



July 1, 2024

Comments transmitted via:
commentletters@waterboards.ca.gov

Ms. Courtney Tyler, Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

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

Dear Chair Esquivel, Board Members, and Staff,

The League of California Cities (Cal Cities) appreciates the opportunity to provide written comments to the State Water Resources Control Board (State Water Board) on the June 14, 2024 version of the Proposed Making Conservation a California Way of Life Regulation (Proposed Regulations) on behalf of the 482 cities statewide. Of the approximately 400 urban water suppliers in California, Cal Cities represents the nearly 200 cities that serve as urban water suppliers, roughly 50 percent of the water suppliers that will need to comply with the Proposed Regulations.

Cal Cities has long-supported water conservation goals statewide that are developed with fair and equitable implementation measures, recognizing and anticipating the need to save water based on the effects of our changing climate. Cal Cities submitted comprehensive comments to the State Water Board in August 2023, March 2024, and May 2024 on the prior versions of the Proposed Regulations. We continue to uphold our previous comments and are limiting our comments in this letter to the most recent changes in the June 14, 2024 version of the Proposed Regulations and to the Enacting Resolution.

1) Proposed Regulations: The State Water Board should retain the new variance for new and existing trees; we support the revisions to tree provisions and reducing burdensome reporting on water suppliers.

We strongly support the inclusion of a variance for existing trees, with a proposed LEF of 0.63 in 2040 and beyond for tree canopies in residential and commercial, industrial and institutional (CII) dedicated irrigation metered (DIM) properties. There are known concerns regarding the unintended impacts to trees at an LEF of 0.55 and the LEF of 0.63 should not be reduced. The State has established numerous policies that protecting tree health is a priority, and AB 2251 (Calderon, 2022) set an important statewide target to achieve a 10% increase in tree canopy cover in urban areas by 2035, with priority for increasing tree canopy cover in disadvantaged and low-income community and low-canopy areas. The regulations must protect canopy of existing trees while achieving long-term water use efficiency.

We appreciate two important changes included in the tree variance provision. We support the inclusion of credentialed urban foresters and certified arborists as eligible persons to prepare or validate the existing tree variance analysis and inventory. Secondly, we support the change of the term “compelling” to “incentivizing” related to the requirement water suppliers must demonstrate if it cannot meet its water use objective by first taking first taking other feasible actions, such as the conversion of high-

water use landscapes to climate ready landscapes. Tree health should be incentivized as part of community health and wellness. Forcing customers to convert their landscape material is beyond the control of water suppliers and not within the scope of this regulation or a requirement in the legislation. The State Water Board must provide a streamlined ability for water suppliers to track and report when inventorying existing trees, such as accessing private properties. This should be part of the technical assistance the State Water Board provides as implementation moves forward.

2) Enacting Resolution: The State Water Board must develop a resolution to ensure a good-faith-effort enforcement policy and to avoid duplicative enforcement.

At the March 20, 2024 Public Workshop on the Proposed Regulations, the State Water Board Members shared that they would like to develop an enforcement policy resolution for when the regulations are adopted by the Board. Cal Cities believes that the enforcement policy should include a good-faith-effort provision that allows the State Water Board to exercise discretion in their enforcement if an urban water supplier is making a good-faith-effort to comply with the regulations.

According to California Water Code Section 10609(c)(1), *“Local urban retail water suppliers should have primary responsibility for meeting standards-based water use targets, and they shall retain the flexibility to develop their water supply portfolios, design and implement water conservation strategies, educate their customers, and enforce their rules.”* Such flexibility includes the time provided to urban water supplies to comply, the standards and achievement of the Urban Water Use Objective, and the enforcement discretion the State Water Board has in overseeing compliance.

We appreciate that State Water Board staff made the draft Resolution publicly available in advance of the Board meeting and we offer the following recommendations, consistent with the Association of California Water Agencies comment letter:

a. Direct Staff to Establish a Good-Faith-Enforcement Policy by 2028.

Cal Cities submitted comments previously and there has been substantive Board discussion outline the need for a clear policy on progressive enforcement. Currently, the Draft Resolution includes action #12 for staff to bring a policy establishing enforcement procedures in 2028.

The State Water Board must make clear in the Enacting Resolution that it will utilize enforcement discretion for water suppliers that are making a good faith effort to comply with the Regulation, including in achieving its water use objective, the CII Performance Measures, and reporting requirements. As we’ve noted, water suppliers have a limited set of tools to incentivize customers to use water more efficiently. Water suppliers may plan for and implement comprehensive efficiency programs, and still not comply with the Regulation. We request that the State Water Board recognize good faith efforts and barriers to implementation outside of water suppliers’ control before taking enforcement actions.

*# 12. By December 2028, staff shall bring an information item to the Board **describing any compliance actions taken and recommend whether the Board should adopt a policy***

~~or guidelines establishing with draft progressive~~ enforcement procedures for the conservation program ~~to the Board for consideration to adopt.~~

b. Direct Staff, in Partnership with Water Suppliers, to Monitor and Assess the Implementation of the Regulation.

We strongly believe that monitoring and assessing the implementation of the final Regulation is necessary given that this Regulation is an important element of the State's Water Supply Strategy and will have significant expected implementation costs on water suppliers. We recommend the State Water Board include language in the enacting resolution to direct staff to monitor and report back to the Board in 2031, 2037 and 2042 on compliance, cost, water savings, impacts to tree canopy and low-income customers, and general challenges and barriers to implementation of the Regulation. We recommend that staff partner with water suppliers to convene an Advisory Group to gather the necessary data and incorporate DWR's studies on indoor water use and CII-DIM data. Water suppliers will not have CII-DIM data until 2028, several years are required to assess the full implementation of the regulation. We recommend the following language:

11. Unless and until directed otherwise, staff shall bring periodic information items to the Board describing the progress staff have made in carrying out the actions identified in this resolution and summarizing the progress water suppliers have made in calculating and meeting urban water objectives and carrying out CII performance measures. In 2031, 2037, and 2042, staff will convene a stakeholder advisory group, that includes water suppliers and other interested parties, to provide a comprehensive assessment of compliance, cost, water savings, impacts to tree canopy and low-income customers, and general challenges and barriers to implementation of the Regulation.

c. Updated Landscape Area Data.

We appreciate the inclusion of action # 5 is intended to ensure stakeholder engagement in the any future process to update residential landscape area and recognizes the importance of landscape area data for this framework and the challenges involved in updating the data. We request that the language be broadened to remove "residential," so that any future efforts on the part of DWR to measure landscape area may be pursued with stakeholder engagement.

#5. The State Water Board directs staff to coordinate with the Department to identify and pursue opportunities to update ~~residential~~ landscape area frequently and as soon as feasible, ensuring stakeholder engagement in the process. The Board recognizes the importance of landscape area data for this framework and the challenges involved in updating the data.

Cal Cities appreciates the opportunity to provide formal written comments to the State Water Board on the Proposed Regulations. As the Proposed Regulations are finalized, we ask for the opportunity to work collaboratively with the State Water Board on implementation efforts, technical assistance, and funding



opportunities in the near future. Please do not hesitate to contact me at msparkskranz@calcities.org or 916-658-8232 regarding our input.

Sincerely,

A handwritten signature in blue ink that reads "Melissa J. Sparks-Kranz".

Melissa Sparks-Kranz
Legislative Representative
League of California Cities

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
Mr. Eric Oppenheimer, Executive Director, State Water Resources Control Board
Mr. James Nachbaur, Director, Office of Research, Planning and Performance, State Water Resources Control Board
Ms. Charlotte Ely, Supervisor, Conservation and Efficiency, State Water Resources Control Board
Ms. Karina Herrera, Supervisor, Conservation and Efficiency, State Water Resources Control Board