

October 18, 2010

TO: Department of Water Resources
VIA email to Wue@water.ca.gov

FROM: Agricultural Council of California
California Chamber of Commerce
California League of Food Processors
California Manufacturers and Technology Association
Chemistry Industry Council of California
Industrial Environmental Association
Western Agriculture Processors Association
Western Growers Association
Western States Petroleum Association
Wine Institute

Re: Regulations to Implement Process Water Provisions of SB x7 7 of 2009

The undersigned industrial water users appreciate the continuing efforts being made by the Department of Water Resources (Department) regarding its proposed process water regulations to implement the process water provisions of SB x7 7 of 2009. We welcome the opportunity to comment on the most recent changes to the regulatory draft proposal dated October 7, 2010.

The Department has made great strides in addressing many of the concerns raised by the stakeholders since the early drafts. In particular, the structure and definitions in the proposed draft regulation are very sound. However, industrial water users continue to have significant concerns about the threshold for "substantial percentage" proposed by the Department. We have a fundamental concern that the proposed threshold of 12% limits the ability of water suppliers to avoid creating a disproportionate burden on customer sectors by subtracting their process water deliveries from their gross water use.

It is clearly the intent of the legislation that water suppliers would have liberal access to this capability, to the extent of their ability to quantify their process water deliveries. Instead, the proposed threshold of 12% would make this adjustment available to very few districts, and leave many others in the untenable position of requiring increased conservation from other water users, thus creating a disproportionate burden the statute clearly intends to avoid.

Specifically, we have concerns with Section 596.3, which establishes the criteria for excluding process water use from the gross water use calculation. Subsection (a) establishes a 12 percent threshold to determine if industrial water use constitutes a "substantial percentage" of total water use in the determination of process water exclusions. This proposed threshold is too high and many districts will not meet the 12 percent even though they have substantial industrial water use in their districts. We would recommend reducing this threshold to 5 percent in order to properly implement the legal requirements of SBx7 7.

Further, we would recommend the inclusion of an additional criterion that would allow a water supplier the flexibility to determine if process water must be excluded to avoid a disproportionate burden on another customer sector (see attached language).

In conclusion, we want to underscore the point that the statute prevents urban retail water suppliers from mandating conservation measures that would reduce the use of process water, and allows suppliers to subtract their process water deliveries from gross water use in establishing and meeting the statute's conservation requirements.

There are critical policy reasons for these provisions. Process water, as defined in the bill, is a business input for many industries that are critical for preserving and growing employment in California. For many of these water uses, the only practical way to reduce water use is to decrease production and hence decrease employment. Our state's employment conditions have only declined since SB x7 7 was enacted, and it is now more important than ever for all State agencies to exercise their statutory and regulatory authorities with a view to maximizing employment.

We thank you again for the opportunity to provide our input.

Amend Section 596.3 to read as follows:

§596.3. Criteria for Excluding Industrial Process Water Use from Gross Water Use

The values utilized below shall be consistent with those in the baseline daily per capita and water use target as reported in the suppliers urban water management plans. When calculating its gross water use, an urban retail water supplier may deduct up to 100 percent of process water use if any one of the following criteria is met in its service area:

- (a) Total industrial water use is equal to or greater than ~~42~~ **5** percent of gross water use, or
- (b) Total industrial water use is equal to or greater than 15 gallons per capita per day, or
- (c) Non-industrial water use is equal to or less than 120 gallons per capita per day if the water supplier has self-certified the sufficiency of its water conservation program with the Department of Water Resources under the provisions of section 10631.5 of the Water Code, or
- (d) The population within the suppliers' service area meets the criteria for a disadvantaged community-, **or**

(e) Consistent with Section 596.1(b)(2), a supplier finds that process water must be excluded to avoid a disproportionate burden on another customer sector.

Note: Authority cited: Section 10608.20(i) (1), Water Code. Reference: Sections 10608.20 (e) 10608.20 (h) (1) (A), 10608.24 (e), and 10608.26(d) Water Code.