

RESOLUTION NO. 17-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CUPERTINO ADOPTING REGULATIONS RESTRICTING WATER USE IN COMPLIANCE WITH EXECUTIVE ORDER B-40-17 ISSUED APRIL 7, 2017 AND STATE WATER RESOURCE CONTROL BOARD EMERGENCY REGULATORY ACTION DATED FEBRUARY 27, 2017

WHEREAS, On April 7, 2017 Governor Edmund G. Brown Jr. issued Executive Order B-40-17 and ended the drought State of Emergency in most of California, while maintaining water reporting requirements and prohibitions on wasteful practices; and,

WHEREAS, Executive Order B-40-17 rescinds two emergency proclamations from January and April 2014 and four drought-related Executive Orders issued in 2014 and 2015; and,

WHEREAS, Executive Order B-40-17 builds on actions taken in Executive Order B-37-16, which remains in effect, to continue making water conservation a way of life in California; and,

WHEREAS, Executive Order B-40-17 requires:

- Continuation of certain prohibited wasteful water practices
- Continuation of Executive Order B-37-16 of water efficiency targets by urban water suppliers.; and

WHEREAS, On February 27, 2017 the State Water Resource Control Board adopted text of emergency regulation for water conservation that re-adopted and extended the prior regulation; and

WHEREAS, The urban water supplier for Cupertino (Santa Clara Valley Water District (Water District)) on January 24, 2017 continued the call for a 20% water use reduction goal as compared to 2013 usage; and

WHEREAS, The Water District supplies water to two urban water retailers within Cupertino and each retailer coordinates water use rules to meet the 20% water use reduction goal; and

WHEREAS, the Council determines that regulations are necessary to coordinate and promote further conservation efforts during this time of drought recovery; and

WHEREAS, The City supports the Water District's efforts to encourage conservation, with an emphasis on outdoor water use, to the extent it may do so within the context the Cupertino Municipal Code; and

WHEREAS, Article XI, Section 7 of the California Constitution declares that a city or county may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws; and

WHEREAS, Cupertino Municipal Code Section 15.32.040 provides that the City may adopt Regulations for water conservation or for other public purposes.

WHEREAS, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines (collectively, "CEQA"), the City determines that the provisions of this Resolution are exempt as a project intended to protect the environment and natural resources (14 Cal.Reg. 15307, 15308);

The Council of the City of Cupertino RESOLVES as follows:

SECTION 1. Regulations

A. Attachment A, "2017/18 Regulations Restricting Water Use" is hereby adopted in compliance with the February 27, 2017 action of the State Water Resource Control Board and April 7, 2017 Executive Order B-40-17 (Attachment B) and incorporated.

SECTION 2. Council directs the City Manager to continue the requirements established in the 2016/17 Water Use Regulations in the 2017/18 Water Use Regulation.

SECTION 3. The 2017/18 Regulation Restricting Water Use will become effective May 15, 2017 and will remain in effect until November 25, 2017 or as amended by the City Council or the Water Board.

SECTION 4. Council directs staff to further promote water conservation by coordinating educational outreach with urban water suppliers and the Water District to ensure that Cupertino customers fully understand drought restrictions and receive a consistent conservation message within the City.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 2nd day of May, 2017, by the following vote:

Vote

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Grace Schmidt, City Clerk

Savita Vaidhyanathan, Mayor

ATTACHMENT A

2017/18 REGULATIONS RESTRICTING WATER USE

Despite record rainfall in much of Northern California this past winter, the State and the Santa Clara Valley Water District have called for continued conservation efforts.

Implementation of individual regulations shall be carried out at the direction of the City Council, in response to its assessment of local water supply conditions, feasibility, and consumption trends. The Council may, in its discretion, opt to revise, delete or include different elements than those described below, so long as the restrictions implemented serve the overall purpose of continued reduction of local consumption.

Article XI, Section 7 of the California Constitution declares that a city or county may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws. Pursuant to this power and Cupertino Municipal Code Section 15.32.040, the City Council of the City of Cupertino adopts the following Regulations in addition to any requirements set forth in Cupertino Municipal Code Chapter 15.32. These regulations are effective May 15, 2017 through November 25, 2017, or until repealed by Council, whichever comes first.

Section A:

To prevent the waste and unreasonable use of water and to promote water conservation, the following acts are prohibited, except where necessary to address an immediate health and safety need:

1. Hosing off sidewalks, driveways and other hardscapes.
2. Using outdoor irrigation during and 48 hours after measureable rainfall.
3. The irrigation with potable water of ornamental turf on public street medians.
4. Using potable water in decorative water features that do not re-circulate the water.
5. Limit outdoor irrigation of ornamental landscapes or turf with potable water to no more than three days per week. Irrigation will be allowed on Monday, Thursday & Saturday for odd number addresses and numberless addresses; and Tuesday, Friday & Sunday for even number addresses.
6. Other restrictions on use of potable water as prescribed from time to time by the Water Board or other governing body or agency.
7. None of the restrictions apply to the use of recycled or grey water. These restrictions also shall not apply to commercial nurseries, golf courses, or other water-dependent businesses, unless specifically included by the Water Board or other governing body or agency.

ATTACHMENT B

**State of California
Office of Administrative Law**

In re:
State Water Resources Control Board

Regulatory Action:

Title 23, California Code of Regulations

Adopt sections: 863, 864, 864.5, 865, 866

Amend sections:

Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6; Water Code Section 1058.5**

OAL Matter Number: 2017-0217-02

OAL Matter Type: Emergency Readopt (EE)

The State Water Resources Control Board submitted this emergency action to readopt section 866 and to readopt and further amend sections 863, 864, 864.5, and 865 in title 23 of the California Code of Regulations, which pertain to drought emergency water conservation.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code and section 1058.5 of the Water Code.

This emergency regulatory action is effective on 2/27/2017 and will expire on 11/25/2017. The Certificate of Compliance for this action is due no later than 11/24/2017.

Date: February 27, 2017

Richard L. Smith

Richard L. Smith
Senior Attorney

For: Debra M. Cornez
Director

Original: Thomas Howard

Copy: David Rose

NOTICE PUBLICATION REGULATIONS SUBMISSION

See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2017-0217-02EE
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For use by Office of Administrative Law (OAL) only

ENDORSED - FILED
In the office of the Secretary of State
of the State of California

FEB 27 2017

1:44 P.M.

2017 FEB 17 P 2:36

OFFICE OF
ADMINISTRATIVE LAW

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY

State Water Resources Control Board

AGENCY FILE NUMBER (if any)

Resolution No. 2017-0004

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Drought Emergency Water Conservation		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) OAL File Nos. 2016-0520-01; 2016-0203-01EE; 2015-0506-02EE; 2015-0320-01EE; 2014-0718-01E
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)		
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 863, 864, 864.5, 865, 866	
	AMEND	
TITLE(S) 23	REPEAL	

3. TYPE OF FILING

- ☐ Regular Rulemaking (Gov. Code §11346)
☐ Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §11349.3, 11349.4)
☐ Emergency (Gov. Code, §11346.1(b))
- ☐ Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.
☐ Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)
- ☒ Emergency Readopt (Gov. Code, §11346.1(h))
☐ File & Print
☒ Other (Specify) Emerg. Readopt (Wat. Code 1058.5(c))
- ☐ Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
☐ Print Only

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

- ☐ Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) ☒ Effective on filing with Secretary of State ☐ \$100 Changes Without Regulatory Effect ☐ Effective other (Specify)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

- ☐ Department of Finance (Form STD. 399) (SAM §6660) ☐ Fair Political Practices Commission ☐ State Fire Marshal
☐ Other (Specify)

7. CONTACT PERSON

David Rose	TELEPHONE NUMBER 916-341-5196	FAX NUMBER (Optional) 916-341-5199	E-MAIL ADDRESS (Optional) david.rose@waterboards.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

DATE

TYPED NAME AND TITLE OF SIGNATORY

Thomas Howard, Executive Director, State Water Resources Control Board

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

FEB 27 2017

Office of Administrative Law

.ADOPTED TEXT OF EMERGENCY REGULATION

Article 22.5. Drought Emergency Water Conservation.

Sec. 863. Findings of Drought Emergency.

(a) The State Water Resources Control Board finds as follows:

(1) On January 17, 2014, the Governor issued a proclamation of a state of emergency under the California Emergency Services Act based on drought conditions;

(2) On April 25, 2014, the Governor issued a proclamation of a continued state of emergency under the California Emergency Services Act based on continued drought conditions;

(3) On April 1, 2015, the Governor issued an Executive Order that, in part, directs the State Board to impose restrictions on water suppliers to achieve a statewide 25 percent reduction in potable urban usage through February, 2016; require commercial, industrial, and institutional users to implement water efficiency measures; prohibit irrigation with potable water of ornamental turf in public street medians; and prohibit irrigation with potable water outside newly constructed homes and buildings that is not delivered by drip or microspray systems;

(4) On November 13, 2015, the Governor issued an Executive Order that directs the State Board to, if drought conditions persist through January 2016, extend until October 31, 2016 restrictions to achieve a statewide reduction in potable usage;

(5) On May 9, 2016, the Governor issued an Executive Order that directs the State Board to adjust and extend its emergency water conservation regulations through the end of January 2017 in recognition of the differing water supply conditions for many communities;

(6) The drought conditions that formed the basis of the Governor's emergency proclamations continue to exist in portions of the state, and snowpack and reservoir conditions for the end of the water year remain subject to significant change; and

(7) The Governor's proclamation remains in effect, drought conditions will likely continue for the foreseeable future may persist or continue locally through the end of the water year, and additional action by both the State Water Resources Control Board and local water suppliers will likely be necessary to prevent waste and unreasonable use of water and to further promote conservation.

Authority: Section 1058.5, Water Code.

References: Article X, Section 2, California Constitution; Sections 102, 104, 105, and 275, Water Code; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463.

Sec. 864. End-User Requirements in Promotion of Water Conservation.

(a) To prevent the waste and unreasonable use of water and to promote water conservation, each of the following actions is 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, 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 a recirculating system;

(5) The application of potable water to outdoor landscapes during and within 48 hours after measurable rainfall;

(6) 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;

(7) The irrigation with potable water of ornamental turf on public street medians; and

(8) 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.

(b) To promote water conservation, operators of hotels and motels shall provide guests with the option of choosing not to have towels and linens laundered daily. The hotel or motel shall prominently display notice of this option in each guestroom using clear and easily understood language.

(c) Upon this subdivision taking effect, all commercial, industrial and institutional properties that use a water supply, any portion of which is from a source other than a water supplier subject to section 864.5 or 865 of this article, shall either:

(1) Limit outdoor irrigation of ornamental landscapes or turf with potable water to no more than two days per week; or

(2) Target potable water use reductions commensurate with those required of the nearest urban water supplier under section 864.5 or, if applicable, section 865. Where this option is chosen, these properties shall implement the reductions on or before July 1, 2016.

(d) The taking of any action prohibited in subdivision (a) ~~or~~ (e), or (f), or the failure to take any action required in subdivision (b) or (c), is an infraction punishable by a fine of up to five hundred dollars (\$500) for each day in which the violation occurs. The fine for the infraction is in addition to, and does not supersede or limit, any other remedies, civil or criminal.

(e)(1) To prevent the waste and unreasonable use of water and to promote water conservation, any homeowners' association or community service organization or similar entity is prohibited from:

(A) Taking or threatening to take any action to enforce any provision of the governing documents or architectural or landscaping guidelines or policies of a common interest development where that provision is void or unenforceable under section 4735, subdivision (a) of the Civil Code; or

(B) Imposing or threatening to impose a fine, assessment, or other monetary penalty against any owner of a separate interest for reducing or eliminating the watering of vegetation or lawns during a declared drought emergency, as described in section 4735, subdivision (c) of the Civil Code.

(2) As used in this subdivision:

(A) "Architectural or landscaping guidelines or policies" includes any formal or informal rules other than the governing documents of a common interest development.

(B) "Homeowners' association" means an "association" as defined in section 4080 of the Civil Code.

(C) "Common interest development" has the same meaning as in section 4100 of the Civil Code.

(D) "Community service organization or similar entity" has the same meaning as in section 4110 of the Civil Code.

(E) "Governing documents" has the same meaning as in section 4150 of the Civil Code.

(F) "Separate interest" has the same meaning as in section 4185 of the Civil Code.

(3) If a disciplinary proceeding or other proceeding to enforce a rule in violation of subdivision (e)(1) is initiated, each day the proceeding remains pending shall constitute a separate violation of this regulation.

(f) To prevent the waste and unreasonable use of water and to promote water conservation, any city, county, or city and county is prohibited from imposing a fine under any local maintenance ordinance or other relevant ordinance as prohibited by section 8627.7 of the Government Code.

Authority: Section 1058.5, Water Code.

References: Article X, Section 2, California Constitution; Sections 4080, 4100, 4110, 4150, 4185, and 4735, Civil Code; Section 8627.7, Government Code; Sections 102, 104, 105, 275, 350, and 10617, Water Code; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463.

Sec. 864.5. Self-Certification of Supply Reliability for Three Additional Years of Drought.

(a) To prevent the waste and unreasonable use of water and to meet the requirements of the Governor's May 9, 2016 Executive Order, each urban water supplier shall:

(1) Identify and report no later than June 22, 2016, on a form provided by the Board, the conservation standard that the supplier will be required to meet under this section;

(2) Identify and report no later than June 22, 2016, on a form provided by the Board, the data and underlying analysis relied upon by the supplier to determine the conservation standard reported pursuant to this subdivision including, but not limited to, identification of each source of supply the supplier intends to rely on and the quantity of water available under that source of supply given the assumptions of this section;

(3) Certify, no later than June 22, 2016, that the conservation standard reported pursuant to this subdivision is based on the information and assumptions identified in this section;

(4) Post, within two weeks of submittal to the board, the data and underlying analysis relied upon by the supplier to determine the conservation standard reported pursuant to this subdivision to a publicly-accessible webpage; and

(5) Beginning June 1, 2016, reduce its total potable water production by the percentage identified as its conservation standard in this section each month, compared to the amount used in the same month in 2013.

(b) Each urban water supplier's conservation standard pursuant to this section shall be the percentage by which the supplier's total potable water supply is insufficient to meet the total potable water demand in the third year after this section takes effect under the following assumptions:

(1) The next three years' precipitation is the same as it was in water years 2013-2015;

(2) No temporary change orders that increase the availability of water to any urban water supplier are issued in the next three years;

(3) The supplier's total potable water demand for each of the next three years will be the supplier's average annual total potable water production for the years 2013 and 2014;

(4) The supplier's total potable water supply shall include only water sources of supply available to the supplier that could be used for potable drinking water purposes;

(5) Each urban water supplier's conservation standard shall be calculated as a percentage and rounded to the nearest whole percentage point.

(c) The Board will reject conservation standards that do not meet the requirements of this section.

(d) Beginning June 1, 2016, each urban water supplier shall comply with the conservation standard it identifies and reports pursuant to this section.

(e) Compliance with the conservation standard reported pursuant to this section shall be measured monthly and assessed on a cumulative basis through January~~October~~ 2017.

(f) If a wholesaler and all of its urban water supplier customers agree, in a legally-binding document, those suppliers and wholesaler may submit to the board, in lieu of the individualized self-certified conservation standard applicable pursuant to section 864.5 or section 865, an aggregated conservation standard, with all supporting documentation required for individualized self-certified conservation standards by section 864.5.

(g) Each urban water wholesaler shall calculate, to the best of its ability, and no later than June 15, 2016, the volume of water that it expects it would deliver to each urban water supplier in each of the next three years under the assumptions identified in subdivision (b), and post that calculation, and the underlying analysis, to a publicly-accessible webpage.

(h) Submitting any information pursuant to this section that the person who submits the information knows or should have known is materially false is a violation of this regulation, punishable by civil liability of up to five hundred dollars (\$500) for each day in which the violation occurs. Every day that the error goes uncorrected constitutes a

separate violation. Civil liability for the violation is in addition to, and does not supersede or limit, any other remedies, civil or criminal.

(i) Any urban water supplier that does not comply with this section shall comply with the applicable conservation standard identified in section 865.

(j) Notwithstanding the deadlines specified in subdivision (a), an urban water supplier may, no later than March 15, 2017, resubmit the material specified in subdivision (a) if that supplier has experienced a change in its baseline water supply conditions.

(k) Notwithstanding the deadlines specified in subdivision (a), an urban water supplier that did not comply with subdivision (a) may, no later than March 15, 2017, submit the material specified in subdivision (a).

(l) An urban water supplier that submits the information required by subdivision (a) in accordance with subdivision (j) or (k) shall, beginning March 1, 2017, reduce its total potable water production by the percentage identified as its conservation standard in this section each month, compared to the amount used in the same month in 2013.

Authority: Section 1058.5, Water Code.

References: Article X, Section 2, California Constitution; Sections 102, 104, 105, 275, 350, 1846, 10617 and 10632, Water Code; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463.

Sec. 865. Mandatory Actions by Water Suppliers.

(a) As used in this article:

(1) "Distributor of a public water supply" has the same meaning as under section 350 of the Water Code, except it does not refer to such distributors when they are functioning solely in a wholesale capacity, but does apply to distributors when they are functioning in a retail capacity.

(2) "R-GPCD" means residential gallons per capita per day.

(3) "Total potable water production" means all potable water that enters into a water supplier's distribution system, excluding water placed into storage and not withdrawn for use during the reporting period, or water exported outside the supplier's service area.

(4) "Urban water supplier" means a supplier that meets the definition set forth in Water Code section 10617, except it does not refer to suppliers when they are functioning solely in a wholesale capacity, but does apply to suppliers when they are functioning in a retail capacity.

(5) "Urban water wholesaler" means a wholesaler of water to more than one urban water supplier.

(6) "Water year" means the period from October 1 through the following September 30. Where a water year is designated by year number, the designation is by the calendar year number in which the water year ends.

(b) In furtherance of the promotion of water conservation each urban water supplier shall:

(1) Provide prompt notice to a customer whenever the supplier obtains information that indicates that a leak may exist within the end-user's exclusive control.

(2) Prepare and submit to the State Water Resources Control Board by the 15th of each month a monitoring report on forms provided by the Board. The monitoring report shall include the amount of potable water the urban water supplier produced, including water provided by a wholesaler, in the preceding calendar month and shall compare that amount to the amount produced in the same calendar month in 2013. The monitoring report shall specify the population served by the urban water supplier, the percentage of water produced that is used for the residential sector, descriptive statistics on water conservation compliance and enforcement efforts, the number of days that outdoor irrigation is allowed, and monthly commercial, industrial and institutional sector use. The monitoring report shall also estimate the gallons of water per person per day used by the residential customers it serves.

(c)(1) To prevent the waste and unreasonable use of water and to meet the requirements of the Governor's May 9, 2016 Executive Order, each urban water supplier that fails to identify a conservation standard as required under section 864.5, or that has a conservation standard rejected by the Board under section 864.5, shall reduce its total potable water production by the percentage identified as its conservation standard in this section. Each urban water supplier's conservation standard considers its service area's relative per capita water usage.

(2) Each urban water supplier whose average July-September 2014 R-GPCD was less than 65 shall reduce its total potable water production by 8 percent for each month as compared to the amount used in the same month in 2013.

(3) Each urban water supplier whose average July-September 2014 R-GPCD was 65 or more but less than 80 shall reduce its total potable water production by 12 percent for each month as compared to the amount used in the same month in 2013.

(4) Each urban water supplier whose average July-September 2014 R-GPCD was 80 or more but less than 95 shall reduce its total potable water production by 16 percent for each month as compared to the amount used in the same month in 2013.

(5) Each urban water supplier whose average July-September 2014 R-GPCD was 95 or more but less than 110 shall reduce its total potable water production by 20 percent for each month as compared to the amount used in the same month in 2013.

(6) Each urban water supplier whose average July-September 2014 R-GPCD was 110 or more but less than 130 shall reduce its total potable water production by 24 percent for each month as compared to the amount used in the same month in 2013.

(7) Each urban water supplier whose average July-September 2014 R-GPCD was 130 or more but less than 170 shall reduce its total potable water production by 28 percent for each month as compared to the amount used in the same month in 2013.

(8) Each urban water supplier whose average July-September 2014 R-GPCD was 170 or more but less than 215 shall reduce its total potable water production by 32 percent for each month as compared to the amount used in the same month in 2013.

(9) Each urban water supplier whose average July-September 2014 R-GPCD was 215 or more shall reduce its total potable water production by 36 percent for each month as compared to the amount used in the same month in 2013.

(d)(1) Beginning June 1, 2015, each urban water supplier that does not submit a self-certification in compliance with section 864.5 shall comply with the conservation

standard specified in subdivision (c), with any modifications to the conservation standard pursuant to subdivision (f) applying beginning March 1, 2016.

(2) Compliance with the requirements of this subdivision shall be measured monthly and assessed on a cumulative basis through ~~January~~ October 2017.

(e)(1) Each urban water supplier that provides potable water for commercial agricultural use meeting the definition of Government Code section 51201, subdivision (b), may subtract the amount of water provided for commercial agricultural use from its potable water production total, provided that any urban water supplier that subtracts any water provided for commercial agricultural use from its total potable water production shall:

(A) Impose reductions determined locally appropriate by the urban water supplier, after considering the applicable urban water supplier conservation standard specified in subdivision (c), for commercial agricultural users meeting the definition of Government Code section 51201, subdivision (b) served by the supplier;

(B) Report its total potable water production pursuant to subdivision (b)(2) of this section, the total amount of water supplied for commercial agricultural use, and shall identify the reduction imposed on its commercial agricultural users and each recipient of potable water for commercial agricultural use;

(C) Certify that the agricultural uses it serves meet the definition of Government Code section 51201, subdivision (b); and

(D) Comply with the Agricultural Water Management Plan requirement of paragraph 12 of the April 1, 2015 Executive Order for all commercial agricultural water served by the supplier that is subtracted from its total potable water production.

(2) Submitting any information pursuant to subdivision (e)(1)(B) or (C) of this section that is found to be materially false by the Board is a violation of this regulation, punishable by civil liability of up to five hundred dollars (\$500) for each day in which the violation occurs. Every day that the error goes uncorrected constitutes a separate violation. Civil liability for the violation is in addition to, and does not supersede or limit, any other remedies, civil or criminal.

(f) In consideration of the differences in climate affecting different parts of the state, growth experienced by urban areas and significant investments that have been made by some suppliers towards creating new, local, drought-resilient sources of potable water supply, an urban water supplier's conservation standard identified in subdivision (c) shall be reduced by an amount, not to exceed eight (8) percentage points total, as follows:

(1) For an urban water supplier whose service area evapotranspiration (ET_o) for the months of July through September exceeds the statewide average evapotranspiration, as determined by the Board, for the same months by five (5) percent or more, the supplier's conservation standard identified in subdivision (c) shall be reduced:

(A) By two (2) percentage points if the supplier's service area evapotranspiration exceeds the statewide average by five (5) percent or more but less than ten (10) percent;

(B) By three (3) percentage points if the supplier's service area evapotranspiration exceeds the statewide average by ten (10) percent or more but less than twenty (20) percent;

(C) By four (4) percentage points if the supplier's service area evapotranspiration exceeds the statewide average by twenty (20) percent or more.

(D) Statewide average evapotranspiration is calculated as the arithmetic mean of all urban water suppliers' service area default evapotranspiration values for the months of July through September. Default service area evapotranspiration will be based on the California Irrigation Management System (CIMIS) ETo Zones Map zone for which the supplier's service area has the greatest area of overlap. In lieu of applying its default service area evapotranspiration, a supplier may use specific data from CIMIS stations within its service area that have at least a five-year period of record, or a three year continuous period of record, to identify a more specifically-applicable evapotranspiration for its service area. If no CIMIS station exists within the supplier's service area, a weather station of comparable accuracy, meeting the preceding period of record requirements, may be used. To qualify for the in-lieu climate adjustment, the supplier shall submit the following data to the Board by March 15, 2016 for each station: station ID; station location; and monthly average evapotranspiration, in inches per month, for July, August, and September for either the five-year period of record or the three-year continuous period of record.

(2) To account for water efficient growth experienced in the state since 2013, urban water suppliers' conservation standards shall be reduced by the product of the percentage change in potable water production since 2013 and the percentage reduction in potable water use required pursuant to subdivision (c), rounded to the nearest whole percentage point. Change in potable water production since 2013 shall be calculated as the sum of the following:

(A) The number of additional permanent residents served since January 1, 2013, multiplied by the average residential water use per person for that supplier's service area during the months of February through October, 2015, in gallons; and

(B) The number of new commercial, industrial and institutional connections since January 1, 2013, multiplied by the average commercial, industrial and institutional water use per connection for that supplier's service area during the months of February through October, 2015, in gallons.

(C) To qualify for the growth credit the supplier shall submit to the Board the following data by March 15, 2016: the number of additional permanent residents served since January 1, 2013 and the number of new commercial, industrial and institutional connections since January 1, 2013.

(3) For an urban water supplier that supplies, contracts for, or otherwise financially invests in, water from a new local, drought-resilient source of supply, the use of which does not reduce the water available to another legal user of water or the environment, the conservation standard identified in subdivision (c) shall be reduced:

(A) By one (1) percentage point if the supplier's qualifying source of supply is one (1) percent or more but less than two (2) percent of the supplier's total potable water production;

(B) By two (2) percentage points if the supplier's qualifying source of supply is two (2) percent or more but less than three (3) percent of the supplier's total potable water production;

(C) By three (3) percentage points if the supplier's qualifying source of supply is three (3) percent or more but less than four (4) percent of the supplier's total potable water production;

(D) By four (4) percentage points if the supplier's qualifying source of supply is four (4) percent or more but less than five (5) percent of the supplier's total potable water production;

(E) By five (5) percentage points if the supplier's qualifying source of supply is five (5) percent or more but less than six (6) percent of the supplier's total potable water production;

(F) By six (6) percentage points if the supplier's qualifying source of supply is six (6) percent or more but less than seven (7) percent of the supplier's total potable water production;

(G) By seven (7) percentage points if the supplier's qualifying source of supply is seven (7) percent or more but less than eight (8) percent of the supplier's total potable water production;

(H) By eight (8) percentage points if the supplier's qualifying source of supply is eight (8) percent or more of the supplier's total potable water production.

(I) To qualify for this reduction the supplier must certify, and provide documentation to the Board upon request demonstrating, the percent of its total potable water production that comes from a local, drought-resilient source of supply developed after 2013, the supplier's investment in that local, drought-resilient source of supply, and that the use of that supply does not reduce the water available to another legal user of water or the environment. To qualify for this reduction an urban water supplier shall submit the required certification to the Board by March 15, 2016.

(J) Certifications that do not meet the requirements of subdivision (f)(3)(I), including certifications for which documentation does not support that the source of supply is a local, drought-resilient source of supply, the use of which does not reduce the water available to another legal user of water or the environment, will be rejected. Submitting a certification or supporting documentation pursuant to subdivision (f)(3)(I) that is found to be materially false by the Board is a violation of this regulation, punishable by civil liability of up to five hundred dollars (\$500) for each day in which the violation occurs. Every day that the error goes uncorrected constitutes a separate violation. Civil liability for the violation is in addition to, and does not supersede or limit, any other remedies, civil or criminal.

(4) No urban water supplier's conservation standard pursuant to this section shall drop below eight (8) percent as a consequence of the reductions identified in this subdivision.

(g) To prevent waste and unreasonable use of water and to promote water conservation, each distributor of a public water supply that is not an urban water supplier shall:

(1) Provide prompt notice to a customer whenever the supplier obtains information that indicates that a leak may exist within the end-user's exclusive control; and

~~(2) Submit a report by December 15, 2016, on a form provided by the Board, that identifies total potable water production, by month, from December, 2015 through November, 2016, total potable water production, by month, for the same months in 2013, and any actions taken by the supplier to encourage or require its customers to conserve water.~~

Authority: Section 1058.5, Water Code.

References: Article X, Section 2, California Constitution; Sections 102, 104, 105, 275, 350, 1846, 10617 and 10632, Water Code; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463.

Sec. 866. Additional Conservation Tools.

(a)(1) To prevent the waste and unreasonable use of water and to promote conservation, when a water supplier does not meet its conservation standard required by section 864.5 or section 865 the Executive Director, or the Executive Director's designee, may issue conservation orders requiring additional actions by the supplier to come into compliance with its conservation standard.

(2) A decision or order issued under this article by the Board or an officer or employee of the Board is subject to reconsideration under article 2 (commencing with section 1122) of chapter 4 of part 1 of division 2 of the Water Code.

(b) The Executive Director, or his designee, may issue an informational order requiring water suppliers, or commercial, industrial or institutional properties that receive any portion of their supply from a source other than a water supplier subject to section 864.5 or 865, to submit additional information relating to water production, water use or water conservation. The failure to provide the information requested within 30 days or any additional time extension granted is a violation subject to civil liability of up to \$500 per day for each day the violation continues pursuant to Water Code section 1846.

(c) Orders issued under previous versions of this section shall remain in effect and shall be enforceable as if adopted under this version. Changes in the requirements of this article do not operate to void or excuse noncompliance with orders issued before those requirements were changed.

Authority: Section 1058.5, Water Code.

References: Article X, Section 2, California Constitution; Sections 100, 102, 104, 105, 174, 186, 187, 275, 350, 1051, 1122, 1123, 1825, 1846, 10617 and 10632, Water Code; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463.

Executive Department

State of California

EXECUTIVE ORDER B-40-17

WHEREAS California has endured a severe multi-year drought that has threatened the water supplies of communities and residents, devastated agricultural production in many areas, and harmed fish, animals and their environmental habitats; and

WHEREAS Californians responded to the drought by conserving water at unprecedented levels, reducing water use in communities by more than 22% between June 2015 and January 2017; and

WHEREAS the State Water Resources Control Board, the Department of Water Resources, the Department of Fish and Wildlife, the Office of Emergency Services, and many other state agencies worked cooperatively to manage and mitigate the effects of the drought on our communities, businesses, and the environment; and

WHEREAS the State provided 66,344,584 gallons of water to fill water tanks for communities suffering through drought-related water shortages, outages, or contamination, and provided emergency assistance to drill wells and connect communities to more robust water systems; and

WHEREAS the State took a number of important actions to preserve and protect fish and wildlife resources, including stream and species population monitoring, fish rescues and relocations, infrastructure improvements at trout and salmon hatcheries, and infrastructure to provide critical habitat for waterfowl and terrestrial animals; and

WHEREAS the State established a Statewide Water Efficiency and Enhancement Program for agricultural operations that provides financial assistance for the implementation of irrigation systems that save water; and

WHEREAS water content in California's mountain snowpack is 164 percent of the season average; and

WHEREAS Lake Oroville, the State Water Project's principal reservoir, is 101 percent of average, Lake Shasta, the federal Central Valley Project's largest reservoir, is at 110 percent of average, and the great majority of California's other major reservoirs are above normal storage levels; and

WHEREAS despite winter precipitation, the effects of the drought persist in areas of the Central Valley, including groundwater depletion and subsidence; and

WHEREAS our changing climate requires California to continue to adopt and adhere to permanent changes to use water more wisely and to prepare for more frequent and persistent periods of limited water supply; and

WHEREAS increasing long-term water conservation among Californians, improving water use efficiency within the State's communities and agricultural production, and strengthening local and regional drought planning are critical to California's resilience to drought and climate change.

NOW, THEREFORE, I, EDMUND G. BROWN JR., Governor of the State of California, in accordance with the authority vested in me by the Constitution and statutes of the State of California, do hereby **TERMINATE THE JANUARY 17, 2014 DROUGHT STATE OF EMERGENCY** for all counties in California except the Counties of Fresno, Kings, Tulare, and Tuolumne.

I FURTHER ORDER THAT:

1. The orders and provisions contained in my April 25, 2014 Emergency Proclamation, as well as Executive Orders B-26-14, B-28-14, B-29-15, and B-36-15 are rescinded.
2. The orders and provisions contained in Executive Order B-37-16, **Making Water Conservation a California Way of Life**, remain in full force and effect except as modified by this Executive Order.
3. As required by the State Emergency Plan and Government Code section 8607(f), the Office of Emergency Services, in coordination with other state agencies, shall produce an after-action report detailing the State's response to the drought and any lessons learned in carrying out that response.

MAINTAINING CONSERVATION AS A WAY OF LIFE

4. The State Water Resources Control Board (Water Board) shall continue development of permanent prohibitions on wasteful water use and requirements for reporting water use by urban water agencies, and to provide a bridge to those permanent requirements, shall maintain the existing emergency regulations until they expire as provided by the Water Code. Permanent restrictions shall prohibit wasteful practices such as:
 - Hosing off sidewalks, driveways and other hardscapes;
 - Washing automobiles with hoses not equipped with a shut-off nozzle;
 - Using non-recirculated water in a fountain or other decorative water feature;
 - Watering lawns in a manner that causes runoff, or within 48 hours after measurable precipitation; and
 - Irrigating ornamental turf on public street medians.
5. The Water Board shall rescind those portions of its existing emergency regulations that require a water supply stress test or mandatory conservation standard for urban water agencies.

6. The Department of Water Resources (Department) shall continue work with the Water Board to develop standards that urban water suppliers will use to set new urban water use efficiency targets as directed by Executive Order B-37-16. Upon enactment of legislation, the Water Board shall adopt urban water use efficiency standards that include indoor use, outdoor use, and leaks as well as performance measures for commercial, industrial, and institutional water use. The Department shall provide technical assistance and urban landscape area data to urban water suppliers for determining efficient outdoor use.
7. The Water Board and the Department shall continue to direct actions to minimize water system leaks that waste large amounts of water. The Water Board, after funding projects to address health and safety, shall use loans from the Drinking Water State Revolving Fund to prioritize local projects that reduce leaks and other water system losses.
8. The Water Board and the Department shall continue to take actions to direct urban and agricultural water suppliers to accelerate their data collection, improve water system management, and prioritize capital projects to reduce water waste. The California Public Utilities Commission is requested to work with investor-owned water utilities to accelerate work to minimize leaks.
9. The Water Board is further directed to work with state agencies and water suppliers to identify mechanisms that would encourage and facilitate the adoption of rate structures and other pricing mechanisms that promote water conservation.
10. All state agencies shall continue response activities that may be needed to manage the lingering drought impacts to people and wildlife. State agencies shall increase efforts at building drought resiliency for the future, including evaluating lessons learned from this current drought, completing efforts to modernize our infrastructure for drought and water supply reliability, and shall take actions to improve monitoring of native fish and wildlife populations using innovative science and technology.

CONTINUED DROUGHT RESPONSE IN FRESNO, KINGS, TULARE, AND TUOLUMNE COUNTIES

11. The Water Board will continue to prioritize new and amended safe drinking water permits that enhance water supply and reliability for community water systems facing water shortages or that expand service connections to include existing residences facing water shortages.
12. The Department and the Water Board will accelerate funding for local water supply enhancement projects and will continue to explore if any existing unspent funds can be repurposed to enable near-term water conservation projects.
13. The Water Board will continue to work with local agencies to identify communities that may run out of drinking water, and will provide technical and financial assistance to help these communities address drinking water

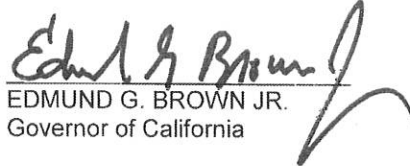
shortages. It will also identify emergency interconnections that exist among the State's public water systems that can help these threatened communities. The Department, the Water Board, the Office of Emergency Services, and the Office of Planning and Research will work with local agencies in implementing solutions to those water shortages.

14. For actions taken in the Counties of Fresno, Kings, Tulare, and Tuolumne pursuant to directives 11–13, the provisions of the Government Code and the Public Contract Code applicable to state contracts, including, but not limited to, advertising and competitive bidding requirements, as well as Division 13 (commencing with section 21000) of the Public Resources Code and regulations adopted pursuant to that Division, are hereby suspended. These suspensions apply to any actions taken by state agencies, and for actions taken by local agencies where the state agency with primary responsibility for implementing the directive concurs that local action is required, as well as for any necessary permits or approvals required to complete these actions.
15. California Disaster Assistance Act Funding is authorized until June 30, 2017 to provide emergency water to individuals and households who are currently enrolled in the emergency water tank program.
16. State departments shall commence all drought remediation projects in Fresno, Kings, Tulare, and Tuolumne Counties within one year of the date of this Executive Order.

This Executive Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

I FURTHER DIRECT that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

IN WITNESS WHEREOF I have
hereunto set my hand and caused
the Great Seal of the State of
California to be affixed this 7th day
of April 2017.


EDMUND G. BROWN JR.
Governor of California

ATTEST:

ALEX PADILLA
Secretary of State

