



May 19, 2026

The Honorable Kenneth Kies
Assistant Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220
Kenneth.Kies@treasury.gov

Dear Assistant Secretary Kies:

We are writing to encourage the Treasury Department (Treasury) and the Internal Revenue Service (IRS) to issue guidance under Section 136 of the Internal Revenue Code (Code) to clarify that certain water conservation measures qualify as “energy conservation measures” as defined in this section. The effect of such guidance would be to exclude rebates or other subsidies relating to these measures from gross income. This letter follows up from prior correspondence on this issue from the Western Urban Water Coalition (WUWC) and supportive legislators to Treasury and other agencies since 2015, the most relevant of which is included herein:

Exhibit A: August 24, 2023, letter from WUWC to Commissioner Touton of the Bureau of Reclamation. This letter is the most recent agency correspondence on this issue

Exhibit B: May 12, 2017, letter from Matt Kellogg, Deputy Assistant Secretary, Office of Legislative Affairs, Department of Treasury. This letter, in response to a letter from Senate advocates (see Exhibit C), indicates prior Treasury support for the position advocated for in this letter.

Exhibit C: February 3, 2017 letter from Senators Feinstein, Heller, Flake, Gardner, Cantwell, Bennet, and Murray to Acting Secretary of the Treasury Adam Szubin. This letter requests clarifying guidance under Section 136 of the Code.

I. Section 136

Section 136 excludes from gross income the value of any subsidy provided, directly or indirectly, by a public utility to a customer for the purchase or installation of any energy conservation measure. The term “energy conservation measure” means any installation or modification primarily designed to reduce consumption of electricity or natural gas or to improve the management of energy demand with respect to a dwelling unit. The term “public utility” means a person engaged in the sale of electricity or natural gas to residential, commercial, or industrial customers for use by such customers.

Treasury and the IRS have not issued regulations or any guidance under Section 136.

II. Water Conservation Subsidies

Urban utilities throughout the arid western United States have implemented programs to incentivize water conservation as a means of managing resources. These programs include the provision of rebates or other subsidies to encourage consumers to engage in conservation measures, consistent with Section 136. Moreover, these measures, by conserving water, also conserve energy. To give three examples of actual programs implemented by WUWC members:

1. Rebates to encourage the adoption of high-efficiency indoor plumbing fixtures that reduce the heating load on residential energy systems.¹
2. Turf replacement initiatives which eliminate the energy consumption required for landscape irrigation pumping.²
3. Adoption of advanced metering and leak detection technologies that lower the energy used for delivering and filtering municipal water.³

When water usage is reduced, the energy required for pumping, treating, and heating water is reduced, thus reducing energy consumption.

This relationship between water conservation and energy conservation is not accidental, but is inherent to the relationship between the two resources and has been studied extensively. Federal agencies have consistently recognized this “water-energy” nexus.⁴ Further, several federal programs already specifically target water conservation as a mechanism for reducing energy usage. For example, the Bureau of Reclamation’s WaterSMART program provides billions of dollars in funding for projects that result in quantifiable water savings, like municipal metering and automation that reduce the energy required for water delivery.⁵ Reclamation’s WaterSMART program is currently funded at over \$41 million in fiscal year 2026.

III. Clarifying Guidance Under Section 136

Recognizing the importance of water conservation, WUWC, other water organizations, and bipartisan legislators have long requested guidance from Treasury and the IRS to clarify that

¹ Denver Water, [Residential Rebates for Toilets](#); San Francisco Public Utilities Commission, [Ultra-High Efficiency Toilet Rebate Program](#).

² Southern Nevada Water Authority, [Water Smart Landscapes Rebate Program](#); Metropolitan Water District of Southern California, [Turf Replacement Program](#).

³ Albuquerque Bernalillo County Water Utility Authority, [HomeConnect](#); East Bay Municipal Utility District, [Flowmeter Rebate](#)

⁴ Executive Order 13956, [Modernizing America’s Water Resource Management and Water Infrastructure](#), 85 Fed. Reg. 65647 (Oct. 2020) (promoting integrated planning and including the Department of Energy on interagency Water Subcabinet); Government Accountability Office, [Energy-Water Nexus – Amount of Energy Needed to Supply, Use, and Treat Water Is Location-Specific and Can Be Reduced by Certain Technologies and Approaches](#), GAO-11-225 (Mar. 2011); Department of Energy, [The Water-Energy Nexus: Challenges and Opportunities](#) (Jun. 2014); Congressional Research Service, [Energy-Water Nexus: The Water Sector’s Energy Use](#) (Jan. 2017).

⁵ Bureau of Reclamation, [WaterSMART Project Selections Overview](#) (noting that Reclamation has selected 2,414 projects to be funded with \$3.37 billion in WaterSMART funding).

water conservation measures are energy conservation measures. This means rebates and subsidies that are part of these important water conservation program that are provided by public water utilities to their customers would be excluded from gross income under section 136. Such guidance could take the form of either a regulation or subregulatory guidance. It would have a major impact on water providers and customers and promote vitally important water conservation. With respect to such guidance, we wish to note the following:

This guidance is appropriate due to the water-energy nexus. Saving water also saves the energy necessary for pumping, treating, and heating water. Water conserving measures are energy conserving measures.

Guidance is permitted by statute. There is currently no regulatory or other guidance under section 136, and thus no guidance that defines “energy conservation measure.” Given the clear scientific support documenting energy conservation achieved through water conservation, we believe it would be appropriate to define the term to include water conservation measures.

We do note, however, that section 136(c) defines “energy conservation measures” as an installation or modification “primarily designed” to reduce electricity or natural gas consumption. Supreme Court case law, in *Malat v. Riddell*,⁶ has interpreted “primarily” to mean “of first importance.” Given the water-energy nexus, water conservation measures do indeed meet this bar. Moreover, the term “primarily,” in this context should be interpreted liberally to mean a “substantial” purpose. This is consistent with the purpose of section 136 intended to incentivize resource conservation. In a similar context, Treasury has recently implied that “primarily” can encompass substantial, dual-purpose benefits. Specifically, in the proposed regulations for the commercial clean vehicle credit of section 45W of the Code, Treasury adopted a flexible approach to the requirement that a vehicle be manufactured “primarily” for use on public roads, ensuring that substantial dual-use capabilities (such as off-road machinery) do not disqualify the vehicle.⁷ By the same logic, and given the well-established nexus between water use and energy use, water conservation measures possess a substantial design purpose to reduce the energy required for municipal pumping, treating, and heating. A dual benefit should not disqualify a measure from being “primarily designed” to manage energy demand.

Treasury has previously recognized that water conservation measures are primarily designed to reduce consumption of electricity or natural gas or to improve the management of energy demand. In a May 12, 2017, letter (see Exhibit B), Treasury responded to a bipartisan request from seven U.S. Senators asking for clarification that water conservation rebates are covered under the energy conservation exclusion of section 136. Treasury’s letter recognizes that there is a valid basis for including energy and water conservation together under section 136, and suggested that the issue could be addressed on a case-by-case basis, i.e., through requests for private letter rulings (PLR).

Furthermore, the IRS has, in at least one instance, concluded that certain water conservation rebates are appropriately excluded from gross income. In PLR 201527018, a city

⁶ 383 U.S. 569, 572 (1966).

⁷ Department of the Treasury, [Section 45W Credit for Qualified Commercial Clean Vehicles](#), 90 Fed. Reg. 3506, 3531 (Jan. 2026) (allowing machinery like “digger derrick trucks,” used for drilling off-road holes, to qualify as a “primarily” on-road vehicle).

implemented a program reimbursing homeowners for the installation of certain devices on private property (the nature of which is redacted in the publicly released ruling). The IRS ruled that the reimbursements did not constitute gross income to the participating property owners and, accordingly, did not give rise to an information reporting obligation under section 6041. Although the ruling does not address section 136 and is nonprecedential, it provides support for the position that, in appropriate circumstances, government-provided rebates, similar to water conservation subsidies, may be excluded from income.

While we are pleased with the prior recognition that water conservation rebates may be covered by section 6041 of the Code, there is a need for guidance that provides such a result without requiring a case-by-case approach. There are a broad number of water conservation programs and utilities that are implementing such programs, and it would be impracticable for each to separately request a private letter ruling. Moreover, as described above, the nexus between water conservation and energy efficiency is clear and does not need a case-by-case determination. Treasury and the IRS can issue a general rule consistent with the statute. Additionally, a general rule here is consistent with the administration's goals of deregulation and reducing the burden on taxpayers and businesses.⁸ By providing a general rule, Treasury and the IRS will reduce the administrative burden on utilities and provide certainty to both utilities and consumers.

Guidance would not be inconsistent with Congressional intent. Finally, we want to acknowledge the legislative history of section 136, while noting that it does not foreclose regulatory action. Section 136 was enacted in 1992 and amended in 1996. The legislative history indicates that the original language proposed for Section 136, in an unenacted 1991 bill, encompassed measures related to electricity, natural gas, and water conservation. However, the revenue impact of this trifecta of tax exclusions was deemed too expensive at that time and the final language enacted in 1992 deleted references to water conservation.⁹ Members of Congress have continuously introduced legislative proposals to include water conservation in section 136 of the Code, most recently in 2025 through S. 857 and H.R. 1871. The legislative proposals expressly define water conservation and exclude subsidies relating to such measures from gross income. The proposals also expand the definition of public utility to include water utilities.

The history here may be viewed to suggest that, while water conservation may be worthy goal, Congressional action is required, but this is not the best reading of the statute for several reasons. First and foremost, recent studies document that water conservation is energy conservation, due to the water-energy nexus. Water conservation measures come within the statutory language, even though the language did not explicitly include them in 1992.

In addition, we stress that regulatory guidance would not render legislative efforts superfluous. While we encourage Treasury to act, regulatory guidance would only be limited to subsidies or rebates provided by "public utilities," as defined under current law i.e., persons engaged in the sale of electricity or natural gas to residential, commercial, or industrial customers

⁸ Executive Order 14192, [Unleashing Prosperity Through Deregulation](#), 90 Fed. Reg. 9065 (Jan. 2025); Executive Order 14270, [Zero-Based Regulatory Budgeting to Unleash American Energy](#), 90 Fed. Reg. 15643 (Apr. 2025); Executive Order 13783, [Promoting Energy Independence and Economic Growth](#), 82 Fed. Reg. 16093 (Mar. 2017).

⁹ Subcommittee on Energy and Agricultural Taxation of the Committee on Finance, United States Senate, S. Hrg. 102-264, at 84 (June 13 & 14, 1991).

for use by such customers. Thus, subsidies relating to water conservation provided by a utility not engaged in the sale of electricity or natural gas to customers would not be eligible for the exclusion under section 136. This is not an ideal policy result, and we acknowledge that legislation is necessary to change this definition to ensure that water utilities and customers throughout the United States are not discouraged from implementing important water conservation programs and measures.

Regulatory action serves an important policy purpose. Finally, we reiterate the important policy considerations that guidance in this area would advance. Due to population shifts, the increasing prevalence of data centers, and broader economic and geopolitical factors, effective management of water and energy resources—both in the western United States and nationwide—is increasingly critical. In light of these considerations, and the role that water conservation subsidies can play in promoting efficient resource use, as well as the clear statutory authority, we respectfully urge Treasury to provide guidance on this issue and would welcome the opportunity to engage further.

If you have any questions, please contact me at (951) 203-2804 or Walshj@emwd.org.

Sincerely,

A handwritten signature in cursive script that reads "Jolene Walsh".

Jolene Walsh
WUWC Chairman
Senior Director, Policy and Government Affairs
Eastern Municipal Water District

EXHIBIT A



August 24, 2023

The Honorable Camille Calimlim Touton
Commissioner
Bureau of Reclamation
1849 C Street NW, No. 7654
Washington, D.C. 20240

Dear Commissioner Touton:

The Western Urban Water Coalition (WUWC)¹ appreciates the participation at our recent coalition meeting and the opportunity to urge the Bureau of Reclamation to work with the U.S. Department of Treasury to interpret section 136 of the Internal Revenue Code (IRC) covering income tax exclusions that are vital to addressing the consequences of climate change, excessive heat, drought and other dire conditions throughout the Western states. The exclusion of water conservation and stormwater management rebates from personal income tax is an action that has virtually no effect on federal tax revenues but will have a major impact for water users and customers and promote vitally important water conservation. This same proposed exclusion has been in all previous versions of the predecessor legislation to the Inflation Reduction Act (IRA) and, indeed, has been pursued by water supply utilities for many years (a copy of the proposed language is attached). A confirmation that section 136 includes exclusion from taxable income for water conservation and stormwater management rebates is entirely in keeping with the content and purpose of the section 136, which already calls for exclusion from taxable income for energy conservation; parity is simply needed for essential water conservation and stormwater management as well. Now is the time to for the Department of the Treasury to issue a determination that section 136 applies to water conservation and stormwater management rebates, rather than continue to postpone a water conservation/stormwater management and climate change provision at a time when water supply has never been more important.

¹ WUWC is a coalition of 20 of the largest western water utilities formed more than 30 years ago to address the unique water issues facing the western United States. Its members serve over 40 million water consumers in major metropolitan areas in seven western states. Members include: Arizona (Central Arizona Project, City of Phoenix and Salt River Project); California (Eastern Municipal Water District, City of Los Angeles Department of Water and Power, The Metropolitan Water District of Southern California, San Diego County Water Authority, Santa Clara Valley Water District, City and County of San Francisco Public Utilities Commission, and East Bay Municipal Utility District); Colorado (Aurora Water, Colorado Springs Utilities, and Denver Water); Nevada (Las Vegas Valley Water District, Southern Nevada Water Authority, and Truckee Meadows Water Authority); New Mexico (Albuquerque Bernalillo County Water Utility Authority); Utah (Salt Lake City Public Utilities and Washington County Water Conservancy District); and Washington (Seattle Public Utilities).

Commissioner Touton
August 24, 2023

This IRC section 136 determination is urgently needed to address the unnecessary tax impediments to the important and effective programs of water supply utilities to promote energy and water conservation and management, including stormwater. Water supply utilities throughout this country have been offering rebates to their residential customers to assist in advancing this nation's energy and infrastructure goals. The Department of the Treasury should confirm that these water conservation rebates are exempt from federal income tax similar to energy conservation measures. Federal agencies have consistently recognized the strong nexus between energy and water and the importance of both resources to the economy of the United States. The Department of the Treasury can help advance these important policy goals by establishing a policy position that water conservation and stormwater management rebates are covered by the current exclusion from taxable income for energy conservation in section 136 of the IRC.

The nation's public water supply utilities, the Bureau's partners in water and energy conservation, face significant challenges in managing supplies and promoting water quality in the face of limited budgets and increasing infrastructure challenges. Water saving measures, including measures targeted at reducing outdoor water consumption in areas with fluctuating water supplies, have assisted public water utilities and their residential customers in saving both energy and water. Significant water conservation and management measures have been advanced by urban utilities throughout the country in states including Nevada, Washington, Colorado, Arizona, California, and Texas. Southern Nevada, for example, has cut its overall water consumption by more than 23% over the past twenty years, even though the region added more than 800,000 residents over that same period. Nevada and its businesses and residents did this by deploying a variety of innovative water conservation programs, including subsidies to residential water users. By doing so, they reduced both water consumption and energy consumption and better managed both their energy and water needs. In Colorado, water conservation programs, including residential shower head exchange programs and subsidies for incorporating certain conservation measures, achieved similar benefits in water and electricity and natural gas savings. Equally important, these programs assisted utilities in better managing demands and the need for energy and water infrastructure to meet these demands.

Because of the water needed to produce energy, and the energy needed to store, transport, and distribute water, when customers conserve water, public water utilities and their customers advance the nation's energy and greenhouse gas goals. One important tool water utilities use to accomplish water conservation is through rebates and other subsidies paid to their customers. Taxing the recipients of rebates issued by utilities to their customers, including rebates issued for the replacement of turf grass in drought-prone areas and installation of rain barrels and other devices, diminishes the value of these rebates to the recipient and therefore the incentive to conserve energy and water. Recognizing this, many states where the rebates are issued have specifically excluded them from taxation by the state. At present, however, there is no clear guidance exempting these rebates from federal tax, despite the clear linkage to energy savings.

Water conservation and stormwater management measures clearly result in energy savings and should be categorically excluded from taxation under IRC section 136, which specifically excludes energy conservation rebates from federal income tax. Under current federal policy and management, the conservation of water and energy through the operation of utilities is inextricably linked and very difficult to separate. While the Internal Revenue Service will

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examine the exclusion issue on a utility-by-utility basis, such an approach is not practical or realistic in most cases due to the energy/water nexus and in many cases places the consumer in the unfair position of being taxed or not taxed simply due to their geographic location and the organizational structure of the particular water supplier that serves them.

The Department of the Treasury considered this issue in its May 12, 2017 letter responding to a bipartisan request from seven U.S. Senators asking for clarification that water conservation rebates are covered under the energy conservation exclusion of section 136. Treasury's letter recognizes that there is a valid basis for including energy and water conservation, including stormwater management, together under section 136, and what is urgently needed now is consideration of a general policy statement or guidance that provides for such a result without the need for a case-by-case approach.

This is an important issue for the water utility industry and the efficient use and development of the nation's energy and water infrastructure. We request your help in urging the Department of the Treasury to issue a concurrence that water conservation rebates are critical components of an energy conservation program and provide policy guidance that water conservation subsidies are not subject to federal taxation as income to the customers. Utilities and their customers need guidance that the residential customers can use with confidence, without waiting for an individual ruling applicable to their particular supplier or without being subject to variation in treatment based solely on the utility providing the conservation rebate. General policy guidance confirming the exclusion of water conservation and stormwater management rebates under section 136 will greatly facilitate water and energy programs of the Bureau, the Department of the Interior and the infrastructure policy of this Administration.

We look forward to working with you on this matter.

* * *

Thank you for the opportunity to provide these comments. For more information, please contact me at (303) 739-7378 or mbrown@auroragov.org, or WUWC's national counsel, Ted Boling, at (202) 661-5872 or TedBoling@perkinscoie.com.

Very truly yours,



Marshall P. Brown
Chairman

EXHIBIT B



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

May 12, 2017

The Honorable Jeff Flake
United States Senate
Washington, DC 20510

Dear Senator Flake:

Thank you for the additional information on the important link between water conservation and energy conservation. We understand there are significant challenges with respect to adequate water supply and ensuring water quality, and we know how important water-saving measures can be. We also understand the concern payors and payees have raised that treating these rebates as taxable income could deter participation in these programs.

As we have previously noted, a broad exemption for all water conservation programs as well as storm water management programs can only be implemented by way of a statutory exemption. Based on information provided by you and other advocates for these programs, however, it appears as though some utilities could be in a position to explore the application of the exclusion from income for energy conservation subsidies in I.R.C. §136 to water conservation programs that provide significant energy saving as well. A qualifying utility that can attest to the energy savings and conservation that results from water conservation program(s) could seek an IRS ruling regarding the availability of section 136 treatment for such program(s) from the IRS Office of Chief Counsel. Such rulings are taxpayer-specific guidance based on the facts presented in the particular taxpayer's situation.

Thank you again for your letter. If you have additional questions, please contact Brad Bailey, Deputy Assistant Secretary for Tax and Budget, Office of Legislative Affairs, at (202) 622-1900.

Sincerely,

Matt Kellogg
Deputy Assistant Secretary
Office of Legislative Affairs

Identical letter sent to:

The Honorable Dianne Feinstein
The Honorable Dean Heller
The Honorable Cory Gardner
The Honorable Maria Cantwell
The Honorable Michael F. Bennet
The Honorable Patty Murray

EXHIBIT C

United States Senate

WASHINGTON, DC 20510

February 3, 2017

The Honorable Acting Secretary Adam Szubin
Department of Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

Dear Acting Secretary Szubin:

We are writing to request that the Department of the Treasury clarify that water conservation rebates and storm water management rebates, including the installation of green infrastructure, can be excluded from residents' taxable income. We have recently received information showing significant, measurable energy savings that result from water conservation. Given the compelling data we have received, we have reason to believe that water conservation rebates should be considered exempt from inclusion in gross income under 26 U.S.C. § 136 (Section 136), which provides such an exemption for energy conservation measures.

Significant conservation measures are underway at urban utilities throughout the country, including in Nevada, Washington, California, Colorado, and Arizona. For example, conservation programs in Arizona have been very effective. Over the past five years, rebates of over \$4,500,000 have contributed to a growing population and economy with shrinking water use. In Colorado, water utilities have also been working to implement conservation programs that have the benefit of saving water and electricity or natural gas, including residential shower head exchange programs. Nevada water managers have deployed a variety of innovative water conservation programs that are yielding immense benefits. Southern Nevada alone cut per capita consumption over the past decade by over 30 percent even though the region has added over 200,000 new residents in that same time span. In Washington state's largest metropolitan county, \$4,800,000 in rebates for rain gardens have helped manage nearly 20 million gallons of storm water, the most cost-effective method available.

In addition, we have attached a letter from the Director of the Center for Water-Energy Efficiency at the University of California, Davis, which details the Center's findings that water conservation in California in Summer 2015 resulted in energy savings equivalent to those of energy efficiency programs. Notably, their research found that water conservation-related greenhouse gas savings over the Summer of 2015 were equivalent to taking about 50,000 cars off the road for a year. Additionally, the Los Angeles Department of Water and Power has estimated total energy savings of approximately 24,400 MWh for fiscal year 2015/16 from the residential and commercial

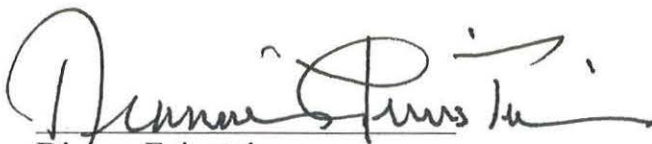
indoor and outdoor water conservation rebates that it provides. These figures are even higher after including energy savings from hot water heating and other customer end uses.

Section 136 was added in 1992, and there is now a clear nexus between saving water and saving energy. Water conservation results in energy savings, including reductions in energy use for heating and for treatment, and it provides significant benefits for enhancing water and energy infrastructure by helping to modernize equipment and facilities and make user systems more efficient and cost effective. We believe the federal agencies involved in energy and water conservation and the Department of the Treasury currently have the authority to interpret Section 136 more broadly.

It appears that many, if not all, water conservation rebates result in per capita energy savings. The same is true of rebates designed to collect, treat, and use storm water or reduce storm water inflows into combined sewers. There are many challenges impacting our nation's water supplies, and it is imperative to maintain the effectiveness of incentives for residents to participate in water efficiency and storm water management programs. We would like to request that you clarify that in cases where a public utility can attest to energy savings from water conservation and storm water management measures, such rebates issued by a public utility can be excluded from gross income under Section 136. This is in line with the process many utilities already follow for energy conservation measures.

We look forward to working with you to ensure the success of water conservation and water quality efforts in our states.

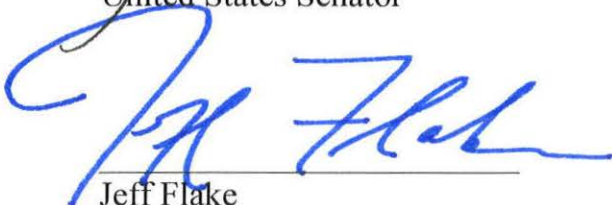
Sincerely,



Dianne Feinstein
United States Senator



Dean Heller
United States Senator



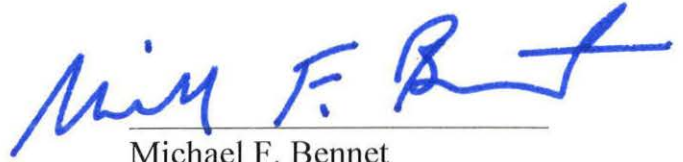
Jeff Flake
United States Senator



Cory Gardner
United States Senator



Maria Cantwell
United States Senator



Michael F. Bennet
United States Senator



Patty Murray
United States Senator