. Finally, State Board approval of SLAs was never addressed in the March 15, 2023, *Draft Staff Framework for the Making Conservation a California Way of Life Regulation* (Proposed Regulatory Framework). Title 22 of the California Code of

Regulations requires SLAs irrigated with recycled water to use separate, dedicated irrigation meters (DIMS). The process for water suppliers to measure DIMs should be consistent. Furthermore, once irrigation at the site is established, DIMs typically do not change over time, if ever. Requiring measurement documentation and review of this data on an annual basis would not result in further water savings and would be burdensome to both water agencies and State Board staff.

We ask that SLA be removed from the variance approval process (Section 968 (i)). We believe there should be a completely separate section addressing SLAs where the Water Board reviews and confirms SLA total acreage submitted by agencies every five years, or on the same schedule as DWR provides updated landscape measurement data to water agencies. We recommend that agencies report annually to the Water Board **only** if there is an increase or decrease in their SLA acreage-- otherwise reporting would remain every five years. Landscape area measurements for SLAs irrigated with recycled water should not require annual variance process and State Board staff approval.

We suggest that you delete the following as indicated in redline strike-out:

- (i) In order to receive approval for either a variance, a temporary provision, ~~or the inclusion of special landscape areas for a given reporting year~~, an urban retail water supplier must submit to the Board, by no later than October 1, for review and approval by the Executive Director, or the Executive Director's designee, a request that includes the following:
- (1) Information quantifying and substantiating each request, including showing how it protects beneficial uses of water; demonstrating that the amount of water requested was delivered by the supplier for the requested use; and verifying that the approval of the request would not jeopardize the ability of a permittee within the supplier's service area to comply with existing permit requirements; and
 - (2) A description of efforts to prioritize water for existing trees, including, but not limited to rebate, direct install, and educational programs focused on transitioning from turf- to tree-centric irrigation systems that promote deep and healthy root growth. Tree-centric irrigation systems include but are not limited to soaker hoses, deep drip watering stakes, drip tubing, and emitters.
 - (3) If the request is denied, the volume of water associated with the variance, provision, ~~or special landscape area~~ shall not be included in the objective.

Page 20, Section 969 for the DIM budget has this caveat (2) for how SLA's can be included and references the SLA discussion in Section 968 for Residential Outdoor Budget (i).

We suggest that you delete the following as indicated in redline strike-out:

$$CII_{DIM} = ((S_{DIM} \times (DIM LA - DIM SLA)) + (S_{DIM SLA} \times DIM SLA)) \times Net ET_0 \times 0.62$$

(2) In order to calculate an outdoor budget for CII landscapes with DIMs pursuant to this subdivision, a supplier may include special landscape areas for CII landscapes with DIMs ~~only if the supplier submits supporting information meeting the criteria described in section 968 (i).~~

(d) (1) An urban retail water supplier may add to its budget for commercial, industrial, and institutional landscapes with dedicated irrigation meters (CII_{DIM}) calculated pursuant

We recommend striking or modifying section 968(c)(2) to describe the five year process or utilize the same schedule for review as DWR for residential SLA – also references 968 (i). (parallel language to the commercial, institutional and industrial (CII).)

According to the statute, water suppliers may use alternative data as demonstrated to DWR.

(2) Notwithstanding paragraph (1), an urban retail water supplier may use alternative data in calculating the urban water use objective if the supplier demonstrates to the department that the alternative data are equivalent, or superior, in quality and accuracy to the data provided by the department.

(Water Code § 10609.20 (e)(2))

DWR has no landscape measurements for SLAs. Therefore, an agency that has areas irrigated with recycled water [SLAs], should easily be able to demonstrate that its landscape measurement data is superior, and be able to utilize that data. This is another reason this should not be in the variance section of the draft regulation. The agency should also be able to update its information, based on the methodology DWR approved – and not go through an annual subjective variance process each year with the State Board.

Potable Reuse Bonus Incentive: Add Direct Potable Reuse for the Future

WRCA is supportive of the section in the draft regulations concerning the Potable Reuse Bonus Incentive. The bonus incentive adjusts the supplier's urban water use objective by the volume of potable reuse water (all types) delivered to residential customers and landscape areas with dedicated potable irrigation meters in connection with CII water use. This adjustment can be up to 10% or 15% of a supplier's water use objective, as specified in the statute. The draft regulations reflect the DWR recommendations and generally are consistent with language WRCA worked out with the environmental community. However, since the Direct Potable Reuse (DPR) regulations are not complete, a process for calculating a bonus incentive for DPR projects has not been developed, as it has for the other types of potable reuse (see DWR appendix). We recommend that the adopting resolution or other supportive documents indicate that this will need to be developed for DPR projects once the regulations are complete and adopted.

SB 1157 Indoor Standard

We look forward to continuing to work on a recycled water variance provision with State Board staff as noted in [Governor Newsom's Senate Bill 1157 \(2022, Hertzberg\) signing message](#). State Board staff provided placeholder language in the draft regulation and we are committed to a path forward on this provision. We share the Governor's desire to reflect local investments in recycled water and infrastructure. Because recycled water is a permanent and long-term investment and because indoor water use is the source water for recycled water systems, we have made some suggested edits to the text in strike-out below.

Additionally, we note that it is critical that whatever provision moves forward it take into account stranded assets of the long-term investment that is recycled water as well as cost-effectiveness and real world impacts of those conservation choices.

Amend Page 10 of the draft regulations to read:

(d) An urban retail water supplier may request a ~~temporary~~ provision to respond to negative impacts to wastewater collection, treatment, and reuse systems, if the supplier shows to the satisfaction of the Board that meeting the objective pursuant to section 966 would require adhering to the applicable residential indoor standard identified in Water Code section 10609.4 ~~and or~~ that meeting the budget for efficient residential indoor use is causing challenges within wastewater collection, treatment, and reuse systems.

The above provision would apply on a case-by-case basis to Urban Retail Water Suppliers that can demonstrate that the indoor standards are negatively impacting cost-effective recycled water operations, infrastructure, or permit compliance.

We look forward to our next meeting with State Board staff this fall on a path forward on the signing message.

High Total Dissolved Solids Variance

As stated above, the variance approval process in Section 968(i) is extremely detailed and will require much agency and Water Board staff time to review and approve each variances. We recommend all variances should last for five years, rather than one year. Additionally, we recommend the Water Board provide technical assistance to those agencies requesting assistance in complying with these reporting provisions.

Commercial, Industrial, and Institutional (CII) DIM Special Landscape Areas

We appreciate Section 969 (a)(5) of the draft regulation states that Special Landscape Areas shall have a landscape efficiency factor (LEF) of 1.0. We request that in Section 969 a (5) clearly state that CII DIMs irrigated with recycled water are SLAs with a factor of 1.0, rather than through a reference to section 491 of the Model Water Efficient Landscape Ordinance (MWELO), which is subject to change, independent of this process.

Amend Section 969 (a)(5) of the draft regulations to read:

(5) For CII landscapes with DIMs that are special landscape areas, the standard (SDIM SLA) shall be a landscape efficiency factor of 1.0. The SDIM SLA shall be applied to CII landscapes with DIMs that are special landscape areas ~~as defined in section 491~~ *which means an areas of the landscape dedicated solely to edible plants, areas irrigated with recycled water, water features using recycled water and areas dedicated to active play such as parks, sports fields, golf courses, and where turf provides a playing surface, as well as CII landscapes with DIMs that are any of the following:*

Additionally, we would like to allow for DWR's recommended approach to account for newly constructed CII DIM landscape areas. This would include: on-the ground measurement, remote sensing methods, and using service area level averages.

Definition of Recycled Water

We recommend you include the statutory or regulatory definition of recycled water under section 965 Definitions.

For reference, please see the statutory definition below:

“water which, as a result of treatment of waste, is suitable for a direct beneficial use or a controlled use that would not otherwise occur and is therefore considered a valuable resource”

(Water Code § 13050(n))

We recommend you include a separate definition for SLA of under section 965 Definitions.

Conclusion

Since the passage of AB 1668 (Friedman) and SB 606 (Hertzberg), these bills lay out a new framework for long-term water conservation for California, WRCA has been actively engaged in the development of statewide conservation regulations. The state of California through statutes and Water Board policies have long encouraged the development of recycled water and potable reuse as drought and climate resilient water supplies. Governor Newsom’s *2022 California’s Water Supply Strategy: Adapting to a Hotter and Drier Future* further highlights the importance of developing these supplies and details a number of actions for increasing recycled water and potable reuse in the state. WRCA believes the draft regulations for “Making Water Conservation a California Way of Life” can be complimentary to these state goals and polices.

We share your commitment to climate-resilient water sources. We look forward to working with the State Board on these issues to ensure cost-effective and real impacts to water conservation are realized.

For questions or additional information, please contact me at rcortes@watereuse.org.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Cortés". The signature is fluid and cursive, with a large initial "R" and a distinct "Cortés" following.

Rosario Cortés
Manager of Regulatory Affairs
WateReuse California

cc: Board Members, State Water Resources Control Board
Eric Oppenheimer, Chief Deputy Director, State Water Resources Control Board