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Comment letter submitted via electronic commenting system

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**Re: Association of California Water Agencies' Comments on Draft Regulatory Language for the Advanced Clean Fleets Regulation Public Fleet Requirements**

The Association of California Water Agencies (ACWA) appreciates the opportunity to provide public comments to the California Air Resources Board (CARB) in response to the recent Draft Regulatory Language on Public Fleet Requirements (Draft Rule), and the May 4, 2022 Advanced Clean Fleets Regulation public workshop. ACWA represents more than 460 public water agencies that collectively deliver approximately 90 percent of the water in California for domestic, agricultural, and industrial uses.

We appreciate CARB staff's work to incorporate stakeholder input in the Draft Rule. Specifically, ACWA appreciates the expanded exemption process, inclusion of early action credit and pathway to consider emergency events, and consideration of the complexity of public fleet operations (one size will not fit all). We encourage CARB to continue to engage with stakeholders to finalize a Rule that achieves the important goals to maximize Zero Emission Vehicles (ZEVs) and Near-Zero Emission Vehicles (NZEVs), is feasible and does not impose unintended consequences on water and wastewater agencies' ability to provide essential services, including during emergencies. We request that CARB clearly define an exemption process when ZEVs that are not available to meet water and wastewater agencies' fleets' needs, as well as include our recommendations below:

## 1. ACWA POLICY RECOMMENDATIONS

### A. Establish an Exemption Compliance Pathway to guide public agencies when ZEVs are unavailable or are not cost-effective.

ACWA recommends that CARB clearly define an exemption pathway to guide public agencies' compliance with the Draft Rule where ZEVs are unavailable or are not cost-effective. This pathway would provide certainty to water suppliers in making the necessary investments, while minimizing the potential for adverse impacts in maintaining essential public health and safety services and the delivery of safe and affordable water.

The Exemption Compliance Pathway should include the following:

- 1) CARB "Commercially Available" ZEV List in place of a ZEV Unavailability List: CARB should establish and maintain a list of "commercially available" vehicles, instead of a ZEV Unavailability List to determine the ZEVs (and NZEVs through 2035) that are expected to comply with the regulation and those exempt until a later date when vehicles are determined commercially available. CARB should assess availability and cost-effectiveness to deem a ZEV commercially available to ensure that public water and wastewater agencies can reliably and affordably carry out routine and emergency operations among diverse fleets. Where ZEVs are unable to meet public fleets' unique characteristics, including operating extended hours, in all weather, elevation, and natural disaster conditions<sup>1</sup>, vehicles should be exempt from the regulation until CARB identifies the vehicle as commercially available. We recommend that commercial availability, to justify inclusion on the list, include the following considerations:
  - Is meeting required specifications (duty cycle duration, elevation, climate, disaster conditions) and exists.
  - Is sold on a competitive basis to multiple buyers (cost to purchase ZEVs (and NZEVs through 2035), and the necessary infrastructure to charge ZEVs can be cost prohibitive to public agencies, especially small and medium sized agencies.
  - Is in sufficient supply to be purchased and received in acceptable time frame comparable to available internal combustion emission vehicle (ICEV).
  - Is available from 3 manufacturers that have at least 2 years experience selling vehicles in California.
  - Has at least 25 of each model placed in service.
- 2) ZEV Variance Process: For ZEVs that CARB has determined commercially available, CARB has the authority to grant variances to public water and wastewater systems to temporarily exempt fleet vehicles from the technical infeasibility, impacts to

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<sup>1</sup> Reference [past ACWA letters](#) (submitted March 31, 2021 and September 27, 2021) to reiterate concerns about commercial availability, specs, unknowns, duty cycles

inadequate grid reliability, and impacts to Disadvantaged Communities (DACs). The following variances should be included:

- Technical Infeasibility: Add a (case-by-case) technical infeasibility exemption that allows fleet owners to receive an exemption to purchase, in the event a commercially available vehicle does not meet a fleet's specifications and needs, an ICEV by submitting an application to the CARB Executive Officer. This proposal is intended to inform development of a pathway for fleets that have unique circumstances that fall outside of more conventional circumstances where commercially available models are equipped to meet fleet needs. The submitted application would describe: why a ZEV is not suitable for the fleet's needs or accessible to the fleet owner, show that an ICEV is available and can meet the fleet's needs, and provide supporting documentation. This concept is similar to the technical infeasibility exemption process employed in the South Coast Air Quality Management District's Rule 1196<sup>2</sup> which uses a Technical Infeasibility Certification<sup>3</sup>. ACWA aligns with Joint Public Utilities' Letter approach to this issue, and encourages CARB more broadly to engage local air quality management districts to address overlapping regulatory requirements.
- Grid Reliability: Grid reliability should further be factored into this rulemaking when considering potential exemptions, or adoption timelines. We appreciate that CARB has incorporated many fellow state agencies into workshops and conversations about the Draft Rule at the January 12, and March 10 workshops on Electricity and the Grid. Further consideration must be given since electricity demand and cost is set to rise significantly as fleets ramp up electrification following adoption of the Draft Rule. Recently, state officials from the California Energy Commission, California Public Utilities Commission, California Independent Service Operator, and Governor's Newsom's office forecasted a shortfall of 1700 Megawatts (MW) this year (and as high as 5000 MW if the grid is severely taxed), and are expecting a capacity shortfall of 1800 MW in 2025 when the Draft Rule will already be in effect<sup>4</sup>.
- Impacts to DACs: Additional consideration is needed for DACs to whether the upfront costs of complying with the Draft Rule are financially feasible. As stated in previous comment letters, the cost for water and wastewater agencies to comply with the Draft Rule could result in rate increases that challenge water affordability for customers and investments in other essential climate resilient projects. We recognize that the need to reduce greenhouse gas emissions from public fleets is essential to mitigating climate change, but shifting budget priorities could impair the ability for small and medium sized water and

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<sup>2</sup> SCAQMD regulations are more stringent than CARB regulations [under Rule 1196 public fleets must demonstrate that no alternative fueled vehicles (e.g., CNG, electric) are available in the configuration needed].

<sup>3</sup> SCAQMD TICR Form Example- <http://www.aqmd.gov/docs/default-source/aqmd-forms/fleet/1196-1186-1-ticr.pdf>

<sup>4</sup> <https://www.reuters.com/world/us/california-says-it-needs-more-power-keep-lights-2022-05-06/>

wastewater agencies to implement other important climate resiliency and multi-benefit projects especially in DACs.

B. Merge Declared Emergency Events and Mutual Aid Assistance into a single “Emergency Event” exemption category.

CARB should merge Declared Emergency Events and Mutual Aid Assistance into a single “Emergency Event” exemption category to remove arbitrary limits on what circumstances engender an emergency. Regardless if an event is natural or manmade, public water agencies need the ability and certainty that they can quickly respond to disasters that threaten communities’ health and safety. This includes repairing terrain or infrastructure, or responding to a mutual aid request from another agency. Responding to these events is not “routine”, but is essential. The Mutual Aid Assistance exemption provision, as written, is restrictive especially towards smaller agencies that use fleet vehicles for numerous purposes including: the 14,000 pounds requirement, required demonstration that mobile fueling is not commercially available for needed configurations, and for similar reasons listed above in the comment about snow removal vehicles. Additionally, the 75% requirement is unclear on if it refers to 75% of new purchases, or 75% of the fleet as a whole.<sup>5</sup>

C. Authorize public agency leadership to declare an emergency event.

CARB should authorize public agency general managers to declare an emergency event. The proposed definition of a “Declared Emergency Event”, as written, suggests only a governing board would have the authority to declare an emergency, enabling fleets to use backup vehicles as necessary to mitigate emergencies and not count against the 1000 miles allotted per year to the backup vehicle. Water and wastewater districts have unique circumstances, such as a main breaks with a sink hole, which puts the general public at risk and these should be declared by the responding agency representative once the situation is evaluated. Following declaration to mitigate the emergency event, the general manager should inform the local governing board and CARB Executive Officer of the declared emergency. This proposed approach enables local officials use their expertise to declare emergencies when appropriate and necessary.

D. Delay the 2024 compliance start date to 2025.

ACWA recommends that CARB delay the compliance start date by one year, from January 1, 2024 to January 1, 2025. As written, the Draft Rule would provide less than 12 months for water suppliers to budget and comply with new purchase requirements. Firstly, some of ACWA’s members have already budgeted for purchases over the next five-year period and have noted that, at this point in mid-2022, it would be too late to alter their procurement processes to purchase ZEVs for January 1, 2024<sup>6</sup>. Secondly, we are concerned that 12

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<sup>5</sup> We support the Joint Publicly Owned Utilities Letter approach to incorporating Mutual Aid Assistance into the Emergency Declarations exemption.

<sup>6</sup> As the Draft Rule is currently written, the time frame for receiving purchased ZEV vehicles (due to lack of availability and/or production time) is challenging from practical standpoint for public agency fleets

months does not provide enough time for water and wastewater agencies to prove that target vehicles classes, which are not currently listed on the ZEV Unavailability List and unavailable for purchase, should be exempt from the regulation. Finally, this delay would align the timing and availability of the Draft Rule with the Advanced Clean Truck (ACT) Regulation, which requires manufacturers who sell medium-heavy duty vehicles to sell ZEVs as an increasing percentage of their annual sales beginning in 2024. The ACT requirement is essential to enable the transition to cleaner fleets in accordance with the Draft Rule to ensure that vehicle models are developed to transition fleets, including public fleets, to clean vehicle options. Demands (for complying with Draft Rule) will go unmet if the Draft Rule and ACT do not align in timing.

## 2. ACWA TECHNICAL AND ADMINISTRATIVE RECOMMENDATIONS

### A. Clarify key concepts and the proposed exemption process.

ACWA appreciates that CARB staff has added numerous concepts to the Draft Rule following extensive public commentary, including ACWA's commentary, in this rulemaking process. We request further clarification on the following concepts in the Draft Rule.

- 1) Exclusion of pickup trucks, and tractors from exemption consideration: As drafted, the Draft Rule excludes pick-up trucks and tractors from exemptions. ACWA thinks that this exclusion is inappropriate. Water systems need to ensure that trucks will be able to meet the unique functions, such as covering long-distances to provide mutual aid and the ability to carry heavy loads. There are concerns, for example, that the added weight of a battery and other add-ons will dilute the actual vehicle range potential even though models will be widely available in many configurations.
- 2) Snow removal exemption: For applicable water and wastewater agencies, fleets may be used for multiple purposes that include, but are not limited to, snow removal. The exemption should more broadly consider this distinction to enable flexibility for smaller fleets. For example, some agencies attach plows to service trucks to navigate snow removal. The service truck is not exclusively a snow removal vehicle, but rather a multi-use vehicle that may be deployed for many other fleet functions, and traverse difficult terrain to do so. The snow removal exemption, as written, would not help applicable water agencies' fleets who use their fleets for snow removal because many of our fleets use vehicles for many purposes, and not exclusively snow removal. This is especially true for our smaller members who employ smaller fleets. Agencies, in these situations, will be in the market for purchasing new service vehicles that meet the necessary specifications to fulfill snow removal and other functions.
- 3) Early or Excess ZEV additions- We appreciate that CARB added this provision to incentivize and reward fleets that are able to act early while weathering higher costs

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because fleets will be in compliance with the rule, but unable to carry out fleet functions effectively while waiting for the new vehicle. As stated numerous times during recent CARB workshops, it can take up to 2 years to receive a purchased vehicle depending upon availability (which we note above).

and more unknowns. Additional guidance is needed to inform public agency fleet managers of the options to make use of early or excess ZEV additions. We request the following be clarified:

- a. How will early/excess additions be reported, and when should documentation be submitted?
  - b. Are all new purchases made prior to 2024 countable towards future compliance years once?
  - c. Are all new purchases during 2024-2027, that exceed the 50% requirement, countable towards future compliance years?
- 4) Vehicles Acquired with Public Funds- We encourage CARB to develop an exhaustive list of eligible and ineligible funds to be counted towards new purchases to help public agency fleets navigate public funding sources for new ZEV/NZEV purchases.
- 5) NZEV Consideration- The Draft Rule provides little detail about how NZEVs will be considered in purchases decisions to determine if the performance specifications (specifically minimum range) of available NZEVs, in the absence of a viable ZEV option, is appropriate to purchase before defaulting to an ICEV. During the May 4 workshop, CARB staff offered a much clearer description, and we encourage CARB staff to include that description in the Draft Rule.
- 6) Backup Vehicle Exemption- The Draft Rule should make clear that designated backup vehicles are allowed to travel up to 1,000 miles per vehicle per year, independent of Declared Emergency Events.
- 7) Designated Low Density Counties- The Draft Rule, as written, guarantees public agencies in Low Density Counties that their compliance starts in 2027. However, some public agencies have jurisdictions that run over county lines and have small land parcels in non-low density counties that would be required to start complying in 2024. ACWA recommends replacing “solely” with “primarily” could mitigate this concern.

*Page 2, Section 2013 (d)(1)*

For a public agency whose jurisdiction is not primarily solely in a designated low population county:

- 8) Clearly define reporting requirements and exemption requests- ACWA requests the Draft Rule clarify requirements for filing annual compliance documents and exemption requests, and the timeline for CARB staff to respond. Regarding reporting requirements, we request the following amendments:
- a. Report changes to the fleet annually (instead of within 30 days)
  - b. Provide documents for an audit within 10 days (instead of within 72 hours)
  - c. For Hiring Compliant Fleets, require fleets that are hired to submit documentation to the hiring entity
  - d. Remove Operator Documentation requirement

- 9) Provide Technical Support and Education- Education, especially for smaller agencies, on effective ZEV/NZEV procurement and deployment, maintenance, and charging is needed to successfully comply with the Draft Rule. ACWA requests CARB provide training and education to public agencies.

### 3. CONCLUSION

We appreciate the opportunity to comment on this very important rulemaking. ACWA hopes to continue conversations with CARB staff to work through our submitted comments with additional detail in follow-on meetings with CARB Board Members and staff, as well as during the 45 day comment period and moving forward. Please do not hesitate to contact me at [nickb@acwa.com](mailto:nickb@acwa.com) or (916) 441-4545, if you have any questions regarding ACWA's input. We look forward to future conversations with CARB staff, and CARB Board Members as this Draft Rule continues to be developed.

Sincerely,



Nicholas Blair  
Regulatory Advocate II

cc: The Honorable Liane Randolph, Chair, California Air Resources Board  
The Honorable Sandra Berg, Vice Chair, California Air Resources Board  
The Honorable E. Joaquin Esquivel, Chair, California State Water Resources Control Board  
Mr. Dave Eggerton, Executive Director, Association of California Water Agencies  
Ms. Cindy Tuck, Deputy Executive Director for Government Relations, Association of California Water Agencies