



# Fact Sheet

## Local Authority to Impose Conservation Or Rationing Measures

### ***Introduction***

The State Water Resources Control Board has received requests about the sources of authority and circumstances under which local agencies serving as water distributors may impose conservation or rationing measures upon water users. This fact sheet provides guidance about these issues. It does not constitute legal advice to any local agency, nor does it express an opinion about the specific factual circumstances under which such authorities should be exercised.

### ***Short Answer***

When the governing body of a distributor of a public water supply finds a present or threatened water shortage emergency, Water Code sections 350 through 359 provide authority for the governing body to adopt any restrictions upon delivery or consumption necessary to meet the emergency. In addition, California law allows for the creation of several different types of water distributors for public supply, some of which possess a separate basis of authority for mandating conservation measures during times of shortage.<sup>1</sup>

Even absent a shortage, water distributors and cities and counties likely have the ability to impose conservation measures under their enabling statutes and other authorities.

### ***Analysis***

Water Code sections 350 through 359 set forth a procedure by which the governing body of any distributor of a public water supply—whether publicly or privately owned—may mandate conservation measures in times of water shortage.

### ***Powers of Distributors of Public Water Supplies During Water Shortage***

The governing body of any distributor of a public water supply may declare a water shortage emergency after finding that “the ordinary demands and requirements of water consumers cannot be satisfied without depleting the water supply of the distributor to the extent that there would be insufficient water for human consumption, sanitation, and fire protection.” (Wat. Code, § 350.) The distributor may do so when an emergency is immediate, because the

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<sup>1</sup> The Water Code allows for special purpose districts with substantially similar purposes, functions, and geographic boundaries to be incorporated under several different statutes, including the California Water District Act, the California Water Storage District Act, the County Water District Law, and the Municipal Water District Law of 1911. Despite such similarities, the enabling statutes vary in the authorities they provide to water districts to mandate conservation in times of shortage.



distributor cannot adequately supply its customers, or when an emergency is threatened, because the distributor determines that it cannot meet an increased future demand. (*Swanson v. Marin Municipal Water Dist.* (1976) 56 Cal.App.3d 512, 517-18.)

After making the declaration and holding a public hearing, the distributor may adopt any regulations or restrictions upon the delivery and use of water that will conserve available water “for the greatest public benefit with particular regard to domestic use, sanitation, and fire protection.” (Wat. Code, § 353.) These restrictions remain in effect until the emergency elapses. (Wat. Code, § 355.)

The distributor has broad discretion to determine what measures to impose to conserve water and such measures may include mandated rationing upon customers or denial of new service connections. (*Building Industry Ass’n v. Marin Municipal Water Dist.* (1991) 235 Cal.App.3d 1641, 1647-48.) When a distributor elects to impose rationing, however, it must allocate or set aside the amount needed for domestic use, sanitation, and fire protection before allocating water for any other purpose. (*Ibid.*)

### ***Additional Conservation Authority During Shortage***

California law allows for the creation of several different types of local water distributors, some of which have additional, specific statutory authority for mandating conservation during times of shortage. Water storage districts, irrigation districts, county water districts, and municipal water districts are each vested with independent statutory authority for mandating conservation in response to shortage.

A water storage district is a public agency created by an election of landowners in an area to acquire, improve, and operate any necessary works for the storage and distribution of water. (Wat. Code, §§ 39400; 43026.) When the volume of water under the water storage district’s control is likely insufficient to satisfy the needs of those it serves, the water storage district must generally reduce deliveries to all customers pro rata. (Wat. Code, § 43004.)

An irrigation district is a public entity formed to, among other things, maximize the beneficial use of water on land susceptible of irrigation from a common source. (Wat. Code, § 20700.) In ordinary circumstances, the irrigation district must annually apportion water pro rata to each landowner upon the basis of the amount of the last assessment against his or her land relative to the assessments against all landowners in the irrigation district. (Wat. Code, § 22250.) In times of shortage, the irrigation district may establish water fees for particular types of crops, require applications for water based on the crops that a landowner intends to grow in the following irrigation season, and distribute water equitably based upon what the district has deemed necessary to support the particular crop proposed to be grown.<sup>2</sup> (Wat. Code, § 22252.3)

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<sup>2</sup> Because irrigation districts are substantially similar to reclamation districts, the law developed with respect to irrigation districts tends to be freely applied to reclamation districts. (*La Mesa, Lemon Grove, & Spring Valley Irrigation District v. Halley* (1925) 197 Cal. 50, 60-61.) Consequently, this system for allocation in times of shortage is likely applicable to reclamation districts, as well.

A county water district is a public agency of limited power created by an election of persons residing within a geographic area and organized to furnish water to those within its boundaries. (Wat. Code, §§ 30200; 31020.) In the event of a drought, or any other “threatened or existing water shortage,” a county water district is empowered to restrict the use of water it supplies for any purpose other than household uses or any other uses the county water district determines to be necessary. (Wat. Code, § 31026.) Unlike Water Code section 353, the statute governing county water districts does not explicitly require them to allocate or set aside the amount of water needed for sanitation and fire protection in imposing such water restrictions. (*Ibid.*)

A statute with virtually identical language governs the actions that municipal water districts must take in response to shortage. A municipal water district is also a public agency of limited power created by an election of persons residing within a geographic area and organized to distribute water within its boundaries. (Wat. Code, §§ 71060-61; 71610, subd. (a).) Like a county water district, a municipal water district may restrict the use of water during a drought, or any other threatened or existing water shortage, for any purpose other than household uses or any other uses the district deems necessary. (Wat. Code, § 71640.) Also like a county water district, a municipal water district is not explicitly required to allocate or set aside the amount of water for sanitation and fire protection in imposing such restrictions. (*Ibid.*)

### ***Conservation Authority Absent Shortage***

Even absent a shortage, water distributors likely have the ability to impose conservation measures. The enabling statutes for most special purpose water districts contain language permitting the districts to either exercise all powers implied by the statutes or to exercise any powers necessary and proper for fulfilling the purposes for which the district was formed.<sup>3</sup> Similarly, in addition to the express authority to create and maintain water supplies (Gov. Code, § 38472, subd. (d); *id.* § 25213, subd. (f)), cities and counties possess the authority to make and enforce “all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.” (Cal. Const., art XI, § 7.) This authority is often referred to as the “police power” and authorizes cities and counties to impose reasonable regulations for the general welfare. (*Cotta v. City and County of San Francisco* (2007) 157 Cal.App.4th 1550, 1557.) Taken together, these authorities permit special purpose water districts, as well as cities and counties, to adopt ordinances requiring conservation of water, even in the absence of an immediate or threatened water shortage.

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<sup>3</sup> E.g. Wat. Code., §§ 22075 [irrigation district may do any act necessary to furnish sufficient water]; 31000 [county water districts exercise powers implied from enabling legislation]; 43150 [water storage district has all powers necessary to perform its duties]; 50900 [reclamation district may do all things necessary or convenient for accomplishing its purposes]; 55331 [county waterworks district may do all things necessary or proper to accomplish its purposes]; 71590 [municipal water district may exercise all powers implied by its enabling legislation]; 74501 [water conservation district may do all acts necessary for the full exercise of its powers]; Stats. 1969, c. 209, p. 504, § 120, West’s Ann. Wat.—Appen. (1995 ed.) ch. 1, p. 33 [metropolitan water district may exercise all powers reasonably implied from its enabling legislation].