
State Water Resources Control Board

**NOTICE OF PROPOSED EMERGENCY RULEMAKING
November 30, 2021**

**Prohibition of Activities and Mandatory Actions during
Declared 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

Over the course of the spring and summer of 2021, Governor Newsom proclaimed a drought state of emergency for all counties in California, culminating, to date, with his October 19, 2021, proclamation of a drought state of emergency that expanded the state of emergency to all California counties. In the October 19, 2021 proclamation, Governor Newsom made it clear that “the most impactful action Californians can take to extend available supplies is to re-double their efforts to voluntarily reduce their water use by 15 percent from their 2020 levels by implementing the commonsense measures identified in operative paragraph 1” of his July 8, 2021 Executive Order (N-10-21). Among other things, the October 19, 2021 proclamation encourages the State Water Resources Control Board (State Water Board) to prohibit, by emergency regulation, wasteful water practices; emergency regulations adopted under Water Code section 1058.5 may remain in effect for up to one year, unless rescinded earlier or extended by the State Water Board.

Water Code section 1058.5 grants the 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 January 4, 2022, the State Water Board will consider a proposed resolution adopting emergency regulations adding new sections to title 23 of the California Code of Regulations.

Proposed Text of Emergency Regulations

See the attached proposed text of the emergency regulations.

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

The State Water Board finds that an emergency exists due to severe drought conditions, as identified in the Governor's drought emergency proclamations. Immediate action is needed to effectively increase water conservation so that remaining supplies are maintained to address the present drought emergency.

The current extent of voluntary conservation established by many urban water suppliers will not provide for timely and effective attainment of the State's conservation needs, which include the maintenance of remaining supplies. Without adequate reserves, water suppliers will be unable to address the drought emergency. The emergency regulation improves the State Water Board's and local agencies' abilities to quickly and effectively implement and enforce mandatory water conservation measures during the current drought, which will help preserve the State's supplies during the drought emergency.

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.

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

Water Code section 1058.5 provides authority for the emergency regulations. The revised emergency regulations implement, interpret, or make specific: 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, 491, and 1122, Water Code; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463; and *Stanford Vina Ranch Irrigation Co. v. State of California* (2020) 50 Cal.App.5th 976.

Written Comment Period

Any interested person may submit written comments relevant to the proposed regulatory action to the State Water Board. Written comments must be received no later than **12 noon P.S.T., Thursday, December 23, 2021**. The State Water Board will only consider written comments received by that time.

Please send comment letters to Ms. Jeanine Townsend, Clerk to the Board, by email at commentletters@waterboards.ca.gov, (916) 341-5620 (fax), or by mail or hand delivery addressed to:

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000 (by mail)
1001 I Street, 24th Floor, Sacramento, CA 95814 (by hand delivery)

Please also indicate in the subject line, “**Comment Letter – Drought Conservation Emergency Regulation.**” Hand and special deliveries should also be addressed to Ms. Townsend at the address above. Couriers delivering comments must check in with lobby security and have them contact Ms. Townsend at (916) 341-5600. Due to the limitations of the email system, emails larger than 15 megabytes are rejected and cannot be delivered or received by the State Water Board. We request that comments larger than 15 megabytes be submitted under separate emails. If you would like to request a copy of the public comment letters received by the Board for this item, send an email to commentletters@waterboards.ca.gov and identify that you are requesting copies of public comments for Drought Conservation Emergency Regulation.

To be added to the mailing list for this rulemaking and to receive notification of updates of this rulemaking, you may subscribe to the listserv for “Water Conservation Regulations” by going to http://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.shtml (look under “General Interests”, select “Water Conservation Regulations”).

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

At present, there is no statewide prohibition on individual activities to promote conservation. 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 is intended to safeguard urban water supplies in the event of another dry year. 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. California has been subject to multi-year droughts in the past, and there is no guarantee that precipitation this winter will lift the State out of the current drought conditions. Moreover, climate change science indicates that the Southwestern United States are becoming drier, increasing the likelihood of prolonged droughts. In addition, 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 2022, more water supply systems will be at risk of depleting supplies, 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 reduce negative impacts to the State’s economy.

Each of the specific prohibitions on water uses is necessary to promote water conservation to maintain an adequate supply during the drought emergency, which cannot be done if water is being used in an excessive or wasteful manner. 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. Consequently, the proposed regulations will further protection of the environment.

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

- Reduced water bills for customers that reduce water use (some of these savings will generate additional economic activity, such as investments in drought-tolerant landscaping);
- increased drought awareness and shared sense of responsibility among urban water users; and
- reduced potential for severe economic disruption if 2022 is another dry year.

The proposed emergency adoption of section 995 directs individuals statewide to refrain from engaging in certain activities to promote conservation to meet the drought emergency and prohibits homeowners' associations, cities, and counties from imposing penalties against homeowners for their actions in response to a declared drought emergency.

Proposed section 995, subdivision (b) 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, and the use of potable water in non-recirculating ornamental fountains.

Proposed section 995, subdivision (c) prohibits homeowners' associations, community service organizations, and similar entities from imposing or threatening to impose penalties for reducing watering of lawns or from requiring owners to reverse or remove landscaping measures in response to a declared drought emergency.

Proposed section 995, subdivision (d) prohibits any city, county, or city and county, from imposing a fine under any local maintenance ordinance or other relevant ordinance as prohibited by section 8627.7 of the Government Code.

Proposed section 995, subdivision (e) specifies the potential penalties for violations of subdivisions (b), (c) and (d).

Proposed section 995, subdivision (f) specifies process for someone issued an order or decision under this section to seek reconsideration of that order or decision.

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

The proposed emergency regulation would be adopted 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 Resources Control Board has determined that adoption of proposed section 995 does not impose a new mandate on local agencies or school districts. The sections are generally applicable law.

The State Water Resources Control Board has further determined that adoption of proposed section 995 does 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. 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. The State Water Board estimates that local agencies that are urban water suppliers could collectively realize as much as \$100,000,000 in lost revenue as a result of implementing the proposed regulations.

Implementation of the proposed emergency regulations will result in additional workload for the State Water Board and possibly for the Department of Water Resources, however, this work will be accomplished through redirection of resources within existing agency budgets. Significant costs or saving for State agencies are therefore not anticipated.

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