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GOVERNOR



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ENVIRONMENTAL PROTECTION

State Water Resources Control Board

NOTICE OF PROPOSED EMERGENCY RULEMAKING

April 29, 2015

Prohibition of Activities and Mandatory Actions during Drought Emergency

Required Notice of Proposed Emergency Action

Government Code section 11346.1, subdivision (a)(2) requires that, at least five working days prior to submission of a proposed emergency regulation to the Office of Administrative Law (OAL), the adopting agency must provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After the submission of the proposed emergency action to OAL, OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6. This document and the accompanying information provide the required notice.

Proposed Emergency Action

On January 17, 2014, Governor Brown declared a drought state of emergency. On April 25, 2014 the Governor signed an Executive Order calling on the State to redouble state drought actions. Among other things, the Executive Order directed the State Water Board to adopt emergency regulations as it deems necessary, pursuant to Water Code section 1058.5, to ensure that Urban Water Suppliers implement drought response plans to limit outdoor irrigation and other wasteful water practices.

Water Code section 1058.5 grants the State Water Resources Control Board (State Water Board) the authority to adopt emergency regulations in certain drought years in order to: "prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion, of water, to promote water recycling or water conservation, to require curtailment of diversions when water is not available under the diverter's priority of right, or in furtherance of any of the foregoing, to require reporting of diversion or use or the preparation of monitoring reports."

On July 15, 2014, the State Water Board adopted [Resolution 2014-0038](#), which adopted an emergency regulation for water conservation that added new sections to title 23 of the California Code of Regulations. That emergency regulation became effective on July 28, 2014, upon approval by the Office of Administrative Law and filing with the Secretary of State. On March 17, 2015, the State Water Board amended and readopted the emergency regulation through adoption of Resolution 2015-0013, and the amended and readopted regulation took effect on March 27, 2015, upon approval by the Office of Administrative Law and filing with the Secretary of State. On April 1, 2015, Governor Brown signed Executive Order B-29-15, directing the State Water Board to, among other things, impose restrictions to achieve a statewide 25 percent reduction in potable urban water usage through February 2016, as compared to the amount used in 2013. On May 5 the State Water Board will consider a resolution to amend and readopt the existing emergency regulation, with some significant updates to address the actions called

for in Executive Order B-29-15, for an additional 270 days. The proposed updated emergency regulation consists of four main types of requirements: a prohibition on certain irrigation practices; an order that all urban water suppliers, as defined, reduce their total potable water production by a defined percentage; an order that other distributors of public water supply, as defined, reduce potable water consumption; and an order for all self-supplied commercial, industrial, and institutional water users to reduce potable water usage. The proposed regulation also includes reporting requirements and new tools to ensure compliance.

Proposed Text of Emergency Regulations

See the attached proposed text of the emergency regulation.

Finding of Emergency (Gov. Code, § 11346.1, subd. (b))

The State Water Board finds that an emergency exists due to severe drought conditions and that adoption of the proposed emergency regulation is necessary to address the emergency. California is currently in the fourth year of a significant drought resulting in severe impacts to California's water supplies and its ability to meet all of the demands for water in the State. On January 17, 2014, Governor Edmund G. Brown, Jr. declared a drought state of emergency. On April 25, 2014 the Governor signed an Executive Order (April 2014 Proclamation) stating, among things, "...that severe drought conditions continue to present urgent challenges: water shortages in communities across the state, greatly increased wildfire activity, diminished water for agricultural production, degraded habitat for many fish and wildlife species, threat of saltwater contamination of large fresh water supplies conveyed through the Sacramento-San Joaquin Bay Delta, and additional water scarcity if drought conditions continue into 2015." Due to these concerns, the April 2014 Proclamation directs the State Water Board to adopt emergency regulations as it deems necessary, pursuant to Water Code section 1058.5, to ensure that urban water suppliers implement drought response plans to limit outdoor irrigation and other wasteful water practices. The April 2014 Proclamation suspended the requirement for review under the California Environmental Quality Act (CEQA) for certain activities, including adoption of emergency regulations by the Board pursuant to Water Code section 1058.5. On December 22, 2014, Governor Brown issued [Executive Order B-28-14](#), which extended the suspension of the CEQA for certain activities contained in the January 2014 and April 2014 Proclamations, including Board adoption of emergency regulations pursuant to Water Code section 1058.5, through May 31, 2016.

On April 1, 2015, Governor Brown signed Executive Order B-29-15, directing the State Water Board to, among other things, impose restrictions to achieve a statewide 25 percent reduction in potable urban water usage through February 2016, as compared to the amount used in 2013. The order mandates that the Governor's January 17, 2014 Proclamation, April 25, 2014 Proclamation, Executive Order B-26-14, and Executive Order B-28-14 remain in full force and effect except as modified.

On July 15, 2014 the State Water Board approved an emergency regulation for urban water conservation. The emergency regulation took effect on July 28, 2014 upon approval by the Office of Administrative Law. On March 17, 2015, the State Water Board amended and readopted the emergency regulation through adoption of Resolution 2015-0013, and the amended and readopted regulation took effect on March 27, 2015. The proposed action is needed to ensure urban water suppliers and all Californians are taking sufficient actions to conserve water and preserve the State's water supply and to help prevent the waste and unreasonable use of water during a period when the Governor has issued a proclamation of emergency based upon drought conditions.

The State Water Board is unable to address the situation through non-emergency regulations because the standard rulemaking process cannot timely address the current severe drought emergency that is the focus of these regulations. Furthermore, as noted above, the Governor's April 1, 2015 Executive Order directs the State Water Board to adopt emergency regulations pursuant to Water Code section 1058.5 to address the issues that are the focus of this proposed regulation.

Authority and Reference (Gov. Code, § 11346.5, subd. (a)(2))

Water Code sections 1058 and 1058.5 provide authority for the emergency regulation. The proposed updated emergency regulation implements, interprets, or makes specific California Constitution Article, X, section 2; Water Code sections 100, 102, 104, 105, 174, 186, 187, 275, 350, 1051, 1122, 1123, 1825, 1846, 10617, and 10632; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463.

Informative Digest (Gov. Code, § 11346.5, subd. (a)(3))

Absent the existing emergency regulation, there is no statewide prohibition on specific water uses to promote conservation. There is also no law or regulation requiring urban water suppliers to make specific potable water use reductions or report the amount of water they produce to the state. The existing emergency regulation constitutes the first statewide directive to urban water users to undertake specific actions to respond to the drought emergency and the first statewide directive setting enforceable conservation performance standards for urban water suppliers; consequently, the proposed regulation is consistent and compatible with existing regulations on this subject. The proposed regulation neither differs from nor conflicts with an existing comparable federal statute or regulation.

The proposed regulation, as updated, consists of four main types of requirements: a prohibition on certain irrigation practices; an order that all urban water suppliers, as defined, reduce their total potable water production by a defined percentage; an order that other distributors of public water supply, as defined, reduce potable water consumption; and an order for all self-supplied commercial, industrial, and institutional water users to reduce potable water usage. The proposed regulation also includes reporting requirements and new tools to ensure compliance. All of these requirements are intended to safeguard urban water supplies in the event of continued drought, minimize the potential for waste and unreasonable use of water, and achieve the 25 percent statewide potable water usage reduction ordered by Governor Brown. It is both reasonable and prudent to maintain urban water supplies to the maximum extent feasible to provide local agencies with the necessary flexibility to meet the health and safety needs of Californians during the drought emergency. April 2015 surveys revealed the lowest Sierra snow water content in California's recorded history. California has been subject to multi-year droughts in the past climate science indicates that the Southwestern United States are becoming drier, increasing the likelihood of severe and prolonged droughts. Drought conditions have already forced the State Water Board to curtail surface water diversions, and many groundwater basins around the state are already in overdraft conditions that will likely worsen due to groundwater pumping this summer. Many water supply systems face a present or threatened risk of inadequate supply. Should drought conditions persist into 2016, more water supply systems will experience shortages, presenting a great risk to the health and safety of the people supplied by those systems. Maintaining urban water supplies through enhanced conservation will reduce the risks to health and safety, and the negative impacts to the State's economy.

Each of the specific prohibitions on water uses is necessary to help prevent the waste and unreasonable use of water and to promote water conservation to maintain an adequate supply during the drought emergency. These prohibitions affect practices that use excessive amounts of water or where more efficient and less wasteful alternatives are available. These practices

are particularly unreasonable during a drought due to the need to conserve limited water supplies to meet health and safety needs.

Additional benefits will be realized should the Board adopt the proposed regulation. These benefits include the following:

- Incentives to eliminate ornamental turf will generate additional economic activity, such as investments in drought-tolerant landscaping.
- Increased water quality in receiving waters due to lower runoff volumes.
- More effective tracking of total urban water use.
- Reduced potential for severe economic disruption due to water shortages if 2016 is another dry year.
- Increased drought awareness and shared sense of responsibility among urban water users as well as out-of-state guests at California hotels, motels, restaurants and bars.

These benefits will offset some of the fiscal impacts to water suppliers when benefits and costs are viewed from a statewide perspective. Therefore, these benefits provide additional justification for adopting the proposed regulation.

Proposed section 863 sets forth the State Water Board's findings of drought emergency, noting the Governor's adoption of multiple emergency proclamations pertaining to drought conditions, the persistence of drought conditions, the dry nature of the preceding three years, and the likelihood that drought conditions will continue.

Proposed section 864 prohibits several activities, except where necessary to address an immediate health and safety need or to comply with a term or condition in a permit issued by a state or federal agency, to promote conservation. The section prohibits the application of water to outdoor landscapes in a manner that causes visible runoff; the use of a hose to wash an automobile except where the hose is equipped with a shut-off nozzle; the application of water to hardscapes, the use of potable water in non-recirculating ornamental fountains; the application of potable water to outdoor landscapes during or within 48-hours after measurable rainfall; the irrigation of ornamental turf on public street medians with potable water; and the irrigation with potable water outside of newly constructed homes and buildings that is not delivered by drip or microspray systems. This section also prohibits serving water except when requested in restaurants and bars and requires the operators of hotels and motels to offer patrons the option of not having their towels and linens washed daily. Finally, under this section, commercial, industrial and institutional users not served by either type of water supplier regulated by section 865 must either limit the number of days they water outdoor turf and ornamental landscapes to no more than two days per week or reduce their total potable water production by 25 percent as compared to 2013.

Proposed section 865 directs urban water suppliers to meet specified conservation standards and to report specific information to the State Water Board. Section 865 groups the larger urban water suppliers by R-GPCD and requires the suppliers in each group to meet a specified percentage conservation standard during the months of June 2015 through February 2016, as compared to the same months in 2013. Those suppliers whose R-GPCD are lower and therefore have less ability for dramatic reductions without impacting indoor uses required for human health and safety have relatively lower conservation standards, though all suppliers are assigned some level of required reductions to meet the Governor's call for a 25 percent

statewide reduction in potable urban water use and to minimize the potential for waste and unreasonable use of water. This section also requires smaller urban water suppliers, defined as any distributor of a public water supply, whether publicly or privately owned and including a mutual water company, but not meeting the definition of urban water suppliers in water code section 10617, to either limit the number of days that outdoor watering of turf and ornamental landscapes is allowed to no more than two days per week or to reduce their total potable water production by 25 percent as compared to 2013.

Proposed section 866 provides the State Water Board with additional emergency enforcement tools to ensure that water suppliers and users are on track to achieve their required savings throughout the effective period of the regulation. A conservation order would be an enforceable order by the Board requiring the recipient to take specified actions immediately. An informational order issued by the Board would require the recipient to submit additional information relating to water production, water use or water conservation. Both conservation orders and informational orders issued by the Board would be subject to reconsideration by the Board and violations would be subject to enforcement pursuant to Water Code section 1846.

Other Matters Prescribed by Statute (Gov. Code, § 11346.5, subd. (a)(4))

The proposed emergency regulation would be adopted to help prevent the waste and unreasonable use of water and to promote water conservation in response to conditions which exist, or are threatened, in a critically dry year immediately preceded by two or more consecutive below normal, dry, or critically dry years or during a period for which the Governor has issued a proclamation of a state of emergency under the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code) based on drought conditions.

Local Mandate (Gov. Code, § 11346.5, subd. (a)(5))

The State Water Board has determined that adoption of proposed sections 863 and 864 does not impose a new mandate on local agencies or school districts. The sections are generally applicable law.

The State Water Board has further determined that adoption of proposed sections 865 and 866 do not impose a new mandate on local agencies or school districts, because the local agencies affected by the section have the authority to levy service charges, fees, or assessments sufficient to pay for the mandate program or increased level of service. (See Gov. Code, § 17556.)

Estimate of Cost or Savings (Gov. Code, § 11346.5, subd. (a)(6))

Increased urban water conservation will result in reduced water use, which in turn will result in reduced water sales and lost revenue for urban water suppliers or distributors of a public water supply. This loss in revenue will be a function of the amount of water conserved (and therefore not sold) and the unit price that water would have sold for. In addition to lost revenue from reduced water sales, urban water suppliers will also incur costs associated with water production reporting as required by the proposed emergency regulations. The State Water Board estimates that local agencies that are urban water suppliers or distributors of a public water supply could collectively realize as much as \$510,000,000 in lost revenue as a result of implementing the proposed regulation. Additionally, the reporting costs to local government are estimated to be \$1,656,980. The total costs to local government are therefore estimated to be \$511,656,980, which is the sum of estimated lost revenues and the estimated reporting costs. This analysis conservatively assumes that even though those costs likely can be recouped by those agencies through rates, they will not be recouped during the effective period of the

regulation and are considered costs to the supplier, but not a local mandate as the costs are ultimately recoverable.

Implementation of the proposed emergency regulation will result in additional workload for the State Water Board and possibly for the Department of Water Resources. At present this work is accomplished through redirection of resources within existing agency budgets. However, the State Water Board anticipates the need for additional resources (up to two PYs) to conduct activities related to the emergency regulation.

The above summary information is explained in greater detail in the State Water Board's Emergency Regulations Digest, which is attached.