



July 14, 2015

California Water Commission
Department of Water Resources
1416 Ninth Street
Sacramento, CA 95814

Re: July 9, 2015 Revised Model Water Efficient Landscape Ordinance (MWEL0)

Dear Commissioner:

The California Pool and Spa Association respectfully requests your disapproval of the revised July 9th draft of MWEL0. This new draft is inconsistent with the intent of the legislature in implementing MWEL0.

Chapter 2.7, Section 490(a)(3) of the California Code of Regulations defines the purpose of MWEL0, stating: “that it is the policy of the State to promote the conservation and efficient water use of water and to prevent the conservation and efficient use of water and to prevent the waste of this valuable resource.” Section 490(a)(4) continues with the assertion, “that landscapes are essential to the quality of life in California by providing areas for active and passive recreation and as an enhancement to the environment by cleaning the air and water, preventing erosion, offering fire protection, and replacing ecosystems lost to development.”

Pools and spas are a significant part of the California backyard landscape and indispensable to the quality of life in California in providing an area for families to gather, be active together, educate children on water safety, and enjoy the outdoors. It was not the legislature’s intent to completely destroy a homeowner’s ability to put a pool in their backyard when MWEL0 was first passed as the revised MWEL0 draft may unfortunately entail.

The draft language proposes to reduce the square foot threshold applicable to new residential projects from 5,000 square feet to 500 square feet, implying a new application of MWEL0 to single family resident backyards not anticipated in the original legislation and which will produce discriminatory and unintended consequences. Pools are defined as a water feature by MWEL0, and a permit is required for a pool installation, meaning that because of the draft changes the ordinance would apply to a swimming pool permit for a pool with 500 square feet of water surface area or more – an unprecedented expansion of the ordinance.

The proposed draft would also force a discriminatory practice of enforcement. A standalone pool to be installed in a single family residence backyard would be covered by MWEL0 but an owner installed or contracted new landscaping of the same backyard would not be covered by MWEL0 because such landscaping does not require a permit. This would be covered by

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MWELo due to the permit requirement for the pool, but because there is no credit provided under MWELo for the pool decking or hardscape or effect of a pool cover when the pool is not in use, the estimated total water use calculation would be skewed to the detriment of the yard with a pool, even if the yard with the pool over the long term uses less water than the yard with full landscaping. This is an unacceptable result.

The new draft MWELo implies that the Department is attempting to apply the same rules used for commercial development to an individual's backyard landscaping choices. Commercial landscapes are purely ornamental and are certainly a worthy target of MWELo. A person's home and yard, particularly the privacy of one's backyard, is an entirely different matter. Backyards for families are not purely ornamental and as the legislature stated in the original MWELo language, landscaping has a purpose and is essential to Californians and Californians should be free to choose how to construct their backyards for their own leisure.

Eliminating swimming pools, spas and hot tubs from the definition of water features would resolve any question that MWELo applies to a permit application for a standalone pool in a single family residence or that MWELo applies to an owner installed or contracted backyard landscape design, with or without a swimming pool, spa or hot tub if the project threshold is reduced to 500 sq. ft., as proposed by the draft ordinance.

Alternately, notes should be added to MWELo that clearly indicate that the ordinance does not apply to swimming pools, spas and hot tubs or water features except when they are a part of a public agency or commercial landscape design or part of a developer installed landscape design plan for the common areas of a multi-family residential development or tract home development or model home in a residential tract development. This would clarify the questions raised in the body of these comments above.

A state agency's promulgation of regulations is limited by the scope of the enabling legislation. The revised MWELo draft goes beyond just water use efficiency, which was the intent of the legislature in passing MWELo. The revisions state in Section 490(b)(1) that the new purpose is to "promote the values and benefits of landscaping practices that integrate and **go beyond** the conservation and efficient use of water." To go beyond the efficient use of water was never intended by the legislature. This language is also outside the scope of the Governor's Executive Order B-29-1 which directs the Department of Water Resources to "increase water efficiency standards," **not** limit property owners freedom of choice as to what they can place in their backyards.

Also, Section 2 of Article X of the California Constitution specifies the right to use water is limited only if the use is unreasonable or non-beneficial. It has already been shown by the legislature in the MWELo language that landscapes are essential to the quality of life in California and so the use of water in a residential landscape is reasonable and beneficial. Pools and spas are a reasonable and beneficial structure in an individual's backyard and thus an individual should not be restricted from placing a pool or spa in their residential backyard based on a use of water argument.

CPSA understands that a drought is occurring and has developed material to education the public about the use of pool and spa covers and various methods to efficiently drain a pool for repairs to recycle the water or repairing a pool using a method were the pool service provider is able to make the repairs underwater. However, the MWELO revision makes highly restrictive changes permanent that will be exceedingly detrimental to the pool and spa industry.

The proposed draft regulations are an unprecedented expansion of the scope of MWELO and will result in unanticipated effects likely including litigation, evading and abuse of the regulations, and growth in the underground economy. These unintended consequences can be avoided by either specifically exempting swimming pools, spas and hot tubs from the definition of water features or clearly exempting swimming pools, spas, and hot tubs when they are installed in single resident family homes. This would continue the intent of MWELO as envisioned by the Legislature upon the enactment of MWELO and avoid the discriminatory effect of the proposed draft.

The existing ordinance has already been modified to the point where it is quite stringent on defining the water budgets at 0.7 ET. CPSA also believes that the Governor's directive to increase the water efficiency standards has already been met in the landscape area and that the highly stringent draft changes will only result in negative unnecessary consequence across California.

Sincerely,

A handwritten signature in black ink, appearing to read "John Norwood". The signature is fluid and cursive, with a large initial "J" and "N".

John Norwood
President & CEO