
State Water Resources Control Board

NOTICE OF PROPOSED EMERGENCY RULEMAKING

May 27, 2022

Adoption of Mandatory Actions and Prohibitions during Declared Drought Emergency

Required Notice of Proposed Emergency Action

Government Code section 11346.1, subdivision (a)(2) requires that, at least five working days prior to submission of a proposed emergency regulation to the Office of Administrative Law (OAL), the adopting agency must provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After the submission of the proposed emergency action to OAL, OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6. This document and the accompanying information provide the required notice.

Proposed Emergency Action

From April 12, 2021 through October 19, 2021, Governor Newsom proclaimed drought states of emergency that have expanded to all California counties. In his March 28, 2022 proclamation, Governor Newsom additionally directed the State Water Resources Control Board (State Water Board) to consider adopting emergency regulations that 1) require preliminary water supply and demand analyses and require implementation of water shortage response actions by urban water suppliers, specifically actions intended to reflect a shortage level of ten to twenty percent and 2) define non-functional turf and prohibit the irrigation of non-functional turf in the commercial, industrial, and institutional sectors. Emergency regulations adopted under Water Code section 1058.5 may remain in effect for up to one year, unless rescinded earlier or extended by the State Water Board.

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.”

On May 24, 2022, the State Water Board considered and adopted a proposed resolution adopting emergency regulations adding a new section to title 23 of the California Code of Regulations.

Proposed Text of Emergency Regulations

See the proposed text of the emergency regulation on the Water Conservation Emergency Regulations webpage at <https://bit.ly/conservationreg>

Finding of Emergency (Gov. Code, § 11346.1, subd. (b))

The State Water Board finds that an emergency exists due to severe drought conditions, as identified in the Governor’s drought emergency proclamations. Immediate action is needed to effectively increase water conservation so that remaining supplies are maintained to address the present drought emergency.

The current extent of voluntary conservation established by many urban water suppliers has not provided timely and reasonably sufficient preservation of existing water supplies as the state heads into the historically dry season. Water conservation is generally the cheapest source of water and appropriate conservation actions now are necessary to lessen the need for more drastic and costly actions that may be necessary in the future. The emergency regulation will conserve water from the most discretionary water uses. It will also support urban water suppliers in implementing water shortage response actions included in their Water Shortage Contingency Plans, which will help preserve the State’s supplies during the drought emergency.

The State Water Board is unable to address the situation through non-emergency regulations because the standard rulemaking process cannot timely address the current severe drought emergency that is the focus of these regulations.

Authority and Reference (Gov. Code, § 11346.5, subd. (a)(2))

Water Code section 1058.5 provides authority for the emergency regulations. The emergency regulations implement, interpret, or make specific: 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, 10608.12, 10617, 10632, and 10632.1, Water Code; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463; and *Stanford Vina Ranch Irrigation Co. v. State of California* (2020) 50 Cal.App.5th 976.

Written Comment Period

A public comment period began on May 13, 2022 when the State Water Board Meeting Agenda for May 24, 2022 was posted. The Meeting Agenda can be found on the Board Calendar at: https://www.waterboards.ca.gov/board_info/calendar/#20220524. The comment period ran through **12:00 p.m. (Noon) on May 19, 2022**.

To be added to the mailing list for this rulemaking and to receive notification of updates of this rulemaking, you may subscribe to the listserv for “Water Conservation Regulations” by going to http://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.shtml (look under “General Interests”, select “Water Conservation Regulations”).

Informative Digest (Gov. Code, § 11346.5, subd. (a)(3))

At present, there is no statewide prohibition on the irrigation of non-functional turf. The proposed regulation is consistent and compatible with existing regulations on this subject. The proposed regulation neither differs from nor conflicts with an existing comparable federal statute or regulation.

The proposed regulation requires urban water suppliers to submit preliminary supply and demand assessments to the Department of Water Resources by June 1, 2022 and to implement Level 2 demand reduction actions, with limited exceptions, or similar model actions for those suppliers that have not adopted water shortage contingency plans, by a date determined by the State Water Board; it also bans the irrigation of non-functional turf with potable water in commercial, industrial, and institutional (CII) sectors.

The proposed regulation is intended to safeguard urban water supplies in the event of another dry year. It is both reasonable and prudent to maintain urban water supplies to the maximum extent feasible to provide local agencies with the necessary flexibility to meet the health and safety needs of Californians during the drought emergency. California has been subject to multi-year droughts in the past, and there is no guarantee that precipitation this winter will lift the State out of the current drought conditions. Moreover, climate change science indicates that the Southwestern United States are becoming drier, increasing the likelihood of prolonged droughts. In addition, drought conditions have already forced the State Water Board to curtail surface water diversions, and many groundwater basins around the state are already in overdraft conditions that will likely worsen due to groundwater pumping this summer. Many water supply systems face a present or threatened risk of inadequate supply. Should drought conditions persist through the wet season, more water supply systems will be at risk of depleting supplies, presenting a great risk to the health and safety of the people supplied by those systems. Maintaining urban water supplies through enhanced conservation will reduce the risks to health and safety and reduce negative impacts to the State's economy.

The prohibition on irrigating non-functional turf in the commercial, industrial and institutional sectors and the requirement that urban water suppliers implement Level 2 water shortage contingency plan actions (actions intended to result in ten to 20 percent savings), or similar model actions if the supplier has not adopted a water shortage contingency plan, are necessary to promote water conservation and to maintain an adequate supply during the drought emergency, which cannot be done if water is being used in an excessive or wasteful manner. The prohibition on irrigating non-functional turf affects one of the most discretionary uses of water, while the requirement that urban water suppliers implement Level 2 water shortage contingency plan demand reduction actions will result in needed water savings implemented in a manner that is best suited to local circumstances. Consequently, the proposed regulations will further protection of the environment.

Additional benefits will be realized should the Board adopt the proposed regulations.

These benefits include the following:

- Reduced water bills for customers that reduce water use (some of these savings will generate additional economic activity, such as investments in drought-tolerant landscaping);
- Increased drought awareness and shared sense of responsibility among urban water users; and
- Reduced potential for severe economic disruption if drought conditions continue through the wet season.

Proposed section 996, subdivision (b) requires that each urban water supplier submit to the Department of Water Resources a preliminary annual water supply and demand assessment consistent with section 10632.1 of the Water Code one month prior to the deadline set by section 10632.1 of the Water Code for submittal of a final annual water supply and demand assessment, and that suppliers comply with the statutory deadline for submittal of a final annual water supply and demand assessment.

Proposed section 996, subdivision (c) requires that every urban water supplier that has adopted a water shortage contingency plan implement at a minimum all demand reduction actions identified in their water shortage contingency plan for a shortage level of ten to twenty percent (Level 2), except that suppliers are not required to implement new residential connection moratoria pursuant to this regulation. A supplier may choose to implement the model demand reduction actions identified in subdivision (d) if: its annual water supply and demand assessment demonstrates an ability to maintain a reliable supply through September 30, 2023; the supplier does not rely on, for any part of its supply, the Colorado River, State Water Project, or Central Valley Project, and no more than ten percent of its supply comes from critically overdrafted groundwater basins; and the supplier's average number of gallons of water used per person per day by residential customers for the year 2020 is below 55 gallons, as reported to the Board in the Electronic Annual Report.

Proposed section 996, subdivision (d) requires that each urban water supplier that has not already submitted a water shortage contingency plan to the Department of Water Resources implement, at a minimum, identified model actions designed to respond to shortage levels of ten to twenty percent similar to the Level 2 actions contained in water shortage contingency plans adopted by suppliers that have complied with Water Code 10632.

The proposed emergency adoption of section 996, subdivision (e) prohibits the irrigation, with potable water, of non-functional turf in the commercial, industrial, and institutional sectors statewide, which is one of the more discretionary water uses that can be reduced or eliminated during drought conditions with less impacts than other water uses. This section provides a local approval process for exempting low water using turf under certain conditions.

Proposed section 996, subdivision (f) specifies the potential penalties for violations of subdivision (e).

Proposed section 996, subdivision (g) specifies process for someone issued an order or decision under this section to seek reconsideration of that order or decision.

Other Matters Prescribed by Statute (Gov. Code, § 11346.5, subd. (a)(4))

The proposed emergency regulation would be adopted in response to conditions which exist, or are threatened, in a critically dry year immediately preceded by two or more consecutive below normal, dry, or critically dry years or during a period for which the Governor has issued a proclamation of a state of emergency under the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code) based on drought conditions.

Local Mandate (Gov. Code, § 11346.5, subd. (a)(5))

The State Water Resources Control Board has determined that adoption of proposed section 996 does not impose a new mandate on local agencies or school districts. The sections are generally applicable law.

The State Water Resources Control Board has further determined that adoption of proposed section 996 does not impose a new mandate on local agencies or school districts, because the local agencies affected by the section have the authority to levy service charges, fees, or assessments sufficient to pay for the mandate program or increased level of service. (See Gov.Code, § 17556.)

Estimate of Cost or Savings (Gov. Code, § 11346.5, subd. (a)(6))

Increased urban water conservation will result in reduced water use, which in turn will result in reduced water sales and lost revenue for urban water suppliers. This loss in revenue will be a function of the amount of water conserved (and therefore not sold) and the unit price that water would have sold for. The State Water Board estimates that local agencies that are urban water suppliers could collectively realize as much as \$394,000,000 in lost revenue as a result of implementing the proposed regulations.

Implementation of the proposed emergency regulations will result in additional workload for the State Water Board and possibly for the Department of Water Resources, however, this work will be accomplished through redirection of resources within existing agency budgets. Significant costs or saving for State agencies are therefore not anticipated.

The above summary information is explained in greater detail in the State Water Board's Emergency Regulations Digest, which is attached.