

Date of Hearing: June 25, 2024

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE

Diane Papan, Chair

SB 1110 (Ashby) – As Amended June 18, 2024

SENATE VOTE: 39-0

SUBJECT: Water reports: urban retail water suppliers: informational order: conservation order

SUMMARY: Permits the State Water Resources Control Board (State Water Board) to adopt an enforcement policy to enforce the urban water use objective and other statutes; delays enforcement of urban water use objective by two years; consolidates reporting on urban water use; and allows reporting to be on a calendar or fiscal year basis. Specifically, **this bill:**

- 1) Grants the State Water Board authority to adopt regulations to address changes in reporting requirements on the urban water use objective made by this bill. Exempts such regulations from the Administrative Procedures Act (APA).
- 2) Permits the State Water Board to adopt an enforcement policy to guide enforcement of provision of law relating to the nonfunctional turf ban, the 20x2020 water conservation target, requirements for agricultural water use efficiency, water use reporting, the urban water use objective, and countywide drought contingency plans. Provides the enforcement policy shall be consistent with legislative findings and declarations.
- 3) Requires the State Water Board, if it adopts an enforcement policy pursuant to this bill, to:
 - a) Solicit input from urban retail water suppliers, local communities, and other stakeholders who may be affected by the enforcement of regulations subject to the enforcement policy;
 - b) Hold a public hearing on the enforcement policy before adopting it; and
 - c) Notify affected parties at least 60 days before the public hearing.
- 4) Provides the adoption of an enforcement policy pursuant to this bill is not subject to APA.
- 5) Consolidates reporting requirements so that urban retail water suppliers submit one report to the Department of Water Resources (DWR) and the State Water Board on the supplier's water use conditions for the previous fiscal or calendar year. Reports shall be due on or before January 1, annually.
- 6) Permits an urban retail water supplier to select its reporting timeframe, calendar year or fiscal year, and specifies that fiscal year reports due as of January 1, 2024 shall cover the period from July 1, 2022 to June 30, 2023 and calendar year reports due as of January 1, 2024 shall cover the period from January 1, 2022 to December 31, 2022. Subsequent reports shall follow this convention.
- 7) Delays the date on which the State Water Board may issue an informational order to an urban retail water agency that is not meeting its urban water use objective from January 1, 2024 to January 1, 2026.

- 8) Delays the date on which the State Water Board may issue a written warning to an urban retail water agency that is not meeting its urban water use objective from January 1, 2025 to January 1, 2027.
- 9) Delays the date on which the State Water Board may issue a conservation order to an urban retail water agency that is not meeting its urban water use objective from January 1, 2026 to January 1, 2028.

EXISTING LAW:

- 1) Requires the State Water Board, in coordination with DWR, to adopt long-term standards for outdoor residential use, outdoor irrigation with dedicated irrigation meters in conjunction with commercial, industrial, and institutional (CII) water use, and a volume for water loss by June 30, 2022 (Water Code § 10609.2).
- 2) Requires each “urban retail water supplier” to calculate its urban water use objective no later than January 1, 2024 and by January 1 every year thereafter. The urban water use objective shall be the sum of the following: (a) aggregate estimated efficient indoor residential water use; (b) aggregate estimated efficient outdoor residential water use; (c) aggregate estimated efficient outdoor CII water use; (d) aggregate estimated efficient water loses; (e) aggregate estimated water use with variances, as appropriate; and (f) bonus incentives for potable reuse (Water Code § 10609.20).
- 3) Authorizes the State Water Board to issue informational orders beginning January 1, 2024, written warnings beginning January 1, 2025, or conservation orders beginning January 1, 2026 to urban retail water suppliers that do not meet their urban water use objective to help said urban retail water supplier meet its urban water use objective (Water Code § 10609.26).
- 4) Defines “urban retail water supplier” as either a public or private water supplier that provides potable municipal water to more than 3,000 end users or that supplies more than 3,000 acre-feet annually at retail for municipal purposes (Water Code § 10608.12).
- 5) Establishes a statewide goal of achieving a 20% reduction in urban per capita water use by December 31, 2020 (20x2020 goal) (Water Code § 10608.16).
- 6) Requires urban wholesale water suppliers to include an assessment of efforts to help achieve the 20x2020 goal in their urban water management plans (Water Code § 10608.36).
- 7) Requires urban water retail suppliers to report to DWR on their progress in meeting the 20x2020 goal in their urban water management plans (Water Code § 10608.40).
- 8) States legislative intent that the State Water Board establish an enforcement policy regarding minor violations of the Porter-Cologne Water Quality Control Act (Water Code § 13399).

FISCAL EFFECT: Unknown. This bill is keyed fiscal.

COMMENTS:

- 1) **Purpose of this bill.** This bill extends deadlines for enforcement of the urban water use objective by two years to accommodate the delay in the adoption of regulations and provides authority to State Water Board to adopt an enforcement policy relative to the urban water use

objective should it choose to do so. The author asserts this will “eliminate any legal ambiguities and reinforce the [State Water Board’s] capability to implement and enforce necessary water regulations effectively.” Further, the author argues this bill “is a vital step forward in reinforcing the [State] Water Board’s enforcement capabilities and streamlining water efficiency reporting. This bill will provide clear guidance, enhance operational efficiency, and generate cost savings, thereby contributing to the sustainable management of our state’s water resources.”

- 2) **Background.** Following the 2012-16 drought, then-Governor Brown issued the “Making Conservation California Way of Life” Executive Order [(EO) B-37-16] directing DWR to work with the State Water Board “to develop new water use targets as part of a permanent framework for urban water agencies.” DWR and the State Water Board released a framework in 2017 (2017 Framework) that outlined a suite of actions that could be implemented under existing authorities and recommended additional actions that could be implemented with new or expanded authorities given by the Legislature.

Making Conservation a Way of Life package. Various bills to implement aspects of the 2017 Framework were introduced in the Legislature in 2017. This led to a roughly year-long process that involved the Brown Administration, the Legislature, and numerous stakeholders and culminated in a two-bill package [SB 606 (Hertzberg) and AB 1668 (Friedman)] that established a foundation for long-term improvements in water conservation and drought planning to adapt to climate change. These two bills provided expanded and new authorities and requirements to drive more efficient use of water and better prepare the state for future droughts.

Urban water use objective. A major component of SB 606 and AB 1668 is that urban retail water agencies have to reduce their water use by meeting an “urban water use objective” that they must begin calculating and reporting to the State Water Board annually in January 2024. The urban water use objective is the sum of: (1) indoor residential water use; (2) outdoor residential water use; (3) outdoor CII use associated with dedicated irrigation meters; (4) water losses; (5) variances, if applicable; and (6) bonus incentives for recycled water, if applicable. The objective and the standards that go into setting it apply on an annual aggregate basis and do not apply to individual customers or even on a monthly basis. A given agency may exceed one or more of the standards (except for water losses) so long as, in the aggregate, that agency is meeting its overall objective.

To enforce the urban water use objective, the State Water Board is authorized to begin issuing informational orders as of January 2024. Subsequently, the State Water Board can issue written warning notices beginning January 2025 and conservation orders beginning January 2026 to any urban water agency that is not meeting its urban water use objective. A written warning can request that that a water agency address “areas of concern” in its next annual report and a conservation order may include a referral to DWR for technical assistance, requirements for education and outreach, requirements for local enforcement, or other efforts to assist the water agency in meeting its urban water use objective. This bill delays the dates on which the State Water Board can begin issuing informational orders, written warnings, and conservation orders by two years each to accommodate the delay in developing the standards.

Making Conservation a Way of Life draft regulations. Standards for the urban water use

objective were supposed to be finalized by June 2022 (see Existing Law #1, above); as such, implementation of the urban use objective is now two years behind schedule. The delay is, in part, due to the COVID-19 pandemic. The State Water Board issued the first draft of regulations in Fall 2023. Water agencies and a report by the Legislative Analyst's Office (LAO) were very critical of the first draft arguing that the regulations were overly complex, cost prohibitive, and unrealistic. Subsequently, the State Water Board released second draft on March 12, 2024. The second draft made several changes in response to comments and criticism received on the first draft, including the following:

- Allows suppliers to include approved variances and temporary provisions in the calculation of their urban water use objective for five years (rather than one year);
- Delays applicability of more rigorous outdoor residential water use standards by five years (to July 1, 2035 and July 1, 2040);
- Permits water suppliers to include a buffer of up to 20% of land that is potentially irrigable, but not actually irrigated, when calculating their outdoor residential use standard; and,
- Deletes provisions requiring a ban on non-functional turf by 2025 given the enactment of legislation to ban non-functional turf beginning January 1, 2027 [AB 1572 (Friedman) Chapter 849, Statutes of 2023].

The State Water Board issued third draft of the regulations on May 20, 2024. This third draft had fewer changes with the more substantive changes pertaining to variances for residential and CII trees and how recycled water use is calculated under the urban water use objective. The regulations are expected to be finalized this summer.

- 3) **Arguments in support.** The Regional Water Authority (RWA) is sponsor of this bill; RWA argues this bill provides “significant cost savings for water agencies and the rate paying public without altering in any way the information that must be reported” and clarify that the State Water Board may adopt an enforcement policy relative to the urban water use objective. Given that some water agencies operate on a fiscal year basis and others operate on a calendar year basis, RWA asserts this bill provides necessary flexibility to comply with reporting requirements under the urban water use objective.
- 4) **Policy consideration.** This bill makes a number of changes to the urban water use objective statute yet regulations to implement this statute are presently in draft form and expected to be finalized later this year. Given that this bill will likely require further changes to the regulations if it is enacted into law, the Committee may wish to consider whether it is premature to makes changes to an underlying statute while draft regulations are still pending.
- 5) **Proposed committee amendments.** This bill exempts the adoption of an enforcement policy and any regulations necessary to implement this bill from APA requirements. An exemption from APA for the adoption of an enforcement policy is not necessary as it is not a regulation and including an exemption muddles this question; as an example, the adoption of an enforcement policy under Porter-Cologne Water Quality Control Act does not contain such an exemption. Regarding the exemption for the adoption of further regulations to implement the urban water use objective, a better approach may be to do them as emergency regulations so that regulations are adopted more expeditiously while allowing for stakeholder input.

In addition, these same sections of this bill refer to the entire “part” of the Water Code when adopting regulations and an enforcement policy. “Part” not only encompasses the urban water use objective, but a number of chapters of law that are not relevant to this bill. Replacing “part” with “chapter,” will narrow the application of this bill and help to avoid any unintended consequences. The following two amendments will address these issues:

Amendment 1

10608.9. 10609.24.... (d) Notwithstanding subparagraph (C) of paragraph (4) of subdivision (b) of Section 10609, the department and board shall have the authority to update any regulations adopted pursuant to this **part chapter** to address changes in statutory reporting requirements. **Regulations updated pursuant to this section are not subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of the Government Code.**

Amendment 2

10608.10. 10609.29. (a) The board may adopt an enforcement policy to guide its enforcement of regulations adopted pursuant to this **partchapter**.

(b) Any enforcement policy adopted pursuant to subdivision (a) shall consider enforcement priorities that are consistent with the legislative findings, declarations, and intent established by this part.

(c) During the process of formulating, or revising, the enforcement policy adopted pursuant to subdivision (a), the board shall solicit and incorporate input from urban retail water suppliers, local communities, and any other parties or members of the public who may be affected by the board’s enforcement of regulations adopted pursuant to this part.

(d) Before the board adopts any enforcement policy pursuant to subdivision (a), the board shall hold a public hearing on the policy. At least 60 days in advance of that hearing, the board shall notify all affected parties by notice of hearing through its internet website and release a draft of the enforcement policy for public review.

(e) Any enforcement policy adopted pursuant to subdivision (a) is not subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of the Government Code.

Emergency regulation authority. This bill will likely require additional changes in regulation. Given that the State Water Board is on the cusp of adopting final regulations later this summer, it is desirable that any further changes to the regulation occur expeditiously. This is why this bill proposes an APA exemption for the adoption of regulations; however, that does not allow for any stakeholder input so, adopting any changes to regulation as emergency regulations may be a preferable approach. The following amendment grants the State Water Board authority to adopt any required changes to regulation as emergency regulations:

SEC. 5. (a) The State Water Resources Control Board may adopt, by emergency regulation, amendments to Chapter 3.5 (commencing with Section 980) of Division 3 of

Title 23 of the California Code of Regulations, as may be required pursuant to Senate Bill 1110 of the 2023–24 Regular Session.

(b) The emergency regulations adopted pursuant to this section shall be adopted by the State Water Resources Control Board in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any emergency regulations adopted by the State Water Resources Control Board pursuant to this section shall be filed with, but not be repealed by, the Office of Administrative Law and shall remain in effect until revised by the State Water Resources Control Board.

- 6) **Conflict with other pending legislation.** Some sections of this bill amend the same sections of law that SB 1330 (Archuleta) and AB 3121 (Hart) also amend. Many of the changes these bills make are similar, if not identical, but to avoid chaptering out issues, the Committee may wish to direct the author address these chaptering out issues in the event that any or all of these bills are signed into law by the Governor.
- 7) **Related legislation.** SB 1330 (Archuleta) of the current legislative session delays the State Water Board's authority to enforce the urban water use objective, deletes obsolete reporting requirements, requires DWR to study efficiency performance of certain classes of landscapes, requires LAO to complete another report on the implementation of the urban water use objective by January 10, 2029, and makes other changes to the urban water use objective statute. SB 1330 is also set for hearing before this Committee.

AB 3121 (Hart) of the current legislative session delays by two years each the dates on which the State Water Board may begin issuing orders to enforce the urban water use objective and requires the LAO to report to the Legislature on implementation of the urban water use objective by January 10, 2028.

AB 1572 (Friedman), Chapter 849, Statutes of 2023, prohibits the use of potable water to irrigate nonfunctional turf on CII (except for cemeteries), homeowners' association, common interest development, and community service organization landscape areas. Begins a phase-in of this ban on specified property types beginning January 1, 2027.

SB 1157 (Hertzberg), Chapter 679, Statutes of 2022, lowers the statewide indoor residential water use standard from 55 gallons per capita daily (gpcd) to 47 gpcd beginning January 1, 2025, and from 50 gpcd to 42 gpcd beginning January 1, 2030 and requires DWR, in coordination with the State Water Board, to conduct studies and investigations to assess specified impacts of this standard.

AB 2157 (Blanca Rubio) of 2022 would have made technical changes to indoor residential use standard statute. AB 2157 died in the Assembly Rules Committee.

AB 1434 (Friedman) of 2022 would have established an indoor residential water use standard of 47 gpcd beginning January 1, 2025 and 42 gpcd beginning January 1, 2030. AB 1434 died

in the Assembly Appropriations Committee.

AB 1414 (Friedman), Chapter 239, Statutes of 2019, realigns the various reporting dates established in SB 606 and AB 1668 so that all reports required by those bills are due on either July 1 or January 1, and makes other minor technical amendments.

AB 1668 (Friedman), Chapter 15, Statutes of 2018, establishes an indoor residential water use standard of 55 gpcd until January 1, 2025, of 52.5 gpcd until January 2, 2030, and of 50 gpcd thereafter and requires DWR to submit a report to the Legislature that may recommend a different indoor residential use standard by January 1, 2021, among other provisions.

SB 606 (Hertzberg), Chapter 14, Statutes of 2018, establishes urban water use objectives and water use reporting requirements so urban water supplier and the State Water Board can track whether or not an urban water supplier is meeting its urban water use objective, among other provisions.

SBx7 7 (Steinberg), Chapter 4, Statutes of 2009-10 Seventh Extraordinary Session, requires a 20% reduction in urban per capita water use by December 30, 2020, among other provisions.

REGISTERED SUPPORT / OPPOSITION:**Support**

Regional Water Authority (sponsor)
Association of California Water Agencies

Opposition

None on file

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