As of April 21, 2020, the State Water Resources Control Board (“State Water Board”) adopted a regulation requiring approximately 400 urban water suppliers in California to report monthly water use.

By way of brief background, monthly reporting was required during the historic drought between 2012-2016 through emergency rulemaking procedures that were enacted via California Code of Regulations, Title 23, Section 864 (which expired after the emergency’s end). During this time, California saw cumulative water savings of nearly 2.7 million acre-feet from June 2015 to March 2017. Beginning in 2018 with Executive Orders B-37-16 and B-40-17 (collectively “Orders”), former Governor Brown sought to bolster his plan to “Make Conservation a California Way of Life” by directing the State Water Board to adopt permanent reporting requirements for urban water suppliers. Following shortly after these Orders, Senate Bill 606 was passed by the State Legislature authorizing the same. The State Water Board’s adoption of a regulation extending the reporting requirements of the drought to a permanent basis is another step towards the State’s conservation goals as laid out in its Water Resilience Portfolio. As part of these future goals set in the Water Resilience Portfolio, Governor Newsom has made it clear that making conservation a “California Way of Life” is still a priority for the State.

With only some minor modifications, the newly adopted regulations will function in the same way as the reporting requirements of the drought emergency. As such, the target for these regulations will remain urban water suppliers as defined under California Water Code 10617 (suppliers providing water for municipal purposes for over 3,000 customers or over 3,000 acre-feet annually). Many of these urban water suppliers
Monthly Water Use Reporting Requirements From 2016 Drought Are Here to Stay

have voluntarily continued monthly reporting since the requirement ended in November 2017, but the new regulation is aiming at changing the “many” to “all.”

Following a period of review by the State’s Office of Administrative Law, the regulations are expected to take effect October 1, 2020. In the meantime, the regulations will be implemented as California Code of Regulations, Title 23, Division 3, Chapter 3.5 – titled “Urban Water Use Efficiency and Conservation.”

While the required reporting may not have as extreme an impact as it did during the last drought emergency, future droughts are reasonably certain just as changes to the regulatory landscape. For example, the SWRCB’s pending Water Quality Control Plan update process which seeks stream flow contributions from water users to help ailing in-Delta fisheries and riparian habitat. Irrespective of how state regulatory agencies might utilize or implement the monthly reporting data, the water rights held by urban water suppliers are not modified by the new, permanent monthly reporting requirements.

This AALRR publication is intended for informational purposes only and should not be relied upon in reaching a conclusion in a particular area of law. Applicability of the legal principles discussed may differ substantially in individual situations. Receipt of this or any other AALRR publication does not create an attorney-client relationship. The Firm is not responsible for inadvertent errors that may occur in the publishing process.

© 2020 Atkinson, Andelson, Loya, Ruud & Romo