

**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2017-0024**

TO PARTIALLY REPEAL A REGULATION FOR
STATEWIDE URBAN WATER CONSERVATION

WHEREAS:

1. On January 17, 2014, Governor Edmund G. Brown Jr. issued [Proclamation No. 1-17-2014](#) (January 2014 Proclamation) declaring a drought State of Emergency to exist in California due to severe drought conditions presenting urgent problems to drinking water supplies, cultivation of crops, and threatening the survival of animals and plants that rely on California's water resources. The January 2014 Proclamation called on all Californians to voluntarily reduce their water usage by 20 percent;
2. 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 in drought conditions, calling on all Californians to redouble their efforts to conserve water. The April 2014 Proclamation noted that the severe drought conditions presented 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. The April 2014 Proclamation also suspended the environmental review required by the California Environmental Quality Act to allow certain actions, including State Water Resources Control Board (State Water Board) rulemaking pursuant to Water Code section 1058.5, to take place as quickly as possible;
3. On May 5, 2015, in response to [Executive Order B-29-15](#), the State Water Board adopted [Resolution No. 2015-0032](#) and a regulation pursuant to Water Code section 1058.5 that, among other things, required a mandatory 25 percent statewide reduction in potable urban water use between June 2015 and February 2016. To implement the Executive Order, the regulation placed each urban water supplier in a conservation tier, ranging between 4 and 36 percent, based on residential per capita water use for the months of July – September 2014. The State Water Board extended and revised the emergency regulation in 2016 ([Resolution No. 2016-0007](#)) to better consider a range of factors that contribute to water use, including climate, growth, and investment in local drought resilient supplies;
4. On May 9, 2016, Governor Brown issued [Executive Order B-37-16](#), calling for the State Water Board to adjust emergency water conservation regulations through the end of January 2017 in recognition of the differing water supply conditions across the state. To implement the Executive Order, the State Water Board adopted, by [Resolution No. 2016-0029](#), revised regulations to allow individual suppliers to self-certify that there would be no supply shortfall assuming three additional dry years. The self certification "stress test" allowed many suppliers to self-certify that there would be no supply shortfall, even after three additional drought years;

5. From June 2015 through February 2017, urban water suppliers reduced statewide potable water usage 22.5 percent compared to 2013, through the significant efforts of the suppliers and their customers. Conservation has generally exceeded requirements set by individual urban water suppliers using the stress test approach. Cumulative water savings since June 2015 has reached 2.6 million acre-feet of water, which is enough water to supply approximately 13 million Californians for one year;
6. Many California communities have faced and continue to face social and economic hardship due to this drought. Groundwater basins remain critically low in some areas, causing community and domestic wells to go dry. The rest of us can make adjustments to our water use, including landscape choices that conserve even more water;
7. 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. Furthermore, some landscape watering practices and other discretionary water uses can be considered wasteful or unreasonable both during and outside of drought conditions;
8. Water conservation is the easiest, most efficient, and most cost-effective way to quickly reduce water demand and extend supplies, providing flexibility for all California communities. Water can be conserved even when it's raining, by turning off outdoor irrigation when the weather is providing adequate irrigation;
9. Transparent water use data, education, and enforcement against water waste are key tools in efficient water use. When conservation becomes a social norm in a community, the need for enforcement is reduced or eliminated;
10. Appropriate messaging is necessary to help make water conservation a California way of life as we move out of one of the most severe droughts in recorded California history. Public awareness and readily accessible conservation tips are critical to achieving local, regional, and statewide conservation goals. 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 and efficient water use (<http://saveourwater.com>). And while efficient water use is necessary, it is important to properly water trees, which improve air quality, provide shade, and enhance aesthetic value. Excellent information on tree irrigation and care during drought can be found at www.saveourwater.com/trees;
11. 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);

12. Water Code section 1058.5 grants the State Water Board the authority to adopt regulations pursuant to the emergency rulemaking process during a declared drought emergency 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”;
13. Water Code section 1058.5 also provides that an emergency regulation adopted under that section “is deemed repealed immediately upon a finding by the board that due to changed conditions it is no longer necessary for the regulation to remain in effect”;
14. By State Water Board [Resolution No. 2012-0061](#), the State Water Board has delegated to the Executive Director “the authority to conduct and supervise the activities of the State Water Board...” including, but not limited to amending or revising emergency regulations previously adopted by the Board;
15. By “Resolved” paragraph number 4 of [Resolution No. 2017-0004](#) the State Water Board directed the Executive Director to consider promptly modifying or repealing the regulation consistent with Water Code section 1058.5 and State Water Board Resolution No. 2012-0061 if the Governor lifts the declaration of a drought state of emergency;
16. On April 7, 2017, the Governor issued [Executive Order B-40-17](#), directing the State Water Board to rescind portions of its existing emergency regulations that require a water supply stress test or mandatory conservation standard for urban water agencies. EO B-40-17 also directs the State Water Board to continue development of permanent prohibitions on wasteful water use, permanent requirements for reporting water use by urban water agencies, and to continue the portions of the emergency regulations that prohibit certain wasteful water practices and require water use reporting as a bridge until permanent requirements are in place;
17. On April 7, 2017, in accordance with directives in EO B-37-16, the State Water Board, Department of Water Resources, Department of Food and Agriculture, California Public Utilities Commission, and the California Energy Commission, released a final report titled “[Making Water Conservation a California Way of Life](#).” The report describes a proposed framework for developing new water use efficiency standards, urban water use targets, and enhanced urban and agricultural water management planning requirements;
18. The state-mandated conservation standards developed by the State Water Board are no longer necessary under current conditions as determined by the Governor in EO B-40-17. Continued prohibition of wasteful and/or unreasonable water use practices and continued availability of transparent water use data are, however, prudent to address water supply needs and the lingering impacts of prolonged drought, and to provide a bridge to permanent rules for making water conservation a California way of life as identified in EO B-37-16 and EO B-40-17; and
19. This action does not constitute a new rulemaking and shall not have any effect on the dates for automatic expiration of the remaining portions of the regulation not repealed by this resolution.

THEREFORE BE IT RESOLVED THAT:

1. The State Water Board repeals portions of California Code of Regulations, title 23, sections 864.5, 865 and 866, as appended to this resolution, pursuant to Water Code section 1058.5;
2. State Water Board staff will submit the revised text of the regulation to Office of Administrative Law (OAL) pursuant to California Code of Regulations, title 1, section 100 for OAL to review and file with the Secretary of State to update the text of the regulation; and
3. If, during the OAL review 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.

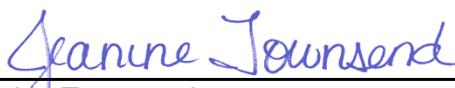
THEREFORE BE IT FURTHER RESOLVED THAT:

4. The State Water Board shall continue to work with DWR, the Public Utilities Commission, and other agencies to support urban water suppliers' actions to implement rates and pricing structures to incentivize additional conservation while protecting low-income ratepayers, as required by directive eight in the Governor's April 1, 2015 Executive Order and [Assembly Bill 401](#) (2015). The Fourth District Court of Appeal's Decision in *Capistrano Taxpayer Association Inc. v. City of San Juan Capistrano* (G048969) does not foreclose the use of conservation-oriented rate structures, and conservation-oriented rate structures are an important tool to promote ongoing conservation and meet the water efficiency standards set forth in Executive Order B-37-16;
5. Nothing in the remaining text of the regulation precludes a local agency from exercising its authority to adopt more stringent conservation measures, and local agencies retain the enforcement discretion in enforcing the remaining text of the regulation to the extent authorized. Local agencies are encouraged to develop their own progressive enforcement practices to help make water conservation a California way of life;
6. The State Water Board calls upon all homeowners' associations to support and cooperate with water suppliers' and their residents' efforts to conserve water in community apartment projects, condominium projects, planned developments, and stock cooperatives statewide and to take reasonable steps to encourage efficient outdoor water use practices and locally-water efficient landscapes;
7. The State Water Board commends wholesale water agencies that have set aggressive conservation targets for their retail water suppliers and who have invested heavily in subsidizing efficiency measures such as turf and toilet rebates, recycled water production, and other potable water augmentation measures;

8. 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 and the Board is committed to moving towards a more resilience-based approach to emergency water conservation and in any permanent measures going forward;
9. The State Water Board commends the many water suppliers that have taken steps and made systemic changes that have led to them surpassing their 20x2020 conservation targets as well as their emergency 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;
10. During the declared drought emergency, heightened conservation that extends urban resilience was both necessary and effective at reducing dramatic economic impacts of the drought. The State Water Board's focus is on making water conservation a California way of life and encouraging efficient use of all water;
11. The California Water Action Plan calls for making conservation a way of life, increasing regional water self-reliance, and expanding storage capacity, among other actions. Long-term water security will depend on implementing a range of actions and the State Water Board recognizes that these actions must advance in a complementary manner such that one action does not impede the progress of another. The State Water Board recognizes that conservation requirements implemented in response to critical drought conditions differ from those actions needed to optimize urban water use efficiency and build resilience over the long-term. Resilience to drought requires a combination of water efficiency and the development of new sustainable supplies, such as recycling, stormwater capture and re-use, local storage to capture water in wet years for use in dry years, and other actions. However, the effect of climate change on California weather patterns and snowpack will undoubtedly put increased pressure on the water supply and pose greater risk for extreme weather conditions, including longer and more severe droughts. It is imperative that State agencies and water suppliers have the information and mechanisms needed to best respond to critical drought emergencies and that all sources of urban water be used efficiently over the long-term. Staff is directed to continue working with the Department of Water Resources, the Department of Food and Agricultural, the Energy Commission, and the Public Utilities Commission to carry out the directives in Executive Order B-37-16, by taking actions to facilitate a transition to permanent, long-term improvements to water use.

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 by the State Water Resources Control Board's Executive Director on April 26, 2017.



Jeanine Townsend
Clerk to the Board

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;

(4) On November 13, 2015, the Governor issued an Executive Order that directs the State Board to, if drought conditions persist through January 2016, extend until October 31, 2016 restrictions to achieve a statewide reduction in potable usage;

(5) On May 9, 2016, the Governor issued an Executive Order that directs the State Board to adjust and extend its emergency water conservation regulations through the end of January 2017 in recognition of the differing water supply conditions for many communities;

(6) The drought conditions that formed the basis of the Governor's emergency proclamations continue to exist in portions of the state, and snowpack and reservoir conditions for the end of the water year remain subject to significant change; and

(7) The Governor's proclamation remains in effect, drought conditions may persist or continue locally through the end of the water year, 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, 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;

(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) 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 864.5 or 865 of this article, shall either:

(1) Limit outdoor irrigation of ornamental landscapes or turf with potable water to no more than two days per week; or

(2) Target potable water use reductions commensurate with those required of the nearest urban water supplier under section 864.5 or, if applicable, section 865. Where this option is chosen, these properties shall implement the reductions on or before July 1, 2016.

(d) The taking of any action prohibited in subdivision (a) or, (e), or (f), or the failure to take any action required in subdivision (b) or (c), 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.

(e)(1) To prevent the waste and unreasonable use of water and to promote water conservation, any homeowners' association or community service organization or similar entity is prohibited from:

(A) Taking or threatening to take any action to enforce any provision of the governing documents or architectural or landscaping guidelines or policies of a common interest development where that provision is void or unenforceable under section 4735, subdivision (a) of the Civil Code; or

(B) Imposing or threatening to impose a fine, assessment, or other monetary penalty against any owner of a separate interest for reducing or eliminating the watering of vegetation or lawns during a declared drought emergency, as described in section 4735, subdivision (c) of the Civil Code.

(2) As used in this subdivision:

(A) “Architectural or landscaping guidelines or policies” includes any formal or informal rules other than the governing documents of a common interest development.

(B) “Homeowners’ association” means an “association” as defined in section 4080 of the Civil Code.

(C) “Common interest development” has the same meaning as in section 4100 of the Civil Code.

(D) “Community service organization or similar entity” has the same meaning as in section 4110 of the Civil Code.

(E) “Governing documents” has the same meaning as in section 4150 of the Civil Code.

(F) “Separate interest” has the same meaning as in section 4185 of the Civil Code.

(3) If a disciplinary proceeding or other proceeding to enforce a rule in violation of subdivision (e)(1) is initiated, each day the proceeding remains pending shall constitute a separate violation of this regulation.

(f) To prevent the waste and unreasonable use of water and to promote water conservation, any city, county, or city and county is prohibited from imposing a fine under any local maintenance ordinance or other relevant ordinance as prohibited by section 8627.7 of the Government Code.

Authority: Section 1058.5, Water Code.

References: 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, and 10617, Water Code; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463.

~~Sec. 864.5. Self-Certification of Supply Reliability for Three Additional Years of Drought.~~

~~(a) To prevent the waste and unreasonable use of water and to meet the requirements of the Governor’s May 9, 2016 Executive Order, each urban water supplier shall:~~

~~(1) Identify and report no later than June 22, 2016, on a form provided by the Board, the conservation standard that the supplier will be required to meet under this section;~~

~~(2) Identify and report no later than June 22, 2016, on a form provided by the Board, the data and underlying analysis relied upon by the supplier to determine the conservation standard reported pursuant to this subdivision including, but not limited to, identification of each source of supply the supplier intends to rely on and the quantity of water available under that source of supply given the assumptions of this section;~~

~~(3) Certify, no later than June 22, 2016, that the conservation standard reported pursuant to this subdivision is based on the information and assumptions identified in this section;~~

~~(4) Post, within two weeks of submittal to the board, the data and underlying analysis relied upon by the supplier to determine the conservation standard reported pursuant to this subdivision to a publicly accessible webpage; and~~

~~(5) Beginning June 1, 2016, reduce its total potable water production by the percentage identified as its conservation standard in this section each month, compared to the amount used in the same month in 2013.~~

~~(b) Each urban water supplier's conservation standard pursuant to this section shall be the percentage by which the supplier's total potable water supply is insufficient to meet the total potable water demand in the third year after this section takes effect under the following assumptions:~~

~~(1) The next three years' precipitation is the same as it was in water years 2013-2015;~~

~~(2) No temporary change orders that increase the availability of water to any urban water supplier are issued in the next three years;~~

~~(3) The supplier's total potable water demand for each of the next three years will be the supplier's average annual total potable water production for the years 2013 and 2014;~~

~~(4) The supplier's total potable water supply shall include only water sources of supply available to the supplier that could be used for potable drinking water purposes;~~

~~(5) Each urban water supplier's conservation standard shall be calculated as a percentage and rounded to the nearest whole percentage point.~~

~~(c) The Board will reject conservation standards that do not meet the requirements of this section.~~

~~(d) Beginning June 1, 2016, each urban water supplier shall comply with the conservation standard it identifies and reports pursuant to this section.~~

~~(e) Compliance with the conservation standard reported pursuant to this section shall be measured monthly and assessed on a cumulative basis through October 2017.~~

~~(f) If a wholesaler and all of its urban water supplier customers agree, in a legally-binding document, those suppliers and wholesaler may submit to the board, in lieu of the individualized self-certified conservation standard applicable pursuant to section 864.5 or section 865, an aggregated conservation standard, with all supporting documentation required for individualized self-certified conservation standards by section 864.5.~~

~~(g) Each urban water wholesaler shall calculate, to the best of its ability, and no later than June 15, 2016, the volume of water that it expects it would deliver to each urban water supplier in each of the next three years under the assumptions identified in subdivision (b), and post that calculation, and the underlying analysis, to a publicly accessible webpage.~~

~~(h) Submitting any information pursuant to this section that the person who submits the information knows or should have known is materially false 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.

~~(i) Any urban water supplier that does not comply with this section shall comply with the applicable conservation standard identified in section 865.~~

~~(j) Notwithstanding the deadlines specified in subdivision (a), an urban water supplier may, no later than March 15, 2017, resubmit the material specified in subdivision (a) if that supplier has experienced a change in its baseline water supply conditions.~~

~~(k) Notwithstanding the deadlines specified in subdivision (a), an urban water supplier that did not comply with subdivision (a) may, no later than March 15, 2017, submit the material specified in subdivision (a).~~

~~(l) An urban water supplier that submits the information required by subdivision (a) in accordance with subdivision (j) or (k) shall, beginning March 1, 2017, reduce its total potable water production by the percentage identified as its conservation standard in this section each month, compared to the amount used in the same month in 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. 865. Mandatory Actions by Water Suppliers.

(a) As used in this article:

(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.~~

~~———— (4) “Urban water supplier” 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.~~

~~———— (5) “Urban water wholesaler” means a wholesaler of water to more than one urban water supplier.~~

~~———— (6) “Water year” means the period from October 1 through the following September 30. Where a water year is designated by year number, the designation is by the calendar year number in which the water year ends.~~

(b) 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 15th 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, 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 May 9, 2016 Executive Order, each urban water supplier that fails to identify a conservation standard as required under section 864.5, or that has a conservation standard rejected by the Board under section 864.5, shall reduce its total potable water production by the percentage identified as its conservation standard in this section. Each urban water supplier's conservation standard considers its service area's relative per capita water usage.~~

~~———— (2) 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.~~

~~———— (3) 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.~~

~~———— (4) 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.~~

~~———— (5) 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.~~

~~———— (6) 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.~~

~~———— (7) 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.~~

~~———— (8) 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.~~

~~———— (9) 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 that does not submit a self-certification in compliance with section 864.5 shall comply with the conservation~~

standard specified in subdivision (e), with any modifications to the conservation standard pursuant to subdivision (f) applying beginning March 1, 2016.

~~————(2) Compliance with the requirements of this subdivision shall be measured monthly and assessed on a cumulative basis through October 2017.~~

~~————(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 (e), 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.~~

~~(f) In consideration of the differences in climate affecting different parts of the state, growth experienced by urban areas and significant investments that have been made by some suppliers towards creating new, local, drought resilient sources of potable water supply, an urban water supplier's conservation standard identified in subdivision (e) shall be reduced by an amount, not to exceed eight (8) percentage points total, as follows:~~

~~(1) For an urban water supplier whose service area evapotranspiration (ET_a) for the months of July through September exceeds the statewide average evapotranspiration, as determined by the Board, for the same months by five (5) percent or more, the supplier's conservation standard identified in subdivision (e) shall be reduced:~~

~~(A) By two (2) percentage points if the supplier's service area evapotranspiration exceeds the statewide average by five (5) percent or more but less than ten (10) percent;~~

~~(B) By three (3) percentage points if the supplier's service area evapotranspiration exceeds the statewide average by ten (10) percent or more but less than twenty (20) percent;~~

~~(C) By four (4) percentage points if the supplier's service area evapotranspiration exceeds the statewide average by twenty (20) percent or more.~~

~~(D) Statewide average evapotranspiration is calculated as the arithmetic mean of all urban water suppliers' service area default evapotranspiration values for the months of July through September. Default service area evapotranspiration will be based on the California Irrigation Management System (CIMIS) ETo Zones Map zone for which the supplier's service area has the greatest area of overlap. In lieu of applying its default service area evapotranspiration, a supplier may use specific data from CIMIS stations within its service area that have at least a five-year period of record, or a three-year continuous period of record, to identify a more specifically applicable evapotranspiration for its service area. If no CIMIS station exists within the supplier's service area, a weather station of comparable accuracy, meeting the preceding period of record requirements, may be used. To qualify for the in-lieu climate adjustment, the supplier shall submit the following data to the Board by March 15, 2016 for each station: station ID; station location; and monthly average evapotranspiration, in inches per month, for July, August, and September for either the five-year period of record or the three-year continuous period of record.~~

~~(2) To account for water efficient growth experienced in the state since 2013, urban water suppliers' conservation standards shall be reduced by the product of the percentage change in potable water production since 2013 and the percentage reduction in potable water use required pursuant to subdivision (c), rounded to the nearest whole percentage point. Change in potable water production since 2013 shall be calculated as the sum of the following:~~

~~(A) The number of additional permanent residents served since January 1, 2013, multiplied by the average residential water use per person for that supplier's service area during the months of February through October, 2015, in gallons; and~~

~~(B) The number of new commercial, industrial and institutional connections since January 1, 2013, multiplied by the average commercial, industrial and institutional water use per connection for that supplier's service area during the months of February through October, 2015, in gallons.~~

~~(C) To qualify for the growth credit the supplier shall submit to the Board the following data by March 15, 2016: the number of additional permanent residents served since January 1, 2013 and the number of new commercial, industrial and institutional connections since January 1, 2013.~~

~~(3) For an urban water supplier that supplies, contracts for, or otherwise financially invests in, water from a new local, drought resilient source of supply, the use of which does not reduce the water available to another legal user of water or the environment, the conservation standard identified in subdivision (c) shall be reduced:~~

~~(A) By one (1) percentage point if the supplier's qualifying source of supply is one (1) percent or more but less than two (2) percent of the supplier's total potable water production;~~

~~(B) By two (2) percentage points if the supplier's qualifying source of supply is two (2) percent or more but less than three (3) percent of the supplier's total potable water production;~~

~~(C) By three (3) percentage points if the supplier's qualifying source of supply is three (3) percent or more but less than four (4) percent of the supplier's total potable water production;~~

~~(D) By four (4) percentage points if the supplier's qualifying source of supply is four (4) percent or more but less than five (5) percent of the supplier's total potable water production;~~

~~(E) By five (5) percentage points if the supplier's qualifying source of supply is five (5) percent or more but less than six (6) percent of the supplier's total potable water production;~~

~~(F) By six (6) percentage points if the supplier's qualifying source of supply is six (6) percent or more but less than seven (7) percent of the supplier's total potable water production;~~

~~(G) By seven (7) percentage points if the supplier's qualifying source of supply is seven (7) percent or more but less than eight (8) percent of the supplier's total potable water production;~~

~~(H) By eight (8) percentage points if the supplier's qualifying source of supply is eight (8) percent or more of the supplier's total potable water production.~~

~~(I) To qualify for this reduction the supplier must certify, and provide documentation to the Board upon request demonstrating, the percent of its total potable water production that comes from a local, drought-resilient source of supply developed after 2013, the supplier's investment in that local, drought-resilient source of supply, and that the use of that supply does not reduce the water available to another legal user of water or the environment. To qualify for this reduction an urban water supplier shall submit the required certification to the Board by March 15, 2016.~~

~~(J) Certifications that do not meet the requirements of subdivision (f)(3)(I), including certifications for which documentation does not support that the source of supply is a local, drought-resilient source of supply, the use of which does not reduce the water available to another legal user of water or the environment, will be rejected. Submitting a certification or supporting documentation pursuant to subdivision (f)(3)(I) 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.~~

~~(4) No urban water supplier's conservation standard pursuant to this section shall drop below eight (8) percent as a consequence of the reductions identified in this subdivision.~~

~~(g) To prevent waste and unreasonable use of water and to promote water conservation, each distributor of a public water supply that is not an 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.~~

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 864.5 or 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 864.5 or 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.~~

~~—— (c) Orders issued under previous versions of this section shall remain in effect and shall be enforceable as if adopted under this version. Changes in the requirements of this article do not operate to void or excuse noncompliance with orders issued before those requirements were changed.~~

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.~~