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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2016-

TO ADOPT AN EMERGENCY REGULATION FOR STATEWIDE URBAN WATER CONSERVATION

WHEREAS:

1. 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, and called on all Californians to redouble their efforts to conserve water. The April 2014 Proclamation finds that the continuous severe drought conditions present 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, if drought conditions continue into 2015. It orders that any provision of the governing document, architectural or landscaping guidelines, or policies of a common interest development will be void and unenforceable to the extent it has the effect of prohibiting compliance with the water-saving measures contained in this directive, or any conservation measure adopted by a public agency or private water company. The April 2014 Proclamation also suspends the environmental review required by the California Environmental Quality Act to allow the emergency regulation and other actions to take place as quickly as possible;
2. The April 2014 Proclamation references the [Governor's January 17, 2014 declaration of a drought State of Emergency in California due to severe drought conditions \(Proclamation No. 1-17-2014\)](#), January 2014 Proclamation). The January 2014 Proclamation finds that dry conditions and lack of precipitation present urgent problems to drinking water supplies and cultivation of crops, which put farmers' long-term investments at risk. The conditions also threaten the survival of animals and plants that rely on California's rivers, including many species in danger of extinction. The January 2014 Proclamation also calls on all Californians to reduce their water usage by 20 percent;
3. On December 22, 2014, in light of the continued lack of rain, Governor Brown issued [Executive Order B-28-14](#), which extends the California Environmental Quality Act suspension through May 31, 2016 for Water Code section 13247 and certain activities identified in the January 2014 and April 2014 proclamations;
4. On April 1, 2015, Governor Brown issued [Executive Order B-29-15](#) that directs the State Water Board to impose restrictions on urban 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; along with other directives;

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5. On May 5, 2015, the State Water Resources Control Board (State Water Board) adopted [Board Resolution No. 2015-0032](#) and an Emergency Regulation to address specific provisions of Executive Order B-29-2015 that included a mandatory 25 percent statewide reduction in potable urban water use between June 2015 and February 2016. To implement the Executive Order, the Emergency Regulation placed each urban water supplier in a conservation tier, ranging between 8 and 36 percent, based residential per capita water use for the months of July – September 2014. Resolution No. 2015-0032 also directed staff to work with stakeholders to further develop and consider a range of factors that contribute to water use, including but not limited to climate, growth, investment in local, drought resilient supplies, and others for adjustment to the current emergency regulation should it need to be extended into 2016;
6. On November 13, 2015, Governor Brown issued [Executive Order B-36-15](#) calling for an extension of urban water use restrictions until October 31, 2016, should drought conditions persist through January 2016. This Executive Order also directs the State Water Board to consider modifying the restrictions to incorporate insights gained from the existing restrictions;
7. On February 2, 2016, the State Water Board adopted [Board Resolution No. 2016-0007](#) and a revised, extended Emergency Regulation to address specific provisions of Executive Order B-36-15. The Emergency Regulation established adjustments to reduce the conservation standards of urban water suppliers 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;
8. On May 9, 2016, Governor Brown issued [Executive Order B-37-16](#) calling on the State Water Board to adjust emergency water conservation regulations through the end of January 2017 in recognition of differing water supply conditions across the state;
9. Statewide precipitation in 2016 has been variable. Northern California received above-average rainfall, while much of southern California continued to experience below-average rainfall and warm temperatures. February 2016 was amongst the warmest and driest recorded for parts of southern California. Consequently, while major Northern California water reservoirs are near or above average water storage for this time of year, many Southern California reservoirs are significantly below average. In addition, the snowpack is melting fast and as of early May is at less than 50 percent of the average for this time of year;
10. 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”;
11. On July 15, 2014, the State Water Board adopted an emergency regulation to support water conservation ([Resolution No. 2014-0038](#)). That regulation became effective July 28, 2014 upon approval by the Office of Administrative Law (OAL);

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12. On March 17, 2015, the State Water Board amended and readopted the emergency regulation to support water conservation ([Resolution No. 2015-0013](#)), which became effective March 27, 2015 upon approval by OAL;
13. On May 5, 2015, the State Water Board significantly amended, and readopted, the emergency regulation to support water conservation ([Resolution No. 2015-0032](#)), which became effective May 18, 2015 upon approval by OAL and expires February 13, 2016;
14. On February 2, 2016, the State Water Board amended and readopted the emergency regulation to support water conservation ([Resolution No. 2016-0007](#)), which became effective February 11, 2016 upon approval by OAL and expires November 7, 2016;
15. 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;
16. Although urban water suppliers have placed restrictions on outdoor watering, the State Water Board continues to receive reports of excessive outdoor water use;
17. Water conservation is the easiest, most efficient, and most cost-effective way to quickly reduce water demand and to extend supplies into the next year. Water saved this summer is water available later in the season or next year, reducing the likelihood of even more severe water shortages should the drought continue. Extending current water supplies offers communities flexibility in managing their water portfolios and drought response options should the drought continue into the next water year;
18. 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;
19. 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>);
20. Many California communities are facing continued social and economic hardship due to the ongoing drought. The rest of us can make adjustments to our water use, including landscape choices that conserve even more water;
21. 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 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

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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;

22. Under the May 5, 2015 emergency regulation, as revised February 2, 2016, urban water suppliers, large and small, have reduced statewide potable water usage more than 23.9 percent compared to usage during the same months in 2013, through the significant efforts of the suppliers and their customers;
23. The State Water Board estimates that suppliers and their customers will save between 0.46 and 0.97 million acre-feet of water in response to the extended regulation from June 2016 through January 2017. This savings will be in addition to the 1.55 million acre-feet the State is on track to have saved from June 2015 through May 2016 compared to usage during the same months in 2013;
24. Directive one of the Governor's May 9, 2016 Executive Order Directs the State Water Board to adjust emergency water conservation regulations through the end of January 2017 in recognition of differing water supply conditions across the state;
25. On April 20, 2016 the State Water Board held a workshop to receive input on the potential modification of the current Drought Emergency Water Conservation regulation. The State Water Board solicited public comments on the proposed framework and received over 130 comments, primarily relating to the improved 2016 water year conditions, whether conservation regulations were necessary, the need to transition to a supply-based conservation regulation, and the ability of urban water suppliers to manage their own water supply options;
26. On May 9, 2016 the State Water Board issued staff-proposed regulatory language for public comment based in part on the April 20, 2016 workshop and comments received, and in part on Executive Order B-37-16. 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 extends portions of the February 2016 emergency regulation and establishes a process for developing locally appropriate water conservation standards in recognition of differing water supply conditions across the state;
27. On May 13, 2016, the State Water Board initiated the formal emergency rulemaking process by issuing public notice that it would consider the adoption of the emergency regulation at the Board's regularly-scheduled May 18, 2016 public meeting, in accordance with applicable State laws and regulations. The State Water Board also distributed for public review and comment a Finding of Emergency that complies with State laws and regulations;
28. As discussed above, the State Water Board is adopting the revised emergency regulation as directed by the Governor in Executive Order B-37-16 based on the ongoing need to prevent the waste and unreasonable use of water and to promote conservation during the ongoing drought emergency; and

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29. 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.

THEREFORE BE IT RESOLVED THAT:

1. The State Water Board adopts California Code of Regulations, title 23, section 864.5 and amends and re-adopts 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. 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, or unless the State Water Board renews the regulation due to continued drought conditions as described in Water Code section 1058.5;
5. The State Water Board directs staff to provide the Board with monthly updates on the implementation of the emergency regulation and its effect.
6. The State Water Board directs staff to condition funding upon compliance with the emergency regulation, to the extent feasible;
7. The State Water Board directs staff to work with DWR and the Save Our Water campaign to disseminate information regarding the emergency regulation; and
8. The State Water Board directs staff to update the electronic reporting portal to include data fields for reporting required by the emergency regulation.

THEREFORE BE IT FURTHER RESOLVED THAT:

10. The State Water Board shall 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, as required by directive eight in the Governor's April 1, 2015 Executive Order. The Fourth District Court of Appeal's recent Decision in *Capistrano Taxpayer Association Inc. v. City of San Juan Capistrano* (G048969) does not foreclose the use of conservation-oriented rate structures;

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11. The State Water Board calls upon water suppliers to:
 - a. ensure that adequate personnel and financial resources exist to implement conservation requirements not only for 2016, but also for another year of drought should it occur. Water suppliers that face budget shortfalls due to reduced sales should take immediate steps to raise necessary revenues in a way that actively promotes continued conservation;
 - b. expedite implementation of new conservation programs by minimizing internal review periods and utilizing emergency authorities, as appropriate;
 - c. consider the relative water use and conservation practices of their customers and target those with higher water use to achieve proportionally greater reductions than those with low use;
 - d. minimize financial impacts to low-income customers;
 - e. preserve safe indoor water supplies in areas with very low R-GPCD and where necessary to protect public health and safety;
 - f. promote low-water use methods of preserving appropriate defensible space in fire-prone areas, consistent with local fire district requirements;
 - g. educate customers on the preservation of trees;
 - h. promote on-site reuse of water; and
 - i. promptly notify staff of the supplier's need for an alternate method of compliance pursuant to resolved paragraph 20 for any supplier that retains a conservation standard pursuant to section 865 of the emergency regulation.
12. The State Water Board calls upon all businesses within California's travel and tourism sectors to inform visitors of California's drought situation and actions visitors should take to conserve water;
13. 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;
14. The State Water Board calls upon both landlords and tenants of residential and commercial properties to cooperate in taking actions that conserve potable water consistent with the emergency regulation and any applicable rules identified by the appropriate urban water supplier;
15. The State Water Board commends wholesale water agencies that have set aggressive conservation targets for their retail water suppliers;
16. 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;

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17. 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. 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;
18. The State Water Board commends the many water suppliers that have met or exceeded their conservation standards under the May 2015 emergency regulation and the February 2016 amended and extended emergency regulation. Those local efforts have helped the state achieve a statewide 23.9 percent potable water savings from June 2015 through March 2016 and have shown what dedicated Californians can achieve as we make water conservation a California way of life;
19. During this drought emergency, heightened conservation that extends urban resilience is necessary. The State Water Board's focus is primarily on immediate reductions in outdoor water use. Some short-term conservation efforts, such as landscape conversions and installation of efficient appliances, will also support long-term conservation objectives, and are encouraged wherever possible; and
20. The State Water Board recognizes that some commercial and industrial customers, while accounting for a significant portion of total use in a service area, have already taken steps to significantly reduce their water consumption and cannot further reduce their use without substantial impacts. However, the Board also recognizes that in many areas there are significant opportunities for reductions in water use by industries and commercial enterprises that have yet to take action, especially those with large areas of non-functional turf. The Board directs staff to respond promptly upon receipt of any request for alternate enforceable methods of compliance for suppliers that retain a conservation standard pursuant to section 865 of the emergency regulation. If the supplier believes the conservation standard is unachievable due to firm commercial and industrial water use and residential use reductions that would affect public health and safety, it should provide any supporting information or documentation for an alternate method of compliance or should use the new water supply reliability self-certification method provided for in section 864.5.

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 May 18, 2016.

Jeanine Townsend
Clerk to the Board