

Department of Water Resources
Michael L. Peterson, Director



(2/2/16) Board Meeting- Item 7
Conservation Extended Emergency Reg
Deadline: 1/28/16 by 12:00 noon

Including service to the Cities of
Elk Grove and Rancho Cordova

Transmitted by email to commentletters@waterboards.ca.gov

January 28, 2016



State Water Resources Control Board
1001 I Street, 24th floor
Sacramento, CA 95814

Subject: 2/2/16 BOARD MEETING (Conservation Extended Emergency Regulation)

Dear Chair Marcus and Board Members D'Adamo, Doduc, Moore and Spivey-Weber:

As a follow up to previous Sacramento County Water Agency (SCWA) and stakeholder comments on elements of the existing Emergency Regulation that should be changed or modified that were submitted to the State Water Resources Control Board (State Water Board), SCWA is pleased to provide comments on the State Water Board staff's *Proposed Emergency Regulation For February Through October 2016* (attached).

We appreciate the State Water Resources Control Board (State Water Board)'s efforts to increase the equity of the current Emergency Regulation by providing various adjustments to the conservation targets. The addition of the climate adjustment to account for varying climate zones throughout the state shows a direct response to our region's request for assistance to help protect our valued urban forests from more permanent damage. In addition, adjustments for growth take into account water purveyors changing conditions.

SCWA is on track to reduce water use by over 36% for the period of June 2015 through February 2016 when compared to 2013. We support the proposed carryover of water savings over and above the assigned conservation percentage. While this will not make up for the lost revenue, it does recognize the efforts of our customers and provides a beneficial mechanism for the overall amount of water saved.

We acknowledge the State Water Board's intent to respond to this drought emergency with a modified Emergency Regulation due to the uncertainty of 2016 water supply conditions. However, we urge the State Water Board to go further in providing equitable adjustments, to continue to consider additional factors that were not incorporated into the proposed Emergency Regulation, and to clarify the hydrologic conditions under which the Emergency Regulation may be relaxed in the future. The actions the State Water Board takes now and later this year will have significant implications for local suppliers' credibility and level of trust with their customers, which will be important to achieving longer term water efficiency improvements and responding to future droughts. The State Water Board's actions should more fully recognize water suppliers' investments in drought resilient supplies, or risk disincentivizing long term planning and preparation for future droughts

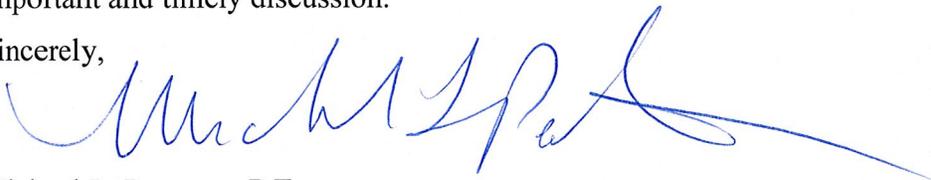
"Managing Tomorrow's Water Today"

Consistent with these important considerations, we offer the following recommendations for modifying the proposed Emergency Regulation prior to adoption.

- Fully recognize water suppliers' investments in drought resilient supplies. By only recognizing local drought resilient investments developed after 2013, the Emergency Regulation completely discounts the value of long term planning and implementation, and the billions of dollars water suppliers have already invested to be prepared for the current drought.
- Expand the definition of local drought resilient supplies that are eligible for an adjustment to the conservation targets. Sustainable groundwater supplies, recycled water used for non-potable purposes, and other strategies have served to mitigate some of the effects of drought throughout the state and will be important for the future. Although the State Water Board staff did not include consideration of these additional local drought resilient supplies in the proposed Emergency Regulation, we urge the State Water Board to continue to consider how these might be included. Support for investment in reliable water supplies is critical to implementation of the State's Water Action Plan.
- Consider mechanisms by which the Emergency Regulation may be modified to recognize significant regional water supply differences that may develop in the "statewide" drought in 2016. Relaxing conservation targets in areas of the state where water supply conditions have significantly improved from 2015 is an appropriate approach to managing the ongoing drought. The large majority of suppliers have already proven they can achieve water savings when needed, largely through customer actions. Prolonging the Emergency Regulation without demonstrated need violates customers' trust and risks customer compliance with future drought regulations.

Thank you for the opportunity to provide our comments. We look forward to continuing this important and timely discussion.

Sincerely,



Michael L. Peterson, P.E.
Agency Engineer
Sacramento County Water Agency

Attachment:

Proposed Emergency Regulation For February Through October 2016

PROPOSED TEXT OF EMERGENCY REGULATION

Article 22.5. Drought Emergency Water Conservation.

Sec. 863. Findings of Drought Emergency.

(a) The State Water Resources Control Board finds as follows:

(1) On January 17, 2014, the Governor issued a proclamation of a state of emergency under the California Emergency Services Act based on drought conditions;

(2) On April 25, 2014, the Governor issued a proclamation of a continued state of emergency under the California Emergency Services Act based on continued drought conditions;

(3) On April 1, 2015, the Governor issued an Executive Order that, in part, directs the State Board to impose restrictions on 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;

(4) On November 13, 2015, the Governor issued an Executive Order that directs the State Board to, if drought conditions persist through January 2016, extend until October 31, 2016 restrictions to achieve a statewide reduction in potable usage;

(45) The drought conditions that formed the basis of the Governor's emergency proclamations continue to exist; and

~~(5) The present year is critically dry and has been immediately preceded by two or more consecutive below normal, dry, or critically dry years; and~~

(6) The drought conditions will likely continue for the foreseeable future and additional action by both the State Water Resources Control Board and local water suppliers will likely be necessary to prevent waste and unreasonable use of water and to further promote conservation.

Authority: Section 1058.5, Water Code.

References: Cal. Const., Art., X § 2; Sections 102, 104, 105, and 275, Water Code; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463.

Sec. 864. End-User Requirements in Promotion of Water Conservation.

(a) To prevent the waste and unreasonable use of water and to promote water conservation, each of the following actions is prohibited, except where necessary to address an immediate health and safety need or to comply with a term or condition in a permit issued by a state or federal agency:

(1) The application of potable water to outdoor landscapes in a manner that causes runoff such that water flows onto adjacent property, non-irrigated areas, private and public walkways, roadways, parking lots, or structures;

(2) The use of a hose that dispenses potable water to wash a motor vehicle, except where the hose is fitted with a shut-off nozzle or device attached to it that causes it to cease dispensing water immediately when not in use;

(3) The application of potable water to driveways and sidewalks; and

(4) The use of potable water in a fountain or other decorative water feature, except where the water is part of a recirculating system;

(5) The application of potable water to outdoor landscapes during and within 48 hours after measurable rainfall;

(6) The serving of drinking water other than upon request in eating or drinking establishments, including but not limited to restaurants, hotels, cafes, cafeterias, bars, or other public places where food or drink are served and/or purchased;

(7) The irrigation with potable water of ornamental turf on public street medians; and

(8) The irrigation with potable water of landscapes outside of newly constructed homes and buildings in a manner inconsistent with regulations or other requirements established by the California Building Standards Commission and the Department of Housing and Community Development.

(b) To promote water conservation, operators of hotels and motels shall provide guests with the option of choosing not to have towels and linens laundered daily. The hotel or motel shall prominently display notice of this option in each guestroom using clear and easily understood language.

(c) Immediately upon this subdivision taking effect, all commercial, industrial and institutional properties that use a water supply, any portion of which is from a source other than a water supplier subject to section 865, shall either:

(1) Limit outdoor irrigation of ornamental landscapes or turf with potable water to no more than two days per week; or

(2) Reduce potable water usage supplied by sources other than a water supplier by 25 percent for the months of June 2015 through ~~February~~ October 2016 as compared to the amount used from those sources for the same months in 2013.

(d) The taking of any action prohibited in subdivision (a) ~~or (e)~~, or the failure to take any action required in ~~subdivisions~~ subdivision (b) or (c), 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.

(e)(1) To prevent the waste and unreasonable use of water and to promote water conservation, any homeowners' association or community service organization or similar entity is prohibited from:

(A) Taking or threatening to take any action to enforce any provision of the governing documents or architectural or landscaping guidelines or policies of a common interest development where that provision is void or unenforceable under section 4735, subdivision (a) of the Civil Code; or

(B) Imposing or threatening to impose a fine, assessment, or other monetary penalty against any owner of a separate interest for reducing or eliminating the watering of vegetation or lawns during a declared drought emergency, as described in section 4735, subdivision (c) of the Civil Code.

(2) As used in this subdivision:

(A) "Architectural or landscaping guidelines or policies" includes any formal or informal rules other than the governing documents of a common interest development.

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

(C)“Common interest development” has the same meaning as in section 4100 of the Civil Code.

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

(E) “Governing documents” has the same meaning as in section 4150 of the Civil Code.

(F) “Separate interest” has the same meaning as in section 4185 of the Civil Code.

(3) If a disciplinary proceeding or other proceeding to enforce a rule in violation of subdivision (e)(1) is initiated, each day the proceeding remains pending shall constitute a separate violation of this regulation.

Authority: Section 1058.5, Water Code.

References: Cal. Const., Art., X § 2; Sections 4080, 4100, 4110, 4150, 4185, and 4735, Civil Code; Sections 102, 104, 105, 275, 350, and 10617, Water Code; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463.

Sec. 865. Mandatory Actions by Water Suppliers.

(a) As used in this section:

(1) “Distributor of a public water supply” has the same meaning as under section 350 of the Water Code, except it does not refer to such distributors when they are functioning solely in a wholesale capacity, but does apply to distributors when they are functioning in a retail capacity.

(2) “R-GPCD” means residential gallons per capita per day.

(3) “Total potable water production” means all potable water that enters into a water supplier’s distribution system, excluding water placed into storage and not withdrawn for use during the reporting period, or water exported outside the supplier’s service area.

(4) “Urban water supplier” means a supplier that meets the definition set forth in Water Code section 10617, except it does not refer to suppliers when they are functioning solely in a wholesale capacity, but does apply to suppliers when they are functioning in a retail capacity.

(b) In furtherance of the promotion of water conservation each urban water supplier shall:

(1) Provide prompt notice to a customer whenever the supplier obtains information that indicates that a leak may exist within the end-user’s exclusive control.

(2) Prepare and submit to the State Water Resources Control Board by the 15th of each month a monitoring report on forms provided by the Board. The monitoring report shall include the amount of potable water the urban water supplier produced, including water provided by a wholesaler, in the preceding calendar month and shall compare that amount to the amount produced in the same calendar month in 2013. The monitoring report shall specify the population served by the urban water supplier, the percentage of water produced that is used for the residential sector, descriptive statistics on water conservation compliance and enforcement efforts, and the number of days that outdoor irrigation is allowed, and monthly commercial, industrial and institutional sector use.

The monitoring report shall also estimate the gallons of water per person per day used by the residential customers it serves.

(c)(1) To prevent the waste and unreasonable use of water and to meet the requirements of the Governor's ~~April~~ November 13, 2015 Executive Order, each urban water supplier shall reduce its total potable water production by the percentage identified as its conservation standard in this subdivision. Each urban water supplier's conservation standard considers its service area's relative per capita water usage.

(2) Each urban water supplier whose source of supply does not include groundwater or water imported from outside the hydrologic region in which the water supplier is located, and that has a minimum of four years' reserved supply available may, submit to the Executive Director for approval a request that, in lieu of the reduction that would otherwise be required under paragraphs (3) through (10), the urban water supplier shall reduce its total potable water production by 4 percent for each month as compared to the amount used in the same month in 2013. Any such request shall be accompanied by information showing that the supplier's sources of supply do not include groundwater or water imported from outside the hydrologic region and that the supplier has a minimum of four years' reserved supply available.

(3) Each urban water supplier whose average July-September 2014 R-GPCD was less than 65 shall reduce its total potable water production by 8 percent for each month as compared to the amount used in the same month in 2013.

(4) Each urban water supplier whose average July-September 2014 R-GPCD was 65 or more but less than 80 shall reduce its total potable water production by 12 percent for each month as compared to the amount used in the same month in 2013.

(5) Each urban water supplier whose average July-September 2014 R-GPCD was 80 or more but less than 95 shall reduce its total potable water production by 16 percent for each month as compared to the amount used in the same month in 2013.

(6) Each urban water supplier whose average July-September 2014 R-GPCD was 95 or more but less than 110 shall reduce its total potable water production by 20 percent for each month as compared to the amount used in the same month in 2013.

(7) Each urban water supplier whose average July-September 2014 R-GPCD was 110 or more but less than 130 shall reduce its total potable water production by 24 percent for each month as compared to the amount used in the same month in 2013.

(8) Each urban water supplier whose average July-September 2014 R-GPCD was 130 or more but less than 170 shall reduce its total potable water production by 28 percent for each month as compared to the amount used in the same month in 2013.

(9) Each urban water supplier whose average July-September 2014 R-GPCD was 170 or more but less than 215 shall reduce its total potable water production by 32 percent for each month as compared to the amount used in the same month in 2013.

(10) Each urban water supplier whose average July-September 2014 R-GPCD was 215 or more shall reduce its total potable water production by 36 percent for each month as compared to the amount used in the same month in 2013.

(d)(1) Beginning June 1, 2015, each urban water supplier shall comply with the conservation standard specified in subdivision (c), as modified by subdivision (f).

(2) Compliance with the requirements of this subdivision shall be measured monthly and assessed on a cumulative basis through October 2016.

(e)(1) Each urban water supplier that provides potable water for commercial agricultural use meeting the definition of Government Code section 51201, subdivision (b), may subtract the amount of water provided for commercial agricultural use from its potable water production total, provided that any urban water supplier that subtracts any water provided for commercial agricultural use from its total potable water production shall:

(A) Impose reductions determined locally appropriate by the urban water supplier, after considering the applicable urban water supplier conservation standard specified in subdivision (c), for commercial agricultural users meeting the definition of Government Code section 51201, subdivision (b) served by the supplier;

(B) Report its total potable water production pursuant to subdivision (b)(2) of this section, the total amount of water supplied for commercial agricultural use, and shall identify the reduction imposed on its commercial agricultural users and each recipient of potable water for commercial agricultural use;

(C) Certify that the agricultural uses it serves meet the definition of Government Code section 51201, subdivision (b); and

(D) Certify that the water subtracted from the potable water production total pursuant to this subdivision is served only to customers who produced at least \$1,000 of revenue in the previous year from agricultural commodities meeting the definition of Government Code section 51201, subdivision (a), or who would have but for circumstances beyond their control;

(E) Certify that potable water used for ornamental landscapes is not included in the amount of agricultural water subtracted; and

~~(F)~~ Comply with the Agricultural Water Management Plan requirement of paragraph 12 of the April 1, 2015 Executive Order for all commercial agricultural water served by the supplier that is subtracted from its total potable water production.

(2) Submitting any information pursuant to subdivision (e)(1)(B), (C), (D) or ~~(E)~~ of this section that is found to be materially false by the ~~board~~ Board is a violation of this regulation, punishable by civil liability of up to five hundred dollars (\$500) for each day in which the violation occurs. Every day that the error goes uncorrected constitutes a separate violation. Civil liability for the violation is in addition to, and does not supersede or limit, any other remedies, civil or criminal.

(f) 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, an urban water supplier's conservation standard identified in subdivision (c) shall be reduced by an amount, not to exceed eight (8) percentage points total, as follows:

(1) For an urban water supplier whose service area evapotranspiration (ETo) for the months of July through September exceeds the statewide average evapotranspiration for the same months by five (5) percent or more, the supplier's conservation standard identified in subdivision (c) shall be reduced:

(A) By two (2) percentage points if the supplier's service area evapotranspiration exceeds the statewide average by five (5) percent or more but less than ten (10) percent;

(B) By three (3) percentage points if the supplier's service area evapotranspiration exceeds the statewide average by ten (10) percent or more but less than twenty (20) percent;

(C) By four (4) percentage points if the supplier's service area evapotranspiration exceeds the statewide average by twenty (20) percent or more.

(D) Statewide average evapotranspiration is calculated as the arithmetic mean of all urban water suppliers' service area default evapotranspiration values for the months of July through September. Default service area evapotranspiration will be based on the California Irrigation Management System (CIMIS) ETo Zones Map zone for which the supplier's service area has the greatest area of overlap. In lieu of applying its default service area evapotranspiration, a supplier may use specific data from CIMIS stations within its service area that have at least a five-year continuous period of record to identify a more specifically-applicable evapotranspiration for its service area. To qualify for the in-lieu climate adjustment the supplier shall submit the following data to the Board by March 15, 2016 for each station: CIMIS station ID; station location; and monthly evapotranspiration, in inches per month, for July, August, and September for the five-year continuous period of record.

(2) To account for water efficient growth experienced in the state since 2013, urban water suppliers' conservation standards shall be reduced by the product of the percentage change in potable water production since 2013 and the percentage reduction in potable water use required pursuant to subdivision (c), rounded to the nearest whole percentage point. Change in potable water production since 2013 shall be calculated as the sum of the following:

(A) The number of additional permanent residents served since January 1, 2013, multiplied by 55 gallons per day, multiplied by 270 days;

(B) The area of new residential landscaping, in square feet, served by a supplier's service connections since 2013, multiplied by 55 percent of the total service area evapotranspiration, measured in inches, for the months of February through October, converted to gallons; and

(C) The number of new commercial, industrial and institutional connections since January 1, 2013, multiplied by the average commercial, industrial and institutional water use per connection for that supplier's service area during the months of February through October, 2015, in gallons.

(D) To qualify for the growth credit the supplier shall submit to the Board the following data by March 15, 2016: the number of additional connections served since January 1, 2013; the area of new residential landscaping, in square feet, served by a supplier's service connections since January 1, 2013; and the number of new commercial, industrial and institutional connections since January 1, 2013.

(3) For an urban water supplier that supplies four (4) or more percent of its total potable water production from a new local, drought-resilient source of supply, the use of which does not reduce the water available to another legal user of water or the environment, the conservation standard identified in subdivision (c) shall be reduced :

(A) By four (4) percentage points if the supplier's qualifying source of supply provides four (4) percent or more but less than five (5) percent of the supplier's total potable water production;

(B) By five (5) percentage points if the supplier's qualifying source of supply provides five (5) percent or more but less than six (6) percent of the supplier's total potable water production;

(C) By six (6) percentage points if the supplier's qualifying source of supply provides six (6) percent or more but less than seven (7) percent of the supplier's total potable water production;

(D) By seven (7) percentage points if the supplier's qualifying source of supply provides seven (7) percent or more but less than eight (8) percent of the supplier's total potable water production;

(E) By eight (8) percentage points if the supplier's qualifying source of supply provides eight (8) percent or more of the supplier's total potable water production;

(F) To qualify for this reduction the supplier must certify, and provide documentation to the Board upon request, demonstrating the percent of its total potable water production that comes from a local, drought-resilient source of supply developed after 2013 and that the use of that supply does not reduce the water available to another legal user of water or the environment. To qualify for this reduction a supplier shall submit the required certification to the Board by March 15, 2016;

(G) Certifications that do not meet the requirements of subdivision (f)(3)(F), including certifications for which documentation does not support that the source of supply is a local, drought-resilient source of supply, the use of which does not reduce the water available to another legal user of water or the environment, will be rejected. Submitting a certification or supporting documentation pursuant to subdivision (f)(3)(F) that is found to be materially false by the Board is a violation of this regulation, punishable by civil liability of up to five hundred dollars (\$500) for each day in which the violation occurs. Every day that the error goes uncorrected constitutes a separate violation. Civil liability for the violation is in addition to, and does not supersede or limit, any other remedies, civil or criminal.

(4) No supplier's conservation standard shall drop below eight (8) percent as a consequence of the reductions identified in this subdivision. No reduction pursuant to this subdivision shall be applied to any urban water supplier whose conservation standard is four (4) percent based on subdivision (c)(2).

(fg)(1) To prevent waste and unreasonable use of water and to promote water conservation, each distributor of a public water supply that is not an urban water supplier shall take one or more of the following actions:

(A) Limit outdoor irrigation of ornamental landscapes or turf with potable water by the persons it serves to no more than two days per week; or

(B) Reduce by 25 percent reduction its total potable water production relative to the amount produced in 2013.

(2) Each distributor of a public water supply that is not an urban water supplier shall submit a report by ~~December 15, 2015~~ September 15, 2016, on a form provided by the Board, that either confirms compliance with subdivision (fg)(1)(A) or identifies total potable water production, by month, from ~~June~~ December 2015 through ~~November~~ August, 2015 2016, and total potable water production, by month, for the same months in 2013.

Authority: Section 1058.5, Water Code.

References: Cal. Const., Art., X § 2; Sections 102, 104, 105, 275, 350, 1846, 10617 and 10632, Water Code; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463.

Sec. 866. Additional Conservation Tools.

(a)(1) To prevent the waste and unreasonable use of water and to promote conservation, when a water supplier does not meet its conservation standard required by section 865 the Executive Director, or the Executive Director's designee, may issue conservation orders requiring additional actions by the supplier to come into compliance with its conservation standard.

(2) A decision or order issued under this article by the ~~board~~Board or an officer or employee of the ~~board~~Board is subject to reconsideration under article 2 (commencing with section 1122) of chapter 4 of part 1 of division 2 of the California Water Code.

(b) The Executive Director, or his designee, may issue an informational order requiring water suppliers, or commercial, industrial or institutional properties that receive any portion of their supply from a source other than a water supplier subject to section 865, to submit additional information relating to water production, water use or water conservation. The failure to provide the information requested within 30 days or any additional time extension granted is a violation subject to civil liability of up to \$500 per day for each day the violation continues pursuant to Water Code section 1846.

(c) Orders issued under previous versions of this subdivision shall remain in effect and shall be enforceable as if adopted under this version.

Authority: Section 1058.5, Water Code.

References: Cal. Const., Art., X § 2; Sections 100, 102, 104, 105, 174, 186, 187, 275, 350, 1051, 1122, 1123, 1825, 1846, 10617 and 10632, Water Code; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463.