

Water Users Legally Obligated to Rein in Certain Outdoor Water Uses

Despite the exceptionally heavy rain events in October and December 2021, California is still experiencing severe drought conditions. In response to these statewide dry conditions, and Governor Newsom's October 2021 emergency proclamation calling for residents to "re-double" their water use reduction efforts, the State Water Resources Control Board (State Board) adopted new, emergency regulations deeming certain water uses wasteful and unreasonable (Water Use Regulation). The Water Use Regulation applies to end water users, such as residents, outdoor uses of water and homeowners' associations and local government enforcement of landscaping provisions during declared states of emergency during the period January 18, 2022 – January 18, 2023.

Prohibitions Applicable to Water Users

The Water Use Regulation (Cal. Code Regs., tit. 23, § 995) expressly prohibits the use of water outdoors in the following manners:

- Applying potable water to outdoor landscapes that causes *more than* "incidental runoff." "Incidental runoff" means water that unintentionally leaves its intended area of use, such as minimal overspray onto pavement from a sprinkler system watering a lawn. Runoff caused by excessive application, intentional overflow, or negligence is categorically not "incidental."
- Using a hose to wash a vehicle without a shut-off nozzle or other device immediately preventing water from dispensing when the hose is not in use.
- Applying potable water to wash sidewalks, driveways, buildings, patios, parking lots, or other hard surfaces, unless there is a health and safety need.

- Using potable water for street cleaning or preparing a construction site.
- Using potable water for decorative fountains.
- Using potable water to irrigate ornamental “turf” on *public* street medians. “Turf” means any ground cover surface of mowed grass, regardless of the season of grass (warm-season or cool-season grasses).
- Irrigating turf and ornamental landscapes within 48 hours after a measurable rain event of at least one quarter inch, based on records from the National Weather Service or another reliable source of rainfall data.

These prohibitions are similar to provisions that were in a former rulemaking effort State Board staff initiated, and the State Board declined to adopt, in 2017. Various stakeholders participating in that rulemaking process expressed concerns regarding the State Board’s exercise of its “reasonable use” authority in a blanket manner (i.e., making certain use per se wasteful/unreasonable in regulation). These concerns, however, predated the *Stanford Vina Ranch Irrigation Co. v. State of Cal. et al* decision in 2020.

Prohibitions Applicable to Homeowners’ Associations and Similar Entities

In addition to the prohibitions on end water users, the Water Use Regulation prohibits homeowners’ associations and other similar entities (e.g., community service organization) from imposing or threatening to impose fines or other monetary penalties against homeowners who stop or reduce irrigating lawns or other vegetation during a declared state of emergency. It also prohibits such associations from requiring a homeowner to reverse or remove water-efficient landscape measures taken once the state of emergency ends.

Similarly, the Water Use Regulation prohibits cities and counties from imposing fines upon residents for failing to water their lawn, or having a

brown lawn, which Government Code section 8627.7 also prohibits. If a homeowners' association, other similar organization, city, or county takes disciplinary action that the Water Use Regulation prohibits, State Board staff may impose a \$500 penalty each day such disciplinary action remains pending.

Enforcement Considerations

In the resolution adopting the Water Use Regulation, the State Board directed staff to consider and implement enforcement in certain ways. Staff must provide at least one (or more) warning of a violation before imposing a monetary penalty. Such penalty must also be based on an ability to pay determination, and staff should consider allowing payment to be made over a period of at least 12 months. However, State Board enforcement of the Water Use Regulation shall not result in the shutoff of water.

Both the State Board resolution and the Water Use Regulation expressly authorize local agencies to adopt more stringent water conservation measures and progressive enforcement practices that promote the stated goal of the Water Use Regulation – water conservation.

Current Water Supplies and Possible Additional Regulations:

The Water Use Regulation is effective for only one year, unless the State Board ends, modifies, or readopts it. As we approach mid-February and the high-pressure system lingers still, we can expect more of the same dry weather for the next couple of weeks. This reality does not help improve water supplies throughout the state. Until the needed rain/snow arrives, the State Board may seek to develop and propose other emergency regulations to oblige additional conservation of our limited water supplies.

The text of the Water Use Regulation is available [here](#).

For questions about how these recent developments may affect your existing or planned projects or water service, please contact Alyson E. Ackerman at aackerman@somachlaw.com.

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