

Date of Hearing: April 18, 2023

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE

Rebecca Bauer-Kahan, Chair

AB 1572 (Friedman) – As Amended April 11, 2023

SUBJECT: Potable water: nonfunctional turf

SUMMARY: Prohibits the use of potable water to irrigate nonfunctional turf on commercial, municipal, institutional, and multifamily residential properties. Begins a phase-in of this ban for specified property types beginning January 1, 2026. Specifically, **this bill:**

- 1) Defines “nonfunctional turf” as any turf not located in areas designated by a property owner or a government agency for recreational use or public assembly. Excludes cemeteries from this definition.
- 2) Prohibits the use of potable water to irrigate nonfunctional turf on commercial, industrial, municipal, institutional, and multifamily residential properties and phases this ban in as follows:
 - a) Beginning January 1, 2026, for all properties owned or leased by the Department of General Services;
 - b) Beginning January 1, 2027, for all municipal and institutional properties, except those in disadvantaged communities (DAC);
 - c) Beginning January 1, 2028, for all commercial and industrial properties;
 - d) Beginning January 1, 2029, for all multifamily residential properties, except those in DACs; and
 - e) Beginning January 1, 3030, for all multifamily residential affordable housing properties and all municipal properties in a DAC.
- 3) Exempts the use of potable water to ensure the health of trees and other perennial plantings or to address immediate health and safety needs from the prohibition outlined in #2, above.
- 4) Permits the State Water Resources Control Board (State Water Board) to extend compliance dates outlined in #2, above, by up to three years through regulation.
- 5) Requires the State Water Board to adopt regulations by July 1, 2025, to develop procedures and criteria for compliance extensions (e.g., for economic hardship) and to establish methods of compliance certification by property owners.
- 6) Requires public water systems to update their regulations, ordinances, or policies governing water use no later than January 1, 2026, to incorporate the prohibition on the use of potable water on nonfunctional turf established by this bill and to communicate these requirements to their customers on or before January 1, 2026.

- 7) Requires commercial, industrial, municipal, and institutional property owners with more than 5,000 square feet of irrigated areas to certify to the State Water Board compliance with this bill beginning June 30, 2029 and every three years thereafter through 2038.
- 8) Requires multifamily residential property owners with more than 5,000 square feet of irrigated areas to certify to the State Water Board compliance with this bill beginning June 30, 2030 and every three years thereafter through 2039.
- 9) Provides that an entity not in compliance with this bill shall be subject to civil liability of up to \$500 per day of violation and any penalties imposed by an urban water supplier.
- 10) Authorizes a water system, city, county, or city and county to enforce the provisions of this bill.
- 11) Requires the State Water Board to begin annual compliance audits to track implementation of this bill on July 1, 2030. The State Water Board shall audit two hydrologic regions each year and rotate regions so that every region is audited every five years. The compliance audits shall include visual inspections of specified properties and be posted on the State Water Board's internet web site.
- 12) Requires the Department of Water Resources to prioritize water conservation and integrated regional water management (IRWM) funding to replace nonfunctional turf for public water agencies serving DACs and to owners of affordable housing.
- 13) Requests the Division of Agriculture and Natural Resources within the office of the President of the University of California (Division) to consult with the Department of Education to disseminate information on native and climate-appropriate plants in schools serving K through 12 grades. Requires the Vice President of the Division to report to the Legislature on progress implementing this bill no later than June 30, 2026.
- 14) Defines various terms for the purposes of this bill, including "affordable housing," "multifamily residential housing," "potable water," and "turf."

EXISTING LAW:

- 1) Imposes a penalty of up to \$500 per day for violations of water rights or orders or regulations adopted by the State Water Board (Water Code § 1846).
- 2) Establishes a standard for indoor residential water use as follows: (a) 55 gallons per capita daily (gpcd) until January 1, 2025; (b) 47 gpcd beginning January 1, 2025; and (c) 42 gpcd beginning January 1, 2030 (Water Code § 10609.4).
- 3) 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).
- 4) Defines the following terms relative to water conservation law (Water Code § 10608.12):
 - a) "Commercial water user" as a water user the provides or distributes a product or service;

- b) “Disadvantaged community” as a community with an annual median household income that is less than 80 percent of the statewide average;
 - c) “Industrial water user” as a water user that is primarily a manufacturer or processor of materials or that is primarily engaged in research and development;
 - d) “Institutional water user” as a water user dedicated to public service, including higher education institutions, schools, courts, churches, hospitals, government facilities, and nonprofit research institutions;
 - e) “Large landscape” as a nonresidential landscape as described by performance measures adopted by the State Water Board; and
 - f) “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.
- 5) 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).
- 6) Declares that the use of potable domestic water for nonpotable uses, including outdoor irrigation, is a waste or unreasonable use of water if recycled water is available for these uses (Water Code § 13550).

FISCAL EFFECT: Unknown. This bill is keyed fiscal.

COMMENTS:

- 1) **Purpose of this bill.** According to the author, “there is an urgent need for additional efforts to reduce unnecessary water use in urban areas. Although drought conditions from 2014-2017 were said to be the most severe drought since statehood, California saw dry conditions return quickly, with severe curtailments of State Project water deliveries imposed in 2022. At the same time, water supply conditions deteriorated rapidly in the Colorado River Basin, a major source of water for urban Southern California.” The author notes efforts currently underway to address the shortfall of water in the Colorado River Basin as further evidence of the need for California to reduce its overall water use and demand on Colorado River water in particular.

The author notes “a large portion of California’s treated drinking water is used to irrigate urban landscapes. In a year without drought restrictions, roughly half of all publicly supplied water is used outdoors, primarily for landscape irrigation.... In a study published in 2005, it was estimated that California had approximately 2.75 million acres of turf grass. Nearly all this turf requires irrigation to survive, and nearly all the irrigation is with treated drinking water.”

Finally, the author argues that this bill “is an extension of past and current state policies to reduce unnecessary water consumption in urban landscapes. It would prohibit the use of drinking water for the irrigation of nonfunctional turf located on commercial, industrial, municipal, institutional, and multifamily residential properties, in stages between January 1, 2026 and January 1, 2029. This will help California businesses and communities save both water and money, and transition to sustainable alternatives that can keep landscapes beautiful.”

- 2) **Background.** California, along with other Western states, experienced severe drought conditions from 2021 until this winter. Drought, even extreme drought, is not unusual for this region, but the fact that California experienced such severe dry conditions only a few years after its worst drought on record from 2012-16 has raised alarmed bells across the state and the West. The situation in the Colorado River Basin has led U.S. Bureau of Reclamation Commissioner Camille Touton to call for a reduction in use of Colorado River water of between 2 million acre-feet (AF) and 4 million AF annually to avoid loss of power generation and to ensure water deliveries.

California drought emergency 2021-23. Fortunately, wetter conditions allowed Governor Newsom to lift the drought emergency for most regions of the state on March 28, 2023, by issuing Executive Order (EO) N-5-23. The relief is welcome, but the previous three years have been severe. The Governor first declared a drought emergency on April 2021, directing various actions to conserve water, and extended the emergency due to ongoing drought conditions seven times. Because of worsening drought conditions in early 2022, the Governor expanded the state’s drought response by issuing EO N-7-22 on March 28, 2022. EO N-7-22 directed a suite of actions, including that the State Water Board consider adopting an emergency regulation banning the irrigation of “nonfunctional turf” in the commercial, industrial, and institutional sectors.

Emergency regulation on nonfunctional turf. Following the Governor’s direction, the State Water Board adopted an emergency regulation banning the irrigation of decorative grass, with limited exceptions, that took effect on June 10, 2022. The emergency regulation remains in effect until June 10, 2023. The definition of “nonfunctional turf” in the emergency regulation is slightly narrower than this bill in that it is limited to ornamental turf: “turf that is solely ornamental and not regularly used for human recreational purposes or for civic or community events. Non-functional turf does not include sports fields and turf that is regularly used for human recreational purposes or for civic or community events.” In contrast, this bill does not narrow its definition of “nonfunctional turf” to turf that is “solely ornamental,” but rather defines it by its designated use. The emergency regulation also includes homeowners’ associations (HOA) and common interest developments (CID) in the definition of “commercial, industrial and institutional,” but does not include actual residences within HOAs or CIDs. This bill in contrast does not cover HOAs and CIDs in its current form.

Governor’s “California’s Water Supply Strategy: Adapting to a Hotter, Drier Future” (August 2022). Governor Newsom released this strategy to address a projected 10% decrease in water supply (6 million to 9 million AF of water) by 2040 due to climate change. To address this shortfall, the strategy sets targets and outlines actions for increased water recycling, desalination, stormwater capture, and water conservation as well as an expansion of 4 million AF of surface and underground storage. Achieving the targets laid out in the

strategy would “close the evaporative gap.” One action highlighted is the conversion of 500 million square feet of ornamental turf by 2030. The Administration asserts this can be achieved through programs and policies that incentivize turf conversion and that, if this goal is achieved, it could save 66,000 AF of water annually at a cost of \$1 billion.

“The Untapped Potential of California’s Urban Water Supply: Water Efficiency, Water Reuse, and Stormwater Capture.” This report by the Pacific Institute released in April 2022 estimates that conversion of turf to less water-intensive landscapes on commercial, industrial, and institutional properties could save up to 400,000 AF of water per year.

Nevada nonfunctional turf ban. In 2021, the Nevada Legislature enacted AB 356 (Committee on Ways and Means) that prohibits the use of Colorado River water to irrigate nonfunctional turf on commercial, multi-family, and institutional properties within the service territory of the Southern Nevada Water Authority (SNWA) or its member agencies beginning January 1, 2027. SNWA serves more than 2.2 million residents in Southern Nevada, including the Las Vegas metropolitan area. AB 356 directed SNWA to define nonfunctional turf and SNWA has, in turn, developed the following definition: “an irrigated grass area not providing functional use;” SNWA indicates that examples include streetscape turf; grass in front of, between, behind or otherwise adjacent to a properties not zoned single-family residential; and turf managed by an HOA that does not provide a recreational benefit to the community. This bill’s definition is similar to that used by SNWA.

- 3) **Arguments in support.** This bill is sponsored by the Natural Resources Defense Council and Heal the Bay (sponsors) that argue this bill “will phase out unnecessary water use in urban areas, support communities in saving both water and money and speed the transition to sustainable alternatives that can keep landscapes beautiful.” The sponsors note that California has had policy in place since 1990 to reduce water use for landscape irrigation in urban settings, but that, nonetheless, “a legacy of irrigated decorative grass remains.”
- 4) **Oppose unless amended.** The Association of California Water Agencies (ACWA) and other associations have taken an “oppose unless amended” position on this bill due to concerns over the definition of “nonfunctional turf” in this bill. ACWA et al. support prohibiting the use of potable water on nonfunctional turf in certain sectors, but are concerned that this bill’s definition is broader than that in the emergency regulations and that the prohibition applies to multifamily housing. In addition, ACWA et al. argue that it is inappropriate to allow water wholesalers and other entities that do not have a direct relationship with individual customers to enforce the provisions of this bill; for this reason, they seek “language that would require coordination with the local water retailer for any enforcement by an entity that is not the retailer.” Finally, ACWA et al. assert that “directing funding intended for IRWM activities to focus on turf replacement is inappropriate” and seek an amendment striking the reference to IRWM funding from this bill.
- 5) **Opposition.** The El Dorado Irrigation District (EID) opposes this bill arguing that it undermines local agencies’ discretion and flexibility to meet their urban water use objective as required by AB 1668 and that it will “impose significant new costs on urban retail water suppliers.” EID contends that this bill “is based on a path of scarcity, imposing restrictions and prohibitions on a selective basis. Instead, the Legislature should focus on increasing resilience and enhancing adaptive capacity that will provide opportunities to strengthen water resources management and plan for climate change impacts.”

- 6) **Proposed committee amendments.** Unlike the emergency regulation, this bill does not cover turf in HOAs, CIDs, and community service organizations that do not have a recreational or other civic purpose. The Committee may wish to consider asking the author to amend this bill to include HOA, CID, and community service organization properties in the prohibition. In addition, this bill prohibits the use of potable water to irrigate nonfunctional turf on “municipal” properties along with commercial, industrial, and institutional. Including “municipal” is likely unnecessary as it appears to have the same meaning as “institutional” properties. The Committee may wish to ask the author to consider striking references to “municipal” in this bill as it may be redundant and could create ambiguity or confusion. The following amendments will address both of these issues:

Amendment 1 – Add the following definitions to Section 10608.12 of the Water Code:

(g) “Common interest development” has the same meaning as in Section 4100 of the Civil Code.

(h) “Community service organization or similar entity” has the same meaning as in Section 4110 of the Civil Code.

(m) “Homeowners’ association” means an “association” as defined in Section 4080 of the Civil Code.

Amendment 2 – Amend Section 10608.14 of the Water Code as follows:

10608.14. (a) The use of potable water for the irrigation of nonfunctional turf located on commercial, industrial, ~~municipal~~, institutional, and multifamily residential properties is prohibited as of the following dates:

(1) All properties owned or leased by the Department of General Services, beginning January 1, 2026.

(2) All ~~municipal~~ and institutional properties, except those specified in paragraph (5), beginning January 1, 2027.

(3) All commercial and industrial properties, beginning January 1, 2028.

(4) All multifamily residential properties, and except those specified in paragraph (5), *and all properties of homeowners’ associations, common interest developments, and community service organizations or similar entities, but not including the residences of these entities’ members or separate interests,* beginning January 1, 2029.

(5) All multifamily residential affordable housing properties and all ~~municipal~~ institutional properties in a disadvantaged community, beginning January 1, 2030.

(b) Notwithstanding subdivision (a), the use of potable water is not prohibited by this section to the extent necessary to ensure the health of trees and other perennial nonturf plantings, or to the extent necessary to address an immediate health and safety need.

(c) The board may extend the compliance date by up to three years for certain persons, institutions, and businesses by regulation.

(d) The board shall develop and adopt regulations no later than July 1, 2025, that shall establish-both of the following:

(1) Procedures and criteria for compliance extensions, including economic hardship, critical business need, and any other categories the board determines are essential to public health and safety.

(2) Methods of compliance certification to the board by property owners.

(e) Public water systems shall revise their regulations, ordinances, or policies governing water service to include the requirements of subdivisions (a) and (b), and any extensions thereto adopted by the board no later than January 1, 2026, and shall communicate the requirements to their customers on or before that date.

(f) (1) An owner of commercial, industrial, ~~municipal~~ and institutional property with more than 5,000 square feet of irrigated area other than a cemetery shall certify to the board, commencing June 30, 2029, and every three years thereafter through 2038, that their property is in compliance with the requirements of this chapter.

- 7) **Related legislation.** AB 1573 (Friedman) of the current legislative session makes changes to required provisions in the Model Water Efficient Landscape Ordinance developed by DWR, including requiring the use of more native or water efficient plants and a prohibition on the use of nonfunctional turf in new or renovated commercial and industrial areas. AB 1573 is pending before this Committee.

SB 606 (Hertzberg), Chapter 14, Statutes of 2018, requires the State Board and DWR to adopt water efficiency regulations, outlines requirements for water suppliers, specifies penalties for violations, and makes technical, conforming changes.

AB 1668 (Friedman), Chapter 15, Statutes of 2018, among other provisions, requires DWR, in consultation with the State Water Board and other stakeholders, to identify small water suppliers and rural communities that may be at risk of drought and water shortage vulnerability by January 1, 2020. Further requires DWR by January 1, 2020, to propose recommendations and guidance regarding the development and use of countywide drought contingency plans to address drought planning for small water suppliers and rural communities.

REGISTERED SUPPORT / OPPOSITION:

Support

Heal the Bay (co-sponsor)
 Natural Resources Defense Council (co-sponsor)
 California Coastal Protection Network
 California Institute for Biodiversity
 California Water Service Company
 Clean Water Action
 Defenders of Wildlife
 Heal the Bay
 Los Angeles Waterkeeper

Mono Lake Committee
Natural Resources Defense Council
Sierra Club California
Sonoma County Water Agency

Oppose unless amended

Association of California Water Agencies
CalChamber
California Municipal Utilities Association
California Special Districts Association
City of Roseville
Mesa Water District
Regional Water Authority
Santa Margarita Water District

Opposition

Desert Water Agency
El Dorado Irrigation District
Elsinore Valley Municipal Water District

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