Dear Ms. Townsend,

The Association of California Water Agencies (ACWA) appreciates the opportunity to provide comments regarding the State Water Resources Control Board’s (State Water Board’s) Draft California Water and Wastewater Arrearage Payment Program Guidelines (Draft Guidelines). ACWA represents over 450 public water agencies that collectively deliver approximately 90 percent of the water used for residential, commercial and agricultural purposes in California. ACWA advocated in Washington, D.C. for federal funding that would be available to assist California households and community water systems with COVID-19 related water debt. ACWA participated in the State Budget and legislative processes that led to the appropriation of $985 million for this important program and the statutory language for its implementation. ACWA greatly appreciates that the State Water Board has made this program a top priority and is moving expeditiously to implement it. In general, the Draft Guidelines are well-written and well-organized, which is helpful to implementation of an important program with tight deadlines.

Following are ACWA’s comments regarding the Draft Guidelines.

1. **Comment 1: “Forgiveness” — ACWA suggests that the State Water Board change the proposed references to “forgiveness” to references to “bill credit.”** [Pages 4 and 11]

   There are two references in the draft guidelines to debt/arrearage “forgiveness.” Under this program, the debt is not being forgiven, it is being covered in full or in part with a
credit on the water bill with the use of federal American Rescue Plan funding. The statute (AB 148, Statutes of 2021, Chapter 115) does not use the term “forgiveness.” Rather, it requires community water systems to allocate the payments as “bill credits” to customers. ACWA suggests deleting the word “forgiveness” each time it appears and replacing it with “bill credit” as shown here:

Suggested Amendments on Pages 4 and 11

Page 4, Par. 2: Customer notification – a written notification to residential and commercial water system customers or connections of the amount of debt/arrearage bill credit forgiveness provided by the program. (…)

Page 11, Par. 2: Community water systems that do not implement a tiered debt bill credit forgiveness system must credit arrearages proportionally to the amount of assistance the system receives.

2. Comment 2 – Disbursement Process/Priority – For clarity to the reader, ACWA suggests that the State Water Board incorporate the phrase “the timing of” from the statute in Proposed Section E. [Page 10]

If there are insufficient funds, AB 148 requires the State Water Board to determine the allocation (or division) of the arrearages funding to the community water systems on a proportional basis. Under AB 148, a separate provision sets the requirements for how State Water Board should prioritize “the timing of” disbursement. The Draft Guidelines track with this timing concept, but for readers who are not familiar with the statute, the language could be clearer by incorporating the phrase “the timing of” as shown here:

Suggested Amendments on Page 10

Section E - (...) Staff will prioritize the timing of disbursements to small community water systems. State Water Board staff may also prioritize the timing of disbursements to disadvantaged communities.

3. Comment 3 – Prioritization of Customers – ACWA appreciates the flexibility proposed in Section F.1.1. on this topic. The flexibility is consistent with AB 148. [Pages 10-11.]
AB 148 requires the State Water Board to develop and establish guidelines for community water systems to prioritize residential water customers and customers with the largest arrearages. [Ca. Health and Safety Code, Section 116773.4 (b)(6)(B).] ACWA appreciates that the State Water Board’s Draft Guidelines at Section F.1.1 would provide recommendations with flexibility so that community water systems may develop tiers that are consistent with the statute and work for the system in question. The draft guidelines would recommend, but not require, that a first tier (for residential customers with high arrearages) include, where information is available, low-income customers. If that were proposed as a mandate, it would be inconsistent with the statute, which does not include such a priority among the required priorities. But as currently drafted, the language is recommended. ACWA appreciates this approach.

4. **Comment 4 – Income Data** - The proposed requirement that large water systems must either identify low-income customers by obtaining CARES (electric and gas corporations program) customer income data or other low-income rate assistance program data, or ask customers to self-identify low-income status, is not authorized by AB 148, is not necessary, and would slow down implementation. It should be deleted. A simpler approach can be taken to address the same issue.

In the context of the Payment Plan section, the Draft Guidelines would require water systems to refer customers, with remaining balances after the program funds are credited, to the Low Income Household Water Assistance Program (LIHWAP) administered by the Department of Community Services and Development for potential enrollment in low-income assistance programs. The proposed referral is a good idea. However, the Draft Guidelines would go further to propose that “large” water systems (defined as ones with more than 3,300 connections or a year-long population of 10,000 persons) would be required to obtain data/information regarding customer income status. AB 148 does not tie arrearage funding to income status and does not require, or establish an authority for the State Water Board to require, customer income data/information for this program. ACWA requests that the State Water Board delete this proposal.

In its place, ACWA suggests that the Draft Guidelines recommend that community water systems include a referral statement in the payment plan notice that notes that additional funding or funding information may be available from the California Department of Community Services and Development for low-income households and provide a website link and contact information. This approach will provide the desired referral.
5. Comment 5: Payment Plans:
   A) Proposed Auto-Enrollment – The proposal that water systems must auto-enroll customers with remaining debt into a payment plan and allow customers 30 days to “opt out” of the payment plan is inconsistent with AB 148. [Pages 6 and 12.]

   B) Proposed Minimum Payment Plan Duration - The proposed requirement that the payment plans have a minimum repayment period of 12 months is inconsistent with State law.

   A. Proposed Auto-Enroll Payment Plans

   ACWA recognizes the importance of payment plans. The Draft Guidelines propose in Section B, that water systems participating in the program must auto-enroll customers with remaining debt into a payment plan and allow the customers 30 days to opt-out of the payment plan. This is an “opt-out” approach. However, subdivision (b) of California Health and Safety Code Section 116773.4 (from AB 148, Statutes of 2021, Chapter 115) sets forth an “opt-in” approach:

   **Statutory Language (AB 148) regarding Enrollment in Payment Plan**

   (e)(1) A community water system shall provide customers with arrearages accrued during the COVID-19 pandemic bill relief period a notice that they may enter into a payment plan and that they have 30 days from the date of the notice to enroll in the payment plan.” [Emphasis added.]

   The Guidelines must be consistent with the statute and provide for an opt-in approach.

   B. Payment Plan Duration

   The proposed requirement that the payment plans have a minimum repayment period of 12 months is inconsistent with State law. AB 148 (2021) requires that a payment plan and its associated rules offered by a community water system of any size conform to Chapter 6 (commencing with Section 116900). From that chapter, Paragraph 2 of subdivision (b) of California Health and Safety Code Section 116910 provides:

   **Excerpt from State Statute regarding Payment Plan Duration**
(...)

Ordinarily, the repayment option offered should result in repayment of any remaining outstanding balance within 12 months. An urban and community water system may grant a longer period if it finds the longer period is necessary to avoid under hardship to the customer based on the circumstances of the individual case.

In these provisions, “within 12 months” could allow a payment plan of (for example) 6 months or 9 months. The statute does not provide that the duration has to be 12 months. For a relatively small amount of debt, a payment plan of 12 months can be too long. The statute gives the systems flexibility to develop a reasonable payment plan duration. AB 148 refers to this statute, and the draft guidelines should be consistent with the statute.

C. Suggested Amendments for the Two Payment Plan Issues

To make the final version of the Guidelines consistent with the statute, ACWA suggests the following amendments on Page 6 and Page 12:

Suggested Amendments on Page 6

- Notify customers of the amount credited;
- Auto-enroll Notify customers with remaining debt that they may enroll into a payment plan with a minimum repayment period of 12 months;
- Allow customers 30 days from the date of the notice to opt out of enroll in a payment plan;

Suggested Amendments on Page 12

F.2.2 Payment Plans

If funds are inadequate to eliminate all residential and commercial arrearages, the water system must provide a notice to enroll any residential and commercial customers with remaining balances after the credits have been applied in a payment plan. The notice offering the payment plan and stating that the customer has must provide the customer with 30 days to opt out of enroll in the plan. (...
6) Comment 6: “Section A.2.” There is a reference in proposed section C.3. to “section A.2.” but there is no section A.2. in the Draft Guidelines. [Page 7]

The reference to “Section A.2.” in proposed section C.3. should be deleted.

ACWA appreciates the State Water Board’s consideration of these comments. If you have questions or would like to discuss the comments, please contact Cindy Tuck at cindyt@acwa.com or Adam Quinonez at adamq@acwa.com.

Sincerely,

Cindy Tuck, P.E.
Deputy Executive Director for Government Relations
Association of California Water Agencies

cc: The Honorable E. Joaquin Esquivel, Chair, State Water Board
The Honorable Dorene D’Adamo, Vice Chair, State Water Board
The Honorable Laurel Firestone, Board Member, State Water Board
The Honorable Sean Maguire, Board Member, State Water Board
The Honorable Nichole Morgan, Board Member, State Water Board
Ms. Eileen Sobeck, Executive Director, State Water Board
Mr. Joe Karkoski, Deputy Director, Division of Financial Assistance (DFA), State Water Board
Ms. Leslie Laudon, Former Deputy Director, DFA, State Water Board
Mr. Darrin Polhemus, Deputy Director, Division of Drinking Water (DDW), State Water Board
Mr. Andrew Altevogt, Assistant Deputy Director, DDW, State Water Board
Ms. Kristyn Abhold, Senior Environmental Scientist, DDW, State Water Board
Mr. Dave Eggerton, Executive Director, ACWA
Mr. Adam Quiñonez, State Relations Director, ACWA