
State Water Resources Control Board

NOTICE OF PROPOSED EMERGENCY RULEMAKING
July 8, 2014

Prohibition of Activities and Mandatory Actions During 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

On January 17, 2014, Governor Brown declared a drought state of emergency. On April 25, 2014 the Governor signed an Executive Order calling on the State to redouble state drought actions. Among other things, the Executive Order provides that: "The Water Board shall direct urban water suppliers that are not already implementing drought response plans to limit outdoor irrigation and other wasteful water practices such as those identified in this Executive Order. The Water Board will request by June 15 an update from urban water agencies on their actions to reduce water usage and the effectiveness of these efforts. The Water Board is directed to adopt emergency regulations as it deems necessary, pursuant to Water Code section 1058.5, to implement this directive."

On May 23, 2014 the State Water Board issued a survey to more than 400 urban water suppliers inquiring on the implementation of their urban water conservation actions and the effectiveness of those actions. The State Water Board's June 17, 2014 meeting included an informational update on the survey results and a description of urban water conservation efforts being carried out by certain urban water suppliers.

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 July 15, 2014, the State Water Board will consider a proposed resolution adopting emergency regulations adding new sections to Title 23 of the California Code of Regulations. The proposed emergency regulations include a prohibition on certain classes of water use, an order for all urban water suppliers to implement mandatory conservation measures, and an order for water suppliers with 3,000 or more service connections to provide monthly data on water production.

Proposed Text of Emergency Regulations

See the attached proposed text of the emergency regulations.

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 State Water Board's May 2014 Drought Survey results demonstrated that urban water conservation efforts could be augmented to minimize the potential risks of threatened severe supply shortages. In addition, the current extent of voluntary conservation goals established by many urban water suppliers will not provide for timely and effective attainment of the State's conservation needs, which include the maintenance of remaining supplies. Without adequate reserves, water suppliers will be unable to address the drought emergency. The emergency regulation improves the State Water Board's and local agencies' abilities to quickly and effectively implement and enforce mandatory water conservation measures during the current drought to 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. Furthermore, the Governor's April 25, 2014 Executive Order orders the State Water Board to adopt emergency regulations pursuant to Water Code section 1058.5 to address the issues that are the focus of these regulations.

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

Water Code sections 1058 and 1058.5 provide authority for the emergency regulations. The revised emergency regulations implement, interpret, or make specific Water Code sections 102, 104, 105, 350, 10617, and 10632.

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

At present, there is no statewide prohibition on individual activities to promote conservation. There is also no law or regulation requiring urban water suppliers to affirmatively adopt drought shortage contingency plans, implement specific stages of their drought shortage contingency plans, or report the amount of water they produce to the state. There is also no law or regulation requiring distributors of public water supplies who are not urban water suppliers to adopt water shortage contingency plans, limit outdoor irrigation by their customers, or implement other mandatory conservation measures. The proposed regulation constitutes the first statewide directive to individuals and to urban water suppliers to undertake specific actions to respond to the drought emergency; consequently, 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 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 into 2015, 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.

Each of the specific prohibitions on water uses is necessary to promote water conservation to maintain an adequate supply during the drought emergency, which cannot be done if water is being used in an excessive or wasteful manner. These prohibitions affect practices that use excessive amounts of water or where more efficient and less wasteful alternatives are available. These practices are particularly unreasonable during a drought due to the need to conserve limited water supplies to meet health and safety needs. Consequently, the proposed regulation 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 water quality in receiving waters due to lower runoff volumes;
- Increased drought awareness and shared sense of responsibility among urban water users;
- More effective tracking of total urban water use; and
- Reduced potential for severe economic disruption if 2015 is another dry year.

The proposed emergency adoption of section X sets forth the State Water Resources Control Board's findings of drought emergency. The proposed emergency adoption of section X.1 directs individuals statewide to refrain from engaging in certain activities to promote conservation to meet the drought emergency. The proposed emergency adoption of section X.2 directs urban water suppliers to report information to the Board and to take actions to promote conservation and directs all other water suppliers to take actions to promote conservation.

Proposed Section X sets forth the Board's findings of drought emergency, noting the Governor's adoption of two emergency proclamations pertaining to drought conditions, the persistence of drought conditions, the dry nature of the preceding two years, and the likelihood that drought conditions will continue.

Proposed Section X.1 prohibits several activities, 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, to promote conservation. The section prohibits the application of water to outdoor landscapes in a manner that causes visible runoff, the use of a hose to wash an automobile except where the hose is equipped with a shut-off nozzle, the application of water to hardscapes, and the use of potable water in non-recirculating ornamental fountains.

Proposed Section X.2 directs urban water suppliers to implement the stage of their water shortage contingency plans that impose mandatory restrictions on outdoor irrigation, requires those urban water suppliers without adequate drought shortage contingency plans to adopt them or other measures to promote conservation within thirty days, and report monthly water production information to the Board. The section also directs distributors of public water supplies that are not urban water suppliers to either limit outdoor irrigation or implement another mandatory conservation measure or measures to achieve conservation.

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 sections X and X.1 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 X.2 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. In addition to lost revenue from reduced water sales, urban water suppliers will also incur costs associated with water production reporting as required by the proposed emergency regulations. The State Water Board estimates that local agencies that are urban water suppliers could collectively realize as much as \$438,185,664 in lost revenue as a result of implementing the proposed regulations. Additionally, the reporting costs to local government are estimated to be \$1,029,600. The total costs to local government are therefore estimated to be \$439,215,264, which is the sum of estimated lost revenues and the estimated reporting costs.

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.