

PROPOSED RESOLUTION

Resolution W-5000
DWA/RSK/BMD/JB5/jp4

AGENDA ID #13219
ITEM #89

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

DIVISION OF WATER AND AUDITS
Water and Sewer Advisory Branch

RESOLUTION W-5000
August 14, 2014

RESOLUTION

(RES. W-5000) RESOLUTION ORDERING WATER UTILITY COMPLIANCE WITH THE STATE WATER RESOURCES CONTROL BOARD'S RESOLUTION NO. 2014-0038 ADOPTING AN EMERGENCY REGULATION FOR STATEWIDE URBAN WATER CONSERVATION AS CODIFIED IN THE CALIFORNIA CODE OF REGULATIONS, TITLE 23, ARTICLE 22.5, SECTIONS 863, 864, AND 865.

SUMMARY

On July 15, 2014 the State Water Resources Control Board (Water Board) adopted an Emergency Regulation for Statewide Water Conservation (Emergency Regulation). The Emergency Regulation is available on the Water Board's website at: http://www.swrcb.ca.gov/waterrights/water_issues/programs/drought/docs/emergency_regulations/oal_app2014071810e.pdf

The Emergency Regulation went into effect on July 28, 2014, after approval by the Office of Administrative Law, and it will expire on April 25, 2015. Within ten (10) days of the effective date of this Resolution, all water utilities subject to the Commission's jurisdiction shall publish notice of the Emergency Regulation in the local newspaper and on their respective website. Within twenty (20) days of the effective date of this Resolution, all water utilities subject to the Commission's jurisdiction shall provide direct notice to their customers by either posted mail or e-mail of the Emergency Regulation. The notice shall list the Water Boards mandatory restrictions and the potential fines arising from violations of these prohibited water uses. In addition, Class A and B water utilities are to track and record their progress in assisting local enforcement agencies responsible for enforcing compliance with the enumerated mandatory water use restrictions.

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BACKGROUND

On April 25, 2014, Governor Edmund G. Brown Jr. issued an executive order to strengthen the state's ability to manage water in drought conditions. The executive order recognizes the need for additional expedited actions to reduce the harmful impacts from the drought. In this regard, Governor Brown ordered California residents to refrain from wasting water and directs the Water Board to adopt emergency regulations as it deems necessary, pursuant to Water Code Section 1058.5, to implement called for reductions in outdoor irrigation and wasteful water practices.

The Emergency Regulation is the Water Board's response to the April 25, 2014 executive order. The Water Board adopted amendments to the California Code of Regulations by adding Sections 863, 864, and 865 to Title 23, Article 12.5. Section 864 outlines prohibited activities intended to promote water conservation. The following actions are 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, roadway, 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.

Section 864(b) provides that violation of any of the four prohibited actions is an infraction punishable by a fine of up to five hundred dollars (\$500) for each day in which the violation occurs.

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Finally, the Emergency Regulation, as it pertains to Commission-jurisdictional utilities, requires all Class A and B water utilities to prepare and submit monthly reports to the Water Board showing monthly water production in 2014 along with a comparison to the amount produced in the same calendar month in 2013. The Emergency Regulation was made effective on July 28, 2014 and will expire on April 25, 2015.

DISCUSSION

With nearly 80% of the state reported to be under extreme drought conditions at the end of June 2014, all Californians need to be cognizant of and compliant with the mandatory restrictions enacted by the Water Board. If California experiences a fourth dry year in a row in 2014/ 2015, water needs for basic health and safety will be at risk. Commission-jurisdictional water utilities are integral and important players in California's water delivery system. As such, they serve an important role through interactions with their customers in assisting in complying with the Water Board's mandatory water use restrictions. By this Resolution, we are ordering all jurisdictional water utilities to take the following steps outlined below to assist in complying with the Water Board's mandatory water use restrictions.

The first component in achieving customer compliance is conveyance of what is expected from water consumers, as well as the consequences for non-compliance. Within ten (10) days of the effective date of this Resolution, water utilities shall publish notice of the Emergency Regulation in the local newspaper and on their respective website.

Within twenty (20) days of the effective date of this Resolution, water utilities shall provide direct notice to their customers by either posted mail or e-mail of the Emergency Regulation. The notice shall list the Water Board's mandatory restrictions and the potential fines arising from violations of these prohibited water uses. Following on regular intervals for the duration that the mandatory restrictions are in effect,

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utilities shall use either bill inserts or bill messages to remind customers of the continuing mandatory restrictions. A suggested draft notice is attached as Appendix A. This draft notice should be modified as necessary by the water utilities, but should contain the Emergency Regulation provisions and the potential fine for violations of the regulations.

Second, all Class A and B water utilities shall assist in assuring compliance with the restricted water uses by working with local law enforcement or public agencies charged with enforcing the mandatory use restrictions.¹ All Class A and B water utilities shall, at a minimum, establish procedures and mechanisms that facilitate employee- and customer-identified violations and the conveyance of this information to the appropriate enforcement officials. These utilities shall track and record reports of violations, actions taken to assist local law enforcement or public agencies, and the results of such actions. This information shall be made available to the Commission upon request.

Utilities also have in their tariffs rules to address the negligent or wasteful use of water, such as Tariff Rule 11.B.3 which provides for the discontinuance of service following proper notice to a customer. Short of this, utilities can also assist enforcement officials by placing flow restrictors on meters for premises where there has been shown a documented history of repeat violations.

Finally, Section 865(d) of the amended California Code of Regulations adopted by the Water Board requires all Class A and B utilities to provide a monitoring report to the Water Board by the 15th of each month beginning in October 2014. The monitoring reports are intended to show progress towards the objective of a 20% reduction in water usage called for in the Governor's Drought Emergency Proclamation dated January 17,

¹ Water Code section 1058.5(d) provides that violations of the Water Board's emergency regulations are "infractions." In California, "infractions" are defined as criminal penalties. *See* Pen. Code sections 16, 17, and 19.6.

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2014. All Class A and B utilities are required to provide a copy of this monthly monitoring report to the Director of the Division of Water and Audits as long as this report is required by the Water Board.

COMMENTS ON PROPOSED RESOLUTION

As provided by Rule 14.6(a) of the Commission's Rules of Practice and Procedure and Pub. Util. Code § 311(g)(2), the 30-day public review and comment period has been waived given the unforeseen emergency situation being addressed by this Resolution. This matter is added to the Agenda pursuant to Government Code Section 11125.3(a)(2).

FINDINGS AND CONCLUSIONS

1. On April 25, 2014, Governor Edmund G. Brown Jr. issued an executive order to strengthen the state's ability to manage water in drought conditions.
2. On July 15, 2014 the State Water Resources Control Board (Water Board) adopted an Emergency Regulation for Statewide Water Conservation (Emergency Regulation). In the Emergency Regulation, the Water Board adopted amendments to the California Code of Regulations in Title 23, Article 12.5, by adding Sections 863-865.
3. The Emergency Regulation went into effect on July 28, 2014, after approval by the Office of Administrative Law, and it will expire on April 25, 2015.
4. Cal. Code Regs. Tit. 23, § 864, enumerates four mandatory water use restrictions and fines for violation of the prohibited uses of up to five hundred dollars (\$500) for each day in which the violation occurs.
5. Water needs for basic health and safety are at risk if California experiences another dry year in 2014/ 2015.
6. Local law enforcement and public agencies are charged with enforcing the mandatory water use restrictions.

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7. Cal. Code Regs. Tit. 23, § 865(d), requires all Class A and B water utilities to prepare and submit monthly monitoring reports to the Water Board showing water production in 2014 along with a comparison to the amount of water produced in the same calendar month in 2013.
8. As provided by Rule 14.6(a) of the Commission's Rules of Practice and Procedure and Pub. Util. Code § 311(g)(2), the 30-day public review and comment period has been waived given the unforeseen emergency situation being addressed by this Resolution.
9. Within ten (10) days of the effective date of this Resolution, water utilities shall publish notice of the Emergency Regulation in the local newspaper and on their respective website listing the Water Board's mandatory restrictions and the potential fines arising from violations of the listed prohibited water uses.
10. Within twenty (20) days of the effective date of this Resolution, water utilities shall provide direct notice to their customers by either posted mail or e-mail of the Emergency Regulation listing the Water Board's mandatory restrictions and the potential fines arising from violations of the listed prohibited water uses.
11. All Class A and B water utilities shall assist in assuring compliance with the restricted water uses by working with local law enforcement or public agencies charged with enforcing the mandatory use restrictions.
12. All Class A and B water utilities shall, at a minimum, establish procedures and mechanisms that facilitate employee- and customer-identified violations and the conveyance of this information to the appropriate enforcement officials. These utilities shall track and record reports of violations, actions taken to assist local law enforcement or public agencies, and the results of such actions. This information shall be made available to the Commission upon request.
13. All Class A and B water utilities should provide copies of the monthly monitoring report on water production, as called for by the Water Board, to the Director of the Division of Water and Audits so long as this report is required by the Water Board.

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THEREFORE IT IS ORDERED THAT:

1. All California Public Utilities Commission jurisdictional water utilities shall notify their customers, either by posted mail or email, as well as by a notice published in the local newspaper, and on their respective website, of the State Water Resources Control Board's enactment of mandatory water use restrictions and fines for violations as codified in Title 23, Article 12.5, Sections 865(a) and (b) of the California Code of Regulations within ten to twenty days of the effective date of this Resolution.
2. All Class A and B utilities are required to provide a copy of the monthly monitoring report on water production, as required by the State Water Resources Control Board's enactment of Section 865(d) in Title 23, Article 12.5 of the California Code of Regulations, to the Director of the Division of Water and Audits as long as these reports are required by the State Water Resources Control Board.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on August 14, 2014; the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director

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APPENDIX A

Date

Notice of State Water Resources Control Board Emergency Regulation

Water Utility (WU) has been ordered by the California Public Utilities Commission to notify its customers of the State Water Resources Control Board's (Board) restrictions and fines for violations of the Board's regulations.

The Board has determined that the following water use activities by water utility customers are prohibited:

1. The application of potable water to outdoor landscapers 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 the recirculating system.

Violation of any of these four prohibited water use activities is an infraction punishable by a fine of up to five hundred dollars (\$500) for each day in which the violation occurs.

Further information may be obtained from the (WU) local business office.

(END OF APPENDIX A)