

Governor's Executive Order N-42-20 Restricts the Ability of Water Service Providers to Shut Off Water Service

On April 2, 2020, Governor Newsom issued [Executive Order N-42-20](#) ("Executive Order") in response to the COVID-19 pandemic. This order restricts the ability of water service providers to shut off water to certain customers for non-payment.

All Residential Water Service Providers Affected

All water service providers providing residential water service, regardless of size, are affected by this Executive Order. The Executive Order specifies that urban and community water systems with more than 200 service connections **and** water service providers previously not subject to SB 998—the Water Shut Off Protection Act—are included.

This Executive Order marks a significant change for smaller water service providers to which SB 998 did not apply. It also affects **all** water service providers since its focus on the customer, rather than the provider, makes it effective across all water service providers in the state.

The Executive Order significantly limits whose water may be shut off by suspending key provisions of SB 998.

Water Service Shutoffs Prohibited After March 4, 2020

Water service providers are prohibited from shutting off water service for non-payment after March 4, 2020, and must restore water service if shut off after that same date, to the following categories of water users:

1. All residential water service, defined as single-family residences, multifamily residences, mobile homes, including in mobile home parks, or farmworker housing by Health & Safety Code section 116902(c), cannot be shut off for non-payment. The Executive Order suspends SB 998 provisions—Health and Safety Code sections 116908 and 116910—governing shutoffs for residential accounts since the Executive order makes these provisions redundant because no residential service shutoffs can now occur under the order.

Implementing this residential provision should be straight forward



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as water service providers generally are aware which of their customers are residential.

2. Businesses considered part of [critical infrastructure sectors](#) as designated by the State Public Health Officer **and** that are also considered a small business under federal Small Business Administration Size Standards regulation [13 C.F.R. part 121.201](#).

This small business/critical infrastructure provision may be difficult for water service providers to implement because there has been some flux in which businesses are considered "critical infrastructure" during the COVID-19 Emergency.

The changing categorization of "critical infrastructure" businesses, combined with the fact that many water service providers may not have sufficient information to determine whether their business customer qualifies under 13 C.F.R. part 121.201, may complicate the implementation of this part of the Executive Order. In addition, the federal Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"), signed into law on March 27, 2020, has made some adjustments to size requirements for small businesses to qualify for relief under its provisions. This further complicates a water system's determination of whether the Executive Order applies to any of its business customers.

Therefore, all water service providers should be cautious before shutting off water to commercial customers. Water service providers should take systematic and reasonable steps to confirm that (1) the business is not included in critical infrastructure and (2) that the customer is not a small business under 13 C.F.R. part 121.201 or any adjustments made by the CARES Act. For water service providers which already have shut off water to such customers, that service will have to be reinstated.

The Executive Order does not eliminate the obligations for protected customers to pay for their water.

Resources for Compliance with the Executive Order

The Executive Order directs the State Water Resources Control Board to identify best practices, guidelines, or both to be implemented during the COVID-19 Emergency to address: (1) non-payment or reduced payment, (2) continuity of service, and (3) the development of measures to relieve water systems under financial distress, such as sharing supplies, equipment, and staffing .

We will update this COVID-19 Emergency Alert with further information regarding State Water Resources Control Board guidance as it develops.

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