



November 6, 2012

Via email cbsc@dgs.ca.gov

State of California
State and Consumer Services Agency
California Building Standards Commission
2525 Natomas Park Dr., Suite 130
Sacramento, Ca 95833

RE: *Comments on the 2013 California Building Standards Code, Title 24 - HCD and BSC 5-12
2012 Uniform Plumbing Code (UPC) of the International Association of Plumbing and
Mechanical Officials, Part 5*

Dear California Building Standards Commission Code Advisory Committee:

We are writing to express our support for revisions to the California Plumbing Code that would act to increase the capture and use of rainwater throughout the state. The proper management and allocation of California's fragile water resources is critical to our state's economy, quality of life, and environment. With the threat of climate change, recurring drought conditions, and limitations in water exports from the Bay Delta, addressing rainwater as an important source of local water supply is critical. Rainwater (and when properly managed, stormwater) can contribute significantly to local water supply reliability by being captured onsite and reused for irrigation or for indoor non-potable uses, or by being allowed to infiltrate to replenish groundwater. The California Plumbing Code should be revised to support its use, thereby reducing the demand for potable water in our state, in order to alleviate water supply and water quality issues facing California.

Rainwater capture and use is one of the most locally sustainable and energy-efficient water supply strategies available to California. Rainwater capture also improves water quality by reducing the volume of runoff and associated pollution discharged to our state's waterways. Recent reports have highlighted practices that capture or infiltrate rainfall as having the potential to provide hundreds of thousands of acre-feet of water supply to our state each year.¹ Earlier this

¹ See, e.g., NRDC, August 2009, *A Clear Blue Future: How Greening California Cities Can Address Water Resources and Climate Challenges in the 21st Century*, at 4-5 (LID practices that emphasize harvesting rainwater through capture or infiltration, at new and redeveloped residential and commercial properties in urbanized California, have the potential to increase local water supplies by over 400,000 acre-feet per year by 2030), <http://www.nrdc.org/water/lid/>; L.A.

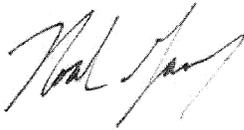
year, AB 1750 (Solorio) was enacted to provide definitions for terms critical to use of rainwater capture or harvesting in California, and to clarify the existing right to implement a rainwater capture system in this state. Nothing in AB 1750 was intended to, nor should be construed as, limiting the sources from which either rainwater or stormwater may be captured and put to beneficial use in California. To this extent, the recent analysis of AB 1750 provided by Mr. Alf Brandt of the Assembly Select Committee on Regional Approaches to Addressing the State's Water Crisis (see Attachment A) correctly states that nothing in either AB 1750 or recent comments by the State Water Resources Control Board on the issue limits rainwater capture solely to rooftops.

While taking all care to protect the public health and the environment, including protection of in-stream flow volumes critical for aquatic life and habitat, the California Building Standards Commission should make every effort to promote the widest application of rainwater capture for re-use as a resource in our state. We suggest that the Commission reject the proposed change to Chapter 17 – Nonpotable Rainwater Catchment Systems, Section 1702.9.3 and revert to the previous definition of collection sources (see Attachment B) and shown below.

1702.9.3 Collection Surfaces. *Rainwater shall be collected from roof surfaces or other manmade, above-ground impervious collection surfaces. Rainwater collected from surface water runoff, vehicular parking surfaces or manmade surfaces at or below grade shall comply with the water quality requirements for on-site treated nonpotable gray water in Section 1604.0.*

Exception: *Collected rainwater or storm water used exclusively for subsurface landscape irrigation.*

Sincerely,



Noah Garrison



Tracy Quinn
Natural Resources Defense Council

Economic Development Corporation, August 14, 2008, *Where Will We Get the Water? Assessing Southern California's Future Water Strategies*, Draft Preliminary Findings, at 9-10, http://www.mwdh2o.com/BlueRibbon/pdfs/Water_SoCalWaterStrategies.pdf; NRDC, November 2011, *Rooftop Rainwater Capture: An Efficient Water Reuse Management Strategy That Increases Supply and Reduces Pollution*, <http://www.nrdc.org/water/files/rooftoprainwatercapture.pdf>.

ATTACHMENT A

California Law Allows Rainwater Capture

AB 1750 Promotes – Does Not Limit – Rainwater Capture

Recent enactment of AB 1750 (Solorio), Chap. 537 of Stat. 2012, reflects the culmination of a 3-year effort to clarify – NOT change – California water rights law regarding rainwater capture. Beginning with the introduction of AB 1834 (Solorio) in 2010, Assemblyman Solorio framed his rainwater capture legislation as an effort to resolve ambiguities in state law. The legislation's final form codified an existing determination by the State Water Resources Control Board that rainwater off rooftops does not require a water right, but left intact existing law that allows rainwater capture more broadly.

Capturing Rainwater Does Not Require a Water Right Under Existing Law. Under California's law of appropriative and riparian water rights, diversion of water from a stream requires either ownership of land "riparian" to a stream or a right to beneficially use water from that stream on land further away. This law comes from both the Common Law and California statute. Specifically, California Water Code Section 1201 defines "public water" that is subject to appropriative water rights (and by reference to riparian rights):

1201. All water flowing in any natural channel, excepting so far as it has been or is being applied to useful and beneficial purposes upon, or in so far as it is or may be reasonably needed for useful and beneficial purposes upon lands riparian thereto, or otherwise appropriated, is hereby declared to be public water of the State and subject to appropriation in accordance with the provisions of this code.

Therefore, water that has not yet entered a "natural channel" – such as rainwater before it enters a stream – is not public water requiring a water right.

AB 1750 Adopted Existing SWRCB Determination. After Senate Environmental Quality Committee (EQ) amended AB 1750 into a form that elicited intense opposition, Assemblyman Solorio deleted much of the bill. (Former bill supporters indicated they would fight the bill on the Senate floor if it proceeded with the EQ amendments.) EQ staff had objected to allowing rainwater used indoors unless the Department of Public Health approved, and the Committee followed the staff recommendation to require DPH "concurrence" before the California Building Standards Commission (CSBC) could adopt building standards for indoor water use. Deleting the authorization for use of rainwater eliminated EQ jurisdiction and its authority to object to the amendments. Assemblyman Solorio replaced the deleted language with a codification of a response by the State Water Resources Control Board (SWRCB) to a question on its website – as to whether rainwater capture was allowed. This replacement language intentionally eliminated any barriers to the CSBC adopting building standards for rainwater capture. The narrowness of this codification reflects the intent to stay out of the way of current CBSC process.

AB 1750 and SWRCB Affirm Right to Capture Rainwater in California. Neither the SWRCB's answer nor AB 1750's codification limits rainwater capture to rooftops. Instead, they affirm the right to capture rainwater that has not entered a "natural channel." The language references rooftops as a device that promotes public recognition. It does not include any language that would limit rainwater capture and the savings clauses in Section 10572 include an affirmation that the bill does not "[c]hange existing water rights law." The definition of "rainwater" applies only to the Water Code, not the Health and Safety Code under which CBSC acts. Allowing rainwater capture without a water right therefore remains the law of California. AB 1750 and the SWRCB determination are an affirmation, not a limitation, on water rights.

ATTACHMENT B

STATE OF CALIFORNIA
STATE AND CONSUMER SERVICES AGENCY
CALIFORNIA BUILDING STANDARDS COMMISSION
2525 NATOMAS PARK DR., SUITE 130
SACRAMENTO, CA 95833
(916) 263-0916 Phone
(916) 263-0959 Fax
Email: cbsc@dgs.ca.gov

Office Use Item No. BSC 05-12
HCD 05-12

PARTICIPATION COMMENTS FOR THE NOTICE DATED OCTOBER 23, 2012
Written comments are to be sent to the above address.

WRITTEN COMMENT DEADLINE: NOVEMBER 6, 2012

Date: 11/6/2012

From:

Tracy Quinn
Name (Print or type)


(Signature)

Natural Resources Defense Council

Agency, jurisdiction, chapter, company, association, individual, etc.

1314 2nd Street Santa Monica CA 90401
Street City State Zip

I/We do not agree with:

The Agency proposed modifications As Submitted on Section No. 1702.9.3

and request that this section or reference provision be recommended:

Approved Disapproved Held for Further Study Approved as Amended

Suggested Revisions to the Text of the Regulations:

~~**1702.9.3 Collection Surfaces.** Rainwater shall be collected only from building roof surfaces.~~

1702.9.3 Collection Surfaces. Rainwater shall be collected from roof surfaces or other manmade, above-ground impervious collection surfaces. Rainwater collected from surface water runoff, vehicular parking surfaces or manmade surfaces at or below grade shall comply with the water quality requirements for on-site treated nonpotable gray water in Section 1604.0.

Exception: Collected rainwater or storm water used exclusively for subsurface landscape irrigation.

Reason: We suggest that the Commission reject the proposed change to Chapter 17 – Nonpotable Rainwater Catchment Systems, Section 1702.9.3 and revert to the previous definition of collection sources. Earlier this year, AB 1750 (Solorio) was enacted to provide definitions for terms critical to use of rainwater capture or harvesting in California, and to clarify the existing right to implement a rainwater capture system in this state. Nothing in AB 1750 was intended to, nor should be construed as, limiting the sources from which either rainwater or stormwater may be captured and put to beneficial use in California. To this extent, the recent analysis of AB 1750 provided by Mr. Alf Brandt of the Assembly Select Committee on Regional Approaches to Addressing the State’s Water Crisis (see Attachment A) correctly states that nothing in either AB 1750 or recent comments by the State Water Resources Control Board on the issue limits rainwater capture solely to rooftops.

Rainwater capture and use is one of the most locally sustainable and energy-efficient water supply strategies available to California. Rainwater capture also improves water quality by reducing the volume of runoff and associated pollution discharged to our state’s waterways. Recent reports have highlighted practices that capture or infiltrate rainfall as having the potential to provide hundreds of thousands of acre-feet of water supply to our state each year¹. While taking all care to protect the public health and the environment, including protection of in-stream flow volumes critical for aquatic life and habitat, the California Building Standards Commission should make every effort to promote the widest application of rainwater capture for re-use as a resource in our state.

¹ See, e.g., NRDC, August 2009, *A Clear Blue Future: How Greening California Cities Can Address Water Resources and Climate Challenges in the 21st Century*, at 4-5 (LID practices that emphasize harvesting rainwater through capture or infiltration, at new and redeveloped residential and commercial properties in urbanized California, have the potential to increase local water supplies by over 400,000 acre-feet per year by 2030), <http://www.nrdc.org/water/lid/>; L.A. Economic Development Corporation, August 14, 2008, *Where Will We Get the Water? Assessing Southern California’s Future Water Strategies*, Draft Preliminary Findings, at 9-10, http://www.mwdh2o.com/BlueRibbon/pdfs/Water_SoCalWaterStrategies.pdf; NRDC, November 2011, *Rooftop Rainwater Capture: An Efficient Water Reuse Management Strategy That Increases Supply and Reduces Pollution*, <http://www.nrdc.org/water/files/rooftoprainwatercapture.pdf>.

HEALTH & SAFETY CODE SECTION 18930

SECTION 18930. APPROVAL OR ADOPTION OF BUILDING STANDARDS; ANALYSIS AND CRITERIA; REVIEW CONSIDERATIONS; FACTUAL DETERMINATIONS

- (a) Any building standard adopted or proposed by state agencies shall be submitted to, and approved or adopted by, the California Building Standards Commission prior to codification. Prior to submission to the commission, building standards shall be adopted in compliance with the procedures specified in Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code. Building standards adopted by state agencies and submitted to the commission for approval shall be accompanied by an analysis written by the adopting agency or state agency that proposes the building standards which shall, to the satisfaction of the commission, justify the approval thereof in terms of the following criteria:
- (1) The proposed building standards do not conflict with, overlap, or duplicate other building standards.
 - (2) The proposed building standard is within the parameters established by enabling legislation and is not expressly within the exclusive jurisdiction of another agency.
 - (3) The public interest requires the adoption of the building standards.
 - (4) The proposed building standard is not unreasonable, arbitrary, unfair, or capricious, in whole or in part.
 - (5) The cost to the public is reasonable, based on the overall benefit to be derived from the building standards.
 - (6) The proposed building standard is not unnecessarily ambiguous or vague, in whole or in part.
 - (7) The applicable national specifications, published standards, and model codes have been incorporated therein as provided in this part, where appropriate.
 - (A) If a national specification, published standard, or model code does not adequately address the goals of the state agency, a statement defining the inadequacy shall accompany the proposed building standard when submitted to the commission.
 - (B) If there is no national specification, published standard, or model code that is relevant to the proposed building standard, the state agency shall prepare a statement informing the commission and submit that statement with the proposed building standard.
 - (8) The format of the proposed building standards is consistent with that adopted by the commission.
 - (9) The proposed building standard, if it promotes fire and panic safety as determined by the State Fire Marshal, has the written approval of the State Fire Marshal.