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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2015-####

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. 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 a new Executive Order 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;
5. 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";

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6. 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);
7. 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;
8. The current emergency regulation has supported Californians' water conservation efforts, with over 125 billion gallons saved from August 2014 through March 2015; however, statewide water use is only nine percent less than the same months in 2013. Achieving a 25 percent reduction in use will require even greater conservation efforts across the state. In particular, many communities must dramatically reduce their outdoor water use;
9. 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;
10. Although urban water suppliers have placed restrictions on outdoor watering, the State Water Board continues to receive reports of excessive outdoor water use;
11. 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;
12. 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;
13. 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>);
14. 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;
15. 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

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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;

16. 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;
17. On April 7, 2015, the State Water Board issued a draft framework proposing increasing levels of required water reduction based upon residential per capita per day use (R-GPCD) for the proposed regulation, and solicited public comments. The Board received over 300 comments on the framework, primarily relating to the levels of required water reduction;
18. On April 18, the State Water Board issued draft regulatory language for public comment based on the April 7 framework and the comments received. The draft regulatory language reflected careful consideration of all comments including those directed at the levels of required reduction. Again, the Board received close to 300 comments;
19. On April 28, 2015, the State Water Board issued a final version of draft regulatory language for comment, followed on April 29 by a formal public notice that it would consider the adoption of the emergency regulation at the Board's regularly-scheduled May 5 and 6, 2015 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;
20. As discussed above, the State Water Board is adopting the emergency regulation because of the continuing emergency drought conditions, the need for prompt action to prevent the waste and unreasonable use of water and to promote conservation, and the specific actions called for in the Governor's April 1, 2015 Executive Order; and
21. 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.

THEREFORE BE IT RESOLVED THAT:

1. The State Water Board adopts California Code of Regulations, title 23, section 866 and re-adopts sections 863, 864, and 865, as appended to this resolution as an emergency regulation;
2. State Water Board staff will submit the regulation to OAL for final approval;

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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. The State Water Board directs staff to provide the Board with monthly updates on the implementation of the emergency regulation and its effect. This update shall include information regarding the progress of the Building Standards Commission, Department of Housing and Community Development, and other state agencies in the adoption and implementation of emergency regulations or other requirements that implement increased outdoor irrigation efficiency for new construction. These regulations and other requirements will extend existing efficiency standards for new construction to the outdoor environment and ensure that California's new homes are constructed to meet the most efficient standards ;
6. The State Water Board directs staff to condition funding upon compliance with the emergency regulation, to the extent feasible;
7. The State Water Board directs staff to work with DWR and the Save Our Water campaign to disseminate information regarding the emergency regulation; and
8. The State Water Board directs staff to update the electronic reporting portal to include data fields for the new reporting required by the emergency regulation.

THEREFORE BE IT FURTHER RESOLVED THAT:

9. 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;
10. 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 2015, 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;

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- 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; and
 - g. educate customers on the preservation of trees.
11. The State Water Board calls upon all businesses within California's travel and tourism sectors to inform visitors of California's dire drought situation and actions visitors should take to conserve water;
12. The State Water Board commends wholesale water agencies that have set aggressive conservation targets for their retail water suppliers;
13. 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;
14. The State Water Board commends the many water suppliers that have already surpassed 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;
15. 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;
16. 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, as part of enforcement efforts, to work with water suppliers to determine alternate methods of compliance if the conservation standard is unachievable due to firm commercial and industrial water use and residential use reductions that would affect public health and safety; and

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17. Some water suppliers have called for further refinement of the tiers to reflect a range of factors that contribute to water use, including but not limited to temperature, lot size, and income. Others have called for an approach that provides greater recognition for early investments in conservation and the development of local, drought resistant water supplies. These suggestions and many others are important considerations in the development of a more comprehensive, and long term, conservation framework. The State Water Board directs staff to work with water suppliers on a thoughtful process to devise options for extended and expanded emergency regulations should the drought continue into 2016.

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 May 5, 2015.

Jeanine Townsend
Clerk to the Board