



UTILITIES DEPARTMENT
250 Hamilton Avenue, Palo Alto, CA 94301

Sent via email: commentletters@waterboards.ca.gov

(7/8/15) Public Workshop
Conservation Pricing
Deadline: 7/1/15 by 12:00 noon

July 1, 2015

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor, Sacramento, CA 95814



Re: Conservation Water Pricing and Implementation of Directive 8 of Executive Order B-29-15

Dear Ms. Townsend:

The City of Palo Alto's Utility Department (CPAU) appreciates the opportunity to comment on ways the State Water Resources Control Board (State Water Board) can assist local water suppliers on the issue of conservation water pricing.

The State Water Board is specifically interested in receiving input on the following questions:

1. *What actions should the State Water Board take to support the development of conservation pricing by water suppliers that have not yet developed conservation rate structures and pricing mechanisms?*
2. *What actions should the State Water Board take to support water suppliers that have already developed conservation rate structures and pricing mechanisms to improve their effectiveness?*
3. *What actions can the State Water Board take to assist water suppliers in demonstrating that existing rate structures harmonize competing legal authorities associated with water rates?*

The State Water Board is generally interested in receiving information on the efficacy of conservation pricing and proposals for how conservation price signals can be improved consistent with Proposition 218.

CPAU's Comments on the State Water Board's Conservation Pricing Proposals

1. CPAU recognizes the State Water Board's authority to manage the state's water resources in times of drought and also appreciates the Board's assertion in the workshop notice that "water suppliers must carefully construct and document their rate structures to comply with the constitutional limitations of Proposition 218". As such, CPAU encourages the State Water Board to move cautiously in this area, being cognizant of both the constitutional authority granted to cities to establish and operate water utilities and of voter-approved limitations on utility rate setting.
2. This is a complicated issue, and one that is frequently litigated by a wide variety of interested parties and stakeholders. Whatever the State Water Board offers must be based on sound legal research, to avoid further complications of this important issue.
3. The City of Palo Alto encourages the State Water Board to focus its efforts on education and outreach about conservation measures that will help everyone get through this historic drought.

Constitutional Limitations on Rate Setting

4. California's voters have spoken repeatedly since the adoption of Proposition 13 in 1978, (the People's Initiative to Limit Property Taxation), to constitutionally limit local government's imposition of taxes, fees and charges for government services and products, including utilities such as water. When the voters adopted Proposition 218 in 1996, the Right to Vote on Taxes Act, they further limited the methods by which local governments collect revenue from taxpayers. Property related fees, including



- fees for water service imposed as an incident of property ownership, can only be imposed or increased under certain conditions outlined in Art. XIID, section 6 of the California constitution.
5. Article X, section 2 of the California constitution states “the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare.”
 6. California courts have opined that Article X, section 2 must be harmonized with the cost-based requirements of Art. XIID. **In other words, conservation must be attained “in a manner that ‘shall not exceed the proportional cost of the service attributable to the parcel.’”** *City of Palmdale v. Palmdale Water District* (2011) 198 Cal.App.4th 926; *Capistrano Taxpayers Association v. San Juan Capistrano*. (2015) 235 Cal.App.4th 1493.
 7. Therefore, even the term “conservation rate structures and pricing mechanisms” used by the State Board will be problematic for many local water suppliers to accept, absent evidence that such mechanisms represent the cost to serve customers. The State Board should avoid placing water suppliers in the difficult position of labeling their cost-based water rates “conservation rates”.
 8. At this stage CPAU is unsure how the State Water Board intends to differentiate between water suppliers that have or have not yet developed conservation rate structures and pricing mechanisms. CPAU notes that any metered usage that incorporates a volumetric charge in its rate structure (even a flat or non-tiered volumetric charge), while remaining cost-based, is also encouraging conservation, since the more the customer uses, the more they pay. Indeed, the California Urban Water Conservation Council’s recognizes that conservation pricing requires a volumetric rate and that metered water service is a necessary condition of conservation pricing.

Next Steps

9. The clearest legally effective way to modify Proposition 218 is to use the same process which created it – a voter approved ballot initiative. Whether the State Water Board is the proper party to put forth such a measure is a policy call to be carefully considered.
10. The State Water Board’s support for legislation interpreting Proposition 218 is another option. But absent judicial support for such legislation in the form of a published California appellate or Supreme Court decision, reliance on any “clarifying” legislation can also present legal risk for local agencies. Regardless, it could take years for this to be settled.
11. In the meantime, the City of Palo Alto encourages the State Water Board to focus its efforts on drought education and outreach.
12. If and when local water suppliers’ rate structures are challenged, the State Board may wish to fund or offer resources such as amicus briefs and research support.

CPAU looks forward to working with the State Water Board on this important issue. Please do not hesitate to contact me at 650-329-2369 or Debra.Lloyd@cityofpaloalto.org should you have questions or need additional information.

Sincerely,



Debra Lloyd
Utilities Compliance Manager
City of Palo Alto Utilities