

**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2017-0004**

**TO ADOPT A 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

“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

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 2017;
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;

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, and if the regulation remains in effect on May 1, 2017, to schedule a board meeting in May 2017 to consider repealing the regulation based on hydrologic and supply conditions at the end of the rainy season;
5. 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;

6. The State Water Board directs staff to condition funding upon compliance with the 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 regulation, and to work with stakeholders to develop consistent messaging regarding the current state of the drought and need for continued water conservation; and
8. 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:

9. 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;
10. 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;
11. 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;
12. 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;
13. 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;

14. 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;
15. 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;
16. 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.

AYE: Chair Felicia Marcus
Vice Chair Frances Spivy-Weber
Board Member Tam M. Doduc
Board Member Steven Moore
Board Member Dorene D'Adamo

NAY: None

ABSENT: None

ABSTAIN: None



Jeanine Townsend
Clerk to the Board