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## State Water Resources Control Board

# SECOND REVISED

## TITLE 23. WATERS DIVISION 3. STATE WATER RESOURCES CONTROL BOARD AND REGIONAL WATER QUALITY CONTROL BOARDS CHAPTER 3.5. CONSERVATION AND THE PREVENTION OF WASTE AND UNREASONABLE USE ARTICLE 2. REPORTING

### NOTICE OF PROPOSED REGULATORY ACTION

#### NOTICE OF PROPOSED RULEMAKING

The State Water Resources Control Board (State Water Board) proposes to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

#### PROPOSED REGULATORY ACTION

The State Water Board proposes to establish California Code of Regulations, title 23, division 3, chapter 3.5 on Conservation and the Prevention of Waste and Unreasonable Use and within this chapter, article 2, on Reporting. This Article is proposed to provide for ongoing monthly reporting by urban water suppliers consistent with emergency regulation requirements in the California Code of Regulations, title 23, division 3, chapter 2, article 22.5, sections 865 and 866 that expired November 25, 2017, by operation of law. Since that date, many, but not all, urban water suppliers have voluntarily submitted monthly reports. The reporting that is proposed would be largely consistent with prior reporting requirements that have expired.

#### AUTHORITY AND REFERENCE

The State Water Board is implementing, interpreting and making specific:

Authority: Sections **275**, 1058, 10609.28, Water Code.

References: Article X, Section 2, California Constitution; Section 51201, Government Code; Sections 102, 104, 105, 350, 1122, 1123, 1124, 1846, 1846.5, 10617, and 10632, Water Code.

#### WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the State Water Board. Written comments must be received ~~no later than 12:00 noon on or before Monday, December 30, 2019~~ **Friday, January 31, 2020**. The State Water Board will only consider written comments received by that time.

Please send comment letters to Ms. Jeanine Townsend, Clerk to the Board, by email at [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov), (916) 341-5620 (fax), or by mail or hand delivery addressed to:

Jeanine Townsend, Clerk to the Board  
State Water Resources Control Board  
P.O. Box 100, Sacramento, CA 95812-2000 (by mail)  
1001 I Street, 24th Floor, Sacramento, CA 95814 (by hand delivery)

Please also indicate in the subject line, “**Comment Letter – Proposed Urban Water Conservation Reporting Regulations.**” Hand and special deliveries should also be addressed to Ms. Townsend at the address above. Couriers delivering comments must check in with lobby security and have them contact Ms. Townsend at (916) 341-5600. Due to the limitations of the email system, emails larger than 15 megabytes are rejected and cannot be delivered or received by the State Water Board. We request that comments larger than 15 megabytes be submitted under separate emails. If you would like to request a copy of the public comment letters received by the Board for this item, send an email to [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov) and identify that you are requesting copies of public comments for Proposed Urban Water Conservation Reporting.

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**” at: [https://www.waterboards.ca.gov/resources/email\\_subscriptions/swrcb\\_subscribe.html](https://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.html) (select “General Interests”, then select “Water Conservation Regulations”).

## **PUBLIC HEARING**

A public hearing has not been scheduled for this proposed action. However, as provided in Government Code section 11346.8, any interested person, or his or her duly authorized representative, may request a public hearing if the request is submitted in writing in the manner described below to the State Water Board no later than 15 days prior to the close of the written comment period. If a request for a public hearing is made, the State Water Board shall, to the extent practicable, provide notice of the time, date, and place of the hearing in accordance with Government Code section 11346.4 by mailing the notice to every person who has filed a request for notice with the State Water Board. In addition, as prescribed by Government Code section 11340.85, notice may be provided by means of electronic communication to those persons who have expressly indicated a willingness to receive notice by this means. Notices will be sent to those who subscribe to the “Water Conservation Regulations” listserv.

Any information about a public hearing, the date, time, and place, will be noticed on the webpage:

[https://www.waterboards.ca.gov/water\\_issues/programs/conservation\\_portal/regs/](https://www.waterboards.ca.gov/water_issues/programs/conservation_portal/regs/)

## **CALIFORNIA ENVIRONMENTAL QUALITY ACT**

The proposed regulation is exempt under California Code of Regulations, title 14, section 15306 (Class 6 exemption). The reporting to be required pursuant to the regulation does not raise a reasonable possibility of having a significant effect on the environment due to unusual circumstances.

## **INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW**

### **Summary of existing laws and regulations**

The proposed regulations would establish in California Code of Regulations, title 23, division 3, a new Chapter 3.5 on Conservation and the Prevention of Waste and Unreasonable Use and within this Chapter a new Article 2 on Reporting. This Chapter is proposed to provide for ongoing monthly reporting by urban water suppliers. Currently, urban water suppliers submit voluntary monthly conservation reports that were required under an emergency regulation that expired November 25, 2017. The reporting requirements in the proposed regulation would keep key metrics from the expired requirements in California Code of Regulations, title 23, sections 865 and 866, while maintaining continuity in data as the state transitions to a water efficiency standards approach set forth in 2018 water conservation and efficiency legislation (SB 606 and AB 1668).

Specifically, each urban water supplier shall prepare and submit to the Board by the 21st of each month a monitoring report on forms provided by the Board. The monitoring report shall include the following information:

- (1) The urban water supplier's public water system identification number(s).
- (2) The urban water supplier's volume of total potable water production, including water provided by a wholesaler, in the preceding calendar month;
- (3) The population served by the urban water supplier during the reporting period;
- (4) The percent residential use that occurred during the reporting period;
- (5) The water shortage response action level.

During certain period of water shortage or when the Governor declares a drought emergency, several additional pieces of information would be required in the monthly report:

- (1) Descriptive statistics on the supplier's achievement of its water contingency plan response actions, and progress toward achieving a reduction in water consumption associated with the supplier's existing water shortage response action level;
- (2) communication actions; and
- (3) compliance and enforcement actions.

### **Comparable Federal Laws and Regulation**

The State Water Board has determined that there are no comparable federal laws or regulations related to the proposed regulation on monthly reporting by urban water suppliers.

## **Policy Overview, Objectives and Benefits of the Proposed Regulatory Action**

Article 10, section 2, of the California Constitution states in part:

[B]ecause of the conditions prevailing in this State the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare.

The proposed regulations would safeguard urban water supplies, minimize the potential for waste and unreasonable use of water as required by the California Constitution, and realize the directives of Executive Order B-37-16 and Executive Order B-40-17.

The State Board has made a determination that the proposed regulation would improve the protection of the public's health and welfare by providing information on potable water production and conservation measures to the State Water Board, other state agencies, local governments, non-profit organizations, academia, water consumers, and others that will help ensure adequate supplies of potable water and encourage greater water conservation.

More specifically, the proposed regulation would increase the transparency of urban water use and provide timely access to local data on potable water production and local water agency actions in California. Stakeholders could continue analyzing data to understand the recent drought, changes after drought, impacts of state and local policies and programs, associated costs of water deficiencies, and learn more about what actions may be helpful to avoid future water shortages. Additionally, the reporting requirements support ongoing water conservation, which extends current water suppliers and benefits the environment through reduction in energy use and greenhouse gas emissions. As such, California residents, worker safety, and the state's environment all benefit.

Further benefits may include increased conservation and a shared sense of responsibility among urban water users and reduced potential for severe economic disruption due to future water shortages.

### **An Evaluation of Inconsistency or Incompatibility with Existing State Regulations**

The State Water Board evaluated whether the proposed regulation is inconsistent or incompatible with existing regulations. The State Water Board found that the proposed regulation is not inconsistent or incompatible with existing state regulations on reporting. The State Water Board's Drinking Water Program currently requires urban water suppliers to submit an Electronic Annual Report each April. This Report covers the prior calendar year and contains some metrics that are similar to the monthly conservation reporting under the proposed regulation. However, relying on Electronic Annual Reports for *monthly* water use and conservation data is not effective for ensuring the state and public have timely information on which to base real-time action. This is because the Electronic Annual Reports cover entire calendar years, which means that

data for January, for example, is not available until the following year (more than 12 months later). The reported data goes through a submittal and review process by both the reporter and the state before it may be available, which adds additional time (4-6 months). A January report becomes available about 1.5 years later, whereas monthly reports pursuant to the proposed regulation will be available within two months of the reporting period.

Furthermore, the proposed regulation allows the State Water Board to decrease the frequency of monthly reporting requirements at such time as an equivalent or more comprehensive reporting system addresses the need for time-sensitive data. This recognizes that improved reporting options may be available in the future. In time, and as required by Water Code section 10609.15, the State Water Board and the Department of Water Resources must streamline reporting and improve accessibility. The state could work with reporters to set up its data systems so that the supplier's monthly data is submitted once and shared within State Government to satisfy other reporting obligations. Such an approach would mean that urban water suppliers would not need to re-enter monthly data into an annual report and would thus make reporting easier for suppliers. The proposed regulation would allow such an approach, if that becomes desirable and achievable.

In the future, there will likely be additional reporting requirements as part of implementation of 2018 conservation legislation (SB 606 and AB 1668). The State Water Board will be adopting regulations to implement aspects of those bills by June 2022 and the proposed regulation may be adjusted to complement any new reporting requirements at that time.

**MANDATED BY FEDERAL LAW OR REGULATIONS** (Gov. Code, §§ 11346.2, subd.(c),) The proposed regulatory action is not identical to previously adopted or amended federal regulations.

#### **LOCAL MANDATE**

This proposal does not impose a mandate on local agencies or school districts, or a mandate which requires reimbursement pursuant to part 7 (commencing with section 17500) of division 4 of the Government Code.

#### **NON-MAJOR REGULATION: RESULTS OF THE ECONOMIC IMPACT ANALYSIS**

The State Water Board has determined that the proposed regulatory action will not have a significant effect on the creation or elimination of jobs within California. Nor will the proposed regulatory action have a significant effect on the creation of new businesses, the elimination of existing businesses, or the expansion of existing businesses doing business within California. However, additional conservation data can foster innovation among data analytic service companies and be used to develop more efficient water use practices or reporting processes.

Monthly urban water use reporting provides the State Water Board, other state agencies, local agencies, academia, non-profit organizations, and the public with timely information on potable water production and the impacts of conservation measures. Having near “real-time” information is valuable for the State, stakeholders, and the public to understand and respond to things that can change quickly, including drought conditions, the impacts of state and local policies and programs, and what actions could effectively help avoid future water shortages and associated costs.

### **COST OR SAVINGS IMPOSED ON LOCAL AGENCIES OR SCHOOL DISTRICTS**

The State Water Board has determined that there is no cost or savings imposed on local agencies or school districts as a result of the proposed regulations, or other nondiscretionary costs or savings imposed on local agencies or school districts, with the exception of urban water agencies that are submitting reports. This proposed regulation will not have a significant, statewide adverse economic impact directly affecting these local agencies because the new regulations establish and continue the method of reporting for specified information that has been in place since June 2014 using the same electronic data submittal process. The reporting cost is estimated to be less than \$300 per month for each of the 349 urban water suppliers that report.

### **BUSINESS REPORTING REQUIREMENT**

Assuming for purposes of this analysis that investor-owned and privately-owned mutual water companies that function as urban water suppliers are “businesses” for purposes of Government Code section 11346.3, there will be expenses for 61 businesses. The State Water Board finds that it is necessary for the health, safety, or welfare of the people of this state that the proposed regulation requires reports by these urban water suppliers. The reports would continue, essentially unchanged, from what was in place in response to drought emergency regulation and is currently voluntary.

### **BUSINESS IMPACT/ SMALL BUSINESS**

The State Water Board has determined and declares that the proposed regulation does not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. Nor will the proposed regulatory action adversely affect small businesses in California because there are no small businesses submitting reports. Government Code chapter 3.5, article 2, section 11342.610 excludes water utilities from the definition of small business.

### **COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES**

The State Water Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulations, with the exception of those urban water suppliers that are defined as businesses, i.e., investor-owned or privately-owned mutual water companies that function as urban water suppliers. The reporting cost is estimated to be less than \$300 per month for each of these 61 urban water suppliers.

### **EFFECT ON HOUSING COSTS**

The State Water Board has determined that the proposed regulatory action will have no effect on housing costs.

### **COST OR SAVINGS TO STATE AGENCIES**

The State Water Board has determined that there are no costs or savings to state agencies as a result of the proposed regulations. Implementation of the proposed updated emergency regulation will not result in additional workload for the State Water Board.

### **COST OR SAVINGS IN FEDERAL FUNDING TO THE STATE**

The State Water Board has determined that there is no cost or savings in federal funding to the state as a result of the proposed regulations.

### **ALTERNATIVES**

The State Water Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Interested persons may present statements or arguments with respect to alternatives to the proposed regulation during the written comment period or at a hearing, if a hearing is requested, on this matter.

### **AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATION, AND THE RULEMAKING FILE**

The State Water Board has prepared an Initial Statement of Reasons for the proposed action. The statement includes the specific purpose for the regulations proposed for adoption and the rationale for the State Water Board's determination that adoption is reasonably necessary to carry out the purpose for which the regulations are proposed. All the information upon which the proposed regulations are based is contained in the rulemaking file. The Initial Statement of Reasons, the express terms of the proposed regulation, and the rulemaking file are available from the contact person listed below or at the website listed below.

### **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After considering all timely and relevant comments received, the State Water Board may adopt the proposed regulation substantially as described in this notice. If the State Water Board makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least fifteen (15) days before the State Water Board adopts the regulations as modified. A copy of any modified regulations may be obtained by contacting ~~Ms. Kathy Frevert~~ **Paola Gonzalez**, the primary contact person identified below. The State Water Board will accept written comments on the modified regulations for fifteen (15) days after the date on which they are made available.

## AVAILABILITY OF FINAL STATEMENT OF REASONS

Upon its completion, a copy of the Final Statement of Reasons (FSOR) may be obtained by contacting either of the persons listed below. A copy may also be accessed on the State Water Board website identified below.

## CONTACT PERSONS

Requests of copies of the text of the proposed regulations, the statement of reasons, or other information upon which the rulemaking is based, or other inquiries should be addressed to the following:

Name: ~~Kathy Frevert~~ **Paola Gonzalez**  
Address: State Water Resources Control Board  
Office of Research, Planning and Performance  
1001 "I" Street  
Sacramento, CA 95814  
Telephone No.: ~~(916) 322-5274~~ **(916) 322-8417**  
E-mail address: ~~Kathy.Frevert@waterboards.ca.gov~~  
[Paola.Gonzalez@waterboards.ca.gov](mailto:Paola.Gonzalez@waterboards.ca.gov)

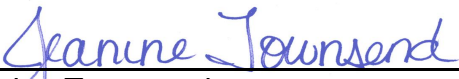
The backup contact person is:

Name: Charlotte Ely  
Address: State Water Resources Control Board  
Office of Research, Planning and Performance  
1001 "I" Street  
Sacramento, CA 95814  
Telephone No.: (916) 319-8564  
E-mail address: [Charlotte.Ely@waterboards.ca.gov](mailto:Charlotte.Ely@waterboards.ca.gov)

A number of core documents relating to this proposed action may also be found on the State Water Board's website at the following address:

[https://www.waterboards.ca.gov/water\\_issues/programs/conservation\\_portal/regs/](https://www.waterboards.ca.gov/water_issues/programs/conservation_portal/regs/)

December 17, 2019  
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Date

  
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Jeanine Townsend  
Clerk to the Board