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January 11, 2011

Charlie Hoppin, Chair and Board Members  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814  
c/o Jeanine Townsend, Clerk to the Board  
**Via Electronic Mail: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)**

**Re: 1/18-19/2011 BOARD MEETING – Item #12, Reasonable Use Doctrine**

Dear Chair Hoppin and Members of the Board:

The California Coastkeeper Alliance (CCKA) represents California’s 12 Waterkeeper organizations, which span the coast from the Oregon border to San Diego. On behalf of the Alliance, we are pleased to submit these comments regarding the “Reasonable Use Doctrine and Agricultural Water Use Efficiency” Report (Report), and associated recommendations on the application of the doctrine to promote more efficient use of agricultural water.

In brief, we welcome this Report as a long-overdue effort to implement the mindful water use strategies embedded in the California Constitution and Water Code. California cannot sustain continued “wasteful” and “unreasonable” uses of water, and we applaud the State Water Resources Control Board’s (Board) initiative to proactively implement the Reasonable Use Doctrine to prevent future water system breakdowns.

We particularly support the following findings in the Report regarding the scope and use of the Reasonable Use Doctrine:

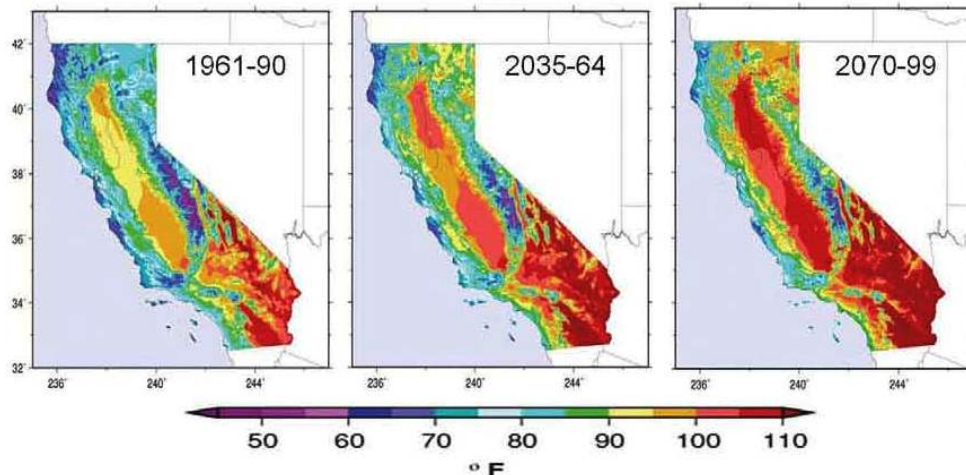
- The Reasonable Use Doctrine is the “cornerstone of California’s complex water rights laws.”
- “All water use must be reasonable and beneficial regardless of the type of underlying water right,” and “[n]o one has an enforceable property interest in the unreasonable use of water.”
- The Report’s “underlying premise” is that the “inefficient use of water is an unreasonable use of water.”
- The Reasonable Use Doctrine “is available prospectively to prevent general practices of inefficient water use,” and moreover “can comprehensively address the inefficient use of water in California.”
- The Reasonable Use Doctrine may be used “broadly to promote the efficient use of water” and it “can be used to promote [more efficient and reasonable agricultural] practices.”

- The “doctrine may apply to an unreasonable method of diversion, even in the absence of any assertion that the diverted water has been wasted or unreasonably used.”
- “Inefficient Water Use is unreasonable water use.”

We commend the Board’s review of the range of agricultural water efficiency practices that could be encouraged through application of the Reasonable Use Doctrine. To further the initiative, we propose adding to the Board’s analysis the following suggested considerations:

- While we greatly appreciate the Board’s effort to define “using water unreasonably” on page 10, we note that the references to the economic justifiability of efficiency practices should be modified to include an equal or greater consideration of the value of the water and affected ecosystems at stake. The costs of adding water efficiency practices are relatively easy to compute. Calculating the costs of avoiding efficiency is more difficult, which is one of the reasons they tend to be marginalized. As can be seen from the state’s ongoing struggles with water supply and water pollution, however, the negative impacts of inefficiency can be far more significant than the costs of implementing more efficient water use strategies. Accordingly, the costs to ecosystems, waterways and water supplies from avoiding efficiencies must be specifically included in a definition of “unreasonable,” to put the efficiency practice at issue into context.
- We agree that more efficient irrigation practices can reduce consumptive water use, particularly from reduced evapotranspiration from the crops and soil. One important additional consideration on this point is the impact of climate change, as demonstrated by the projected temperature changes in the Central Valley and Imperial Valley.<sup>1</sup> The significance of using water wisely and of avoiding actions that will result in increased evapotranspiration over time become particularly acute in light of the increased heat that these areas will face in the coming years.

Figure 1. California Historical & Projected July Temperature Increase 1961-2099



Source: Dan Cayan et al. 2009.

<sup>1</sup> California Natural Resources Agency, 2009 *California Climate Adaptation Strategy*, Figure 1 (Dec. 2, 2009), available at: <http://www.energy.ca.gov/2009publications/CNRA-1000-2009-027/CNRA-1000-2009-027-F.PDF>.

- Greater conservation also will allow the state to *choose*, on behalf of the best interests of the public and the affected environment, where the water will go – rather than letting wasted water possibly, and possibly not, flow to good use. Moreover, agricultural runoff often contains numerous pollutants that foul much-needed surface water and groundwater sources, as the Report correctly notes. Again, consideration of the full range of benefits of greater efficiencies must be incorporated into the definition of “unreasonable” – including the benefits of cleaner water, not solely additional water.
- In addition to adoption of more efficient water use practices, consideration should be given to the reasonableness of the use of the water generally. The Report specifically chooses not to address the topic of saving water through switching to different crops (or land retirement, which is not mentioned), asserting that this practice “is heavily dependent on market conditions.” We urge the Board to consider the broader definition of “agricultural use” in determining what is wasteful and unreasonable. By eliminating whole categories of potential water savings from a “wastefulness” determination due to market forces – which are *not* mentioned in the Constitutional or Code language – the Report makes a *de facto* decision about what is wasteful and what is not. This type of wastefulness assessment should be debated in a public forum in order to ensure appropriate public feedback on the Board’s determination the reasonable use of the state’s waters – which belong to the people of the state.
- We ask that more deliberation be given to the topic of transfers of conserved water. We have concerns about excluding from this incentive process *only* those water users who are “subject to a waste or unreasonable use proceeding.” Given the paucity of water rights staff, even with the new staff increases, active waste/unreasonable use proceedings may take some time to become established practice. This transfer language thus may potentially reward many wasteful water users not subject to these proceedings, an outcome the Report specifically indicates it would like to avoid. To avoid this outcome, each such proposed transfer instead should be evaluated for waste and inefficiency of use before and after the efficiency measures were installed. Only those taking action well above and beyond the desired level of efficiency (and certainly far beyond “wasteful”) should be rewarded with the opportunity to sell conserved water. Otherwise, the Board would be approving profit off the sale of the public’s water, the use of which was illegal to begin with. Finally, greater attention should be provided to transferring conserved water to waterways (as noted below); the Report is notably quiet on instream flows.
- Focused consideration should be given to ensuring that greater efficiencies and conservation results in *greater flows in waterways*. Greater efficiency should be specifically combined with improved water diversion management to ensure healthier aquatic ecosystems, rather than just more water for increased human uses. Reasonable diversion is another element of the Reasonable Use Doctrine, but one that is only touched on in the Report; we urge the Board to include it more comprehensively as this process moves forward.

Lastly, we agree that a Reasonable Water Use Unit should be created to “enforce the prohibition against the waste or unreasonable use of water,” and that this enforcement process should be streamlined to “start with the issuance of a Cease and Desist Order.” We welcome the opportunity to discuss these and other issues at the proposed Reasonable Use Summit.

\* \* \*

Thank you for the opportunity to provide these comments, and for your work in preparing this laudable Report. We look forward to participating in the proposed Reasonable Use Summit and working with you to implement its recommendations swiftly.

Regards,

A handwritten signature in black ink, appearing to read "Linda Sheehan", with a long horizontal flourish extending to the right.

Linda Sheehan  
Executive Director

cc: Craig M. Wilson, Delta Watermaster