

D R A F T

STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2016-

TO ADOPT AN EMERGENCY REGULATION FOR STATEWIDE URBAN WATER CONSERVATION

WHEREAS:

1. 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, and called on all Californians to redouble their efforts to conserve water. The April 2014 Proclamation finds that the continuous severe drought conditions present 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, if drought conditions continue into 2015. It orders that any provision of the governing document, architectural or landscaping guidelines, or policies of a common interest development will be void and unenforceable to the extent it has the effect of prohibiting compliance with the water-saving measures contained in this directive, or any conservation measure adopted by a public agency or private water company. The April 2014 Proclamation also suspends the environmental review required by the California Environmental Quality Act to allow the emergency regulation and other actions to take place as quickly as possible;
2. The April 2014 Proclamation refers to the [Governor's Proclamation No. 1-17-2014](#), issued on January 17, 2014, declaring a drought State of Emergency to exist in California due to severe drought conditions (January 2014 Proclamation). The January 2014 Proclamation finds that dry conditions and lack of precipitation present urgent problems to drinking water supplies and cultivation of crops, which put farmers' long-term investments at risk. The conditions also threaten the survival of animals and plants that rely on California's rivers, including many species in danger of extinction. The January 2014 Proclamation also calls on all Californians to reduce their water usage by 20 percent;
3. On December 22, 2014, in light of the continued lack of rain, Governor Brown issued [Executive Order B-28-14](#), which extends the California Environmental Quality Act suspension through May 31, 2016 for Water Code section 13247 and certain activities identified in the January 2014 and April 2014 proclamations;
4. On April 1, 2015, Governor Brown issued [Executive Order B-29-15](#) that directs the State Water Board to impose restrictions on urban 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; along with other directives;

DRAFT

5. On May 5, 2015, the State Water Resources Control Board (State Water Board) adopted [Board Resolution No. 2015-0032](#) and an Emergency Regulation to address specific provisions of [Executive Order B-29-2015](#) that included a mandatory 25 percent statewide reduction in potable urban water use between June 2015 and February 2016. To implement the Executive Order, the Emergency 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. Resolution No. 2015-0032 also directed staff to work with stakeholders to further develop and consider a range of factors that contribute to water use, including but not limited to climate, growth, investment in local, drought resilient supplies, and others for adjustment to the current emergency regulation should it need to be extended into 2016;
6. On November 13, 2015, Governor Brown issued [Executive Order B-36-15](#) calling for an extension of urban water use restrictions until October 31, 2016, should drought conditions persist through January 2016. This Executive Order also directs the State Water Board to consider modifying the restrictions to address uses of potable and non-potable water, as well as to incorporate insights gained from the existing restrictions;
7. As of January 15, 2016, the state has experienced some much-needed snow and rainfall in December and January; However, surface and groundwater storage remains depleted, precipitation has been inconsistent, and snowpack is about average, and the full hydrologic water conditions for 2016 will not be known until April 2016;
8. 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”;
9. On July 15, 2014, the State Water Board adopted an emergency regulation to support water conservation ([Resolution No. 2014-0038](#)), and that regulation became effective July 28, 2014 upon approval by the Office of Administrative Law (OAL);
10. On March 17, 2015, the State Water Board amended and readopted the emergency regulation to support water conservation ([Resolution No. 2015-0013](#)), which became effective March 27, 2015 upon approval by OAL;
11. On May 5, 2015, the State Water Board amended and readopted the emergency regulation to support water conservation ([Resolution No. 2015-0032](#)), which became effective May 18, 2015 upon approval by OAL and expires February 13, 2016;
12. State Water Board estimates that suppliers and their customers will save more than one million acre-feet of water in response to the extended regulation. This savings will be in addition to the 1.2 million acre-feet the State is on track to have saved from June 2015 through February 2016;

DRAFT

13. Under the May 5, 2015 emergency regulation, urban water suppliers, large and small, have reduced statewide potable water usage more than 25 percent compared to 2013, through the significant efforts of the suppliers and their customers;
14. 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;
15. Although urban water suppliers have placed restrictions on outdoor watering, the State Water Board continues to receive reports of excessive outdoor water use, and not all suppliers have achieved their conservation standards under the May 5, 2015 emergency regulation;
16. Water conservation is the easiest, most efficient and most cost-effective way to quickly reduce water demand and extend supplies into the next year, providing flexibility for all California communities. Water saved this summer is water available later in the season or next year, reducing the likelihood of even more severe water shortages should the drought continue;
17. 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;
18. 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>);
19. Many California communities are facing social and economic hardship due to this drought. The rest of us can make adjustments to our water use, including landscape choices that conserve even more water;
20. 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;

DRAFT

21. Directive two of the Governor's April 1, 2015 Executive Order directs the State Water Board to consider the relative per capita usage of each urban water supplier's service area and require that areas with high per capita use achieve proportionally greater reductions than areas with low per capita use;
22. On December 21, 2015, the State Water Board issued a draft framework proposing modest adjustments to the May 5 emergency regulation structure, keeping the increasing levels of required water reduction based upon residential per capita per day use (R-GPCD), and adding several credits that reduce a supplier's required water reduction based on certain conditions. The State Water Board solicited public comments on the proposed framework and received over 200 comments, primarily relating to the levels and types of credits and consideration of updated drought conditions in April 2016, at which time more information will be available on 2016 snowpack and reservoir levels;
23. On January 15, 2016 the State Water Board issued draft regulatory language for public comment based on the December 21, 2015 framework and the comments received. The draft regulatory language reflected careful consideration of all comments including those directed at the levels of required reduction. The draft regulatory language extends the May 2015 emergency regulation, that otherwise would expire on February 13, 2016, and provides modest equity credits and adjustments to address geographic climate differences, new growth, and investments made in new, local, drought resilient potable water supplies;
24. On January 22, 2016, the State Water Board initiated the formal emergency rulemaking process by issuing public notice that it would consider the adoption of the emergency regulation at the Board's regularly-scheduled February 2, 2016 public meeting, 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;
25. As discussed above, the State Water Board is adopting the extended emergency regulation as directed by the Governor in Executive Order B-36-15 based on the need for prompt action to prevent the waste and unreasonable use of water and to promote conservation because the May 15 emergency regulation is set to expire on February 13, 2016, emergency drought conditions still exist, and stakeholders have requested reasonable and modest adjustments to the existing emergency regulation; and
26. 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.

DRAFT

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. This regulation shall remain in effect for 270 days 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. In consideration of the fact that Executive Order B-36-15 directs the State Water Board to extend restrictions to achieve statewide reductions in urban potable water usage if drought conditions persist through January 2016, and 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 in March and April, 2016 and, if conditions warrant, bring a proposal for rescission or adjustment of this regulation to the Board no later than the second regularly-scheduled May 2016 Board meeting;
6. The State Water Board directs staff to provide the Board with monthly updates on the implementation of the emergency regulation and its effect;
7. The State Water Board directs staff to condition funding upon compliance with the emergency regulation, to the extent feasible;
8. The State Water Board directs staff to work with DWR and the Save Our Water campaign to disseminate information regarding the emergency regulation; and
9. The State Water Board directs staff to update the electronic reporting portal to include data fields for reporting required by the emergency regulation.

THEREFORE BE IT FURTHER RESOLVED THAT:

10. The State Water Board shall 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, as required by directive eight in the Governor's April 1, 2015 Executive Order. The Fourth District Court of Appeal's recent Decision in *Capistrano Taxpayer Association Inc. v. City of San Juan Capistrano* (G048969) does not foreclose the use of conservation-oriented rate structures;

DRAFT

11. The State Water Board calls upon water suppliers to:
 - a. ensure that adequate personnel and financial resources exist to implement conservation requirements not only for 2016, but also for another year of drought should it occur. Water suppliers that face budget shortfalls due to reduced sales should take immediate steps to raise necessary revenues in a way that actively promotes continued conservation;
 - b. expedite implementation of new conservation programs by minimizing internal review periods and utilizing emergency authorities, as appropriate;
 - c. consider the relative water use and conservation practices of their customers and target those with higher water use to achieve proportionally greater reductions than those with low use;
 - d. minimize financial impacts to low-income customers;
 - e. preserve safe indoor water supplies in areas with very low R-GPCD and where necessary to protect public health and safety;
 - f. promote low-water use methods of preserving appropriate defensible space in fire-prone areas, consistent with local fire district requirements;
 - g. educate customers on the preservation of trees;
 - h. promote on-site reuse of water; and
 - i. promptly notify staff of the supplier's need for an alternate method of compliance pursuant to resolved paragraph 18.
12. The State Water Board calls upon all businesses within California's travel and tourism sectors to inform visitors of California's drought situation and actions visitors should take to conserve water;
13. 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;
14. The State Water Board commends wholesale water agencies that have set aggressive conservation targets for their retail water suppliers;
15. 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;
16. 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. 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;

D R A F T

17. During this drought emergency, heightened conservation that extends urban resilience is necessary. The State Water Board's focus is primarily on immediate reductions in outdoor water use. Some short-term conservation efforts, such as landscape conversions and installation of efficient appliances, will also support long-term conservation objectives, and are encouraged wherever possible;
18. The State Water Board recognizes that some commercial and industrial customers, while accounting for a significant portion of total use in a service area, have already taken steps to significantly reduce their water consumption and cannot further reduce their use without substantial impacts. However, the Board also recognizes that in many areas there are significant opportunities for reductions in water use by industries and commercial enterprises that have yet to take action, especially those with large areas of non-functional turf. The Board directs staff to respond promptly upon receipt of any request for alternate enforceable methods of compliance. If the supplier believes the conservation standard is unachievable due to firm commercial and industrial water use and residential use reductions that would affect public health and safety, it should provide any supporting information or documentation for an alternate method of compliance; and
19. Some water suppliers have called for further refinement of the tiers and have called for an approach that provides greater recognition for early investments in conservation; the development of local, drought resistant water supplies that include banked groundwater; regional compliance mechanisms; climate; and health and safety needs. These suggestions and many others have been considered in the context of the current drought emergency, but are separately important considerations for the development of a more comprehensive long-term conservation framework. The State Water Board directs staff to continue working with stakeholders on further refinement of emergency water conservation regulation should they need to be extended beyond October 2016.
20. 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 over the long-term. 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 engage the Department of Water Resources in developing a proposed framework for enhanced urban water conservation and efficiency.

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 2, 2016.

Jeanine Townsend
Clerk to the Board