

Governor Issues New Water Conservation Order; SWRCB Proposes Water Conservation Emergency Regulation Amendments

On May 9, 2016, Governor Brown issued a new Executive Order B-37-16 directing actions to extend the State Water Resources Control Board ("SWRCB") temporary emergency water regulation through January 2017 and to develop more permanent, long term conservation measures aimed at using water wisely, reducing water waste, and improving water use efficiency. Although hydrologic conditions have improved in much of California in 2016, the Executive Order directs development of conservation standards in the event the drought extends into 2017 and to address more frequent and persistent future drought conditions.

Alongside the Executive Order, on May 9, 2016, the SWRCB staff released a proposal that would amend the February 2, 2016 emergency regulation, including substantive changes to the mandated reduction in potable water production, as well as fulfilling the Governor's mandate to extend the regulation through January 2017. Staff is accepting comments through May 16, 2016 at noon, but recommend that comments be submitted by Friday, May 13, 2016. The proposal will be considered by the SWRCB for comment and adoption on May 18, 2016 and are anticipated to take effect in June 2016 and remain in effect through January 2017.

Staff's proposed regulation offers an alternative to the state developed conservation standards, allowing for locally-developed conservation standards based upon the agency's specific circumstances. Specifically, the proposed regulation allows individual urban water suppliers (more than 3,000 customers or supplying more than 3,000 acre-feet of water annually) to self-certify the level of available water supplies, assuming three additional dry years, and the level of conservation necessary to assure adequate supply over that time. The supply projection for the next three years would be based on current supply conditions plus an assumed three-year hydrology mirroring the 2012-13, 2013-14, and 2014-15 water years. Demand over that same period would be based on each supplier's average total potable water production for 2013 and 2014. The SWRCB then assigns a mandatory conservation standard equal to the deficiency the supplier identifies. Suppliers that do not submit a water reliability certification and supporting information are defaulted to a mandated conservation standard.

by *Nathan A. Metcalf*



Wholesale water suppliers would be required to make projections and post online the amount of water they would deliver to retail water suppliers under the three-dry-years scenario. Additionally, many of the existing requirements imposed on small water suppliers and businesses would be lifted, including the requirement to reduce potable water production by a mandated percentage. However, small water suppliers are still required to submit a one-time report on December 15, 2016, to identify total potable water production and are encouraged to maintain conservation actions. For commercial properties, the restrictions related to serving drinking water only upon request and laundered towels and linens would be removed. The draft regulation would continue the prohibitions against certain water uses, including hosing off sidewalks, irrigating ornamental turf on public streets, and overwatering landscape.

As directed by Governor Brown's Executive Order B-37-16, the emergency water conservation regulation is proposed to extend until January 2017, and we have yet to see how the SWRCB will transition that regulation into permanent, long term water conservation measures in the future.

Please contact us with any questions or to discuss the proposed new conservation standards and Executive Order B-37-16.

For more information, please contact:

Nathan A. Metcalf, Partner
415-995-5838
nmetcalf@hansonbridgett.com