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Public Comment  
Changes to Prohibiting Wasteful Water Use Practices  
Deadline: 2/14/18 by 12 noon

**General Manager**  
Kimberly A. Thorner, Esq.  
**General Counsel**  
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February 14, 2018

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



VIA EMAIL: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

**Re: Comment Letter – Changes to Proposed Regulation Prohibiting Wasteful Water Use Practices.**

Dear Ms. Townsend,

On behalf of Olivenhain Municipal Water District, thank you for the opportunity to provide the State Water Resources Control Board with additional input on the proposed rulemaking on prohibitions of wasteful water uses. OMWD provides 84,000 customers in northern San Diego County with water, wastewater, recycled water, hydroelectric, and recreational services. We have taken note of the changes that have been made to the regulatory document prohibiting wasteful and unreasonable use of water, and would like to reiterate our objectives and concerns.

Foremost, OMWD concurs with the December 22, 2017 comment letter submitted to SWRCB by San Francisco Public Utilities Commission (SFPUC) and Bay Area Water Supply & Conservation Agency (BAWSCA). SFPUC and BAWSCA correctly point out that SWRCB would be acting outside of its jurisdiction in moving forward with the proposed rulemaking. Under the Reasonable Use Doctrine established by Article X, Section 2 of the California Constitution and codified by Water Code Sections 100, SWRCB lacks authority to issue regulations that make determinations of reasonable use in the abstract. California appellate cases such as *Light v. SWRCB* (2014) 226 Cal.App.4th 1463 and *State Water Resources Control Board Cases* (2006) 136 Cal.App. 674, 762, confirm that it is only appropriate to declare that a certain use of water is wasteful or unreasonable after undertaking a facts-and-circumstances analysis that is specific to each case. Furthermore, SWRCB cannot curtail the exercise of a vested water right, or eliminate conservation-based rights protected by Water Code section 1011, without providing proper notice of hearing and due process to the affected water rights holder. A broad, statewide ban on practices deemed "wasteful and unreasonable" in the abstract is not appropriate and is not in accordance with the authority afforded to SWRCB under the Reasonable Use Doctrine.

Furthermore, the prohibition on watering turf on public medians and parking strips poses a number of concerns. Chief among these concerns is restricting the use of recycled water which does nothing to offset potable water demand. Limiting the recycled water exemption only to irrigation systems installed prior to January 1, 2018 is counter-productive and would act as a disincentive for the conversion of potable irrigation to recycled water irrigation systems. Another concern is that vegetation, including turf, along street medians and parking strips functions as a method of dust abatement and could reduce the effects of urban heat islands; categorizing irrigation of such areas as wasteful is unreasonable. While more water-efficient landscaping is available and should be encouraged in these areas, there are times when turf may be the most appropriate choice; for example, in the planted spaces between the street and the sidewalk where street parking is available.



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OMWD acknowledges that irrigation of landscapes during or shortly after a measurable rain event should be adjusted in response to the amount of rainfall; however, a rigid prohibition fails to account for local variables and should be avoided. It is not uncommon for rainfall to vary across a locality, and setting a prohibition based on rainfall at the nearest weather station creates complications in terms of enforcement and disregards local variables. Furthermore, irrigation during or after rain is only wasteful if the rain event is adequate enough to meet the water demands of the landscape for 48 hours or more. While the adjustment of the definition of measurable rain to one-fourth of one inch more accurately reflects the capabilities of current weather-based irrigation technology, that amount would not always be sufficient to replace irrigation for 48 hours. For instance, supplemental irrigation during or shortly after a light rain event not only allows for the deep irrigation required by some plants, such as trees, but also increases efficiency due to the decrease of evaporative loss and is thus a reasonable use of water. Additionally, irrigation cycles often adhere to a schedule that cannot easily be deviated from or adjusted each time it rains. For these reasons, we believe the document language should simply read "measurable" or "effective" rainfall, leaving the specifics of rainfall measurement to local discretion.

In regard to enforcement of the proposed prohibitions, will SWRCB carry out enforcement activity, or will this ultimately be assigned to the local level? Who should be issuing the fines associated with the violation of this state policy, and where will that money be directed? Please ensure that this information will be included in the rulemaking document. Note that entities required to take enforcement actions under the proposed regulation may be eligible for reimbursement of the significant costs that would be incurred, assuming this regulation establishes a state-mandated local program.

If you or your staff should need any additional details pertaining to this assessment, please do not hesitate to contact me at 760-753-6466 or [kthorner@olivenhain.com](mailto:kthorner@olivenhain.com).

Regards,



Kimberly A. Thorner  
General Manager

CC: Kim Craig, Deputy Cabinet Secretary, Office of Governor Edmund G. Brown, Jr.  
Assemblywoman Marie Waldron  
Assemblyman Rocky Chavez  
Assemblyman Brian Maienschein  
Assemblyman Todd Gloria  
Senator Pat Bates  
Senator Joel Anderson  
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Eric Oppenheimer, Chief Deputy Director, State Water Resources Control Board Planning and Performance  
Dave Bolland, Director of Regulatory Relations, Association of California Water Agencies