

Facilities, Construction & Property Practice Group

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AALRR Alert



State Water Resources Control Board Modifies Water Conservation Requirements

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Mandatory statewide water use restrictions in California have been replaced by a more locally driven set of water conservation requirements under emergency regulations adopted by the State Water Resources Control Board ("State Board") on May 18, 2016, and approved by the Office of Administrative Law on May 31, 2016. These new regulations implement a statewide water conservation approach that replaces the prior percentage reduction-based water conservation standard with a localized "stress test" approach.

The prior emergency regulations were adopted by the State Board in May 2015 and were extended and amended in February to address the four-year drought. Under those prior regulations, the State's 411 urban water suppliers were required to meet potable water use reduction standards based on consumption – with bigger users hit with bigger cuts – rather than the state of their local supplies. For some suppliers, cuts ran as high as 36 percent. Those standards were widely criticized for failing to take into account local and regional differences in climate,

demographics, water supply, and water needs.

The new emergency regulations, which remain in effect through January 2017, require development of local conservation standards based upon each water agency's specific circumstances. They do not include a mandatory minimum "conservation floor." Rather, the new rules center on a "self-certification" process that requires local water agencies to forecast their supply and demand over the next three years, assuming three dry years similar to 2012 to 2015. Under this metric, water agencies that project shortages are required to meet a conservation standard equal to the amount of their projected shortage. For example, if a water agency projects it will have a 10 percent supply shortfall, its mandatory conservation standard is 10 percent.

Previously, only retail water suppliers were subject to the emergency conservation requirements. Under the new regulations, wholesale water suppliers are also required to make projections about the amount of water they will be able to deliver

to each of their retail suppliers under the three-dry-years scenario.

The newly adopted regulations also keep in place the specific prohibitions against certain water uses. Those prohibitions include:

- 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;
- 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

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it to cease dispensing water immediately when not in use;

- The application of potable water to driveways and sidewalks;
- The use of potable water in a fountain or other decorative water feature, except where the water is part of a recirculating system;
- The application of potable water to outdoor landscapes during and within 48 hours after measurable rainfall;
- 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;
- The irrigation with potable water of ornamental turf on public street medians; and
- 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.

targets. Even suppliers in Southern California, who largely missed out on El Niño storms, will argue for significant relief. California's water system was designed so that water from rain and snow in the north is delivered to urban areas in the south, where much of the state's population resides. Consequently, many places in Southern California that suffered through a dry winter will benefit from the wetter weather in the north and ease up on conservation. For example, the State Water Project draws from reservoirs such as Oroville, Shasta, and Folsom. Oroville and Shasta are both more than 90 percent full, while Folsom swelled to the point that officials had to release water to prevent flooding earlier this winter.

In contrast, water districts dependent on still suffering reservoirs, such as New Melones in the Central Valley, may have to set conservation targets higher because their supplies remain diminished. Additionally, communities in that region depending upon groundwater, which remains in short supply because of the drought, are unlikely to see much relief.

With the new regulations, many Northern California cities and towns hit by heavy rains and snow are likely to lower their conservation