

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – OFFICE OF RESEARCH, PLANNING AND PERFORMANCE
FEBRUARY 8, 2017**

ITEM 9

SUBJECT

CONSIDERATION OF A PROPOSED RESOLUTION AMENDING AND READOPTING DROUGHT-RELATED EMERGENCY REGULATIONS FOR URBAN WATER CONSERVATION TO IMPLEMENT EXECUTIVE ORDER B-29-15, B-36-15, and B-37-16

DISCUSSION

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 deemed 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.

On July 15, 2014, the State Water Board adopted [Resolution No. 2014-0038](#), which adopted an emergency regulation for water conservation that added new sections to title 23 of the California Code of Regulations. The emergency regulation became effective on July 28, 2014 upon approval by the Office of Administrative Law (OAL). On March 17, 2015, the State Water Board adopted [Resolution No. 2015-0013](#), which amended and readopted the emergency regulation for an additional 270 days. The regulatory language became effective on March 27, 2015 upon approval by OAL. On April 1, 2015, Governor Brown issued [Executive Order B-29-15](#), which, among other things, directed the State Water Board to impose restrictions on water suppliers to achieve a statewide 25 percent reduction in potable urban usage through February 2016. On May 5, 2015, the State Water Board adopted [Resolution No. 2015-0032](#) and an emergency regulation, which, among other things, placed each urban water supplier in a conservation tier, ranging between 4 and 36 percent, based residential per capita water use for the months of July through September 2014. The emergency regulation became effective on May 18, 2015 for 270 days upon approval by the Office of Administrative Law (OAL).

On November 13, 2015, Governor Brown issued [Executive Order B-36-15](#), which called for an extension of urban water use restrictions until October 31, 2016, should drought conditions persist. This Executive Order also directed the State Water Board to consider modifying the restrictions on water use and incorporate insights gained from the existing restrictions. On February 2, 2016, the State Water Board adopted [Resolution No. 2016-0007](#), which amended and readopted the emergency regulation for an additional 270 days. That regulation became effective on February 11, 2016 upon approval by OAL.

On May 9, 2016 Governor Brown issued [Executive Order B-37-16](#) calling for the State Water Board to adjust emergency water conservation regulations through the end of January 2017, in recognition of the differing water supply conditions across the state. To implement the Executive Order, the State Water Board adopted [Resolution No. 2016-0029](#), which revised regulations to allow individual suppliers to self-certify that there would be no supply shortfall assuming three additional dry years. The self-certification “stress test” allowed many suppliers

to self-certify that there would be no supply shortfall, even after three additional drought years. The Executive Order also called on the Board to develop a proposal to achieve a mandatory reduction in potable urban water usage that builds off of the mandatory 25% reduction called for in Executive Order B-29-15 and lessons learned through 2016. The current emergency regulation became effective on May 31, 2016 upon approval by OAL and remains in effect until February 28, 2017.

So far, the state has experienced significant snow and rainfall during the 2016/2017 water year, causing many of the state's reservoirs to shift to flood-control operations; however, some reservoirs remain critically low and groundwater storage remains depleted in many areas due to the continued impact of prolonged drought. Precipitation cannot be counted on to continue, and snowpack levels, while above average for the current time of year, are subject to rapid reductions as seen in 2016 and before. The full picture of the state's hydrologic water conditions for 2016/2017 remains unclear and subject to a number of variables at least through the end of the spring.

Consistent with Governor's May 9, 2016 Executive Order the State Water Board staff recommend that the State Water Board re-adopt an extend, with minor amendments, the emergency regulation and reassess water supply conditions, as well as the need for continued urban water conservation regulations, in the spring of 2017.

POLICY ISSUE

Should the State Water Board adopt the proposed resolution and accompanying regulation?

FISCAL IMPACT

Fiscal considerations are addressed as a part of drought funding.

REGIONAL BOARD IMPACT

None.

STAFF RECOMMENDATION

Staff recommends that the State Water Board adopt the proposed resolution adopting the emergency regulation.

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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2017-

TO ADOPT AN EMERGENCY REGULATION FOR STATEWIDE URBAN WATER CONSERVATION

WHEREAS:

1. On January 17, 2014, Governor Edmund G. Brown Jr. issued [Proclamation No. 1-17-2014](#) (January 2014 Proclamation) declaring a drought State of Emergency to exist in California due to severe drought conditions presenting urgent problems to drinking water supplies and cultivation of crops, which put farmers' long-term investments at risk, and threatening the survival of animals and plants that rely on California's rivers, including many species in danger of extinction. The January 2014 Proclamation called on all Californians to reduce their water usage by 20 percent;
2. On April 25, 2014, Governor Edmund G. Brown Jr. issued an executive order ([April 2014 Proclamation](#)) to strengthen the State's ability to manage water and habitat effectively in drought conditions, calling on all Californians to redouble their efforts to conserve water. The April 2014 Proclamation noted that the severe drought conditions presented urgent challenges across the State, including water shortages in communities and for agricultural production, increased wildfires, degraded habitat for fish and wildlife, threat of saltwater contamination, and additional water scarcity. Among other things, the April 2014 Proclamation suspended the environmental review required by the California Environmental Quality Act to allow certain actions, including State Water Resources Control Board (State Water Board) rulemaking pursuant to Water Code section 1058.5, to take place as quickly as possible;
3. Between April 2014 and November 2015 Governor Brown and the Legislature took a number of additional drought-related actions including extending the California Environmental Quality Act suspension for certain activities identified in the January 2014 and April 2014 Proclamations and other later drought-related executive orders.
4. In response to [Executive Order B-29-15](#), on May 5, 2015, the State Water Board adopted [Resolution No. 2015-0032](#) and a regulation pursuant to Water Code section 1058.5 that, among other things, required a mandatory 25 percent statewide reduction in potable urban water use between June 2015 and February 2016. To implement the Executive Order, the regulation placed each urban water supplier in a conservation tier, ranging between 4 and 36 percent, based residential per capita water use for the months of July – September 2014. By [Resolution No. 2016-0007](#) the State Water Board extended and revised the regulation to better consider a range of factors that contribute to water use, including but not limited to climate, growth, investment in local, drought resilient supplies;
5. On May 9, 2016 Governor Brown issued [Executive Order B-37-16](#) calling for the State Water Board to adjust emergency water conservation regulations through the end of January 2017 in recognition of the differing water supply conditions across the state. To implement the Executive Order, the State Water Board adopted, by [Resolution No. 2016-0029](#), revised regulations to allow individual suppliers to self-certify that there would be no supply shortfall assuming three additional dry years. The self certification

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“stress test” allowed many suppliers to self-certify that there would be no supply shortfall, even after three additional drought years. The Executive Order also called on the Board to develop a proposal to achieve a mandatory reduction in potable urban water usage that builds off of the mandatory 25% reduction called for in Executive Order B-29-15 and lessons learned through 2016;

6. From June 2015 through December 2016, urban water suppliers have reduced statewide potable water usage 22.5 percent compared to 2013, through the significant efforts of the suppliers and their customers. Conservation has generally exceeded requirements set by individual urban water suppliers using the stress test approach. Cumulative water savings since June 2015 has reached 2.42 million acre-feet of water, which is enough water to supply approximately 12 million Californians for one year;
7. In many areas, 50 percent or more of daily water use is for lawns and outdoor landscaping. Outdoor water use is generally discretionary, and many irrigated landscapes will survive while receiving a decreased amount of water;
8. Water conservation is the easiest, most efficient and most cost-effective way to quickly reduce water demand and extend supplies, providing flexibility for all California communities. Water can be conserved even when it’s raining, especially by turning off outdoor irrigation when the weather is providing ample irrigation;
9. Education and enforcement against water waste is a key tool in conservation programs. When conservation becomes a social norm in a community, the need for enforcement is reduced or eliminated;
10. Public information and awareness is critical to achieving conservation goals, and the Save Our Water campaign, run jointly by the Department of Water Resources (DWR) and the Association of California Water Agencies, is an excellent resource for conservation information and messaging that is integral to effective drought response (<http://saveourwater.com>). Appropriate messaging regarding current state and regional drought conditions will increase public awareness and understanding of why conservation measures need to continue as the State’s water supply conditions improve.;
11. Many California communities have faced and continue to face social and economic hardship due to this drought. Groundwater basins remain critically low in some areas, causing communities and well owners’ wells to go dry. Some reservoirs remain critically low, despite this winter’s precipitation. The rest of us can make adjustments to our water use, including landscape choices that conserve even more water;
12. The State Water Board’s current regulation requires that smaller water providers submit a report, due by December 15, that identifies total potable water production by month for the previous calendar year. Much of this information is also required as a component of the Division of Drinking Water’s Electronic Annual Report and can be consolidated with that reporting;
13. The California Constitution declares, at article X, section 2, that the water resources of the state must be put to beneficial use in a manner that is reasonable and not wasteful. Relevant to the current drought conditions, the California Supreme Court has clarified that “what may be a reasonable beneficial use, where water is present in excess of all

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needs, would not be a reasonable beneficial use in an area of great scarcity and great need. What is a beneficial use at one time may, because of changed conditions, become a waste of water at a later time.” (*Tulare Dist. v. Lindsay Strathmore Dist.* (1935) 3 Cal.2d 489, 567.) In support of water conservation, the legislature has, through Water Code section 1011, deemed reductions in water use due to conservation as equivalent to reasonable beneficial use of that water. Accordingly, this regulation is in furtherance of article X, section 2 during this drought emergency. This temporary emergency regulation is not to be used in any future administrative or judicial proceedings as evidence or finding of waste and unreasonable use of any individual water user or water supplier subject to this regulation, and are not to affect or otherwise limit any rights to water conserved under applicable law, including without limitation, water conserved consistent with Water Code section 1011;

14. Water Code section 1058.5 grants the State Water Board the authority to adopt regulations pursuant to the emergency rulemaking process during a declared drought emergency 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”;
15. As of January 15, 2017, the state has experienced significant snow and rainfall in December and January, causing many of the state’s reservoirs to shift to flood-control operations; however, groundwater storage remains depleted in many areas due to the continued impact of prolonged drought, precipitation cannot be counted on to continue, and snowpack levels, while above average for the current time of year, are subject to rapid reductions as seen in 2016 and before. The full picture of the state’s hydrologic water conditions for 2016/2017 remains unclear and subject to a number of variables at least until April 2016;
16. Extending the emergency regulation does not require any particular water supplier to establish mandatory conservation requirements; instead, it allows each supplier to customize requirements to their own water supply conditions. Continued implementation of reasonable water conservation measures is prudent to address water supply uncertainty and the lingering impacts of prolonged drought for an additional 270 days, until the Governor lifts the drought emergency proclamation, or the State Water Board determines that emergency regulations should be modified or rescinded;
17. The current regulation adopted by Resolution No. 2016-0029 is scheduled to expire February 28, 2017 by operation of law if not readopted;
18. On January 18, 2017, the State Water Board held a workshop to receive input on the potential modification and extension of the current conservation regulation. The State Water Board solicited public comments on the proposed framework and received approximately 75 comments, primarily relating to the improved water conditions in December 2016 and January 2017, whether a conservation regulation continued to be necessary, and the ability of urban water suppliers to manage their own water supply options;

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19. On January 26, 2017, the State Water Board issued public notice of its regularly-scheduled February 8, 2017 Board meeting at which it would consider amendment, extension and readoption of the regulation, in accordance with applicable State laws and regulations;
20. On February 1, 2016 the State Water Board issued staff-proposed regulatory language for public comment based on the impending expiration date of the current regulation, current conditions and comments received before and at the January 18 workshop. The staff proposal reflects careful consideration by the Board and staff of all comments including those directed at the levels of required reduction and the basis upon which water use reductions should be required. The draft regulatory language largely extends the May 18, 2016 regulation in recognition of differing water supply conditions across the state and comments from suppliers that the current regulation structure was the appropriate response to current conditions if the Board does not let the regulation expire; and;
21. As discussed above, the State Water Board is readopting the regulation because the Governor's proclamation remains in effect, because the drought conditions that formed the basis of the Governor's emergency proclamations continue to exist in portions of the state, because snowpack and reservoir conditions for the end of the water year remain subject to significant change through the end of the water year, because the May 18 regulation is set to expire on February 28, 2017, and to address ongoing need to prevent the waste and unreasonable use of water and to promote conservation during the declared drought emergency.

THEREFORE BE IT RESOLVED THAT:

1. The State Water Board readopts California Code of Regulations, title 23, sections 863, 864, 865 and 866, as appended to this resolution as an emergency regulation;
2. State Water Board staff will submit the regulation to OAL for final approval;
3. If, during the approval process, State Water Board staff, the State Water Board, or OAL determines that minor corrections to the language of the regulation or supporting documentation are needed for clarity or consistency, the State Water Board Executive Director or the Executive Director's designee may make such changes;
4. The State Water Board directs the Executive Director to consider promptly modifying or repealing the regulation consistent with Water Code section 1058.5 and State Water Board [Resolution No. 2012-0061](#) if the Governor lifts the declaration of a drought state of emergency;
5. This regulation shall remain in effect for 270 days after filing with the Secretary of State unless the State Water Board determines that it is no longer necessary due to changed conditions, the State Water Board renews the regulation due to continued drought conditions as described in Water Code section 1058.5, or the Executive Director modifies or repeals the regulation under authority delegated in Resolution No. 2012-0061;

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6. In consideration of the fact that in many years a significant portion of the state's rainfall and snowpack occur in February and March, the State Water Board directs staff to monitor and evaluate available data on precipitation, snowpack, reservoir storage levels, and other factors and report back to the Board with monthly updates on the implementation of the regulation and its effect and to receive direction from the Board regarding whether to bring a proposal for rescission or adjustment back to the Board based on updated conditions;
7. The State Water Board directs staff to condition funding upon compliance with the regulation, to the extent feasible;
8. The State Water Board directs staff to work with DWR and the Save Our Water campaign to disseminate information regarding the regulation, and to work with stakeholders to develop consistent messaging regarding the current state of the drought and need for continued water conservation; and
9. The State Water Board directs staff to use the Electronic Annual Report to collect monthly production volumes and any actions taken by the supplier to encourage or require conservation for distributors of a public water supply.

THEREFORE BE IT FURTHER RESOLVED THAT:

10. The State Water Board shall continue to work with DWR, the Public Utilities Commission, and other agencies to support urban water suppliers' actions to implement rates and pricing structures to incent additional conservation while protecting low-income ratepayers, as required by directive eight in the Governor's April 1, 2015 Executive Order and Assembly Bill 401 (2015). The Fourth District Court of Appeal's Decision in *Capistrano Taxpayer Association Inc. v. City of San Juan Capistrano* (G048969) does not foreclose the use of conservation-oriented rate structures, and conservation-oriented rate structures are an important tool to promote ongoing conservation and meet the water efficiency standards set forth in Executive Order B-37-16;
11. Nothing in the regulation or in the enforcement provisions of the regulation precludes a local agency from exercising its authority to adopt more stringent conservation measures. Moreover, the Water Code does not impose a mandatory penalty for violations of the regulation adopted by this resolution, and local agencies retain the enforcement discretion in enforcing the regulation to the extent authorized. Local agencies are encouraged to develop their own progressive enforcement practices to promote conservation;
12. The State Water Board calls upon all homeowners' associations to support and cooperate with water suppliers' and their residents' efforts to conserve water in community apartment projects, condominium projects, planned developments, and stock cooperatives statewide;
13. The State Water Board commends wholesale water agencies that have set aggressive conservation targets for their retail water suppliers and who have invested heavily in subsidizing efficiency measures such as turf and toilet rebates, recycled water production, and other potable water augmentation measures;

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14. The State Water Board commends water suppliers that have made investments to boost drought-resistant supplies, such as advanced treated recycled water and desalination. Those investments help to make communities more resilient in the face of drought and the Board is committed to moving towards a more resilience based approach to emergency water conservation and in any permanent measures going forward;
15. The State Water Board commends the many water suppliers that have taken steps and made systemic changes that have led to them surpassing their 20x2020 conservation targets as well as their emergency conservation targets. Long-term conservation efforts are critical to maintaining economic and social well-being, especially in light of the impacts of climate change on California's hydrology;
16. During this drought emergency, heightened conservation that extends urban resilience has been and continues to be necessary. The State Water Board's focus is on continuing reductions in outdoor water use;
17. The California Water Action Plan calls for making conservation a way of life, increasing regional water self-reliance, and expanding storage capacity, among other actions. Long term water security will depend on implementing a range of actions and the State Water Board recognizes that these actions must advance in a complementary manner such that one action does not impede the progress of another. The State Water Board recognizes that conservation requirements implemented in response to critical drought conditions differ from those actions needed to optimize urban water use efficiency and build resilience over the long-term. Resilience to drought requires a combination of water efficiency and the development of new sustainable supplies, such as recycling, stormwater capture and re-use, local storage to capture water in wet years for use in dry years, and other actions. However, the effect of climate change on California weather patterns and snowpack will undoubtedly put increased pressure on the water supply and pose greater risk for extreme weather conditions, including longer and more severe droughts. It is imperative that State agencies and water suppliers have the information and mechanisms needed to best respond to critical drought emergencies and that all sources of urban water be used efficiently over the long-term. Staff is directed to continue working with the Department of Water Resources, the Department of Food and Agricultural, the Energy Commission, and the Public Utilities Commission to carry out the directives in Executive Order B-37-16, by taking actions to facilitate a transition to permanent, long-term improvements to water use.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on February 8, 2017.

Jeanine Townsend
Clerk to the Board

ADOPTED TEXT OF EMERGENCY REGULATION

Article 22.5. Drought Emergency Water Conservation.

Sec. 863. Findings of Drought Emergency.

(a) The State Water Resources Control Board finds as follows:

(1) On January 17, 2014, the Governor issued a proclamation of a state of emergency under the California Emergency Services Act based on drought conditions;

(2) On April 25, 2014, the Governor issued a proclamation of a continued state of emergency under the California Emergency Services Act based on continued drought conditions;

(3) On April 1, 2015, the Governor issued an Executive Order that, in part, directs the State Board to impose restrictions on water suppliers to achieve a statewide 25 percent reduction in potable urban usage through February, 2016; require commercial, industrial, and institutional users to implement water efficiency measures; prohibit irrigation with potable water of ornamental turf in public street medians; and prohibit irrigation with potable water outside newly constructed homes and buildings that is not delivered by drip or microspray systems;

(4) On November 13, 2015, the Governor issued an Executive Order that directs the State Board to, if drought conditions persist through January 2016, extend until October 31, 2016 restrictions to achieve a statewide reduction in potable usage;

(5) On May 9, 2016, the Governor issued an Executive Order that directs the State Board to adjust and extend its emergency water conservation regulations through the end of January 2017 in recognition of the differing water supply conditions for many communities;

(6) The drought conditions that formed the basis of the Governor's emergency proclamations continue to exist in portions of the state, and snowpack and reservoir conditions for the end of the water year remain subject to significant change; and

(7) The Governor's proclamation remains in effect, drought conditions will likely continue for the foreseeable future may persist or continue locally through the end of the water year, and additional action by both the State Water Resources Control Board and local water suppliers will likely be necessary to prevent waste and unreasonable use of water and to further promote conservation.

Authority: Section 1058.5, Water Code.

References: Article X, Section 2, California Constitution; Sections 102, 104, 105, and 275, Water Code; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463.

Sec. 864. End-User Requirements in Promotion of Water Conservation.

(a) To prevent the waste and unreasonable use of water and to promote water conservation, each of the following actions is prohibited, 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:

(1) The application of potable water to outdoor landscapes in a manner that causes runoff such that water flows onto adjacent property, non-irrigated areas, private and public walkways, roadways, parking lots, or structures;

(2) The use of a hose that dispenses potable water to wash a motor vehicle, except where the hose is fitted with a shut-off nozzle or device attached to it that causes it to cease dispensing water immediately when not in use;

(3) The application of potable water to driveways and sidewalks;

(4) The use of potable water in a fountain or other decorative water feature, except where the water is part of a recirculating system;

(5) The application of potable water to outdoor landscapes during and within 48 hours after measurable rainfall;

(6) The serving of drinking water other than upon request in eating or drinking establishments, including but not limited to restaurants, hotels, cafes, cafeterias, bars, or other public places where food or drink are served and/or purchased;

(7) The irrigation with potable water of ornamental turf on public street medians; and

(8) The irrigation with potable water of landscapes outside of newly constructed homes and buildings in a manner inconsistent with regulations or other requirements established by the California Building Standards Commission and the Department of Housing and Community Development.

(b) To promote water conservation, operators of hotels and motels shall provide guests with the option of choosing not to have towels and linens laundered daily. The hotel or motel shall prominently display notice of this option in each guestroom using clear and easily understood language.

(c) Upon this subdivision taking effect, all commercial, industrial and institutional properties that use a water supply, any portion of which is from a source other than a water supplier subject to section 864.5 or 865 of this article, shall either:

(1) Limit outdoor irrigation of ornamental landscapes or turf with potable water to no more than two days per week; or

(2) Target potable water use reductions commensurate with those required of the nearest urban water supplier under section 864.5 or, if applicable, section 865. Where this option is chosen, these properties shall implement the reductions on or before July 1, 2016.

(d) The taking of any action prohibited in subdivision (a)-~~(e)~~, or (f), or the failure to take any action required in subdivision (b) or (c), is an infraction punishable by a fine of up to five hundred dollars (\$500) for each day in which the violation occurs. The fine for the infraction is in addition to, and does not supersede or limit, any other remedies, civil or criminal.

(e)(1) To prevent the waste and unreasonable use of water and to promote water conservation, any homeowners' association or community service organization or similar entity is prohibited from:

(A) Taking or threatening to take any action to enforce any provision of the governing documents or architectural or landscaping guidelines or policies of a common interest development where that provision is void or unenforceable under section 4735, subdivision (a) of the Civil Code; or

(B) Imposing or threatening to impose a fine, assessment, or other monetary penalty against any owner of a separate interest for reducing or eliminating the watering of vegetation or lawns during a declared drought emergency, as described in section 4735, subdivision (c) of the Civil Code.

(2) As used in this subdivision:

(A) “Architectural or landscaping guidelines or policies” includes any formal or informal rules other than the governing documents of a common interest development.

(B) “Homeowners’ association” means an “association” as defined in section 4080 of the Civil Code.

(C) “Common interest development” has the same meaning as in section 4100 of the Civil Code.

(D) “Community service organization or similar entity” has the same meaning as in section 4110 of the Civil Code.

(E) “Governing documents” has the same meaning as in section 4150 of the Civil Code.

(F) “Separate interest” has the same meaning as in section 4185 of the Civil Code.

(3) If a disciplinary proceeding or other proceeding to enforce a rule in violation of subdivision (e)(1) is initiated, each day the proceeding remains pending shall constitute a separate violation of this regulation.

(f) To prevent the waste and unreasonable use of water and to promote water conservation, any city, county, or city and county is prohibited from imposing a fine under any local maintenance ordinance or other relevant ordinance as prohibited by section 8627.7 of the Government Code.

Authority: Section 1058.5, Water Code.

References: Article X, Section 2, California Constitution; Sections 4080, 4100, 4110, 4150, 4185, and 4735, Civil Code; Section 8627.7, Government Code; Sections 102, 104, 105, 275, 350, and 10617, Water Code; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463.

Sec. 864.5. Self-Certification of Supply Reliability for Three Additional Years of Drought.

(a) To prevent the waste and unreasonable use of water and to meet the requirements of the Governor’s May 9, 2016 Executive Order, each urban water supplier shall:

(1) Identify and report no later than June 22, 2016, on a form provided by the Board, the conservation standard that the supplier will be required to meet under this section;

(2) Identify and report no later than June 22, 2016, on a form provided by the Board, the data and underlying analysis relied upon by the supplier to determine the conservation standard reported pursuant to this subdivision including, but not limited to, identification of each source of supply the supplier intends to rely on and the quantity of water available under that source of supply given the assumptions of this section;

(3) Certify, no later than June 22, 2016, that the conservation standard reported pursuant to this subdivision is based on the information and assumptions identified in this section;

(4) Post, within two weeks of submittal to the board, the data and underlying analysis relied upon by the supplier to determine the conservation standard reported pursuant to this subdivision to a publicly-accessible webpage; and

(5) Beginning June 1, 2016, reduce its total potable water production by the percentage identified as its conservation standard in this section each month, compared to the amount used in the same month in 2013.

(b) Each urban water supplier's conservation standard pursuant to this section shall be the percentage by which the supplier's total potable water supply is insufficient to meet the total potable water demand in the third year after this section takes effect under the following assumptions:

(1) The next three years' precipitation is the same as it was in water years 2013-2015;

(2) No temporary change orders that increase the availability of water to any urban water supplier are issued in the next three years;

(3) The supplier's total potable water demand for each of the next three years will be the supplier's average annual total potable water production for the years 2013 and 2014;

(4) The supplier's total potable water supply shall include only water sources of supply available to the supplier that could be used for potable drinking water purposes;

(5) Each urban water supplier's conservation standard shall be calculated as a percentage and rounded to the nearest whole percentage point.

(c) The Board will reject conservation standards that do not meet the requirements of this section.

(d) Beginning June 1, 2016, each urban water supplier shall comply with the conservation standard it identifies and reports pursuant to this section.

(e) Compliance with the conservation standard reported pursuant to this section shall be measured monthly and assessed on a cumulative basis through ~~January~~October 2017.

(f) If a wholesaler and all of its urban water supplier customers agree, in a legally-binding document, those suppliers and wholesaler may submit to the board, in lieu of the individualized self-certified conservation standard applicable pursuant to section 864.5 or section 865, an aggregated conservation standard, with all supporting documentation required for individualized self-certified conservation standards by section 864.5.

(g) Each urban water wholesaler shall calculate, to the best of its ability, and no later than June 15, 2016, the volume of water that it expects it would deliver to each urban water supplier in each of the next three years under the assumptions identified in subdivision (b), and post that calculation, and the underlying analysis, to a publicly-accessible webpage.

(h) Submitting any information pursuant to this section that the person who submits the information knows or should have known is materially false is a violation of this regulation, punishable by civil liability of up to five hundred dollars (\$500) for each day in which the violation occurs. Every day that the error goes uncorrected constitutes a

separate violation. Civil liability for the violation is in addition to, and does not supersede or limit, any other remedies, civil or criminal.

(i) Any urban water supplier that does not comply with this section shall comply with the applicable conservation standard identified in section 865.

(j) Notwithstanding the deadlines specified in subdivision (a), an urban water supplier may, no later than March 15, 2017, resubmit the material specified in subdivision (a) if that supplier has experienced a change in its baseline water supply conditions.

(k) Notwithstanding the deadlines specified in subdivision (a), an urban water supplier that did not comply with subdivision (a) may, no later than March 15, 2017, submit the material specified in subdivision (a).

(l) An urban water supplier that submits the information required by subdivision (a) in accordance with subdivision (j) or (k) shall, beginning March 1, 2017, reduce its total potable water production by the percentage identified as its conservation standard in this section each month, compared to the amount used in the same month in 2013.

Authority: Section 1058.5, Water Code.

References: Article X, Section 2, California Constitution; Sections 102, 104, 105, 275, 350, 1846, 10617 and 10632, Water Code; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463.

Sec. 865. Mandatory Actions by Water Suppliers.

(a) As used in this article:

(1) “Distributor of a public water supply” has the same meaning as under section 350 of the Water Code, except it does not refer to such distributors when they are functioning solely in a wholesale capacity, but does apply to distributors when they are functioning in a retail capacity.

(2) “R-GPCD” means residential gallons per capita per day.

(3) “Total potable water production” means all potable water that enters into a water supplier’s distribution system, excluding water placed into storage and not withdrawn for use during the reporting period, or water exported outside the supplier’s service area.

(4) “Urban water supplier” means a supplier that meets the definition set forth in Water Code section 10617, except it does not refer to suppliers when they are functioning solely in a wholesale capacity, but does apply to suppliers when they are functioning in a retail capacity.

(5) “Urban water wholesaler” means a wholesaler of water to more than one urban water supplier.

(6) “Water year” means the period from October 1 through the following September 30. Where a water year is designated by year number, the designation is by the calendar year number in which the water year ends.

(b) In furtherance of the promotion of water conservation each urban water supplier shall:

(1) Provide prompt notice to a customer whenever the supplier obtains information that indicates that a leak may exist within the end-user's exclusive control.

(2) Prepare and submit to the State Water Resources Control Board by the 15th of each month a monitoring report on forms provided by the Board. The monitoring report shall include the amount of potable water the urban water supplier produced, including water provided by a wholesaler, in the preceding calendar month and shall compare that amount to the amount produced in the same calendar month in 2013. The monitoring report shall specify the population served by the urban water supplier, the percentage of water produced that is used for the residential sector, descriptive statistics on water conservation compliance and enforcement efforts, the number of days that outdoor irrigation is allowed, and monthly commercial, industrial and institutional sector use. The monitoring report shall also estimate the gallons of water per person per day used by the residential customers it serves.

(c)(1) To prevent the waste and unreasonable use of water and to meet the requirements of the Governor's May 9, 2016 Executive Order, each urban water supplier that fails to identify a conservation standard as required under section 864.5, or that has a conservation standard rejected by the Board under section 864.5, shall reduce its total potable water production by the percentage identified as its conservation standard in this section. Each urban water supplier's conservation standard considers its service area's relative per capita water usage.

(2) Each urban water supplier whose average July-September 2014 R-GPCD was less than 65 shall reduce its total potable water production by 8 percent for each month as compared to the amount used in the same month in 2013.

(3) Each urban water supplier whose average July-September 2014 R-GPCD was 65 or more but less than 80 shall reduce its total potable water production by 12 percent for each month as compared to the amount used in the same month in 2013.

(4) Each urban water supplier whose average July-September 2014 R-GPCD was 80 or more but less than 95 shall reduce its total potable water production by 16 percent for each month as compared to the amount used in the same month in 2013.

(5) Each urban water supplier whose average July-September 2014 R-GPCD was 95 or more but less than 110 shall reduce its total potable water production by 20 percent for each month as compared to the amount used in the same month in 2013.

(6) Each urban water supplier whose average July-September 2014 R-GPCD was 110 or more but less than 130 shall reduce its total potable water production by 24 percent for each month as compared to the amount used in the same month in 2013.

(7) Each urban water supplier whose average July-September 2014 R-GPCD was 130 or more but less than 170 shall reduce its total potable water production by 28 percent for each month as compared to the amount used in the same month in 2013.

(8) Each urban water supplier whose average July-September 2014 R-GPCD was 170 or more but less than 215 shall reduce its total potable water production by 32 percent for each month as compared to the amount used in the same month in 2013.

(9) Each urban water supplier whose average July-September 2014 R-GPCD was 215 or more shall reduce its total potable water production by 36 percent for each month as compared to the amount used in the same month in 2013.

(d)(1) Beginning June 1, 2015, each urban water supplier that does not submit a self-certification in compliance with section 864.5 shall comply with the conservation

standard specified in subdivision (c), with any modifications to the conservation standard pursuant to subdivision (f) applying beginning March 1, 2016.

(2) Compliance with the requirements of this subdivision shall be measured monthly and assessed on a cumulative basis through ~~January~~October 2017.

(e)(1) Each urban water supplier that provides potable water for commercial agricultural use meeting the definition of Government Code section 51201, subdivision (b), may subtract the amount of water provided for commercial agricultural use from its potable water production total, provided that any urban water supplier that subtracts any water provided for commercial agricultural use from its total potable water production shall:

(A) Impose reductions determined locally appropriate by the urban water supplier, after considering the applicable urban water supplier conservation standard specified in subdivision (c), for commercial agricultural users meeting the definition of Government Code section 51201, subdivision (b) served by the supplier;

(B) Report its total potable water production pursuant to subdivision (b)(2) of this section, the total amount of water supplied for commercial agricultural use, and shall identify the reduction imposed on its commercial agricultural users and each recipient of potable water for commercial agricultural use;

(C) Certify that the agricultural uses it serves meet the definition of Government Code section 51201, subdivision (b); and

(D) Comply with the Agricultural Water Management Plan requirement of paragraph 12 of the April 1, 2015 Executive Order for all commercial agricultural water served by the supplier that is subtracted from its total potable water production.

(2) Submitting any information pursuant to subdivision (e)(1)(B) or (C) of this section that is found to be materially false by the Board is a violation of this regulation, punishable by civil liability of up to five hundred dollars (\$500) for each day in which the violation occurs. Every day that the error goes uncorrected constitutes a separate violation. Civil liability for the violation is in addition to, and does not supersede or limit, any other remedies, civil or criminal.

(f) In consideration of the differences in climate affecting different parts of the state, growth experienced by urban areas and significant investments that have been made by some suppliers towards creating new, local, drought-resilient sources of potable water supply, an urban water supplier's conservation standard identified in subdivision (c) shall be reduced by an amount, not to exceed eight (8) percentage points total, as follows:

(1) For an urban water supplier whose service area evapotranspiration (ET_o) for the months of July through September exceeds the statewide average evapotranspiration, as determined by the Board, for the same months by five (5) percent or more, the supplier's conservation standard identified in subdivision (c) shall be reduced:

(A) By two (2) percentage points if the supplier's service area evapotranspiration exceeds the statewide average by five (5) percent or more but less than ten (10) percent;

(B) By three (3) percentage points if the supplier's service area evapotranspiration exceeds the statewide average by ten (10) percent or more but less than twenty (20) percent;

(C) By four (4) percentage points if the supplier's service area evapotranspiration exceeds the statewide average by twenty (20) percent or more.

(D) Statewide average evapotranspiration is calculated as the arithmetic mean of all urban water suppliers' service area default evapotranspiration values for the months of July through September. Default service area evapotranspiration will be based on the California Irrigation Management System (CIMIS) ETo Zones Map zone for which the supplier's service area has the greatest area of overlap. In lieu of applying its default service area evapotranspiration, a supplier may use specific data from CIMIS stations within its service area that have at least a five-year period of record, or a three year continuous period of record, to identify a more specifically-applicable evapotranspiration for its service area. If no CIMIS station exists within the supplier's service area, a weather station of comparable accuracy, meeting the preceding period of record requirements, may be used. To qualify for the in-lieu climate adjustment, the supplier shall submit the following data to the Board by March 15, 2016 for each station: station ID; station location; and monthly average evapotranspiration, in inches per month, for July, August, and September for either the five-year period of record or the three-year continuous period of record.

(2) To account for water efficient growth experienced in the state since 2013, urban water suppliers' conservation standards shall be reduced by the product of the percentage change in potable water production since 2013 and the percentage reduction in potable water use required pursuant to subdivision (c), rounded to the nearest whole percentage point. Change in potable water production since 2013 shall be calculated as the sum of the following:

(A) The number of additional permanent residents served since January 1, 2013, multiplied by the average residential water use per person for that supplier's service area during the months of February through October, 2015, in gallons; and

(B) The number of new commercial, industrial and institutional connections since January 1, 2013, multiplied by the average commercial, industrial and institutional water use per connection for that supplier's service area during the months of February through October, 2015, in gallons.

(C) To qualify for the growth credit the supplier shall submit to the Board the following data by March 15, 2016: the number of additional permanent residents served since January 1, 2013 and the number of new commercial, industrial and institutional connections since January 1, 2013.

(3) For an urban water supplier that supplies, contracts for, or otherwise financially invests in, water from a new local, drought-resilient source of supply, the use of which does not reduce the water available to another legal user of water or the environment, the conservation standard identified in subdivision (c) shall be reduced:

(A) By one (1) percentage point if the supplier's qualifying source of supply is one (1) percent or more but less than two (2) percent of the supplier's total potable water production;

(B) By two (2) percentage points if the supplier's qualifying source of supply is two (2) percent or more but less than three (3) percent of the supplier's total potable water production;

(C) By three (3) percentage points if the supplier's qualifying source of supply is three (3) percent or more but less than four (4) percent of the supplier's total potable water production;

(D) By four (4) percentage points if the supplier's qualifying source of supply is four (4) percent or more but less than five (5) percent of the supplier's total potable water production;

(E) By five (5) percentage points if the supplier's qualifying source of supply is five (5) percent or more but less than six (6) percent of the supplier's total potable water production;

(F) By six (6) percentage points if the supplier's qualifying source of supply is six (6) percent or more but less than seven (7) percent of the supplier's total potable water production;

(G) By seven (7) percentage points if the supplier's qualifying source of supply is seven (7) percent or more but less than eight (8) percent of the supplier's total potable water production;

(H) By eight (8) percentage points if the supplier's qualifying source of supply is eight (8) percent or more of the supplier's total potable water production.

(I) To qualify for this reduction the supplier must certify, and provide documentation to the Board upon request demonstrating, the percent of its total potable water production that comes from a local, drought-resilient source of supply developed after 2013, the supplier's investment in that local, drought-resilient source of supply, and that the use of that supply does not reduce the water available to another legal user of water or the environment. To qualify for this reduction an urban water supplier shall submit the required certification to the Board by March 15, 2016.

(J) Certifications that do not meet the requirements of subdivision (f)(3)(I), including certifications for which documentation does not support that the source of supply is a local, drought-resilient source of supply, the use of which does not reduce the water available to another legal user of water or the environment, will be rejected. Submitting a certification or supporting documentation pursuant to subdivision (f)(3)(I) that is found to be materially false by the Board is a violation of this regulation, punishable by civil liability of up to five hundred dollars (\$500) for each day in which the violation occurs. Every day that the error goes uncorrected constitutes a separate violation. Civil liability for the violation is in addition to, and does not supersede or limit, any other remedies, civil or criminal.

(4) No urban water supplier's conservation standard pursuant to this section shall drop below eight (8) percent as a consequence of the reductions identified in this subdivision.

(g) To prevent waste and unreasonable use of water and to promote water conservation, each distributor of a public water supply that is not an urban water supplier shall:

(1) Provide prompt notice to a customer whenever the supplier obtains information that indicates that a leak may exist within the end-user's exclusive control; and

~~———— (2) Submit a report by December 15, 2016, on a form provided by the Board, that identifies total potable water production, by month, from December, 2015 through November, 2016, total potable water production, by month, for the same months in 2013, and any actions taken by the supplier to encourage or require its customers to conserve water.~~

Authority: Section 1058.5, Water Code.

References: Article X, Section 2, California Constitution; Sections 102, 104, 105, 275, 350, 1846, 10617 and 10632, Water Code; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463.

Sec. 866. Additional Conservation Tools.

(a)(1) To prevent the waste and unreasonable use of water and to promote conservation, when a water supplier does not meet its conservation standard required by section 864.5 or section 865 the Executive Director, or the Executive Director's designee, may issue conservation orders requiring additional actions by the supplier to come into compliance with its conservation standard.

(2) A decision or order issued under this article by the Board or an officer or employee of the Board is subject to reconsideration under article 2 (commencing with section 1122) of chapter 4 of part 1 of division 2 of the Water Code.

(b) The Executive Director, or his designee, may issue an informational order requiring water suppliers, or commercial, industrial or institutional properties that receive any portion of their supply from a source other than a water supplier subject to section 864.5 or 865, to submit additional information relating to water production, water use or water conservation. The failure to provide the information requested within 30 days or any additional time extension granted is a violation subject to civil liability of up to \$500 per day for each day the violation continues pursuant to Water Code section 1846.

(c) Orders issued under previous versions of this section shall remain in effect and shall be enforceable as if adopted under this version. Changes in the requirements of this article do not operate to void or excuse noncompliance with orders issued before those requirements were changed.

Authority: Section 1058.5, Water Code.

References: Article X, Section 2, California Constitution; Sections 100, 102, 104, 105, 174, 186, 187, 275, 350, 1051, 1122, 1123, 1825, 1846, 10617 and 10632, Water Code; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463.