



Fact Sheet

Drought Water Conservation Emergency Regulation – Frequently Asked Questions

January 2022

Updated: 1/28/22

Where can I find information on the emergency regulation?

You can find information and subscribe to the Water Conservation Regulations email list for updates at bit.ly/conservationreg.

What wasteful water uses are prohibited?

Using potable water for the following activities:

- Outdoor watering that lets water run onto sidewalks and other areas (except incidental runoff)
- Washing vehicles without an automatic shutoff nozzle
- Washing hard surfaces like driveways or sidewalks that don't absorb water
- Street cleaning or construction site preparation
- Filling decorative fountains, lakes, or ponds
- Outdoor watering within 48 hours after it rains at least 1/4 inch of rainfall
- Watering ornamental turf on public medians

What is potable water?

Potable water, also known as drinking water, is water that meets state and federal drinking water standards and is safe for sanitary purposes such as drinking, cooking or handwashing.

Who does this apply to?

The prohibitions apply to all water users including individuals, cities, counties, and businesses. The prohibitions may apply to different users in different ways. For example, the prohibition against watering public medians more likely applies to local governments than to individuals, while the prohibition against filling decorative fountains may apply to individuals, state and local governments, and some commercial properties.

Are there exceptions from the prohibitions?

Yes. Water can be used for immediate health and safety needs.



What are examples of “health and safety needs”?

Health and safety needs must be reasonable and legitimate. Examples include using potable water for removing animal or human waste from sidewalks, controlling dust, or activities where people may have direct contact with the water. When possible, people should use cleaning methods that do not require water, such as a broom to remove debris.

The regulation was adopted right after an extremely wet December. Why do we need a drought emergency regulation?

These prohibitions are low-cost, easy-to-implement measures that save water as well as raise awareness of drought conditions that may possibly worsen, despite the precipitation in December 2021. The prohibitions focus on reducing outdoor water use, which is one of the best ways to save water in both the dry and wet seasons. For instance, large water savings were observed when homeowners and communities stopped watering lawns during the rain events of late 2021. Even with these early winter storms, California remains in a drought, and we are obligated not just to save water but also to prevent wasting it.

What is “incidental runoff”?

“Incidental runoff” is an unintended, unanticipated, and infrequent amount of water that escapes the area where it was applied (for example, a sprinkler causing a small amount of water to unintentionally flow from a lawn onto the sidewalk). Runoff is not considered incidental if it is a result of excessive application, the facility or system design, intentional overflow, or negligence.

Should I skip irrigation when it rains?

Yes. If it rained recently or is going to rain soon, you should change your lawn irrigation schedule. Check the weather to plan for and confirm the amount of rainfall in your area.

Why does the emergency regulation prohibit irrigation during or within 48 hours of at least one fourth of an inch (1/4”) of rainfall specifically?

During the last drought, irrigation was prohibited after “measurable rainfall.” A number of comments suggested that the State Water Board use ¼ of an inch of rain to make the prohibition clearer. After this amount of rain, an irrigation system can generally be turned off for at least 48 hours without harming most landscapes.

Can communities still water trees?

Yes. The emergency regulation only prohibits irrigating turf (lawn) on public street medians. Trees provide many environmental benefits, such as shade, carbon storage, and animal habitat. Urban trees also reduce heat island effects and associated health impacts, absorb and filter storm water, reduce urban flooding risk, protect air quality, and save energy by shading buildings. For more information on taking care of trees while saving water, see the [Save Our Trees](#) section within SaveOurWater.com.

Who enforces the prohibitions?

Any local agency or government authorized to enforce infractions can enforce these prohibitions at their discretion, along with the State Water Board. The emergency regulation allows agencies/governments to decide if and how to enforce these prohibitions along with their own existing conservation rules.

Does the emergency regulation give new enforcement authority to anyone?

No. The emergency regulation does not give new authority to public (or private) entities that don't already have it. Also, the emergency regulation does not limit or specify how existing authority can be used. The emergency regulation makes prohibited activities a violation, so any entity already authorized to enforce violations may choose to enforce these violations. The State Water Board does not maintain a list of California governmental entities with enforcement authority.

What does enforcement look like?

Enforcement may include warning letters, mandatory water use audits (for large commercial or institutional properties), and fines (up to \$500 per day). Before charging fines, the State Water Board directs staff, and encourages other enforcing agencies, to provide warnings, consider a person's ability to pay, offer payment plans of at least 12 months without a tax lien, and not shut off a person's water service for nonpayment. The State Water Board also encourages agencies to provide additional assistance to disadvantaged communities and translate conservation announcements and materials into the languages spoken by local customers.

Are local agencies or governments required to use the emergency regulation's enforcement authority?

No. This emergency regulation does not require specific enforcement. Local agencies or governments get to decide how to use enforcement resources. They may choose to enforce their own drought conservation rules, including those in their Water Shortage Contingency Plans (WSCPs), as opposed to this emergency regulation, but the emergency regulation gives local agencies and governments additional options to address water waste and can assist with conservation messaging.

Where can I report water waste violations?

You can report water waste violations online at [SaveWater.ca.gov](https://www.savewater.ca.gov). These reports are sent to local water suppliers and the State Water Board. The website allows you to upload photos, which helps with enforcement decision-making.

Can HOAs or cities enforce their landscaping guidelines that conflict with homeowners' drought responses?

Homeowners' associations (HOAs) are prohibited from fining residents who are taking appropriate drought measures to conserve water. In drought emergencies, many homeowners want to change their landscaping to plants and structures that require less

water or to reduce watering turf. The State Water Board regularly receives complaints during drought from homeowners frustrated by HOAs enforcement of landscaping rules, such as requiring lawn watering or maintaining specific plants. This enforcement may violate the Davis-Stirling Act. The State Water Board or a local agency could impose penalties on any HOA that violates specific portions of the Davis-Stirling Act. The emergency regulation includes a similar provision prohibiting cities and counties from restricting certain drought responses.

How is the State Water Board addressing the needs of economically disadvantaged communities in this emergency regulation?

The State Water Board has directed staff and encourages enforcing entities to 1) provide warnings, consider a person's ability to pay, and offer payment plans before charging fines and 2) not shut off a person's water service for nonpayment.

How is the State Water Board addressing linguistic needs?

The State Water Board develops plain language materials; translates water conservation announcements, notices of violations, enforcement actions, and other materials; and encourages local agencies to do the same.

How long will this emergency regulation be in effect?

This emergency regulation will be in effect until January 18, 2023 (one year after it took effect on January 18, 2022), unless the State Water Board modifies it, readopts it, or determines the emergency regulation is no longer necessary.

What changes were made from the draft emergency regulation to the final emergency regulation adopted by the Board?

There are two minor differences between the draft emergency regulation and the final emergency regulation adopted by the State Water board on January 4, 2021:

- 1) Clarifying changes were made to the street cleaning/construction site preparation prohibition. This change clarifies that the prohibition on using potable water does not apply to all uses of water for construction activities (such as mixing concrete) and that it only applies to construction site preparation if no other method is available.
- 2) The prohibition against using potable water for irrigating turf on public medians was modified to remove "landscaped areas between the street and sidewalk" and to include "ornamental." These changes remove the prohibition against using potable water to irrigate turf on parkways, which are generally the area between the sidewalk and the street; they also provide clarity and make the prohibition easier to implement. Water agencies likely made changes in the last drought regarding irrigating medians, so limiting the prohibition in this manner should not lead to significant new costs or have a notable potential impact on trees.

What is covered by the “construction site preparation” prohibition?

Construction purposes refer to spraying the ground with potable water to prepare a construction site. This rule does not apply where potable water is required to protect public health and safety, or where no other method can be used to accomplish the same goal.

Does the emergency regulation prohibit filling swimming pools?

The emergency regulation does not impact swimming pools.

How is the State Water Board promoting drought resilience and water conservation for the long-term?

Among other ongoing activities related to water rights and water quality, the State Water Board is working on regulations to [Make Conservation a California Way of Life](#), including [adopting long-term standards for the efficient use of water](#) and [water loss performance standards](#) for urban retail water suppliers. The [Safe and Affordable Funding for Equity and Resilience \(SAFER\) program](#) supports permanent and sustainable drinking water solutions that ensure all Californians have access to safe, affordable, and reliable drinking water. For information and updates on the State Water Board’s drought activities, visit waterboards.ca.gov/drought.

**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2022-0002**

TO ADOPT AN EMERGENCY REGULATION
TO SUPPLEMENT VOLUNTARY WATER CONSERVATION

WHEREAS:

1. On April 21, May 10, and July 8, 2021, Governor Newsom issued proclamations that a state of emergency exists in a total of 50 counties due to severe drought conditions and directed state agencies to take immediate action to preserve critical water supplies and mitigate the effects of drought and ensure the protection of health, safety, and the environment.
2. On October 19, 2021, Governor Newsom signed a proclamation extending the drought emergency statewide and further urging Californians to reduce their water use.
3. There is no guarantee that winter precipitation will alleviate the current drought conditions.
4. Many Californians have taken bold steps over the years to reduce water use; nevertheless, the severity of the current drought and uncertainty about Water Year 2022 require additional conservation actions from residents and businesses.
5. Water conservation is the easiest, most efficient, and most cost-effective way to quickly reduce water demand and extend supplies into the next year, providing flexibility for all California communities. Water saved is water available next year, giving water suppliers the flexibility to manage their systems efficiently. The more water that is conserved now, the less likely it is that a community will experience such dire circumstances or that water rationing will be required.
6. Most Californians use more water outdoors than indoors. In many areas, 50 percent or more of daily water use is for lawns and outdoor landscaping. Outdoor water use is generally discretionary, and many irrigated landscapes would not suffer greatly from receiving a decreased amount of water.

7. Public information and awareness are critical to achieving conservation goals, and the Save Our Water campaign (SaveOurWater.com), run jointly by the Department of Water Resources (DWR) and the Association of California Water Agencies, is an excellent resource for conservation information and messaging that is integral to effective drought response.
8. SaveWater.CA.Gov is an online tool designed to help save water in communities. This website lets anyone easily report water waste from their phone, tablet, or computer by simply selecting the type of water waste they see, typing in the address where the waste is occurring, and clicking send. These reports are filed directly with the State Water Resources Control Board (State Water Board or Board) and relevant local water supplier.
9. Enforcement against water waste is a key tool in conservation programs. When conservation becomes a social norm in a community, the need for enforcement is reduced or eliminated.
10. On October 19, 2021, the Governor suspended the environmental review required by the California Environmental Quality Act to allow State Water Board-adopted drought conservation emergency regulations and other actions to take place quickly to respond to emergency conditions.
11. Water Code section 1058.5 grants the State Water Board the authority to adopt emergency regulations in certain drought years in order to: “prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion, of water, to promote water recycling or water conservation, to require curtailment of diversions when water is not available under the diverter’s priority of right, or in furtherance of any of the foregoing, to require reporting of diversion or use or the preparation of monitoring reports.”
12. On November 30, 2021, the State Water Board issued public notice that the State Water Board would consider the adoption of the regulation at the Board’s regularly scheduled January 4, 2022 public meeting, in accordance with applicable State laws and regulations. The State Water Board also distributed for public review and comment a Finding of Emergency that complies with State laws and regulations.
13. The emergency regulation sets a minimum standard that many communities are already doing more but not everyone is taking these low-cost, easy to implement actions that can save significant amounts of water during a drought emergency.

14. Disadvantaged communities may require assistance in increasing water conservation, and state and local agencies should look for opportunities to provide assistance in promoting water conservation, including but not limited to translation of regulation text and dissemination of water conservation announcements into languages spoken by at least 10 percent of the people who reside in a water supplier's service area, such as in newspaper advertisements, bill inserts, website homepage, social media, and notices in public libraries.
15. The Board directs staff to consider the following in pursuing any enforcement of section 995, subdivision (b)(1)(A)-(F): before imposing monetary penalties, staff shall provide one or more warnings; monetary penalties must be based on an ability to pay determination, consider allowing a payment plan of at least 12 months, and shall not result in a tax lien; and Board enforcement shall not result in shutoff.
16. The Board encourages entities other than Board staff that consider any enforcement of this regulation to apply these same factors identified in resolved paragraph 15. Nothing in the regulation or in the enforcement provisions of the regulation precludes a local agency from exercising its authority to adopt more stringent conservation measures. Moreover, the Water Code does not impose a mandatory penalty for violations of the regulation adopted by this resolution, and local agencies retain their enforcement discretion in enforcing the regulation, to the extent authorized, and may develop their own progressive enforcement practices to encourage conservation.

THEREFORE BE IT RESOLVED THAT:

1. The State Water Board adopts California Code of Regulations, title 23, section 995, as appended to this resolution as an emergency regulation.
2. State Water Board staff will submit the regulation to the Office of Administrative Law (OAL) for final approval.
3. If, during the approval process, State Water Board staff, the State Water Board, or OAL determines that minor corrections to the language of the regulation or supporting documentation are needed for clarity or consistency, the State Water Board Executive Director or designee may make such changes.

4. This regulation shall remain in effect for one year after filing with the Secretary of State unless the State Water Board determines that it is no longer necessary due to changed conditions or unless the State Water Board renews the regulation due to continued drought conditions, as described in Water Code section 1058.5.
5. The State Water Board directs State Water Board staff to work with the Department of Water Resources and the Save Our Water campaign to disseminate information regarding the emergency regulations.
6. Nothing in the regulation or in the enforcement provisions of the regulation precludes a local agency from exercising its authority to adopt more stringent conservation measures. Local agencies are encouraged to develop their own progressive enforcement practices to promote conservation.

CERTIFICATION

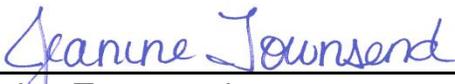
The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on January 4, 2022.

AYE: Vice Chair Dorene D'Adamo
Board Member Sean Maguire
Board Member Laurel Firestone
Board Member Nichole Morgan

NAY: None

ABSENT: Chair E. Joaquin Esquivel

ABSTAIN: None



Jeanine Townsend
Clerk to the Board

ADOPTED TEXT OF EMERGENCY REGULATION

Title 23. Waters

Division 3. State Water Resources Control Board and Regional Water Quality Control Boards

Chapter 3.5. Urban Water Use Efficiency and Conservation

Article 2. Prevention of Drought Wasteful Water Uses

§ 995. Wasteful and Unreasonable Water Uses.

(a) As used in this section:

(1) "Turf" has the same meaning as in section 491.

(2) "Incidental runoff" means unintended amounts (volume) of runoff, such as unintended, minimal overspray from sprinklers that escapes the area of intended use. Water leaving an intended use area is not considered incidental if it is part of the facility or system design, if it is due to excessive application, if it is due to intentional overflow or application, or if it is due to negligence.

(b)(1) To prevent the unreasonable use of water and to promote water conservation, the use of water is prohibited as identified in this subdivision for the following actions:

(A) The application of potable water to outdoor landscapes in a manner that causes more than incidental runoff such that water flows onto adjacent property, non-irrigated areas, private and public walkways, roadways, parking lots, or structures;

(B) The use of a hose that dispenses water to wash a motor vehicle, except where the hose is fitted with a shut-off nozzle or device attached to it that causes it to cease dispensing water immediately when not in use;

(C) The use of potable water for washing sidewalks, driveways, buildings, structures, patios, parking lots, or other hard surfaced areas, except in cases where health and safety are at risk;

(D) The use of potable water for street cleaning or construction site preparation purposes, unless no other method can be used or as needed to protect the health and safety of the public;

(E) The use of potable water for decorative fountains or the filling or topping-off of decorative lakes or ponds, with exceptions for those decorative fountains, lakes, or ponds that use pumps to recirculate water and only require refilling to replace evaporative losses;

(F) The application of water to irrigate turf and ornamental landscapes during and within 48 hours after measurable rainfall of at least one fourth of one inch of rain. In determining whether measurable rainfall of at least fourth of one inch of rain occurred in a given area, enforcement may be based on records of the National Weather Service, the closest CIMIS station to the parcel, or any other reliable source of rainfall data available to the entity undertaking enforcement of this subdivision; and

(G) The use of potable water for irrigation of ornamental turf on public street medians.

(2) Notwithstanding subdivision (b)(1), the use of water is not prohibited by this section to the extent necessary to address an immediate health and safety need. This may include, but is not limited to, the use of potable water in a fountain or water feature when required to be potable because human contact is expected to occur.

(c)(1) To prevent the unreasonable use of water and to promote water conservation, any homeowners' association or community service organization or similar entity is prohibited from:

(A) Taking or threatening to take any action to enforce any provision of the governing documents or architectural or landscaping guidelines or policies of a common interest development where that provision is void or unenforceable under section 4735, subdivisions (a) and (b) of the Civil Code;

(B) Imposing or threatening to impose a fine, assessment, or other monetary penalty against any owner of a separate interest for reducing or eliminating the watering of vegetation or lawns during a declared drought emergency, as described in section 4735, subdivision (c) of the Civil Code; or

(C) Requiring an owner of a separate interest upon which water-efficient landscaping measures have been installed in response to a declared drought emergency, as described in section 4735, subdivisions (c) and (d) of the Civil Code, to reverse or remove the water-efficient landscaping measures upon the conclusion of the state of emergency.

(2) As used in this subdivision:

(A) "Architectural or landscaping guidelines or policies" includes any formal or informal rules other than the governing documents of a common interest development.

(B) "Homeowners' association" means an "association" as defined in section 4080 of the Civil Code.

(C) "Common interest development" has the same meaning as in section 4100 of the Civil Code.

(D) "Community service organization or similar entity" has the same meaning as in section 4110 of the Civil Code.

(E) "Governing documents" has the same meaning as in section 4150 of the Civil Code.

(F) "Separate interest" has the same meaning as in section 4185 of the Civil Code.

(3) If a disciplinary proceeding or other proceeding to enforce a rule in violation of subdivision (c)(1) is initiated, each day the proceeding remains pending shall constitute a separate violation of this regulation.

(d) To prevent the unreasonable use of water and to promote water conservation, any city, county, or city and county is prohibited from imposing a fine under any local maintenance ordinance or other relevant ordinance as prohibited by section 8627.7 of the Government Code.

(e) The taking of any action prohibited in subdivision (b), (c) or (d) is an infraction punishable by a fine of up to five hundred dollars (\$500) for each day in which the violation occurs. The fine for the infraction is in addition to, and does not supersede or limit, any other remedies, civil or criminal.

(f) A decision or order issued under this section by the Board or an officer or employee of the Board is subject to reconsideration under article 2 (commencing with section 1122) of chapter 4 of part 1 of division 2 of the Water Code.

Authority: Section 1058.5, Water Code.

References: Article X, Section 2, California Constitution; Sections 4080, 4100, 4110, 4150, 4185, and 4735, Civil Code; Section 8627.7, Government Code; Sections 102, 104, 105, 275, 350, 491, and 1122, Water Code; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463; *Stanford Vina Ranch Irrigation Co. v. State of California* (2020) 50 Cal.App.5th 976.