



Environment, Land Use & Natural Resources ADVISORY ■

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California State Water Resources Control Board Adopts Emergency Water Regulations

By Ed Casey and Andrew Brady

On May 5, 2015, the California State Water Resources Control Board adopted emergency regulations to implement Governor Jerry Brown's April 1, 2015, executive order. That order required a 25 percent reduction in the use of potable water statewide through February 28, 2016. The regulations become effective on June 1, 2015, and last until February 28, 2016.

In an attempt to achieve the required reductions, the regulations include end-user requirements that apply to residential water users and businesses with separate requirements for public water suppliers. On May 7, 2015, the State Water Board's regulations were also adopted by the California Public Utilities Commission for application to investor-owned water utilities and their customers. The California Building Standards Commission and Department of Housing and Community Development are expected to adopt emergency regulations by June 1, 2015, concerning irrigation systems for new housing developments.

End-User Requirements

The adopted regulations include prohibitions on various activities except where necessary to address an immediate health and safety need or to comply with the terms or conditions of state and federal permits.

The regulations prohibit residential end users from doing the following:

- Allowing runoff into streets and sidewalks.
- Using a hose to wash cars and other vehicles unless the hose has a shut-off valve.
- Using potable water to wash down sidewalks and driveways.
- Using potable water in decorative fountains that do not recirculate the water.
- Irrigating within 48 hours of measurable rainfall.
- Irrigating ornamental turf on street medians with potable water.

The regulations require the following for businesses:

- **Developers:** Outdoor irrigation systems for new residential and commercial developments that use potable water must comply with requirements established by the California Building Standards Commission and Department of Housing and Community Development.

- **Restaurants:** May not provide water to customers unless they request it.
- **Hotels and motels:** Must provide guests the option of not having towels and linens laundered daily.
- **Commercial and industrial properties not served by a water supplier (e.g., those that pump their own water):** Must either limit outdoor irrigation of ornamental landscapes or turf with potable water to no more than two days per week or reduce water usage by 25 percent between June 2015 and February 2016.

A violation of any of these measures can result in fines by the State Water Board of up to \$500 per day, in addition to any other applicable fines.

Requirements for Water Suppliers

The regulations require water suppliers to:

- Prepare and submit written reports to the State Water Board by the fifteenth of each month. The reports must include information about customer and water usage and require a comparison of the public water supplier's total use for the month compared with the same month in 2013.
- Promptly notify customers of leaks in portions of the water system under the customer's control.

Water suppliers serving more than 3,000 service connections must reduce monthly potable water usage by an amount assigned within [a system of eight tiers](#), which includes reduction requirements that range from 4 percent to 36 percent per month. Water suppliers serving fewer than 3,000 service connections must either reduce water usage by 25 percent or restrict outdoor irrigation to no more than two days per week. These reductions are based on water usage as of 2013 (which may complicate new developments that increase water usage).

Failure to reach set reduction targets or other violations can result in a variety of enforcement actions by the State Water Board against water suppliers from informational orders to cease and desist orders. Violations of cease and desist orders are subject to civil liability of up to \$10,000 per day of violation.

Next Steps

The regulations leave a great deal of discretion to water suppliers to figure out how to achieve the required reductions. Given the deadlines in the State Water Board's regulations, water suppliers are expected to take action in short order. In addition, the State Water Board will be working with water suppliers on how to implement Provision 8 of the governor's executive order, which encourages water suppliers to implement water rate structures that promote conservation. That task became more complex, however, with the [recent appellate court decision striking down a tiered rate system](#).

If you have any questions about the State Water Board's regulations, please feel free to contact [Ed Casey](#), [Andrew Brady](#) or one of the attorneys in Alston & Bird's [Environment, Land Use & Natural Resources Group](#).

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If you have any questions or would like additional information, please contact your Alston & Bird attorney or any of the following:

Doug Arnold
404.881.7637
doug.arnold@alston.com

Nicki Carlsen
213.576.1128
nicki.carlsen@alston.com

Clay Massey
404.881.4969
clay.massey@alston.com

Jocelyn Thompson
213.576.1104
jocelyn.thompson@alston.com

Sarah Babcock
404.881.7632
sarah.babcock@alston.com

Edward Casey
213.576.1005
ed.casey@alston.com

Elise Paeffgen
202.239.3939
elise.paeffgen@alston.com

Andrea Warren
213.576.2518
andrea.warren@alston.com

Paul Beard
916.498.3354
paul.beard@alston.com

Skip Fulton
404.881.7152
skip.fulton@alston.com

Bruce Pasfield
202.239.3585
bruce.pasfield@alston.com

Jonathan Wells
404.881.7472
jonathan.wells@alston.com

Ward Benshoof
213.576.1108
ward.benshoof@alston.com

Maureen Gorsen
916.498.3305
maureen.gorsen@alston.com

Geoffrey Rathgeber
404.881.4974
geoff.rathgeber@alston.com

Meaghan Goodwin Boyd
404.881.7245
meaghan.boyd@alston.com

Ronnie Gosselin
404.881.7965
ronnie.gosselin@alston.com

Damien Schiff
916.498.3320
damien.schiff@alston.com

Andrew Brady
213.576.2527
andrew.brady@alston.com

Maya Lopez Grasse
213.576.2526
maya.grasse@alston.com

Beverlee Silva
404.881.4625
beverlee.silva@alston.com

ALSTON & BIRD

WWW.ALSTON.COM

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ATLANTA: One Atlantic Center ■ 1201 West Peachtree Street ■ Atlanta, Georgia, USA, 30309-3424 ■ 404.881.7000 ■ Fax: 404.881.7777

BRUSSELS: Level 20 Bastion Tower ■ Place du Champ de Mars ■ B-1050 Brussels, BE ■ +32 2 550 3700 ■ Fax: +32 2 550 3719

CHARLOTTE: Bank of America Plaza ■ 101 South Tryon Street ■ Suite 4000 ■ Charlotte, North Carolina, USA, 28280-4000 ■ 704.444.1000 ■ Fax: 704.444.1111

DALLAS: 2828 North Harwood Street ■ 18th Floor ■ Dallas, Texas, USA, 75201 ■ 214.922.3400 ■ Fax: 214.922.3899

LOS ANGELES: 333 South Hope Street ■ 16th Floor ■ Los Angeles, California, USA, 90071-3004 ■ 213.576.1000 ■ Fax: 213.576.1100

NEW YORK: 90 Park Avenue ■ 15th Floor ■ New York, New York, USA, 10016-1387 ■ 212.210.9400 ■ Fax: 212.210.9444

RESEARCH TRIANGLE: 4721 Emperor Blvd. ■ Suite 400 ■ Durham, North Carolina, USA, 27703-85802 ■ 919.862.2200 ■ Fax: 919.862.2260

SILICON VALLEY: 1950 University Avenue ■ 5th Floor ■ East Palo Alto, California, USA, 94303-2282 ■ 650.838.2000 ■ Fax: 650.838.2001

WASHINGTON, DC: The Atlantic Building ■ 950 F Street, NW ■ Washington, DC, USA, 20004-1404 ■ 202.756.3300 ■ Fax: 202.756.3333