

# PROPOSED RESOLUTION

Resolution W-5000  
DWA/RSK/BMD/jp4

AGENDA ID #13219 (Rev. 3)  
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.**

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### 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](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 Board's mandatory restrictions and the potential fines arising from violations of these prohibited water uses. All Commission jurisdiction water utilities are ordered to comply with the Water Board's requirements codified in Title 23, Article 12.5, Sections 865(b) through (e) in implementing either mandatory outdoor irrigation restrictions or, alternatively,

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mandatory water conservation measures. Utilities shall include notice of the implementation of either the mandatory outdoor irrigation restrictions or mandatory water conservation measures as required in Sections 865(b) through (e) as part of the required customer notification.

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.

## **BACKGROUND**

On January 17, 2014, Governor Edmund G. Brown Jr. issued an executive order declaring a drought state of emergency (Emergency Drought Declaration). In response to this executive order, the Commission on February 28, 2014 issued Resolution W-4976 wherein it adopted drought procedures for water conservation. The Commission ordered Class A and B water utilities with Tariff Rule 14.1 for voluntary conservation to activate this Tariff Rule 14.1 calling for a voluntary reduction in water use. Those utilities that did not have an existing Tariff Rule 14.1 were required to file an advice letter adding this rule to its tariff. All Class A and B water utilities are in compliance with Resolution W-4976. Utilities were also provided an opportunity to add memorandum accounts to their preliminary statements in the tariffs to track the incremental costs associated with drought compliance efforts. Finally, the Commission directed water utilities to comply with future directives under the Emergency Drought Declaration for either additional voluntary conservation measures or requirements for mandatory rationing.

On April 25, 2014, Governor Brown issued a second 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

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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.

Section 865 outlines mandatory actions required of all water suppliers. All Class A and B utilities that meet the definition of an urban water supplier set forth in Water Code Section 10617 shall implement all requirements and actions of the stage of their water shortage contingency plans that imposes mandatory restrictions on outdoor irrigation of ornamental landscapes or turf with potable water (Section 865(b)(1)). As an

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alternative, the Water Board provides that Class A and B utilities that are classified as urban water suppliers can request approval of an alternate plan that achieves a level of conservation superior to that achieved above (Section 865(b)(2)).

All Class A and B utilities that meet the definition of an urban water supplier and that do not have water shortage contingency plans or have been notified by the Department of Water Resources that their water shortage contingency plans do not meet the requirements of Water Code Section 10632 shall, within 30 days, limit outdoor irrigation of ornamental landscapes or turf with potable water by customers they serve to no more than two days per week or shall implement another mandatory conservation measure or measures intended to achieve a comparable reduction in water consumption relative to the amount consumed in 2013 (Section 865(c)).

All Class B, C, and D utilities that do not meet the definition of an urban water supplier shall take one or more of the following actions within 30 days. Utilities are either to: (1) limit outdoor irrigation of ornamental landscapes or turf with potable water by customers they serve to no more than two days per week; or (2) implement another mandatory conservation measure or measures intended to achieve a comparable reduction in water consumption by the customers they serve relative to the amount consumed in 2013 (Section 865(e)).

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

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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, 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

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charged with enforcing the mandatory use restrictions.<sup>1</sup> 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.

All Class A, B, C, and D utilities shall comply with the Water Board's requirements outlined in Sections 865(b) through (e) in implementing either mandatory outdoor irrigation restrictions or, alternatively, mandatory water conservation measures. Utilities shall include notice of the implementation of either the mandatory outdoor irrigation restrictions or mandatory water conservation measures required in Section 865 as part of the customer notification requirements of the four prohibited water uses specified in Section 864.

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 15<sup>th</sup> 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,

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<sup>1</sup> 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. Cal. Code Regs. Tit 23, § 865(b) through (e), imposes mandatory restrictions on outdoor irrigation of ornamental landscapes or turf using potable water.
6. Cal. Code Regs. Tit 23 § 865(b) through (e), provides for implementation of mandatory conservation measures as an alternative to mandatory restrictions on outdoor irrigation.

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7. Water needs for basic health and safety are at risk if California experiences another dry year in 2014/ 2015.
8. Local law enforcement and public agencies are charged with enforcing the mandatory water use restrictions.
9. 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.
10. 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.
11. 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.
12. 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.
13. 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.
14. 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.



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15. 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.
16. All Class A, B, C, and D utilities shall comply with the Water Board's requirements outlined in Sections 865(b) through (e) in implementing either mandatory outdoor irrigation restrictions or, alternatively, mandatory water conservation measures.

### **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, Section 864 of the California Code of Regulations within ten to twenty days of the effective date of this Resolution.
2. All California Public Utilities Commission jurisdiction water utilities shall comply with the State Water Resources Control Board's requirements codified in Title 23, Article 12.5, Sections 865(b) through (e) in implementing either mandatory outdoor irrigation restrictions or, alternatively, mandatory water conservation measures. Utilities shall include notice of the implementation of either the mandatory outdoor irrigation restrictions or mandatory water conservation measures as required in Sections 865(b) through (e) as part of the customer notification required in Ordering Paragraph No. 1.
3. 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

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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:

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PAUL CLANON  
Executive Director

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## APPENDIX A

Date

Notice of State Water Resources Control Board Emergency Regulation to Control Water Use During Droughts

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. This notification is being sent because California is in a drought and your cooperation is needed to ensure reliable supplies of water for your comfort and necessary use *[or something that explains/reminds customers of the situation]*

The Board has determined that the following water use activities by *[insert water utility name]* customers are not allowed:

1. Watering outdoor landscapes in a way that causes water to "runoff" onto adjacent property, non-irrigated areas, private and public walkways, roadways, parking lots, or structures.
2. Washing a vehicle, with a hose without a shut-off nozzle or other device that will immediately stop the flow of water when not in use.
3. Using drinking water to wash driveways and sidewalks.
4. Using drinking water in a fountain or other decorative water feature, except where the water is recirculated.
5. Violation of any of these four prohibited or restricted water use activities may be punished 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)**