



February 1, 2019

Sent Via Email [commentletters@waterboards.ca.gov]

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

Re: Comment Letter – Options for Implementation of a Statewide Low-Income Water Rate Assistance Program – January 3, 2019 Draft Report

Dear Ms. Townsend:

Please accept this comment for the record of the above-caption draft report. We commend the State Water Resources Control Board (SWRCB) for its bold and ambitious recommendations for a statewide Low-Income Water Rate Assistance Program (W-LIRA). The Board’s draft report makes a compelling a case for the adoption of further public policy to truly achieve the Human Right to Water articulated in AB 685 (2012), specifically the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking and sanitary purposes.

We commend to the Board’s attention the comment letter (“Joint Letter”) submitted today by the Community Water Center, Pacific Institute, Leadership Counsel for Justice and Accountability, and Clean Water Action, and joined by additional organizations with a shared concern for safe, sufficient, and affordable drinking water for all Californians. We urge the Board to act favorably on the recommendations made in this Joint Letter.

In addition to the points raised in the Joint Letter, NRDC urges the Board to provide additional information and evaluation of certain aspects of its recommended program.

Benefit level and type. We note that AB 401 defines “low-income” as no greater than 200% of the federal poverty level, a benchmark that is used in energy low-income support programs as well. The Board proposal, however, calls for a benefit that is unresponsive to the deeper needs of the very poor at the lowest end of the income spectrum. We recommend that the Board consider mechanisms that more effectively protect water affordability for the very poor by ensuring that the level of benefit is sufficient to make essential water service affordable and secure for the poorest of California households. There is precedent in other states for statewide utility bill affordability programs that tailor

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the level of benefit to account for the financial need of individual households. For example, New Jersey's Universal Service Fund (USF) program, for gas and electric customers, provides a benefit, for each eligible household, that is calculated to ensure that gas and electric costs do not total more than 6% of household income.¹

Consumption benchmark. For the reasons well stated in the Joint Letter, we believe the Board has erred in recommending a consumption benchmark set at 12 Ccf as the point of reference for determining the cost of water provided by each individual utility and the corresponding benefit levels for eligible households in that utility service area. For most households, this level of consumption is well above the amounts typically used for personal consumption, cooking, laundering, bathing, and sanitation. While not its intended use in this proposal, we are concerned that applying 12 Ccf in the W-LIRA program will establish a presumption for what the state deems an essential or basic amount of water use. We recommend that 6 and 9 Ccf be considered as viable alternatives, with the appropriate adjustments in the break points and percentages of the Board's three-tier structure to maintain benefit levels comparable to those in the Board's current proposal.

Revenue options. As noted in the Joint Proposal, the Board's draft report largely absolves public water systems of any substantive responsibilities for addressing the diminishing affordability of drinking water service for their low-income customers. Appendix G offers cursory examination of flat charges on residential water customers and concludes that such charges are too onerous to support the entire program. However, more nuanced approaches to raising revenue from water systems might play a role in replacing or supplementing the Board's recommended revenue options to provide a meaningful *portion* of program costs. In lieu of flat charges on residential customers, the Board might evaluate charges that would apply to consumption above specified thresholds to raise revenue from high-volume residential and commercial customers. Another approach to achieve a similar effect would be to allocate a water system revenue contribution in proportion to peak summer demand. Either of these approaches would serve to reinforce the state's policy to make water conservation a California Way of Life while raising revenue that could be applied to maintain water affordability for low-income households.

Benefit distribution. The draft report properly notes the challenges in distributing benefits to eligible households across the state, including those that do not receive a water bill. However, an on-bill credit to qualifying households that *do* receive a water bill has many advantages noted in the report. We recommend that the Board consider building on these advantages by offering an on-bill credit to those that receive a water bill, while adopting effective benefit distribution mechanisms for all other households. Regarding the option to use an electric bill credit as a delivery mechanism, we urge the board to provide more information on a few aspects of this proposal: (1) is there a legal concern with using an energy billing system to return a non-energy benefit to customers, (2) would there be a cost to the utility billing system to accommodate this proposal, (3) how would such a distribution approach reach residents residing in single-metered multifamily buildings, (4)

¹ See "Universal Service Fund Frequently Asked Questions," New Jersey Department of Community Affairs, accessed Jan. 31, 2019, <https://www.state.nj.us/dca/divisions/dhcr/faq/usf.html>.

what would be the additional benefit to electric systems and their customers by reducing arrearage and collection costs, and (5) whether such benefits could be effectively monetized with a contribution from the electric utilities to serve as an additional revenue source for the W-LIRA program. We also recommend that the Board further explore the role that owners of affordable rental properties might play in a statewide water affordability program. With no engagement by building owners, W-LIRA credits run the risk of providing an immediate inducement to rent increases, potentially negating the intended effect of the program. Additionally, if as proposed the program encompasses low-income households on private wells, a monthly credit (perhaps on an electric bill) may do little to address core water quality problems resulting from groundwater contamination off-site. The final report should provide more information on how such households would benefit from the program.

Complementary strategies for improving affordability. The draft report's treatment of water conservation and efficiency assistance is far too dismissive. It is well known that many water conservation programs offered by utilities are accessed primarily by middle- and upper-income consumers. Nevertheless, successful programs in both water and energy efficiency have been designed specifically to reach low-income households. Such programs are not based on in-store rebates for customers making discretionary purchases, but rather they involve the direct installation of more efficient equipment on low-income customers' premises. While actions in addition to efficiency programs are needed to fully resolve affordability challenges for low-income households, these programs provide critically needed benefits nonetheless, reducing the dollar amount of water bills, curtailing the costs of bill support programs, and in many cases offering additional customer utility savings by reducing energy costs. The final report should describe an appropriate role for efficiency programs tailored to W-LIRA participants.

Additionally, the Joint Letter makes a telling point in noting that rate reform is possibly the most important non-W-LIRA tool for addressing affordability for millions of Californians, yet was dismissed for irrelevant reasons within Appendix L. As with well-crafted water efficiency programs, improved water rate designs can advance both equity and efficiency goals, and the benefits for low-income customers can narrow the affordability gap that a W-LIRA will attempt to close. Attention should also be directed to rate structures for sanitary sewer service, which in California, unlike most states, are commonly flat for residential customers regardless of water use or discharge and are often equal or exceed the amount of the water bill on an annual basis.

Finally, the draft report's characterization of the obstacles posed by Proposition 218 to public utility affordability programs is far too conclusory. The flat assertion of Prop 218 as an obstacle to utility funded customer assistance programs does not reflect the full range of legal scholarship on Prop 218's impacts nor the nuances of case law that have slowly accumulated on the subject. We urge the Board to modify the language of the final report

to eliminate conclusory statements and encourage further discussion of strategies that can advance water affordability goals while passing applicable constitutional tests.²

Thank you for your attention to these views.

Respectfully submitted,

A handwritten signature in black ink that reads "Edward R. Osann". The signature is written in a cursive style with a large initial 'E'.

Edward R. Osann
Senior Policy Analyst

Lawrence Levine
Senior Attorney

² We urge the Board to closely consider the legal analysis submitted to the Board by the UC Berkeley Environmental Law Clinic, dated Aug. 25, 2017, which explores several ways to structure local rates that promote low-income affordability consistent with Prop 218. (See https://www.waterboards.ca.gov/water_issues/programs/conservation_portal/assistance/docs/comments/ucb_elc_ejcw_public_comment_re_ab_401.pdf.) Among other things, the Berkeley analysis suggests (at p. 47) that state legislation requiring publicly-owned water systems to offer a lifeline rate could allow those systems to treat the cost of providing a lifeline rate as part of their cost of service, making that cost recoverable from the rate base without violating Prop 218. Similarly, it argues (at p. 35) that a state legislative prohibition on terminating service due to a customer's inability to pay could allow public water systems to treat the costs of implementing that prohibition as part of their cost of service. Further, we note that one of the sources on which the draft report's appendix relies for its conclusions about Prop 218 actually suggests that water utilities can make a "business case" that low-income affordability programs improve a system's financial stability and, therefore, that the costs of such programs should be considered part of the cost of service that is recoverable from the rate base. (UNC Environmental Finance Center, *Navigating Legal Pathways to Rate-Funded Customer Assistance Programs: A Guide for Water and Wastewater Utilities*, 2017, at pp. 17-18.) The Board could provide – or seek – additional guidance on these legal questions.