



San Diego County Water Authority

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April 22, 2015

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OTHER REPRESENTATIVE

County of San Diego

Felicia Marcus, Chair
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Sent via email to: jessica.bean@waterboards.ca.gov

Dear Chair Marcus:

The San Diego County Water Authority appreciates the opportunity to provide recommendations on the State Water Resources Control Board's (State Water Board's) Draft Emergency Regulations for Urban Water Conservation (draft regulations). We appreciate the efforts by the State Water Board to incorporate previously submitted comments into the draft regulations released April 18. It was encouraging to see that the draft regulations recognize that commercial agricultural water use in San Diego County is not a part of the Governor's goal to reduce urban water use by 25 percent. This is a welcomed change in the draft framework, and will help protect San Diego County's \$1.9 billion agricultural sector.

In the Water Authority's April 13, 2015 comment letter on the State Water Board's proposed framework, we recommended that the regulations recognize the critical importance of developing new drought-proof supplies during these times of serious drought shortages to help protect the State's \$2 trillion economy and the health and welfare of the citizens of California. Demand reduction – the sole focus of the proposed regulations – is one side of a two-sided coin to meeting the challenges posed by prolonged drought; the other is new supply development. The draft regulations can play a vital role in advancing the Governor's Water Action Plan and state law if they provide appropriate credit for the development of drought-proof water supplies.

The Governor's California Water Action Plan encourages agencies to increase self-reliance, manage and prepare for dry periods and reduce dependence on the Bay-Delta. Specifically, the Roadmap for Action in the 2013 update prioritizes regional self-reliance:

"Increase regional self-reliance for water by investing in water use efficiency, water recycling, advanced water technologies, local and regional water-supply projects, improved regional coordination of local and regional water supplies, and other strategies."

In addition, The Delta Plan published by the Delta Stewardship Council in 2013, said:

"Consequently, to achieve the statewide water supply mandates and the coequal goal of statewide water supply reliability, regions located outside the Delta also must take

actions outside the Delta to increase water efficiency and develop sustainable local and regional sources of water, which will contribute to improved water supply reliability. Individual actions by water suppliers throughout the state will be vital to success in this regard.” (Emphasis added.)

A similar mandate occurs in Section 85021 of State Water Code (added by SBX7-1, 2009):

“The policy of the State of California is to reduce reliance on the Delta in meeting California’s future water supply needs through a statewide strategy of investing in improved regional supplies, conservation, and water use efficiency. Each region that depends on water from the Delta watershed shall improve its regional self-reliance for water through investment in water use efficiency, water recycling, advanced water technologies, local and regional water supply projects, and improved regional coordination of local and regional water supply efforts.” (Emphasis added.)

While the proposed regulations have an initial effective period of only 270 days, the State Board must look beyond this fourth-consecutive year of drought and provide an incentive for local agencies to expedite the development of new drought-proof supplies. In formulating and adopting these regulations, the State Board should consider the very real possibility that this drought will stretch into a fifth and sixth year – perhaps longer. With proposed reduction targets as high as 36 percent for the period of June 1, 2015-February 28, 2016, should the drought continue unabated, it will not be realistic to assume that the imposition of even deeper demand reductions next year or the year after could be achieved without causing serious damage to the California economy. Development of new drought-proof supplies may prove to be the only method to protect California’s economy from more prolonged and recurring droughts. Modifying the proposed regulations to provide an increased emphasis on new supply development to support the local economy would provide an unprecedented catalyst for a new era of local supply development, as urban water suppliers will be highly motivated by their civic leaders, businesses, industries and residents to improve local water supply conditions to protect their economies and quality of life from the specter of even steeper cutbacks.

In addition to modifying the regulations to provide credit for the development of new, drought-proof local supplies, outlined above, we also recommend the following changes to the proposed regulations to improve clarity, focus actions on achieving immediate water use reductions, and target waste and unreasonable use.

1. Section 864 (a)(8) requires irrigation with potable water outside of newly constructed homes and buildings to be delivered by drip or microspray, but does not define “newly constructed.” For clarity, “newly constructed” should include homes and buildings where a permit for the landscape construction has not been issued by the local jurisdiction prior to the effective date of this regulation.
2. Section 865(b)(2) requires water suppliers to submit water use data for each of the following sectors: commercial, industrial and institutional. It is important to note that agencies can only submit water use data consistent with their existing billing system, and not all may be able to comply with the specific requirements of the regulations. The language should be modified to provide added flexibility that will facilitate reporting of information.

3. Section 865(d)(2) states that compliance will be determined on a cumulative basis. The fact sheet implies that compliance would be based on a four-month running average. We recommend that the language in the regulation be modified to reflect a four-month running average as the basis for compliance. Use of a running average will encourage agencies that have challenges meeting the goals during the first month to continue trying to come into compliance over the 270-day compliance period.
4. Section 866 states that the State Board may issue conservation orders requiring additional actions by the supplier to come into compliance with the conservation standard. We recommend that the regulation be more specific on the types of actions the State Board might include in the orders. The State Board orders should focus on activities that gain the most immediate water savings including short-term landscape restrictions and proactive enforcement. The fact sheet suggests that the orders could include mandates on changes to rates and pricing, restrictions on outdoor irrigation, public outreach rebates and audit programs, leak detection and repair and other methods. Rates and pricing mechanisms that may be used to help encourage conservation should be left to individual water agencies, which must comply with statutory and Constitutional rate-setting requirements based upon the unique facts and circumstances present within each agency. Incentive programs should not be included as a part of any conservation order. While incentives are an important aspect of long-term conservation programs, during mandatory water use restrictions, new incentive programs will not contribute significantly to achieving the immediate water use reductions required by these regulations. Agencies that currently manage conservation incentive programs are likely to keep those programs in operation for the duration of these regulations and beyond.
5. The proposed reduction goals were set without consideration of actual water uses or a definition of what might be considered waste and unreasonable use. This could have unintended consequences by requiring actions that are not targeted at waste and unreasonable use if the established goal is not reasonably achievable. Section 866 of the regulations should define what is clearly not intended by this regulation, including: actions that would put human health and safety at risk; reductions of water use necessary for sustaining animals and livestock; and reductions in commercial or industrial use that would reduce the economic output of business.

We appreciate the opportunity to comment on the proposed regulations. Attachment A includes specific recommendations for changes to the regulations highlighted in yellow. We hope these recommendations will help the State Board to refine its regulations and are offered in the hopes of improving the success of the regulations.

Sincerely,



Maureen A. Stapleton
General Manager

Enclosure

Attachment A

San Diego County Water Authority's Recommendations for Changes to Emergency Regulation

PROPOSED 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 28, 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: Sections 102, 104 and 105, Water Code.

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; and

(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 outside of newly constructed homes and Buildings that is not delivered by drip or microspray systems. This applies to landscapes for newly constructed homes and buildings where a landscape permit has not been issued by the local jurisdiction prior to the effective date of this regulation.

(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 not served by a water supplier meeting the requirements of Water Code section 10617 or section 350 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 by 25 percent for the months of June 2015 through February 2016 as compared to the amount used 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.

Authority: Section 1058.5, Water Code.

References: Sections 102, 104, ~~and~~ 105, 350, and 10617, Water Code.

Sec. 865. Mandatory Actions by Water Suppliers.

(a) The term “urban water supplier,” when used in this section, refers to 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 imposes 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-users 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, and the number of days that outdoor irrigation is allowed, monthly commercial sector use, monthly industrial sector use, and monthly institutional sector use, reported separately or in aggregate form, as data is currently available from a water supplier's existing billing system. 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 and that received average annual precipitation in 2014 may, notwithstanding its average July-September 2014 R-GPCD, submit for Executive Director approval a request to reduce its total water usage 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's service area received average annual precipitation in 2014.

(3) Each urban water supplier whose average July-September 2014 R-GPCD was less than 65 shall reduce its total water usage 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 between 65 and 79.9 shall reduce its total water usage 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 between 80 and 94.9 shall reduce its total water usage 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 between 95 and 109.9 shall reduce its total water usage 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 between 110 and 129.9 shall reduce its total water usage 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 between 130 and 169.9 shall reduce its total water usage 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 between 170 and 214.9 shall reduce its total water usage 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 greater than 215 shall reduce its total water usage 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 subdivision (c).

(2) Compliance with the requirements of this subdivision shall be measured monthly and assessed on a cumulative basis, based on a four-month running average.

(e) Each urban water supplier that serves 20 percent or more of its total production for commercial agricultural use meeting the definition of Government Code section 51201, subdivision (a) may subtract the amount of water supplied for commercial agricultural use from its water production total, provided that the supplier complies with the Agricultural Water Management Plan requirement of paragraph 12 of the April 1, 2015 Executive Order. Each urban water supplier that serves 20 percent or more of its total production for commercial agricultural use meeting the definition of Government Code section 51201, subdivision (a) shall certify that the agricultural uses it serves meet the definition of Government Code section 51201, subdivision (a), and shall report its total water production pursuant to subdivision (b)(2), identifying the total amount of water supplied for commercial agricultural use.

(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:

(1A) 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

(2B) Implement another mandatory conservation measure or measures intended to achieve a ~~20~~25 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, as defined in Water Code section 350, that is not an urban water supplier shall submit a report by December 15, 2015, on a form provided by the Board, that includes:

(A) Total potable water production, by month, from June through November, 2015, and total potable water production, by month, for June through November 2013; or

(B) Confirmation that the distributor limited outdoor irrigation of ornamental landscapes or turf with potable water by the persons it serves to no more than two days per week.

Authority: Section 1058.5, Water Code.

References: Sections 102, 104, 105, 350, 1846, 10617 and 10632, Water Code.

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 his designee, may issue conservation orders requiring additional drought response actions by the supplier to come into compliance with its conservation standard. The order may mandate the water supplier to take the following short-term drought response actions either by itself or in coordination with other regional water agencies, intended to create immediate water savings:

i. Adopt a drought response ordinance allowing the agency to enforce necessary drought restrictions

ii. Implement public outreach on the types of restrictions that are mandated and steps the public can take to reduce water consumption

iii. Restrict discretionary uses of water including reductions in landscape irrigation.

iv. Implement active enforcement actions on customers that are non-compliance with local drought restrictions

v. Immediately respond and repair water system leaks.

(2) All conservation orders issued under this article shall be subject to reconsideration under article 2 (commencing with section 1122) of chapter 4 of part 1 of division 2 of the California Water Code.

(b) The Executive Director, or his designee, may issue an informational order requiring water suppliers, or commercial, industrial or institutional properties not served by a water supplier meeting the requirements of Water Code section 10617 or section 350, to submit additional information beyond that required to be reported pursuant to the other provisions of this article. 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) It is not the intent of this regulation to require any of the following as part of a conservation order:

(1) Actions that would put human health and safety at risk;

(2) Reductions of water necessary for sustaining animals and livestock;

(3) Reductions in commercial or industrial use that would reduce the economic output of business;

(4) Irrigation restrictions that would result in permanent damage to trees;

(5) Any action that is not legal under California law or the California Constitution.

Authority: Section 1058.5, Water Code.

References: Sections 100, 102, 104, 105, 174, 186, 187, 275, 350, 1051, 1122, 1123, 1825, 1846, 10617 and 10632, Water Code.