

Drought State of Emergency: Governor Brown Issues Executive Order Mandating 25 Percent Reduction of Urban Water Usage

On April 1, 2015, the Governor released his fourth, and most restrictive, drought State of Emergency proclamation yet. Executive Order B-29-15 ("Executive Order") mandates a statewide 25% reduction in urban potable water usage through February 28, 2016. California's State Water Resources Control Board ("Water Board") is directed to impose restrictions, likely through regulation, that achieve the mandate. In doing so, the restrictions should identify each water suppliers' service areas and "require that those areas with high per capital use achieve proportionally greater reductions than those with low use." (Executive Order 2).

Additionally, the Water Board must impose requirements that urban water suppliers develop rate structures and other pricing mechanisms to maximize water conservation efforts. Implementation of these rate structures must be carefully crafted in light of California's Proposition 218, which requires taxes, assessments, or property-related fees to be proportional to the cost of service. (See Cal. Constitution Article XIID, Section 6(b) (3)). The constitutionality of tiered water conservation pricing may be clarified by the California Fourth District Court of Appeal later this month. See *Capistrano Taxpayers Association v. City of San Juan Capistrano*, G048969 (Cal. App. 4th).

The requirement for urban water suppliers to provide monthly information on water usage, conservation, and enforcement measures to the Water Board is made permanent through the Executive Order. Information reporting is expanded to agricultural water suppliers who must now draft a specific drought management plan with their 2015 Agricultural Water Management Plans.

The Executive Order also implements California's Statewide Groundwater Elevation Monitoring Program. Those local water agencies identified to have high and medium priority groundwater basins are directed to immediately implement the program. With regard to those local water agencies, the Department of Water Resources ("Department") is now required to refer noncompliant agencies to the Water Board and the Department is encouraged to draft specific enforcement provisions.

The Executive Order continues to direct the Water Board and the

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Department to implement statewide initiatives for conservation and limitations on the use of potable water for irrigation, including coordination with local governments to replace 50 million square feet of lawns with drought resistant tolerant landscaping. It allows for increased enforcement where water is wasted or there is an allegation of unreasonable use.

To spur innovation, the Executive Order establishes a new program for California's Energy Commission to administer, titled the Water Energy Technology ("WET") program, to incentivize the development of new technologies to achieve water and energy savings, and greenhouse gas reductions.

Last, the Executive Order directs certain government agencies to streamline their response to applications for the approval of certain drought related programs or projects. This includes streamlined processing of water infrastructure projects as well as voluntary water transfers and emergency drinking water projects.

The Executive Order sets the stage for the various government agencies to take action, including the Water Board and the Department. While the Executive Order does not require local water suppliers to take any immediate action, understanding current per capita usage and existing pricing practices may help with evaluating and informing on the Water Board's impending restrictions.

Please feel free to contact us with any questions and stay tuned to our updates as emergency rules and regulations are promulgated.

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