
State Water Resources Control Board

TO: **OFFICE OF ADMINISTRATIVE LAW**
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DATE: August 6, 2021

SUBJECT: EMERGENCY REPORTING AND CURTAILMENT REGULATION FOR
THE SACRAMENTO-SAN JOAQUIN DELTA WATERSHED DUE TO DROUGHT

Please find enclosed the submittal for an emergency regulation adopted by the State Water Resources Control Board (State Water Board) on August 3, 2021. The State Water Board provided notice of the proposed emergency rulemaking to parties interested in regulations and drought information on July 30, 2021. This submittal includes the information required to be submitted pursuant to sections 6.5 and 50 of the Office of Administrative Law's (OAL) regulations.

Specifically, the following information is enclosed:

1. Seven copies of Form 400, each with a copy of the adopted regulation with authorities and references included.
2. A copy of State Water Board Resolution 2021-0028 adopting the regulation and the adopted regulation, dated August 3, 2021.
3. A copy of the Notice of Proposed Emergency Rulemaking, dated July 30, 2021, with attached draft regulation text.
4. A copy of the email transmitting the Notice of Proposed Emergency Rulemaking, dated July 30, 2021, to multiple email subscription lists.
5. A copy of the redline version of the adopted regulation text that identifies all changes made since the revised regulation text was released on July 30, 2021.
6. A copy of the finding of emergency, informative digest, and revised fiscal analysis.
7. A copy of the Water Unavailability Methodology for the Delta Watershed report, dated July 23, 2021, which is incorporated by reference in the regulation. This document includes a summary report and appendices A, B, and C.
8. A copy of Form 399 and attached revised fiscal impact analysis.

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

The regulation was adopted pursuant to Water Code section 1058.5, which authorizes the State Water Board to adopt emergency regulations to prevent the waste or unreasonable use of water, to promote water recycling or conservation, or to require curtailments when water is not available under the diverter's priority of right in response to drought conditions as defined in that section. In this case, section 1058.5 applies because Governor Gavin Newsom issued a proclamation of a state of emergency based on drought conditions on May 10, 2021. Section 1058.5, subdivision (b) provides that, notwithstanding Government Code sections 11346.1 and 11349.6, the State Water Board's finding of emergency in connection with the adoption of a regulation under section 1058.5 is not subject to review by OAL. In addition, section 1058.5, subdivision (c) provides that regulations adopted under section 1058 may remain in effect up to one year, and may be renewed if the State Water Board finds that drought conditions remain in effect.

On July 23, 2021, the State Water Board released an initial draft of the emergency regulation for public review and comment. State Water Board staff provided information concerning the proposed regulation and received oral comments during a public workshop held on July 27, 2021. Written comments on the proposed regulation were due by 12:00 noon on July 29, 2021. With the July 30 notice of the proposed emergency rulemaking, the State Water Board released a revised draft regulation that incorporated changes in response to the oral and written comments received. Following the release of the revised draft regulation on July 30, additional non-substantive clarifying changes were made to the regulation prior to and during the State Water Board's adoption meeting on August 3, 2021. Included in this submittal is a redline version of the adopted regulation that identifies the changes made since the regulation text was released with the notice on July 30, 2021.

Additionally, the fiscal impact analysis, which was also released with the July 30 notice along with the informative digest, has been revised to correct relatively minor errors. Changes are reflected in paragraph 4 of the Summary section, and in Tables 6 and 10. New text, including a new Table 11, was also added to provide additional information concerning the distribution of fiscal effects between state and local government entities. The estimated costs to state and local agencies are reduced relative to that reflected in the July 30 analysis, and the analysis still shows a net savings to state and local agencies collectively. Due to the differing roles of state and local agencies in providing water to end users, however, the analysis estimates a net cost to state agencies, while a net savings is estimated for local agencies. Corresponding changes were made to the same information in the informative digest. The enclosed revised fiscal impact analysis incorporates these changes.

If you have any questions regarding this submittal, please contact Dana Heinrich at (916) 341-5188 or Dana.Heinrich@waterboards.ca.gov.

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