

**State of California  
Office of Administrative Law**

**In re:**  
**State Water Resources Control Board**

**Regulatory Action:**

**Title 23, California Code of Regulations**

**Adopt sections:** 863, 864, 865, 866

**Amend sections:**

**Repeal sections:**

**NOTICE OF APPROVAL OF EMERGENCY  
REGULATORY ACTION**

**Government Code Sections 11346.1 and  
11349.6; Water Code Section 1058.5**

**OAL File No. 2015-0506-02 EE**

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The State Water Resources Control Board submitted this action to readopt and further amend three sections, adopted in OAL file no. 2014-0718-01E and readopted in OAL file no. 2015-0320-01EE, and to adopt a new section in title 23 of the California Code of Regulations pertaining to drought emergency water conservation. The updated regulations are intended to safeguard urban water supplies in the event of continued drought, minimize the potential for waste and unreasonable use of water, and achieve the 25 percent statewide potable water usage reduction ordered by Governor Brown in his April 1, 2015 executive order.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code and section 1058.5 of the Water Code.

This emergency regulatory action is effective on 5/18/2015 and will expire on 2/13/2016. The Certificate of Compliance for this action is due no later than 2/12/2016.

Date: 5/18/2015



Richard L. Smith  
Senior Attorney

For: DEBRA M. CORNEZ  
Director

Original: Thomas Howard  
Copy: David Rose

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-</b>	REGULATORY ACTION NUMBER	EMERGENCY NUMBER <b>2015-0506-02EE</b>
NOTICE		REGULATIONS	
<p>For use by Office of Administrative Law (OAL) only</p> <p style="text-align: center;">2015 MAY -6 PM 4:13</p> <p style="text-align: center;">OFFICE OF ADMINISTRATIVE LAW</p>			
AGENCY WITH RULEMAKING AUTHORITY State Water Resources Control Board			AGENCY FILE NUMBER (if any)

**ENDORSED - FILED**  
In the office of the Secretary of State  
of the State of California

**MAY 18 2015**  
2:03 PM

**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)	
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		ACTION ON PROPOSED NOTICE		NOTICE REGISTER NUMBER	PUBLICATION DATE

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S) Drought Emergency Water Conservation		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) OAL File No. 2014-0718-01-E; 2015-0320-01EE	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT 863, 864, 865, 866 per agency request	
TITLE(S) 23		AMEND	
3. TYPE OF FILING		REPEAL	
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	
<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print		<input checked="" type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input checked="" type="checkbox"/> Other (Specify) <b>Emerg. Readopt (Wat. Code 1058.5(c))</b>	
<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only			
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))		<input checked="" type="checkbox"/> Effective on filing with Secretary of State	
		<input type="checkbox"/> §100 Changes Without Regulatory Effect	
		<input type="checkbox"/> Effective other (Specify)	
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)		<input type="checkbox"/> Fair Political Practices Commission	
<input type="checkbox"/> Other (Specify)		<input type="checkbox"/> State Fire Marshal	
7. CONTACT PERSON David Rose		TELEPHONE NUMBER 916-341-5196	FAX NUMBER (Optional) 916-341-5199
		E-MAIL ADDRESS (Optional) david.rose@waterboards.ca.gov	

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Thomas Howard</i>	DATE 5/6/15
TYPED NAME AND TITLE OF SIGNATORY Thomas Howard, Executive Director, State Water Resources Control Board	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

MAY 18 2015.

Office of Administrative Law

# ADOPTED 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;

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

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

(56) 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: Article X, Section 2, California Constitution; Sections 102, 104, and 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;

- (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; ~~and~~
- (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 2016 as compared to the amount used from those sources for the same months in 2013.
- (ed) The taking of any action prohibited in subdivision (a) or the failure to take any action required in subdivisions (b) or (c), ~~in addition to any other applicable civil or criminal penalties,~~ 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.

Authority: Section 1058.5, Water Code.

References: Article X, Section 2, California Constitution; Sections 102, 104, ~~and~~ 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.

~~(a)(4) The term "Urban water supplier," when used in this section, refers to 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)(1) To promote water conservation, each urban water supplier shall implement all requirements and actions of the stage of its water shortage contingency plan that includes mandatory restrictions on the number of days that outdoor irrigation of ornamental landscapes or turf with potable water is allowed, or shall amend its water shortage contingency plan to include mandatory restrictions on the number of days that outdoor irrigation of ornamental landscapes or turf with potable water is allowed and implement these restrictions within forty five (45) days. Urban water suppliers with approved alternate plans as described in subdivision (b)(2) are exempted from this requirement.~~

~~(2) An urban water supplier may submit a request to the Executive Director for approval of an alternate plan that includes allocation based rate structures that satisfies the requirements of chapter 3.4 (commencing with section 370) of division 1 of the Water Code, and the Executive Director may approve such an alternate plan upon determining that the rate structure, in conjunction with other measures, achieves a level of conservation that would be superior to that achieved by implementing limitations on outdoor irrigation of ornamental landscapes or turf with potable water by the persons it serves to no more than two days per week.~~

~~(c) To promote water conservation, each urban water supplier that does not have a water shortage contingency plan that restricts the number of days that outdoor irrigation of ornamental landscapes and turf with potable water is allowed, or has been notified by the Department of Water Resources that its water shortage contingency plan does not meet the requirements of Water Code section 10632 shall, within forty five (45) days, limit outdoor irrigation of ornamental landscapes or turf with potable water by the persons it serves to no more than two days per week.~~

~~(db) 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 15<sup>th</sup> 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 1, 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).

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

(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) 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) or (C) of this section 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.

(ef)(1) To prevent waste and unreasonable use of water and to promote water conservation, each distributor of a public water supply, as defined in Water Code section 350, that is not an urban water supplier shall, within forty five (45) days, take one or more of the following actions:

(4A) 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 its total potable water production relative to the amount produced in 2013.

(2) Implement another mandatory conservation measure or measures intended to achieve a 20 percent reduction in water consumption by the persons it serves relative to the amount consumed 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, on a form provided by the Board, that either confirms compliance with subdivision (f)(1)(A) or identifies total potable water production, by month, from June through November, 2015, and total potable water production, by month, for June through November 2013.

Authority: Section 1058.5, Water Code.

References: Article X, Section 2, California Constitution; 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 or an officer or employee of the board is subject to reconsideration under article 2 (commencing with section 1122) of chapter 4 of part 1 of division 2 of the 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.

Authority: Section 1058.5, Water Code.

References: Article X, Section 2, California Constitution; 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.