

Client Alert

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California Governor Orders 25% Cut in Water Use—What It Means for Businesses

By William Sloan and Alejandro Bras

California is experiencing a drought of epic proportions. To meet this challenge, on April 1, 2015, California Governor Jerry Brown issued [Executive Order B-29-15](#) to usher in an aggressive statewide plan for reducing water use. The key feature of the Order is the directive to the State Water Resources Control Board (State Water Board) to impose restrictions on potable urban water use that will achieve a “statewide 25% reduction” through February 28, 2016. The State Water Board has already indicated that it will be issuing draft regulations to implement this order this month with adoption slated for May.

The details of the Order establish a comprehensive approach to water conservation, and many of the provisions in the Order will have important implications for California businesses and the population generally. Beyond the mandated reduction, the Order calls for enhanced drought planning, heightened enforcement, and new public funding for water technologies. The following is a summary of the key provisions:

THE 25% REDUCTION

- The Order directs the State Water Board to reduce statewide potable urban water usage by 25% through February 28, 2016. The California Public Utilities Commission (CPUC) is similarly directed to develop restrictions for investor-owned utilities under its jurisdiction. Notably, agricultural water users are largely exempt from the cutbacks in the Order although future restrictions, particularly to senior water rights holders, may be sought if the drought situation worsens.
- The 25% reduction will be measured against 2013 water usage, and restrictions will consider relative per capita usage in water supplier service areas.
- The Order requires the State Water Board is also directed to impose restrictions on commercial, industrial, and institutional properties, such as campuses, golf courses, and cemeteries, to achieve 25% reductions in potable water usage.
- The Order directs both the State Water Board and the CPUC are directed to develop rate structures and other pricing mechanisms through emergency regulations to maximize water conservation.

MONITORING, PLANNING, AND ENFORCEMENT

- Urban water suppliers must report monthly to the State Water Board on water usage, conservation, and enforcement. The Order states that these monthly reports will be required on a permanent basis.
- Agricultural water suppliers to areas larger than 25,000 acres must include a drought management plan in

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their 2015 Agricultural Water Management Plans. They must also provide quantification of supply and demand for 2013 through 2015. Agricultural water suppliers to areas between 10,000 to 25,000 acres will have similar requirements, with a later deadline of July 1, 2016.

- The Order grants the State Water Board the authority to conduct inspections of properties, by warrant if necessary, to determine whether illegal diversions or wasteful and unreasonable use of water are occurring, and to bring enforcement actions against illegal diverters and those engaging in wasteful and unreasonable uses.

STREAMLINING AND INVESTMENT

- State permitting agencies must prioritize water infrastructure projects that increase local water supplies, including water recycling facilities, reservoir improvement projects, surface water treatment plants, desalination plants, stormwater capture and greywater systems.
- The California Energy Commission is to expedite the processing of all applications and petitions for amendments to power plant certifications issued for the purpose of securing an alternate water supply necessary for continued power plant operation.
- The California Energy Commission, in conjunction with the State Water Board and the Department of Water Resources, must develop a Water Energy Technology program, also known as the WET program, in order to “accelerate” deployment of water management technologies such as renewable energy-powered desalination, integrated on-site reuse systems, water use monitoring software, irrigation system timing and precision technology, and on-farm precision technology.

MISCELLANEOUS PROVISIONS

- The Department of Water Resources is to lead a statewide initiative to replace 50 million square feet of lawns, and will fund lawn replacement programs in underserved communities.
- Irrigation with potable water outside newly constructed homes and buildings is prohibited except through drip and microspray systems.
- Irrigation of ornamental turf with potable water on public street medians is prohibited.

As with any broad sweeping mandate, the devil will be in the details. The State Water Board and other agencies will now proceed with implementation of this directive and, in the process, water rights, property rights, and ongoing business concerns that depend on water will all take center stage.

Morrison & Foerster regularly advises clients on water rights and water use issues, including in negotiations with regulators and also when defending clients that have been targeted by private or enforcement lawsuits. For more information regarding Executive Order B-29-15, or regarding Morrison & Foerster’s water law practice, please contact us.

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Contact:

William M. Sloan
(415) 268-7209
wsloan@mofo.com

Michael J. Steel
(415) 268-7350
msteel@mofo.com

Peter Hsiao
(213) 892-5731
phsiao@mofo.com

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