

**California Regional Water Quality Control Board  
Santa Ana Region**

**May 1, 2015**

**ITEM: 9**

**SUBJECT: EMERGENCY WATER CONSERVATION REGULATIONS**

**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 its drought actions. Among other things, the Executive Order directed the State Water Resources Control Board (State 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 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. The emergency regulation became effective on July 28, 2014 upon approval by the Office of Administrative Law.

The initial water conservation emergency regulation included prohibitions on certain water uses and required larger urban water suppliers to activate their Water Shortage Contingency Plan to a level where outdoor irrigation restrictions are mandatory. In communities where no water shortage contingency plan exists, the regulation required that water suppliers either limit outdoor irrigation to twice a week or implement other comparable conservation actions. Finally, large urban water suppliers must report water use on a monthly basis to track progress. The initial emergency regulation was scheduled to expire on April 25, 2015, absent further action.

The U.S. Drought Monitor, however, currently classifies almost the entire State of California as experiencing severe to exceptional drought conditions. In average years, the snowpack stores water during the winter months and releases it through melting in the spring and summer to replenish rivers and reservoirs. However, warm and relatively dry weather conditions this year have reduced the amount of snowpack in California's mountains. As of March 3, 2015, the Sacramento Region cumulative precipitation was 87 percent of average for that date (8-Station Index). However, most of that precipitation fell as rain, and Sierra snow water content is extremely low. Continued action is, therefore, needed to ensure urban water suppliers and all Californians are taking sufficient actions to conserve water and preserve the State's water supply. As a result, on March 17, 2015, the State Board adopted Resolution 2015-0013, readopting the emergency regulation and revising it to include the following additional measures:

- A prohibition on irrigation of turf or ornamental landscapes during and 48 hours following measurable precipitation.

- Hospitality sector restrictions requiring that water only be served on request in restaurants and bars, and requiring the operators of hotels and motels to offer patrons the option of not having their towels and linens washed daily.
- A requirement for urban water suppliers that do not already have a limit on the number of days that outdoor irrigation of ornamental landscapes or turf with potable water is allowed, to limit such irrigation to no more than two days per week.
- A requirement that urban water suppliers promptly notify their customers when they are aware of leaks within the customer's control.
- Additional reporting requirements for urban water suppliers on compliance and enforcement efforts being undertaken within their service areas.
- Clarification that small urban water suppliers are required to limit outdoor irrigation of ornamental landscapes or turf with potable water to no more than two days per week or implement other mandatory conservation measures intended to achieve a 20 percent reduction in water consumption.

The readopted emergency regulation became effective on March 27, 2015, upon approval by the Office of Administrative Law.

On April 1, 2015, following measurement of a record-low Sierra snowpack, Governor Brown issued an Executive Order mandating a number of additional measures to respond to the drought. In particular, the Executive Order requires the State Board to adopt restrictions to achieve a statewide 25% reduction in potable urban water usage compared to the amount used in 2013. In response to the Executive Order, State Board staff has released both a schedule and a Proposed Regulatory Framework for Emergency Rulemaking (copy attached). The schedule calls for State Board adoption of new regulations on May 5 or 6, 2015, to achieve the 25% reduction.

An update on the State Board's progress toward developing and adopting the new regulations will be provided at the Board meeting.

## MANDATORY CONSERVATION PROPOSED REGULATORY FRAMEWORK

The Governor's April 1, 2015 Executive Order directs the State Water Board to impose restrictions to achieve an aggregate statewide 25% reduction in potable urban water use through February 2016. The Executive Order stipulates the 25% reduction in water use as compared to 2013, but proposes flexibility in how to achieve this reduction in recognition of the level of conservation already achieved by many communities around the State.

Input Requested: The State Water Board is interested in receiving feedback on these regulatory concepts as well as other ideas on how a 25% reduction could be structured. Please submit comments and ideas on the proposed framework by email to Jessica Bean at [Jessica.Bean@waterboards.ca.gov](mailto:Jessica.Bean@waterboards.ca.gov) by April 13, 2015.

### Urban Water Suppliers

- I. **Apportioning Water Supplier Reductions:** The Executive Order directs the State Water Board to consider the relative per capita water usage of each water suppliers' service area, and have those areas with high per capita use achieve proportionally greater reductions than those with low use. Reporting on residential per capita (R-GPCD) water use began in October 2014 for the September 2014 reporting period. Residential per capita water use is highest during the summer months when outdoor irrigation demand is high. Reported summertime water use is also generally more consistent because the weather varies less from year to year than during the winter. Accordingly, September 2014 R-GPCD serves as a reasonable basis for placement of the 411 urban water suppliers into four categories as follows:

R-GPCD Range (Sept 2014)	# of Suppliers within Range	Conservation Standard
Under 55	18	10%
55-110	126	20%
110-165	132	25%
Over 165	135	35%

The proposed breakdown of water suppliers into R-GPCD groupings with corresponding conservation standards is intended to equitably and effectively achieve a 25% aggregate statewide reduction in potable urban water use.

II. **New Reporting Requirements:** To assess compliance by commercial, industrial, and institutional (CII) sector customers and actions taken by urban water suppliers to reduce CII sector use, the following additional reporting requirements are proposed:

- Monthly commercial sector use;
- Monthly large landscape commercial customer use (e.g. golf courses, amusement parks);
- Monthly industrial sector use;
- Monthly institutional sector use; and
- Monthly large landscape institutional customer use (e.g. cemeteries, college campuses).

Reporting requirements under the existing Emergency Regulation that took effect March 27, 2015, will remain in effect.

III. **Compliance Assessment:** To determine if urban water suppliers are meeting required use reductions, water production data, as reported by each individual water supplier for the months of June 2015 through February 2016, will be compared to the same period(s) in 2013. Given the severity of the current drought, the State Water Board will assess suppliers' compliance for both monthly and cumulative water usage reductions.

IV. **Enforcement:**

The State Water Board has a variety of tools available to enforce its regulations:

- Informal enforcement, such as warning letters, can provide a clear reminder to water suppliers of the requirements and an alert that their conservation programs are not achieving the desired water savings. Warning letters would generally not be accompanied by monetary penalties
- Formal enforcement actions include Cease and Desist Orders (CDO) to stop non-compliant activity. These Orders generally contain a description of the specific actions, and a timeline for implementing them, required for the recipient to return to compliance. Non-compliance with a CDO during a drought emergency, such as the current one, can result in a complaint to assess Administrative Civil Liabilities of up to \$10,000 for each day of non-compliance.

In addition to these existing tools, other tools may be needed to ensure compliance for the short duration of the regulations. These tools would be developed through the emergency rulemaking and would remain in effect for its duration (270 days unless extended by the State Water Board). The tools include:

- Informational Orders that would enable the Board to require specific data and other facts on conservation practices if conservation targets are not being met.
- Conservation Orders that would go into effect immediately upon receipt, as opposed to CDOs that can only be issued and enforced after the State Water Board holds an evidentiary hearing, if one is requested. A conservation order would describe the specific actions required for the recipient to come into compliance with the requirements of the regulation. Issuance of a conservation order would be subject to reconsideration by the Board and violation of a conservation order would not be subject to the enhanced penalties associated with violation of a CDO during a drought emergency.

The tools will be used alone, or in combination, to address the following compliance problems:

- Failure of water suppliers to file reports as required by the regulation;
- Failure to implement prohibitions and restrictions as described in the Governor's Executive Orders and the emergency regulation; and
- Failure of water suppliers to meet the assigned water use reduction target.

## Small Water Suppliers

There are over 2,600 small water suppliers (those with fewer than 3,000 service connections) that provide water to over 1.5 million Californians. Under the existing Emergency Regulation that took effect March 27, 2015, these suppliers are required to either limit outdoor irrigation to no more than two times per week or to institute measures that achieve a 20% reduction in use. Small suppliers are not required to report their water production to the Board, but are expected to have the data available on request. Small suppliers will need to contribute to achieving the statewide 25% potable urban water use reduction called for in the Executive Order.

- I. **Apportioning Water Supplier Reductions:** Up until the release of the April 1, 2015 Executive Order, all water suppliers were being asked to achieve a voluntary 20% reduction in water use. The existing emergency regulation assigns responsibilities to both larger urban water suppliers and small suppliers to restrict irrigation to achieve the 20% reduction target. Under this proposal, small water suppliers would be required to achieve a 25% water savings as compared to their 2013 water use under the new regulation.

- II. **Reporting Requirements:** To date, small water suppliers have not been required to report on their water use or conservation measures. Small suppliers would now be directed to provide a one-time report to the State Water Board, 180 days after the effective date of the new emergency regulation, addressing at a minimum:
- Potable water production from June-November 2013 and June-November 2015;
  - The number of days per week outdoor irrigation is allowed and other restrictions implemented to achieve a 25% water use reduction; and
  - Specific restrictions on CII sector use.
- III. **Compliance Assessment:** Compliance would be based upon whether small suppliers submitted the required data and met the 25% water use reduction requirement.
- IV. **Enforcement:** The State Water Board may use any of the tools discussed above, as appropriate.

### **Additional Prohibitions and End-User Requirements**

The State Water Board's existing emergency regulation includes a number of water use prohibitions that apply to all Californians and end-user restrictions that apply to specific water users, such as restaurants and hotels. These existing restrictions will remain in effect, and consistent with the Executive Order, the following new prohibitions will be put in place:

- The use of potable water outside of newly constructed homes and buildings that is not delivered by drip or micro-spray systems will be prohibited; and
- The use of potable water to irrigate ornamental turf on public street medians will be prohibited.

The State Water Board will also consider adding requirements for large landscape users (e.g. commercial, industrial, institutional) not served by either type of water supplier discussed above to achieve the 25% statewide reduction in potable urban water use.