

Date of Hearing: June 25, 2024

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE

Diane Papan, Chair

SB 1330 (Archuleta) – As Amended June 13, 2024

SENATE VOTE: 39-0

SUBJECT: Urban retail water supplier: water use

SUMMARY: Delays the State Water Resources Control Board's (State Water Board) authority to enforce the urban water use objective, deletes obsolete reporting requirements, requires the Department of Water Resources (DWR) to study efficiency performance of certain classes of landscapes, requires the Legislative Analyst's Office (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. Specifically, **this bill:**

- 1) Delays applicability of penalties of \$1,000/day and \$10,000/day during droughts for violations of the urban water use objective regulations from November 1, 2027 to November 1, 2029.
- 2) Repeals the requirement for urban wholesale water suppliers to include an assessment of their efforts to help achieve water use reduction targets (e.g., 20% urban water use reduction, urban water use objective) in their urban water management plans.
- 3) Repeals the requirement for urban retail water suppliers to assess and report on their efforts to help achieve the 20x2020 goal in their urban water management plans.
- 4) Requires DWR to analyze the water efficiency performance of newly constructed residential landscapes and commercial, industrial, and institutional (CII) landscapes with dedicated irrigation meters to determine whether these landscapes are using the same amount of water for which they are designed and to explain any divergences if the landscapes are using more water than intended.
- 5) Requires DWR to recommend, if appropriate, a new standard for existing residential landscapes and CII landscapes with dedicated irrigation meters for adoption by the State Water Board.
- 6) Requires DWR to update methodology for calculating residential and CII landscape areas, if necessary, and measure landscape area within each urban retail water supplier's service area by January 1, 2028. DWR shall update the landscape area measurements every five years after 2028 and post landscape area measurements on its website.
- 7) Provides that landscape area measurements completed per #6, above, must include tree canopy data no later than January 1, 2039 for purposes of variances for water use to irrigate trees.
- 8) Clarifies that urban retail water suppliers shall include aggregate indoor residential use and aggregate outdoor residential use when calculating their urban water use objectives.

- 9) Requires urban retail water suppliers to include a narrative description of demand management measures that will be implemented to achieve their urban water use objective in the 2026 report to DWR on achieving the urban water use objective.
- 10) 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.
- 11) 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.
- 12) 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.
- 13) Requires LAO to report to the Legislature by January 10, 2029 evaluating the implementation of the urban water use objective standards and water use reporting.
- 14) Declares legislative intent that the Chair of the State Water Board and director of DWR appear before the relevant policy committees in both houses of the Legislature to report on the implementation of the urban water use objective standards no later than July 1, 2031 (rather than January 1, 2026 per existing law).
- 15) Delays the deadline on a DWR report on the progress of urban retail water suppliers towards achieving their urban water use objective from January 1, 2028 to January 1, 2030.
- 16) Provides that any regulations necessary to implement this bill shall be adopted by the State Water Board as emergency regulations and declares that any such regulations are necessary for the immediate preservation of the public peace, health, safety, and general welfare.

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 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 with dedicated irrigation meters; (d) aggregate estimated efficient water losses; (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) Requires, under the Urban Water Management Planning Act (WAT § 10610 *et seq.*), every public and private urban water supplier that directly or indirectly provides water for municipal purposes to prepare and adopt an urban water management plan (Water Code § 10620).
- 6) Requires each urban water supplier to update and submit its urban water management plan to DWR every five years (Water Code § 10621).
- 7) 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).
- 8) 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).
- 9) 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).

FISCAL EFFECT: Unknown. This bill is keyed fiscal.

COMMENTS:

- 1) **Purpose of this bill.** This bill makes several changes to the urban water use objective statute. The author argues that this bill “will provide flexibility for water suppliers to comply with the water conservation mandates, which will reduce costs and provide more time for reaching the urban water use objectives established in the 2018 laws. At the same time, [this bill] will help Californians who are facing ever-increasing water bills both at home and at work. California is a high cost of living state and anything we can do to bring affordability to residents and businesses just makes sense.”
- 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 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 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 (so more rigorous standards kick in on July 1, 2035 and July 1, 2040, respectively);
- 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 El Dorado Irrigation District (EID) supports this bill arguing that it makes necessary changes to the urban water use objective statute to accommodate delays, make changes recommended by the LAO and save costs. EID maintains that this bill's requirement that DWR determine irrigable landscape areas will "relieve suppliers, many of which serve disadvantaged communities, from the burden of measuring landscapes and also should result in a reduction in future General Fund expenditures by changing from an annual calculation to at least a once in a decade calculation."
- 4) **Arguments in opposition.** California Coastkeeper Alliance and a number of environmental organizations oppose this bill arguing that it is premature because regulations have not yet been finalized, lacks necessary guidelines regarding outdoor water use, and skews the report this bill requires the LAO to complete by 2029. California Coastkeeper et al. note that they had previously removed their opposition, but that recent amendments have caused them to once again oppose this bill. California Coastkeeper et al. maintain that this bill requires DWR "to identify new outdoor efficiency targets for recommendation to the State Water Board, without any guidance as to what those targets are meant to achieve. Moreover, [this] bill requires [LAO] to release a report that focuses solely on 'issues' regarding the accuracy of the data, not the accuracy of the data generally, leading to a skewed report."
- 5) **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.
- 6) **Proposed committee amendments.** This bill repeals a provision in existing law requiring wholesale water suppliers to include an assessment of present and future efforts to conserve water. This includes measures taken to achieve the 20x2020 target, but also other goals for water conservation in Part 2.55 of the Water Code. The challenges posed by climate change to the water sector make the repeal of this section questionable. It behooves water suppliers to continue to pursue increased conservation and efficiency and this existing section of law provides some accountability to do just that. The Committee may wish to request that the author take the following amendment:

Amendment 1

SEC. 2. Section 10608.36 of the Water Code is repealed.

Reporting on 20x2020 goal. This bill repeals a requirement that urban retail water suppliers report on progress in meeting the 20x2020 goal in their urban water management plan. Given that a handful of suppliers still have not met the 20% reduction target and to prevent regression on water conservation efforts, it does not make sense to repeal this reporting requirement. Further, this does not seem like an onerous requirement given that urban water management plans are updated and submitted to DWR in five-year intervals. The Committee may wish to request that the author retain the reporting requirement in existing law to keep water suppliers focused on realizing increase water use efficiency:

Amendment 2

SEC. 3. Section 10608.40 of the Water Code is repealed.

Tree canopy and landscape area. This bill directs DWR to again measure landscape area within each supplier's service territory by 2028 and periodically going forward. While there is merit to this requirement, as written, there is some confusion and inconsistency with the provision directing DWR to also include tree canopy in its measurement. To address this, the Committee may wish to request that the author take the following technical amendments:

Amendment 3

10609.20.... (f) (1) The department shall update methodologies and criteria for calculating residential and CII landscape areas, if necessary to accomplish the purposes of this chapter, and determine landscape area measurements within each urban retail water supplier's service area to be completed by January 1, 2028, and once every five years thereafter.

(2) Landscape area measurements determined pursuant to paragraph (1) shall, no later than January 1, 2039, include tree canopy coverage data for purposes of calculating a variance for water use associated with irrigating existing trees in existing residential landscapes and CII water use with dedicated irrigation meters landscapes.

(3) The department shall post landscape area measurement data on its internet website.

Updated LAO report. An evaluation by the LAO in 2029 makes sense; however, assessing the accuracy of data or the "issues" with data accuracy is likely beyond the scope of the LAO's expertise. To focus such a report on areas within the LAO's area of competency, the Committee may wish to request that the author take the following amendment:

Amendment 4

10609.30. On or before January 10, 2029, the Legislative Analyst shall provide to the appropriate policy committees of both houses of the Legislature and the public a report evaluating the implementation of the water use efficiency standards and water use reporting pursuant to this chapter. The board and the department shall provide the Legislative Analyst with the available data to complete this report.

(a) The report shall describe all of the following:

(1) The rate at which urban retail water users are complying with the standards, and factors that might facilitate or impede their compliance.

(2) ~~Issues identified regarding the accuracy of the data and estimates being used to calculate urban water use objectives.~~

~~(3)~~ Indications of the economic impacts, if any, of the implementation of this chapter on urban water suppliers and urban water users, including CII water users.

7) **Conflict with other pending legislation.** Some sections of this bill amend the same sections of law that SB 1110 (Ashby) 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.

- 8) **Related legislation.** SB 1110 (Ashby) of the current legislative session permits the 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. SB 1110 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 3121 is pending before the Senate Appropriations Committee.

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, establishes the 20x2020 goal, among other provisions.

REGISTERED SUPPORT / OPPOSITION:

Support

Association of California Water Agencies
Bellflower-Somerset Mutual Water Company
California Water Association
Desert Water Agency
El Dorado Irrigation District
League of California Cities
Palmdale Water District
Rowland Water District
Upper San Gabriel Valley Municipal Water District
Walnut Valley Water District

Opposition

California Coastkeeper Alliance
Coachella Valley Waterkeeper
Humboldt Waterkeeper
Inland Empire Waterkeeper
Los Angeles Waterkeeper
Mono Lake Committee
Monterey Waterkeeper
Orange County Waterkeeper
Otter Project, The
Russian Riverkeeper
San Diego Coastkeeper
Santa Barbara Channelkeeper
Shasta Waterkeeper
South Yuba River Citizens League
Yuba River Waterkeeper

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