
State Water Resources Control Board

NOTICE OF PROPOSED EMERGENCY RULEMAKING May 19, 2023

Proposed revision and readoption of the Emergency Regulation to Ban Decorative Grass Watering in Commercial, Industrial, and Institutional Areas

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 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 drought conditions.

On August 11, 2022, the Governor announced California's long-term 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.

On March 24, 2023, in Executive Order N-5-23, the Governor affirmed that the multi-year nature of the current drought continues to have significant, immediate impacts on communities across California.

Water Code section 1058.5 grants the State Water Board the authority to adopt emergency regulations in certain drought years 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."

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

Before May 30, 2023, the State Water Board will revise, readopt, and submit to OAL the emergency regulation previously adopted in May 2022, ensuring that a ban on using potable water for decorative grass watering (non-functional turf irrigation) in commercial, industrial, and institutional areas remains in effect for up to an additional year of continued drought conditions. This provision will, if approved by OAL, be added to title 23 of the California Code of Regulations.

Proposed Text of Emergency Regulation

The Proposed Emergency Regulation Text can be found at this link:

https://www.waterboards.ca.gov/water_issues/programs/conservation_portal/regs/docs/2023/EmergencyRegTextDRAFT_2023-06ereq.pdf.

Regulatory documents and more information can also 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>.

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 ban on using potable water to irrigate decorative grass in commercial, industrial, and institutional areas must continue to promote water conservation during the drought emergency. California has been subject to multi-year droughts in the past and it is uncertain what future conditions will be. Moreover, climate change science indicates that the Southwestern United States are becoming drier, increasing the likelihood of prolonged droughts.

Additional benefits will be realized should the Board adopt the proposed regulation:

- 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 economic disruption if there are dry years ahead.

The proposed emergency adoption of section 996, subdivision (b), prohibits the irrigation, with potable water, of non-functional turf in the commercial, industrial, and institutional sectors statewide, which is one of the more discretionary water uses that can be reduced or eliminated during drought conditions with less impacts than other water uses. This section provides a local approval process for exempting low water using turf under certain conditions.

Proposed section 996, subdivision (c), specifies the potential penalties for violations of subdivision (b).

Proposed section 996, subdivision (d), specifies the process for someone issued an order or decision under this section to seek reconsideration of that order or decision.

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 996 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 996 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 prices that water would have sold for. The State Water Board estimates that local agencies that are urban water suppliers could collectively realize approximately \$10 million in lost revenue as a result of implementing the proposed regulations. We expect that suppliers will fully make up for any lost revenues by adjusting their rates over time.

Implementation of the proposed emergency regulation will result in additional workload for the State Water Board. This work, however, 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>

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 close of business **Thursday, May 25, 2023**. The State Water Board will only consider written comments received by that time.

Please send comment letters to the Clerk to the Board by email at commentletters@waterboards.ca.gov, (916) 341-5620 (fax), or by mail or hand delivery addressed to:

Courtney Tyler, 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 – Emergency Regulation to Ban Decorative Grass Watering.**” Hand and special deliveries should also be addressed to the Clerk at the address above. Couriers delivering comments must check in with lobby security and have them contact the Clerk to the Board at (916) 341-5611. 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.

To be added to the mailing list to receive notification of updates of water conservation regulations, 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.

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

The State Water Board finds that an emergency exists due to 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 remain in effect across all the counties of California. On August 11, 2022, the Governor announced California’s long-term 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.

On March 24, 2023, in Executive Order N-5-23, the Governor affirmed that the multi-year nature of the current drought continues to have significant, immediate impacts on communities across California. Immediate action is needed to ensure Californians are taking sufficient actions to conserve water.

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.

Date May 19, 2023

Courtney Tyler
Courtney Tyler
Clerk to the Boar