



March 27, 2024

Submitted via: commentletters@waterboards.ca.gov

Attn: James Nachbaur
Director, Office of Research, Planning, and Performance
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Re: Comment Letter — Proposed Regulation to Make Conservation a California Way of Life

Dear Mr. Nachbaur,

CalWEP appreciates this opportunity to provide comments on the State Water Board's updated proposed regulation to make conservation a California way of life as submitted March 12, 2024.

CalWEP is a membership-based, non-profit organization representing over 220 California water agencies, businesses, and other organizations with a mission to maximize urban water efficiency and conservation throughout California. Collectively CalWEP water agency members provide services to over 6.6 million connections across the State. We are also a state chapter of the national Alliance for Water Efficiency.

CalWEP originated as the California Urban Water Conservation Council, which was tasked with implementing the historic 1991 Memorandum of Understanding Regarding Urban Water Conservation in California. Since our inception, we have developed tools, generated research, offered technical trainings, as well as program assistance and administration support to help water agencies meet their conservation and efficiency goals. These early and sustained conservation efforts supported by CalWEP and enacted by suppliers have resulted in significant per capita water reductions even as the State has become more populated.

CalWEP prides itself on continuing our collaborative efforts with suppliers, industry partners, and fellow non-profits, against the backdrop of climate change, to seek out and support new and innovative approaches to reduce urban water usage further. Additionally, CalWEP's annual programming has provided forums for our membership and the water conservation community at large to develop and adapt conservation programs that help balance cost with the greatest water savings potential. Our members have also addressed the affordability of their services and funded programs that support customers living within under-resourced and disadvantaged communities (DACs).

In late 2023, when CalWEP participated in select rulemaking working groups hosted by the State Water Board, we stressed that the regulation needs to balance the urgency of climate change and dwindling water suppliers with the realities and capacity on the ground at water agencies. We greatly appreciate the State Water Board's deep engagement on this proposed regulation as well as the hours spent convening interested parties as it ensured that a collaborative approach to this balancing act is core to this regulation. It is CalWEP's opinion that the outcome of the State Board's collaborative rulemaking has resulted in an updated proposed regulation that better addresses the realities of conservation program implementation, including limitations of suppliers servicing under-resourced communities, as well as historical and ongoing investments made by suppliers to continue to reduce customer water usage. Specifically, CalWEP supports the updates described below and requests that the State Water Board retain these changes within the final regulation:

- **Section 966 (i)**
CalWEP appreciates the State Water Board's initiative to simplify and streamline an alternative compliance pathway for all suppliers who will have to achieve significant savings to meet their objective. The ACP qualifying conditions and required actions offer a more equitable approach for those who will be disproportionately affected by the proposed regulation.
- **Section 974 (c)(1)**
CalWEP appreciates the inclusion of an option to target the top 20% of overall CII water users. This approach will likely result in the greatest water savings, compared to targeting the top 20% of water users per classification category. The latter would require targeting specific accounts that could have relatively low water-use compared to other sectors and could potentially result in reengaging customers who have previously participated in water efficiency programs, thereby diminishing the impact and ultimately the cost-effectiveness of BMP implementation.
- **Section 974 (g)(1)**
CalWEP supports limiting BMP implementation requirements for suppliers whose overall CII water use totals 10% or less of all deliveries. This enables suppliers to focus efforts and resources on residential actions to maximize water savings.
- **Section 974 (h)(1)**
CalWEP supports the elimination of the originally proposed tiered CII BMP implementation approach as well as the newly proposed timeline extension for CII BMP implementation. The June 30, 2039, extension will likely result in well-designed and impactful conservation BMPs for targeted CII customer segments while generating multiple-benefits for the supplier and customer alike.

While CalWEP is generally supportive of many of the updates to the proposed regulation, we believe that a few additional modifications would result in a stronger regulation. Thus, we have prepared the following comments for the State Water Board’s consideration during this ongoing rulemaking process:

1. Section 968(b)(2)(B)

The inclusion of 20% Irrigable Not-Irrigated landscape area for calculating the outdoor residential water budget should not sunset after DWR provides updated Landscape Area Measurement data to suppliers unless specific conditions are achieved.

CalWEP appreciates and supports the inclusion of 20% of suppliers’ unique square footage of Irrigable Not Irrigated area to calculate their respective outdoor residential water budgets within the updated proposed regulation. This revision is further justified by DWR’s statistical analysis of outdoor water use that demonstrated INI being irrigated at 20% of irrigable area.

However, CalWEP does not support the elimination of 20% INI from the outdoor residential water budget calculation once updated landscape area measurements are provided by DWR due to technological limitations coupled with equity concerns. These issues are addressed below:

Technological Limitations

Current LAM data was collected in 2018 (with some data collected in 2020) from a single point in time at 1-foot resolution. The classification of the LAM was designed to separate areas that were being irrigated (II) from those that provided no indication of actively being irrigated but that showed irrigation infrastructure (INI). While best available methods for updated LAM could rely on higher resolution 4-band aerial imagery to create a highly accurate, polygon level, land use classification dataset (as is being provided by DWR for the CII LAM), some issues remain that will make obtaining better INI data difficult. These include the subjectivity of designating INI (even with the continued use of machine learning) and the static nature of the data representing a single snapshot in time. Therefore, the 20% INI allowance will likely be needed beyond the next LAM update, unless the new dataset can overcome these issues.

Equity Considerations

DWR’s September 2022, *Recommendations for Outdoor Residential Water Use Efficiency Standard*, finds that, “INI landscape area also is receiving some irrigation, albeit much less than II area,” and concludes that this makes it necessary to include a 20% buffer to “maintain equity across urban retail water suppliers¹”. Additionally, an analysis, “Why do hotter, drier areas struggle to meet their water use efficiency targets?” from the California Data Collaborative addresses the disparity of inland versus coastal urban

¹ [*Recommendations for Outdoor Residential Water Use Efficiency Standard*](#) Department of Water Resources (September 2022)

water use objectives, noting that water suppliers in higher-ET areas (mostly inland areas) are much more likely to exceed their objective². In their analysis the CADC notes:

“Regions with higher annual ET_o may have landscapes that can absorb more irrigation without becoming visibly green and appearing as “irrigated” in imagery. This could be a result of different plant choices, or simply higher temperatures drying plant life more quickly.”

In summary, CADC’s analysis shows that by removing INI landscape area as a factor in calculating a supplier’s water budget, the proposed regulation could disproportionately impact inland communities, including the Central Valley and Inland Empire. Both regions have high concentrations of underserved and under resourced water suppliers.

Therefore, CalWEP recommends that the proposed regulation be amended to state that the 20% INI landscape area shall be factored into a supplier’s outdoor residential water budget until any new LAM issued by DWR, or alternative data generated by the supplier and approved by the State Water Board, can overcome the above technological limitations and equity concerns.

2. Section 974 (g)(3), (h)(2)

In addition to regional entities, the State Water Board should also clarify that suppliers can utilize programs and services offered by non-profits and other organizations operating statewide, like CalWEP, in-lieu of designing and implementing their own conservations programs to comply with the CII best management practices listed under the CII Performance Measures. This small change would provide a big opportunity for suppliers to take advantage of resources and programs from prominent statewide organizations.

CalWEP appreciates the State Water Board’s inclusion of conservation programs offered by regional entities as an option for suppliers to adopt as part of their BMPs offerings to customers. As we noted in our comment letter to the State Water Board on October 17, 2023, these “umbrella programs” offer an expeditious and often cost-effective approach for suppliers to achieve CII water savings. Successful wholesaler programs administered at the regional level serve as prime examples. Similarly, non-profits and energy utilities operating at a statewide scale can provide the same services and generate the same benefits as regional entities. For example, CalWEP-administered umbrella programs have helped reduce the cost burden to individual suppliers by cost-sharing start-up and operational expenses through multi-member participation. Additionally, CalWEP’s umbrella programs have been designed to integrate lessons learned and experience gained running programs over the decades to maximize participation and water savings. Furthermore, CalWEP has committed to assisting our members with the implementation of the proposed regulations. Therefore, CalWEP recommends that the

² [Why do hotter, drier areas struggle to meet their water use efficiency targets?](#) Christopher Tull, California Data Collaborative (January 2024)

proposed regulation include the language “and/or statewide” following the term “regional entities” for both paragraphs (g)(3) and (h)(2) of section 974.

In addition to assisting suppliers design conservation programs, both regional and statewide entities have the capability and staffing to implement these programs on behalf of the supplier. CalWEP currently offers rebates processing and discounted bulk purchase programs for several suppliers. Therefore, CalWEP recommends that the phrase “and/or implementing” be added to paragraph (g)(3) of Section 974 within the proposed regulation. This change would keep consistent the same allowance for implementation granted by paragraph (h)(f) of the same section.

Recommendation #2 - Suggested red-line edits are as follows for Section 974:

*(g)(3) For purposes of subdivisions (d) and (e), a supplier may rely on a regional **and/or statewide** entity in lieu of designing **and/or implementing** its own conservation program.*

*(h)(2) For purposes of this section, a supplier may rely on implementation by a regional **and/or statewide** entity in lieu of implementing its own conservation program.*

CalWEP is committed to partnering with the State Water Board to get this proposed regulation over the finish line and gladly offer our staff’s expertise as the next iteration of the regulation is put together. We look forward to moving into the implementation phase with our members to ensure that conservation continues to be way a life in California. We once again thank the State Water Board members and staff for this collaborative process and look forward to continued opportunities to work together to ensure a resilient water future for our state.

Please contact me if you have any questions regarding this information (tia@calwep.org).

Sincerely,



Tia Fleming, Co-Executive Director
California Water Efficiency Partnership