

**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2023-0014-EXEC**

**TO ADOPT AN EMERGENCY REGULATION
TO REDUCE WATER DEMAND AND IMPROVE WATER CONSERVATION**

WHEREAS:

1. Over the course of the spring and summer of 2021, Governor Newsom proclaimed a drought state of emergency for most counties in California, culminating with his October 19, 2021, proclamation of a drought state of emergency that expanded the state of emergency to all California counties.
2. These proclamations urge Californians to reduce their water use.
3. On March 28, 2022, in Executive Order N-7-22, the Governor directed the State Water Resources Control Board (State Water Board or Board) to consider adopting an emergency regulation to increase water conservation. The Executive Order includes a request that the Board establish a ban on decorative grass watering (non-functional turf irrigation) by entities in the commercial, industrial, and institutional sectors.
4. On May 24, 2022, the State Water Board adopted an emergency regulation that, among other things, bans non-functional turf by entities in the commercial, industrial, and institutional sectors, including common areas of homeowners' associations (HOAs). On June 10, 2022, the emergency regulation went into effect and remains in effect for one year from the effective date, unless the State Water Board revises, renews, or rescinds it before then.
5. On August 11, 2022, the Governor announced California's latest actions to increase water supply and adapt to more extreme weather patterns caused by climate change in a document called, "California's Water Supply Strategy, Adapting to a Hotter, Drier Future." The strategy recognizes that the American West is experiencing extreme, sustained drought conditions caused by hotter, drier weather.
6. On March 24, 2023, Governor Newsom signed Executive Order N-5-23, affirming that continued action by the State is needed to address ongoing consequences of the drought emergency, that next winter's hydrology is uncertain, and that the most efficient way to preserve the State's improved surface water supplies is for Californians to continue their ongoing efforts to make conservation a way of life.
7. As expressed in Executive Order N-5-23, improved conditions have helped rehabilitate surface water supplies, but have not abated the severe drought conditions that remain in some parts of the State, including the Colorado River basin, and many groundwater basins throughout the State remain depleted from

overreliance and successive multi-year droughts.

8. Many Californians and urban water suppliers have taken bold steps over the years to reduce water use; nevertheless, current conditions require continued reasonable conservation actions.
9. Water conservation is the easiest, most efficient, and most cost-effective way to quickly reduce water demand and extend water supplies through this summer and into the next year, providing flexibility for all California communities. Water saved is water available next year, giving water suppliers added flexibility to manage their systems effectively over time. The more water that is conserved now, the less likely it is that a community will experience dire shortages that may require water rationing or other emergency actions.
10. Most Californians use more water outdoors than indoors. In many areas, 50 percent or more of daily water use is for irrigation of lawns and outdoor landscaping irrigation. Outdoor water use is generally discretionary, and many irrigated landscapes would not suffer greatly from receiving a decreased amount of water. Irrigation of non-functional turf is one of the most discretionary water uses in California.
11. Public information and awareness are critical to achieving conservation goals, and the Save Our Water campaign (SaveOurWater.com) is an excellent resource for conservation information and messaging that is integral to effective drought response.
12. SaveWater.CA.Gov is an online tool designed to help save water in communities. This website lets anyone easily report water waste from their phone, tablet, or computer by simply selecting the type of water waste they see, typing in the address where the waste is occurring, and clicking send. These reports are filed directly with the State Water Board and relevant local water supplier.
13. On March 28, 2022, the Governor suspended the environmental review required by the California Environmental Quality Act to allow State Water Board-adopted drought conservation emergency regulations and other actions to take place quickly to respond to emergency conditions.
14. 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.”

15. State Water Board Resolution No. 2012-0061 delegates to the Board's Executive Director the authority to revise and readopt emergency regulations previously adopted by the Board.
16. Immediate action is needed to ensure reasonable actions are taken to conserve water, including the revision and readoption of the Board's emergency regulation to maintain the ban on non-functional turf irrigation by entities in the commercial, industrial, and institutional sectors prior to its expiration.
17. On May 19, 2023, the State Water Board issued public notice that it will consider the revision and readoption of the emergency regulation it previously adopted on May 24, 2022, prior to its expiration and 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.
18. Disadvantaged communities may require assistance in increasing water conservation, and state and local agencies should look for opportunities to provide assistance in promoting water conservation. This assistance should include but not be limited to translation of regulation text and dissemination of water conservation announcements into languages spoken by at least 10 percent of the people who reside in a water supplier's service area, such as in newspaper advertisements, bill inserts, website homepage, social media, billboards, and notices in public libraries.
19. The Board directs staff to consider the following in pursuing any enforcement of section 996, subdivision (b): before imposing monetary penalties, staff shall provide one or more warnings; monetary penalties must be based on an ability to pay determination, consider allowing a payment plan of at least 12 months, and shall not result in a tax lien; and Board enforcement shall not result in shutoff.
20. The Board encourages entities other than Board staff that consider any enforcement of this regulation to apply these same factors identified in resolved paragraph 19. 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 their enforcement discretion in enforcing the regulation, to the extent authorized, and may develop their own progressive enforcement practices to encourage conservation.

THEREFORE BE IT RESOLVED THAT:

1. The State Water Board adopts California Code of Regulations, title 23, section 996, as appended to this resolution as an emergency regulation.
2. State Water Board staff shall submit the regulation to the Office of Administrative Law (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 designee may make such changes.
4. This regulation shall remain in effect for one year 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 State Water Board staff to work with the Department of Water Resources and the Save Our Water campaign to disseminate information regarding the emergency regulation.
6. 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. Local agencies are encouraged to develop their own progressive enforcement practices to promote conservation.

As the Executive Director of the State Water Board, I do hereby adopt this resolution pursuant to lawfully delegated authority.



Eileen Sobeck
Executive Director

May 26, 2023

Date

PROPOSED TEXT OF EMERGENCY REGULATION

Title 23. Waters

Division 3. State Water Resources Control Board and Regional Water Quality Control Boards

Chapter 3.5. Urban Water Use Efficiency and Conservation

Article 3. Prevention of Drought Wasteful Water Uses

§ 996. Urban Drought Response Actions

(a) As used in this section:

(1) "Commercial, industrial and institutional" refers to commercial water users, industrial water users, and institutional water users as respectively defined in Water Code, section 10608.12, subdivisions (e), (i), and (j), and includes homeowners' associations, common interest developments, community service organizations, and other similar entities but does not include the residences of these entities' members or separate interests.

(2) "Common interest development" has the same meaning as in section 4100 of the Civil Code.

(3) "Community service organization or similar entity" has the same meaning as in section 4110 of the Civil Code.

(4) "Homeowners' association" means an "association" as defined in section 4080 of the Civil Code.

(5) "Non-functional turf" means turf that is solely ornamental and not regularly used for human recreational purposes or for civic or community events. Non-functional turf does not include sports fields and turf that is regularly used for human recreational purposes or for civic or community events.

(6) "Plant factor" has the same meaning as in section 491.

(7) "Separate interest" has the same meaning as in section 4185 of the Civil Code.

(8) "Turf" has the same meaning as in section 491.

(b) (1) To prevent the unreasonable use of water and to promote water conservation, the use of potable water is prohibited for the irrigation of non-functional turf at commercial, industrial, and institutional sites.

(2) Notwithstanding subdivision (b)(1), the use of water is not prohibited by this section to the extent necessary to ensure the health of trees and other perennial non-turf plantings or to the extent necessary to address an immediate health and safety need.

(3) Notwithstanding subdivision (b)(1), an urban water supplier may approve a request for continued irrigation of non-functional turf where the user certifies that

the turf is a low water use plant with a plant factor of 0.3 or less, and demonstrates the actual use is less than 40% of reference evapotranspiration.

- (c) The taking of any action prohibited in subdivision (b) is an infraction punishable by a fine of up to five hundred dollars (\$500) for each day in which the violation occurs. The fine for the infraction is in addition to, and does not supersede or limit, any other remedies, civil or criminal.
- (d) A decision or order issued under this section by the Board, or an officer or employee of the Board, is subject to reconsideration under article 2 (commencing with section 1122) of chapter 4 of part 1 of division 2 of the Water Code.

Authority: Section 1058.5, Water Code.

References: Article X, Section 2, California Constitution; Sections 4080, 4100, 4110, and 4185, Civil Code; Section 8627.7, Government Code; Sections 102, 104, 105, 275, 350, 377, 491, 1122, and 10608.12, Water Code; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463; *Stanford Vina Ranch Irrigation Co. v. State of California* (2020) 50 Cal.App.5th 976.