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## State Water Resources Control Board

### **NOTICE OF PROPOSED EMERGENCY RULEMAKING November 23, 2022**

#### **Consideration of a proposed Resolution readopting the Prohibited Wasteful Water Uses Emergency Regulation for Water Conservation**

##### **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**

Over the course of the spring and summer of 2021, Governor Newsom proclaimed a drought state of emergency for most counties in California, culminating with his October 19, 2021, proclamation of a drought state of emergency that expanded the state of emergency to all California counties. In the October 19, 2021, proclamation, Governor Newsom made it clear that “the most impactful action Californians can take to extend available supplies is to re-double their efforts to voluntarily reduce their water use by 15 percent from their 2020 levels by implementing the commonsense measures identified in operative paragraph 1” of his July 8, 2021 Executive Order (N-10-21). Among other things, the October 19, 2021, proclamation encouraged the State Water Resources Control Board (State Water Board) to prohibit, by emergency regulation, certain wasteful water practices. Emergency regulations adopted under Water Code section 1058.5 may remain in effect for up to one year, unless rescinded earlier or renewed by the State Water Board.

On January 4, 2022, the State Water Board adopted an emergency regulation that prohibits certain wasteful water use practices statewide and encourages Californians to monitor their water use more closely while building habits to use water wisely. On January 18, 2022, the emergency regulation went into effect and is in effect for one year from the effective date, unless the State Water Board renews or rescinds it before then.

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

On March 28, 2022, in Executive Order N-7-22, the Governor affirmed that the orders and provisions contained in the four drought-related Proclamations from 2021 remain in full force and effect, except as otherwise modified by those Proclamations. The Governor in that Executive Order also called on all Californians to reduce water use and directed specific State agencies to take actions in support of water conservation.

On August 11, 2022, the Governor announced California's latest actions to increase water supply and adapt to more extreme weather patterns caused by climate change in a document called, "California's Water Supply Strategy, Adapting to a Hotter, Drier Future." The strategy recognizes that the American West is experiencing extreme, sustained drought conditions caused by hotter, drier weather.

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 December 7, 2022, the State Water Board will consider a proposed Resolution readopting the emergency regulation previously adopted in January 2022, ensuring those provisions remain in effect for up to an additional year of continued drought conditions. These provisions will, if readopted, be added to title 23 of the California Code of Regulations. For details on the regulation adoption proceedings, including the time, place, and nature of the proceedings, please refer to the agenda for the State Water Board's regularly-scheduled public meeting for December 6-7, 2022, which can be found through the State Water Board Calendar at: [https://www.waterboards.ca.gov/board\\_info/calendar/](https://www.waterboards.ca.gov/board_info/calendar/)

### **Proposed Text of Emergency Regulation**

The Proposed Text of Emergency Regulation can be found linked to the agenda for the State Water Board's regularly-scheduled public meeting for December 7, 2022, as well as under "Current Statewide Water Conservation Emergency Regulations" on the State Water Board's Water Conservation Emergency Regulations webpage at: <https://bit.ly/conservationreg>

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

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. Many water supply systems face a present or threatened risk of inadequate supply. Should drought conditions persist through the next year, 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 regulations will further protect 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 drought awareness and shared sense of responsibility among urban water users; and
- reduced potential for severe economic disruption if 2023 is another dry year.

The proposed emergency adoption of section 995 directs individuals statewide to refrain from engaging in certain activities to promote conservation to meet the drought emergency and prohibits homeowners' associations, cities, and counties from imposing penalties against homeowners for their actions in response to a declared drought emergency.

Proposed section 995, subdivision (b) 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 995, subdivision (c) prohibits homeowners' associations, community service organizations, and similar entities from imposing or threatening to impose penalties for reducing watering of lawns or from requiring owners to reverse or remove landscaping measures in response to a declared drought emergency.

Proposed section 995, subdivision (d) prohibits any city, county, or city and county, from imposing a fine under any local maintenance ordinance or other relevant ordinance as prohibited by section 8627.7 of the Government Code.

Proposed section 995, subdivision (e) specifies the potential penalties for violations of subdivisions (b), (c) and (d).

Proposed section 995, subdivision (f) specifies process for someone issued an order or decision under this section to seek reconsideration of that order or decision

The Informative Digest and Fiscal Impacts document can be found under "Current Statewide Water Conservation Emergency Regulations" on the State Water Board's Water Conservation Emergency Regulations webpage at: <https://bit.ly/conservationreg>

#### **Written Comment Period**

Any interested person may submit written comments relevant to the proposed regulatory action to the State Water Board. Written comments must be received no later than **12 noon, on Friday, December 2, 2022**. 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 – Prohibited Uses Emergency Regulation Dec 2022.**" 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 **Prohibited Uses Emergency Regulation Dec 2022**.

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” by going to:

[https://www.waterboards.ca.gov/water\\_issues/programs/conservation\\_portal/regs/emergency\\_regulation.html#subscribe](https://www.waterboards.ca.gov/water_issues/programs/conservation_portal/regs/emergency_regulation.html#subscribe)

**Finding of Emergency** (Gov. Code, § 11346.1, subd. (b))

The State Water Board finds that an emergency exists due to severe drought conditions and that adoption of the proposed emergency regulation is necessary to address the emergency. On April 12, 2021, May 10, 2021, July 8, 2021, and October 19, 2021, Governor Newsom proclaimed states of emergency that continue today and exist across all the counties of California due to extreme and expanding drought conditions. Early rains in October and December 2021 gave way to the driest January, February, and March in recorded history for the watersheds that provide much of California's water supply. On March 28, 2022, in Executive Order N-7-22, the Governor affirmed that the orders and provisions contained in the four Proclamations from 2021 remain in full force and effect, except as modified by those Proclamations, and called on all Californians to reduce water use, directing State agencies to take certain water conservation actions. Immediate action is needed to ensure water suppliers and all Californians are taking sufficient actions to conserve water and preserve the State's water supply.

Additional information can be found in the Informative Digest and Fiscal Impacts document, available under “Current Statewide Water Conservation Emergency Regulations” on the State Water Board's Water Conservation Emergency Regulations webpage at: <https://bit.ly/conservationreg>

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

Water Code section 1058.5 provides authority for the emergency regulations. The revised emergency regulations implement, interpret, or make specific: Article X, Section 2, California Constitution; Sections 4080, 4100, 4110, 4150, 4185, and 4735, Civil Code; Section 8627.7, Government Code; Sections 102, 104, 105, 275, 350, 491, and 1122, Water Code; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463; and *Stanford Vina Ranch Irrigation Co. v. State of California* (2020) 50 Cal.App.5th 976.

**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.

### **Suspension of California Environmental Quality Act**

On October 19, 2021, the Governor issued an executive order addressing the drought emergency, which, among other things, suspended the California Environmental Quality Act (CEQA) as applied to the State Water Resources Control Board's adoption of emergency regulations to "supplement voluntary conservation by prohibiting certain wasteful water practices." The proposed emergency regulation falls under this suspension.

### **Local Mandate** (Gov. Code, § 11346.5, subd. (a)(5))

The State Water Resources Control Board has determined that adoption of proposed section 995 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 995 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. The State Water Board estimates that local agencies that are urban water suppliers could collectively realize approximately \$7,000,000 in lost revenue as a result of implementing the proposed regulations.

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 savings for State agencies are therefore not anticipated.

The above summary information is explained in greater detail in the Informative Digest and Fiscal Impacts document, which can be found under "Current Statewide Water Conservation Emergency Regulations" on the Water Conservation Emergency Regulations webpage at: <https://bit.ly/conservationreg>