

## UPDATE ON CALIFORNIA'S EFFORTS TO COMPLY WITH THE STATE WATER BOARD'S EMERGENCY REGULATION TO REDUCE POTABLE WATER USE BY 25%

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On May 5, 2015, the State Water Resources Control Board ("SWRCB") adopted an emergency regulation mandating urban areas to reduce potable water usage by 25 percent statewide between June 2015 and February 2016. The regulation was implemented in accordance with Governor Brown's April 1, 2015 Executive Order on actions necessary to address California's severe drought conditions. The provisions of the emergency regulation went into effect on May 18, 2015.

As the drought persists, Californians continue to meet SWRCB's mandate. Potable water use was reduced by 31.3 percent during July (an increase from 27.3 percent in June), exceeding the 25 percent mark for a second consecutive month since the emergency regulation took effect.

By way of recap, to reach the statewide reduction mandate, the emergency regulation assigns each urban water supplier (serving more than 3,000 connections) a conservation standard that ranges between 4 percent and 36 percent based on their residential gallons per capita per day ("R-GPCD") for the months of July – September 2014, as compared to the amount used in the same month in 2013. For example, urban water suppliers whose average July-September 2014 R-GPCD was less than 65 are subject to an 8 percent reduction standard for each month as compared to the amount used in the same month in 2013, while suppliers whose average July-September 2014 R-GPCD was between 215 and 612 are subject to a 36 percent reduction standard. Urban water suppliers whose source of water supply does not include groundwater or water imported from outside the hydrologic region in which the supplier is located, and that have a minimum of four years' reserved supply available are subject to a 4 percent reduction for each month. Collectively, urban water suppliers should achieve a 25 percent reduction in potable water use statewide under the regulation.

The emergency regulation also prohibits the following for all Californians:

- Using potable water to wash sidewalks and driveways
- Runoff when irrigating with potable water
- Using hoses with no shutoff nozzles to wash cars
- Using potable water in decorative water features that do not recirculate the water
- Using outdoor irrigation during and 48 hours following measurable precipitation
- Using potable water to irrigate ornamental turf on public street medians
- Using potable water to irrigate landscapes of new homes and buildings

The regulation also requires suppliers to notify customers about leaks that are within the customer's control and to report on water use, compliance, and enforcement. It further requires that restaurants can only serve water to customers on request and that hotels and motels must provide guests with the option of not having towels and linens laundered daily.

The July numbers are noteworthy because the amount of water saved in July 2015 (74.6 billion gallons) is more than four times the amount of water saved in July 2014 (18.0 billion gallons), when the state's voluntary 20 percent conservation goal was in effect. Statewide, the average residential water use was 98 gallons per capita day for July 2015, which was significantly lower than residential water use in July 2014 (statewide average R-GPCD of 132.9). Further, 290 water suppliers, serving 29.2 million people, met or exceeded their conservation standard in July, up from 265 water suppliers in June. Of these, 98 water suppliers exceeded their standard by 10 percent, while 67 water suppliers exceeded their standard by 15 percent or more.

The emergency regulation, of course, has not been without criticism by urban water supplies, who have complained that it considers recycled water and degraded water that augment potable water supplies the same as traditional potable supplies; it does not consider local water supply availability; it does not account for prior conservation; and it does not take into account climate differences within the state.

The City of Riverside, for example, has sued the state, claiming that the restrictions unfairly affect the community. Under the regulations, Riverside can face fines of up to \$10,000 a day if it doesn't cut water use by 24 percent, compared with 2013 levels. Riverside argues it should qualify for the 4 percent reserve tier because it imports no water and has a four-year reserve that comes from its local groundwater aquifers. The SWRCB, however, has designated the reserve tier for water districts that could draw on surface-level water resources, like lakes and streams, while also having a four-year reserve supply. The state has said they did not include groundwater in the original exemption because of difficulties in reliably measuring groundwater levels, and the use of groundwater reserves as an emergency resource. The City of Riverside's lawsuit remains pending in Fresno County Superior Court.

Despite the positive results thus far, the SWRCB has indicated that citizens should brace for further curtailments and reductions, while the board itself braces for more litigation.