

State Water Resources Control Board

NOTICE OF PROPOSED REGULATORY ACTION
TITLE 23. Waters
DIVISION 3. State Water Resources Control Board and Regional Water Quality Control Boards
CHAPTER 3.5 – Urban Water Use Efficiency and Conservation
ARTICLE 1
SUBJECT: MAKING CONSERVATION A CALIFORNIA WAY OF LIFE

NOTICE OF PROPOSED RULEMAKING

The State Water Resources Control Board (State Water Board or Board) proposes to adopt the proposed regulation described below, after considering all comments, objections, and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The State Water Board proposes to add California Code of Regulations, title 23, division 3, chapter 3.5, article 1, sections 965-975 and 978. Existing articles 1, 2, and 3 will be renumbered to articles 2, 3, and 4, respectively. The proposed new sections would establish a new foundation for long-term improvements in water conservation and drought planning to adapt to climate change and the resulting longer and more intense droughts in California. The proposed *Making Conservation a California Way of Life* regulation (proposed regulation) would require Urban Retail Water Suppliers (suppliers) to calculate and adhere to water use objectives, implement Commercial, Industrial, and Institutional (CII) performance measures, and submit annual progress reports.

PUBLIC HEARING

The State Water Board will conduct a public hearing on **October 4, 2023**. The public hearing will include an overview of the regulatory timeline and process, along with presentations led by urban retail water suppliers and other interested parties on the proposed regulation. At the hearing, any person may present oral or written comments relevant to the proposed action described in this notice, in addition to the written comment opportunity described below. Board staff will provide an overview of the proposed regulation and key provisions, followed by an opportunity for the public to comment. While a quorum of the State Water Board may be present, the Board will not take formal action at the public hearing.

The meeting will be held at the Joe Serna Jr. CalEPA Building, 1001 I Street, Sacramento, CA 95814, with the option to participate remotely.

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

Notices will be sent to those who subscribe to the “Water Conservation Regulations” GovDelivery topic list. Information about the public hearing will be posted on the webpage:

https://www.waterboards.ca.gov/water_issues/programs/conservation_portal/regs/water_efficiency_legislation.html

LANGUAGE SERVICES

To request translation of documents, interpretation services, or to submit a language access complaint, please submit your request by September 22, 2023, using one of the following options:

1. Complete online request at: bit.ly/LanguageAccessForm
2. Call (916) 341-5254
3. Email OPP-LanguageServices@Waterboards.ca.gov

SPECIAL ACCOMMODATION REQUEST

To request special accommodations or language needs, please contact the Clerk to the Board at (916) 341-5611 as soon as possible, but no later than 10 business days before the scheduled Board hearing.

Para solicitar comodidades especiales o necesidades de otro idioma, por favor llame a la oficina del Consejo al (916) 341-5611 lo más pronto posible, pero no menos de 10 días de trabajo antes del día programado para la audiencia del Consejo.

WRITTEN COMMENT PERIOD AND SUBMITTAL OF COMMENTS

[Gov. Code, § 11346.4(a), § 11346.5(a)(15)]

Any interested person may submit written comments relevant to the proposed regulatory action to the Clerk to the State Water Board. Any written comments pertaining to the proposed regulation, regardless of the method of transmittal, must be received by the Clerk **by October 17, 2023**, which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely. Written comments may be submitted via any of the following methods:

1. By email to: commentletters@waterboards.ca.gov. The State Water Board requests but does not require that email transmission of comments, particularly those with attachments, contain the regulation package identifier “**Comment Letter—Proposed Making Conservation a California Way of Life Regulation**” in the subject line to facilitate timely identification and review of the comment.
2. By fax transmission to: (916) 341-5620. The State Water Board requests but does not require that faxed comments contain the subject line “**Comment Letter—Proposed Making Conservation a California Way of Life Regulation.**”
3. By mail to: Clerk to the Board, Courtney Tyler, State Water Resources Control Board, P.O. Box 100, Sacramento, CA 95812-0100.
4. Hand-delivered to: Clerk to the Board, Courtney Tyler, State Water Resources Control Board, 1001 I Street, 24th Floor, Sacramento, CA 95814.

The State Water Board requests but does not require that written comments be sent by mail or that hand-delivered be submitted in triplicate.

The State Water Board requests, but does not require, that, if reports or articles in excess of 25 pages are submitted in conjunction with the comments, the commenter provide a summary of the report or article and describe the reason for which the report or article is being submitted or its relevance to the proposed regulation.

All comments, including email or fax transmissions, should include the author's name and U.S. Postal Service mailing address in order for the State Water Board to provide copies of any notices that may be required in future.

Due to the limitations of the email system, emails larger than 15 megabytes (MB) may be rejected and will not be delivered and received by the State Water Board. Therefore, emails larger than 15 MB should be submitted under separate emails or via another form of delivery.

Please note that under the California Public Records Act (Gov. Code, § 7920.000 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request.

If you would like to request a copy of the public comment letters received by the Board for this item, send an email to commentletters@waterboards.ca.gov and identify that you are requesting copies of public comments for the proposed Making Conservation a California Way of Life Regulation.

To be added to the mailing list for this rulemaking and to receive notification of updates for this rulemaking, you may subscribe to the GovDelivery list for "**Water Conservation Regulations**" [here](#) by selecting "General Interests," then selecting "Water Conservation Regulations."

AUTHORITY AND REFERENCE

The State Water Board proposes to adopt regulations implementing, interpreting, and making specific Water Code sections 275, 10609, 10609.2, 10609.4, 10609.6, 10609.8, 10609.9, 10609.10, 10609.12, 10609.14, 10609.16, 10609.20, and 10609.22.

Authority: Sections 275, 1058, 10609.2, 10609.10, 10609.20, and 10609.28, Water Code.

References: Article X, Section 2, California Constitution; Sections 3080, 4080, 4100, and 4185, Civil Code; Sections 8558 and 51201, Government Code; Sections 116275 and 116530, Health and Safety Code; Sections 102, 104, 105, 350, 1122, 1123, 1124, 1846, 1846.5, 10608.12, 10608.20, 10608.34, 10609.2, 10609.4, 10609.6, 10609.8, 10609.9, 10609.10, 10609.12, 10609.20, 10609.24, 10609.26, 10609.27, 10609.28, 10611.3, 10617, 10632, and 10728, Water Code.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

Pursuant to section 10609.34 of the Water Code, the proposed regulation is exempt under California Code of Regulations, title 14, section 15308 (Class 8 exemption). The proposed action does not involve the relaxation of existing water conservation or water use standards.

INFORMATIVE DIGEST

[Gov. Code, § 11346.5(a)(3)]

Summary of Existing State Law and Regulations

In 2018, the California State Legislature enacted Senate Bill (SB) 606 and Assembly Bill (AB) 1668 (together, 2018 conservation legislation) to establish a new foundation for long-term improvements in water conservation and drought planning to adapt to climate change and the longer and more intense droughts that are likely to result in California. Water Code section 10609.2 directs the State Water Resources Control Board (State Water Board or Board) to adopt long-term standards for the efficient use of water, variances for unique uses that can have a material effect on urban water use, and guidelines and methodologies pertaining to the calculation of an urban water use objective (objective). Water Code section 10609.10, subdivision (d) directs the Board to adopt performance measures for Commercial, Industrial, and Institutional (CII) water use. Water Code sections 10609.22 and 10609.24 direct each Urban Retail Water Supplier (supplier) to annually calculate its objective and provide a report pertaining to the objective and implementation of the CII performance measures. The Board's proposed *Making Conservation a California Way of Life* regulation (proposed regulation) would establish methodologies and guidelines to calculate the objectives; standards for efficient residential outdoor water use and efficient use of water on CII landscapes with Dedicated Irrigation Meters (DIMs); CII performance measures; and annual reporting requirements.

Water Code section 10609.2, subdivision (d) directs that the proposed regulation exceeds the targets established by SB X7-7.

Water Code section 10609, subdivision (c)(3) directs that the "long-term standards and urban water use objectives should acknowledge the shade, air quality, and heat-island reduction benefits provided to communities by trees through the support of water-efficient irrigation practices that keep trees healthy."

Water Code section 10609, subdivision (c)(2) directs that the "long-term standards and urban water use objectives should advance the state's goals to mitigate and adapt to climate change."

Comparable Federal Statute and Regulations

[Gov. Code § 11346.5(a)(3)(B)]

There are no federal regulations or statutes that address the specific subject addressed by the proposed regulation.

Effect of the proposed rulemaking

[Gov. Code § 11346.5(a)(3)(A)]

The proposed regulation creates a new framework for managing urban water use by California's largest water suppliers. It would establish unique efficiency goals for each supplier based on local conditions, while leaving flexibility to implement locally appropriate solutions. In addition to establishing long-term standards for the efficient use of water throughout California's urban areas and a framework that incorporates local conditions and provides flexibility to suppliers to make locally appropriate implementation choices, the proposed regulation is expected to save a significant amount of water.

A recent assessment of urban water supplies found that adopting proven technologies and practices could reduce urban water use in California by 2.0 million to 3.1 million acre-feet per year (AFY), or by 30 to 48 percent (Cooley et al., 2022). The proposed regulation would help California begin to realize that potential; by 2035, it is expected to reduce statewide urban water use by approximately 15 percent from 2020 levels. The Board estimates that the proposed regulation would save approximately 235,000 acre-feet of water in 2025 (compared to the assumed 2025 baseline water use) and increased amounts in subsequent years, reaching almost 440,000 acre-feet of water in 2040 (compared to the assumed 2040 baseline water use). In this way, the proposed regulation would help to realize the [California Water Supply Strategy](#) goal of building upon the conservation achievements of the last two decades to reduce annual water demand in towns and cities by at least half a million acre-feet by 2030.

The proposed regulation would help realize the water savings outlined in the water supply strategy. It is also expected to create indirect benefits beyond water savings. While not the primary goal of the proposed regulation, implementation of the framework is likely to result in suppliers making investments and programmatic changes that encourage individuals, businesses, and local governments to change how they use water. Such changes have the potential to advance the State Water Board's mission of preserving, enhancing, and restoring the quality of water resources and the statutory directive to advance California's climate change mitigation and adaptation goals. The proposed regulation can also support statewide policies to accelerate nature-based solutions, divert organic waste from landfills, build healthy soils, and advance equity.

Policy Statement Overview

[Gov. Code § 11346.5(a)(3)(C)]

The proposed regulation is designed to establish a new foundation for long-term improvements in water conservation and drought planning to adapt to climate change and the longer and more intense droughts that are likely to result in California. The effect of the proposed regulation is the establishment of long-term standards for the efficient use of water and performance measures for commercial, industrial, and institutional water use. Additionally, it will establish a method to estimate the aggregate amount of water that would have been delivered the previous year by an urban retail water supplier if all that water had been used efficiently. This estimated aggregate water use is the urban retail water supplier's urban water use objective. The objective is based

on the water use efficiency standards and local service area characteristics for that year. By comparing the amount of water used in the previous year with the urban water use objective, local urban water suppliers will be in a better position to help eliminate unnecessary use of water; that is, water used in excess of that needed to accomplish the intended beneficial use.

Specific Benefits Anticipated from the Proposed Regulatory Action

[Gov. Code § 11346.5(a)(3)(C)]

Protecting Human Health and Water Resources

- In addition to saving water, the proposed regulation may also bring about changes to urban landscapes that protect water quality by reducing dry-weather and wet-weather runoff.
- The proposed regulation would incentivize changes to urban landscapes, including, in some cases, the transition to climate-ready landscapes, which, for the purposes of the proposed regulation are landscapes that save water, reduce waste, nurture soil, sequester carbon, conserve energy and reduce urban heat, protect air and water quality, and create habitat for native plants and pollinators. Because climate-ready landscapes are more efficiently irrigated and make better use of precipitation, the proposed regulation could reduce wet-weather runoff, preventing water pollution and protecting water resources.
- By reducing urban water demand, the proposed regulation could help to preserve in-stream flows and water availability.

Supporting Practices that Keep Trees Healthy

- The proposed regulation incentivizes efforts to maintain and increase the urban tree canopy in California. It includes a provision for the planting of new, climate-ready trees and an alternative compliance pathway for suppliers that demonstrate their support of practices that keep trees healthy. By encouraging suppliers to invest in water conservation and tree care, the proposed regulation could not only save water but also support water-efficient irrigation practices that keep trees healthy.

Mitigating and Adapting to Climate Change

- Climate change is driving aridification and changing precipitation patterns. Aridification – hotter and drier conditions over longer periods – could diminish our existing water supply by up to 10 by 2040 (California Natural Resources Agency, 2022). Although a naturally occurring feature of California's climate, drought conditions have become more frequent and more intense. A combination of hotter temperatures and low precipitation years – especially when snowpack and snowmelt runoff are low - creates drier conditions. California has been getting drier since 1895. In California and across the southwestern United States, 2000 to 2021 were the driest 22-year period over the past 1,000 years, part of what

scientists call an emerging “megadrought” era (OEHHA, 2022). At the same time, changing precipitation patterns – more rain instead of snow and an increase in the duration, frequency, and intensity of “atmospheric river” storms – may lead to greater flooding risks and reservoirs having to release more water early in the spring to fulfill flood control functions, meaning less of the precipitation we do get can be captured and stored. Toward the end of the century, warming temperatures in California could result in a 30 percent loss of snowpack and a 25 percent increase in rain, leading to a higher volume of water rushing from headwaters and washing out across the state (Huang et al., 2020). In other words, we will likely be grappling with floods and drought simultaneously, causing impacts to water storage and availability.

- The proposed regulation will help us adapt to aridification and changing precipitation patterns. Finding and fixing leaks along with replacing older fixtures and appliances with efficient models will save water indoors and out. Saving water indoors, especially, saves energy, which can reduce the emission of greenhouse gases and other co-emitted air pollutants, improving air quality. If, as a result of work undertaken by suppliers to meet their objectives, households were to replace inefficient clothes washers with more efficient models, embedded statewide energy savings would reach approximately 1,860 GWh of electricity and 36.5 million MMBtu of natural gas by 2040; this equates to \$49 million in direct energy cost savings in 2025 and increased energy cost savings thereafter, reaching approximately \$100 million in 2040.
- Significant water savings can also be realized by transitioning away from high water-using landscapes such as turf to “climate-ready” landscapes. Climate-ready landscapes require much less water because they are planted with lower water-using vegetation that is irrigated much more efficiently. Because they are composed of deeply rooted vegetation and their soils enriched with mulch and compost, climate-ready landscapes are better at retaining rainwater. According to one study, such landscapes retain 80 percent of the rain (Kent, 2017). By slowing, spreading, and sinking rainwater, climate-ready landscapes help keep soils hydrated, which reduces irrigation needs. Climate-ready landscapes also lessen the impact of extreme wet weather events, helping to reduce flooding in urbanized areas.

Accelerating Nature-based Solutions, Diverting Organic Waste from Landfills, and Building Healthy Soils

- Implementation of the proposed regulation is likely to result in suppliers making investments and programmatic changes that encourage individuals, businesses, and local governments to change how they use water. Such changes have the potential to support statewide policies to accelerate nature-based solutions, divert organic waste from landfills, and build healthy soils.

Advancing equity

- The proposed regulation aims to support Governor Newsom's California's Water Supply Strategy's call on state agencies to respond to the hydrological challenges posed by climate change in a way that advances equity and supports disadvantaged communities (Water Supply Strategy, 2022). The proposed regulation incentivizes suppliers to make investments that not only save water but also advance equity. Specifically, the proposed regulation may, in the long-run, mitigate rate increases; it may also encourage suppliers to assess rate structures and invest in programs and partnerships that reduce urban heat.

EVALUATION OF INCONSISTENCY OR INCOMPATIBILITY WITH EXISTING STATE REGULATIONS

[Gov. Code, § 11346.5(a)(3)(D)]

The State Water Board reviewed its existing general regulations and regulations specific to water use efficiency and conservation to evaluate whether the proposed regulation is inconsistent or incompatible with existing state regulations. The State Water Board determined that no other state regulation addressed the same subject matter and that this proposal, if adopted, would not be inconsistent or incompatible with existing state regulations.

MANDATED BY FEDERAL LAW OR REGULATIONS

[Gov. Code, § 11346.2(c)]

Adoption of this regulation is not mandated by federal law or regulations.

OTHER STATUTORY REQUIREMENTS

[Gov. Code, § 11346.5(a)(4)]

Safe, Clean, Affordable Water

[Wat. Code, § 106.3]

Water Code section 106.3 states that it is the policy of the state that every human has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. In preparing the proposed regulation, the State Water Board determined the proposed regulation is consistent with this statewide policy. While the proposed regulation may, in some cases, result in increased costs to those served by a water system, that potential cost is expected to render water neither unaffordable nor inaccessible.

Urban Water Use Objectives and Water Use Reporting

[Wat. Code, § 10609.2]

Water Code section 10609.2 states that the Board, in coordination with the department, shall adopt long-term standards for the efficient use of water, and that the standards shall be adopted for (1) Outdoor residential water use; (2) Outdoor irrigation of landscape areas with dedicated irrigation meters in connection with CII water use; (3) A volume for water loss. Additionally, when adopting the standards, the Board shall consider the policies of Chapter 9 of Division 6, Part 2.55 of the Water Code and the proposed efficiency standards' effects on local wastewater management, developed

and natural parklands, and urban tree health. The Board also is required to set the long-term standards at a level designed so that the water use objectives, together with other demands excluded from the long-term standards such as CII indoor water use and CII outdoor water use not connected to a dedicated landscape meter, would exceed the statewide conservation targets required pursuant to Chapter 3 (commencing with Section 10608.16). Finally, section 10609.2 states that the Board, in coordination with the department, shall adopt by regulation variances recommended by the department pursuant to Section 10609.14 and guidelines and methodologies pertaining to the calculation of an urban retail water supplier's urban water use objective recommended by the department pursuant to Section 10609.16.

[Wat. Code, § 10609.10]

Water Code section 10609.10 states that the Board, in coordination with the department, shall adopt performance measures for CII water use.

Pre-Notice Meeting with Affected Parties [Gov. Code, §11346.45(a)]

Government Code section 11346.45, subdivision (a) requires that, prior to publication of the notice of proposed rulemaking, the agency proposing the regulation must involve parties who would be subject to the proposed regulation in public discussions, when the proposed regulation involves complex proposals or a large number of proposals that cannot be easily reviewed during the comment period. The State Water Board provided suppliers and other interested parties opportunities to be involved in public discussions about the proposed regulation in 12 workshops on the following topics:

- On December 3 and 4, 2021, State Water Board staff hosted two workshops describing the methods being used to analyze how the proposed efficiency standards could affect trees, parklands, and local wastewater management.
- On May 11, 2022, State Water Board staff hosted a workshop summarizing the results of the analysis undertaken to understand how the residential indoor and outdoor standards may affect the wastewater sector.
- On August 12, 2022, State Water Board staff hosted a workshop summarizing the results of the analysis undertaken to understand how the standards may affect trees and parklands.
- On February 23 and 28, 2023 and March 6, 8, and 10, 2023, State Water Board staff hosted workshops to provide an overview of the draft regulatory framework and sought the input of interested parties. Parties provided feedback to help staff understand and evaluate how the framework could affect various organizations, communities, and California. Staff also heard about whether or how various organizations could support efforts to make conservation a way of life.
- On March 22, 2023, State Water Board staff hosted a pre-rulemaking workshop during a public Board meeting. During this workshop, staff presented the proposed regulatory framework.

- On May 17 and 18, 2023, State Water Board staff hosted two workshops with small suppliers (those with less than 10,000 connections) to better understand how the draft regulatory framework could specifically affect small water suppliers.

LOCAL MANDATE

[Gov. Code, § 11346.5(a)(5)]

The proposed regulation would not impose a mandate on local agencies or school districts that requires state reimbursement. The proposed regulation will not be a requirement unique to local government and will apply equally to public and private water systems.

Local agencies currently incur costs in their operation of urban water systems. The costs imposed by the proposed regulation are not the result of a “new program or higher level of service” within the meaning of Article XIII B, section 6 of the California Constitution because the proposed regulation applies generally to all individuals and entities that operate urban water systems in California and does not impose unique requirements on local governments (County of Los Angeles vs. State of California et al, 43 Cal App 3d 46 (1987)). In addition, suppliers can pass on the cost of regulation implementation through increasing service fees. Therefore, no state reimbursement of these costs is required (Gov. Code, §17556, subd. (d)).

FISCAL IMPACT

[Gov. Code, § 11346.5(a)(6)]

Cost to Local Agencies and School Districts Requiring Reimbursement

None. Any costs incurred by local agencies or school districts as a result of the proposed regulation are not reimbursable by the State pursuant to Article XIII B, section 6 of the California Constitution. Urban retail water suppliers are expected to fully make up for the costs incurred as a result of the proposed regulation by adjusting their rates to customers over time. Government Code §17556, subdivision (d), identifies the types of actions that are not reimbursable state mandates: “the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service. This subdivision applies regardless of whether the authority to levy charges, fees, or assessments was enacted or adopted prior to or after the date on which the statute or executive order was enacted or issued.”

Other Non-discretionary Cost or Savings Imposed Upon Local Agencies

Suppliers operated by local governments: Most suppliers are operated by local governments, usually a city, county, or district, and these suppliers serve almost 81 percent of the total population in the state. Like privately-owned suppliers, some publicly-owned suppliers will likely incur costs to meet their water use objectives. Like privately-owned suppliers, publicly-owned suppliers on the one hand will spend less to acquire water and less on stormwater-related corrective measures, but, on the other hand, will potentially lose revenue due to the water use reductions. Ultimately, the Board expects that suppliers will fully make up for their lost revenues by adjusting their rates to customers over time. Publicly-owned suppliers would incur aggregate costs of

approximately \$8.45 billion and accrue benefits of approximately \$9.09 billion from 2025 to 2040.

Local wastewater management agencies: Water Code section 10609.2 requires that the State Water Board evaluate how the proposed efficiency standards may affect local wastewater management. Wastewater collection, treatment, and reuse agencies may experience increased costs, as well as potential benefits, when the influent volumes lessen or become more concentrated. Local wastewater management agencies would incur costs of \$2.5 billion; benefits for these agencies could not be quantified.

Urban forestry and landscape management agencies: Water Code section 10609.2 requires that the State Water Board evaluate how the proposed efficiency standards may affect urban tree health as well as natural and developed parklands. Potentially affected areas may develop or update urban forestry management plans to prioritize spending on new trees. To meet their objectives, 149 suppliers may have to facilitate savings in outdoor water use. The urban forests within the service areas of these suppliers could be at risk if the required savings are not thoughtfully achieved. If, however, the required water savings are achieved by, for example, increasing the efficiency of irrigation systems and/or by converting turf into climate-ready landscapes, the risk would be minimized. In such areas, likely mitigation actions would include improved public education programs for irrigation management, development of urban forestry management plans and updated tree inventories, and new investments in irrigation technologies adapted to tree watering needs. Local wastewater management agencies would incur costs of approximately \$100 million; benefits for these agencies could not be quantified.

Local institutional water users: Suppliers, both privately- and publicly-owned, and wastewater management agencies may choose to pass on some or all of their increased costs and benefits to their end-customers. Some of their end-customers are local governments, i.e., local institutional water users. The average water cost for an affected CII property might decrease by approximately \$168 per month in the 2025-2040 period (compared to the assumed future baseline). The average wastewater cost might increase by approximately \$6 per month in the same period (compared to the assumed future baseline). Combined, water and wastewater costs would decline on average by \$1,944 a year (compared to the assumed future baseline). Local institutional water users will not incur the cost of purchasing from their suppliers the water that they save. More specifically, local institutional water users, as well as other CII customers, will not use as much water as they would in the absence of the proposed regulation. These water savings are a direct result of the CII performance measures that CII customers, including local institutional water users, implement. All else equal, water savings mean lower water bills (compared to the assumed future baseline).

Local sales tax: Suppliers and households will spend more on residential water use efficiency programs and CII performance measures. Wastewater management agencies and urban forestry and landscape management agencies will also incur expenses because of the proposed regulation. Much of that spending includes purchases of several types of goods, including, for example, landscape material, high-efficiency toilets and washers, valves, and water leak monitoring equipment. Sales tax will generally apply to such purchases. The proposed regulation therefore is expected to

have an impact on sales tax revenues. Local sales tax revenues will be greater in the first years of the proposed regulation as this is when much of the water use efficiency measures are assumed to be implemented. Aggregate local sales tax revenues are estimated to increase (compared to the assumed future baseline) by almost \$21 million in 2025, and between \$500,000 and \$3.6 million per year in the following years.

Local inspection and permit fees: As Dedicated Irrigation Meters (DIMs), DIM tie-ins, and backflow devices are installed, suppliers will pay fees to local governments for the appropriate permits and backflow inspections. Local governments thus will experience an increase in revenues from such fees. The aggregate increase in revenue from inspection and permit fees across all local governments will amount to approximately \$2.9 million per year between 2025 and 2030. The additional local staff for these inspections and permitting processes would cost approximately \$1.8 million per year, including overhead, between 2025 and 2030 to local governments.

Local property taxes: Together, wastewater management agencies would incur costs of \$385 million per year between 2025 and 2030, and \$78 million per year afterward. The Board assumed that such costs would be passed on to customers. Wastewater management agencies may pass service charges to customers in different ways, including, for example, through wastewater service bills and property taxes. Wastewater charges are not a property tax and are not related to the assessed value of a property. However, these charges are sometimes included in property tax statements to save on administrative costs. If the estimated wastewater costs were passed on entirely via property tax statements, aggregate revenues across all counties in California would increase (compared to the assumed future baseline) by as much as \$385 million in 2025, and \$78 million per year in the following years.

Costs or Savings Imposed Upon State Agencies

State Water Resources Control Board: None. The State Water Board does not anticipate an increase in resource needs because of the proposed regulation.

State institutional water users: Suppliers are expected to pass on costs and benefits of the proposed regulation to customers, some of which are state institutional water users. The cost pass-through calculation for state institutional water users is the same as the one performed for local institutional water users, and, therefore, relies on the same assumptions and has the same limitations. The average water cost for an affected CII property might decrease by approximately \$168 per month in the 2025-2040 period (compared to the assumed future baseline). The average wastewater cost might increase by approximately \$6 per month in the same period (compared to the assumed future baseline). Combined, water and wastewater costs would decline on average by \$1,944 per year (compared to the assumed future baseline). Collectively, state institutional water users would not incur the cost of purchasing from their suppliers the water that they would save as a result of the proposed regulation. That is, state institutional water users, as well as other CII customers, will not use as much water as they would in the absence of the proposed regulation. These water savings are a direct result of the CII performance measures that CII customers, including state institutional water users, implement. All else equal, water savings mean lower water bills (compared to the assumed future baseline).

State sales tax: As explained for local sales tax, much of the spending by suppliers, households, wastewater management agencies, and urban forestry and landscape management agencies includes purchases of several types of goods; sales tax will generally apply to such purchases. The proposed regulation therefore is expected to have an impact on the state's sales tax revenue. State sales tax revenues will be greater in the first years of the proposed regulation as this is when much of the water use efficiency measures are expected to be implemented. State sales tax revenues are estimated to increase (compared to the assumed future baseline) by almost \$162 million in 2025, and between \$4 million and \$28 million per year in the following years.

Costs or Savings in Federal Funding to the State

None. The State Water Board has determined that the proposed regulation will not create additional costs or savings in federal funding to the state.

HOUSING COSTS

[Gov. Code, § 11346.5(a)(12)]

The State Water Board does not expect that the regulation will have an impact on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE

[Gov. Code, § 11346.3(a), § 11346.5(a)(7), § 11346.5(a)(8)]

Types of Businesses Affected

Urban retail water suppliers can be either publicly-owned (e.g., municipal agencies, special-purpose and irrigation districts, municipal water districts, and counties) or privately-owned (e.g., investor-owned utilities and nonprofit mutual water companies). The proposed regulation would apply to 405 urban retail water suppliers in the state, 337 of which are publicly-owned. For the purpose of the economic impact assessment, the Board assumed that "businesses" refer to the remaining 68 regulated privately-owned suppliers. Suppliers are generally local monopolies; households and CII customers usually do not have a choice between their water service supplier and another one. Therefore, suppliers are typically not subject to competition in the short term (see Creation of New Businesses or Elimination of Existing Businesses within California section and Competitive Advantages or Disadvantages for California Businesses section below).

Projected Compliance Requirements

Water Code section 10609 et seq. required the Department of Water Resources to provide recommendations on and the State Water Board to adopt standards for the efficient use of water, variances for unique uses that can have a material effect on water use, performance measures for commercial, industrial, and institutional water use, and guidelines and methodologies that identify how each urban retail water supplier will calculate an urban water use objective. The proposed regulation would require suppliers

to comply with urban water use objectives, implement the adopted CII performance measures, and submit annual progress reports.

Urban water use objective: A supplier's urban water use objective is a retrospective estimate of aggregate, efficient water use for the previous year, based on adopted water use efficiency standards and local service area characteristics for that year. A supplier's water use objective equals the sum of standard-based budgets for residential indoor use, residential outdoor use, CII landscapes with DIMs, which are submeters that supply water for only outdoor irrigation, and real water losses. When applicable, the urban water use objectives will also include variances (for example, for water use associated with livestock), provisions (for example, for existing pools, spas and similar water features or for the planting of new, climate-ready trees) and a bonus incentive for potable recycled water use.

Performance measures: CII performance measures are actions to be taken by urban retail water suppliers that would result in increased water use efficiency by CII water users. They will not affect industrial process water. Under the proposed regulation, there are three CII performance measures: (1) suppliers will be required to install DIMs on or employ in-lieu technologies for the landscapes of CII customers that a) do not have a DIM and b) the supplier estimates to have used more than 500,000 gallons of water; (2) suppliers will be required to classify their CII customers according to the broad classification categories used by the U.S. Environmental Protection Agency's ENERGYSTAR Portfolio Manager tool; (3) suppliers will be required to offer best management practices (BMPs) to CII customers that meet specific criteria.

Ability to Compete

[Gov. Code, §11346.5(a)(7)(C)]

The State Water Board has made an initial determination that the adoption of this regulation may have a significant, statewide adverse economic impact directly affecting business. The State Water Board has considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses.
- (iii) The use of performance standards rather than prescriptive standards.
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

The State Water Board has made an initial determination that the adoption of this regulation will not directly affect the ability of California businesses to compete with businesses in other states.

RESULTS OF THE STANDARDIZED REGULATORY IMPACT ANALYSIS (SRIA)

[Gov. Code, § 11346.5(a)(10), § 11346.3(c)]

Statement of Results

The State Water Board determined that the economic impact of the proposed regulation would likely exceed \$50 million in a 12-month period so the regulation should be considered a Major Regulation as defined by California Code of Regulations, title 1, section 2000, subdivision (g). The State Water Board prepared a SRIA as required by Government Code section 11346.3, subdivision (c).

The proposed regulation would save approximately 235,000 acre-feet of water in 2025 (compared to the assumed 2025 baseline water use) and increased amounts in subsequent years, reaching almost 440,000 acre-feet of water saved in 2040 (compared to the assumed 2040 baseline water use). The total cumulative amount of water savings in the 2025-2040 period would be approximately 6.3 million acre-feet. Most of the estimated water savings (approximately 80 percent) would come from the assumed residential water use efficiency measures, and the remainder (approximately 20 percent) from CII performance measures.

In the 2025-2040 period, quantified benefits of the proposed regulation are estimated to exceed the quantified costs. Assuming a discount rate of 3 percent, the State Water Board estimates present discounted values of \$16.0 billion for the quantified benefits and \$13.5 billion for the quantified costs.

Most of the estimated benefits originate from reduced water purchases or reduced water production (compared to the assumed future baseline) by the affected suppliers. The estimated benefits also originate from reduced water use (compared to the assumed future baseline) by residential customers (reduced water use by CII customers, although also a benefit, could not be quantified).

Most of the estimated costs originate from the implementation of residential water use efficiency measures, approximately \$5.8 billion from 2025 to 2040 or 43 percent of total estimated costs, and revenues that would be lost by suppliers (and, to a lesser extent, no wastewater management agencies), approximately \$4.7 billion or 35 percent. The estimated cost of wastewater infrastructure improvements and other related infrastructure projects during that period is approximately \$1.6 billion or 12 percent of total estimated costs.

Creation or Elimination of Jobs within California

The total number of jobs within the state is estimated to increase by approximately 18,000 in 2025. Increases in jobs statewide will range from 5,000 to 11,000 per year in the following years. The top industries experiencing increased employment are architectural, engineering, and related services; greenhouse, nursery, and floriculture production (including compost and mulch operations); and valve and fittings other than plumbing – mostly because of the increase in the demand for turf conversion to climate-ready landscapes.

Creation of New Businesses or Elimination of Existing Businesses within California

The main businesses affected by the proposed regulation are suppliers. Because these are generally local monopolies, households and CII customers usually do not have a choice between their water service supplier and another one. Thus, the proposed regulation is not expected to cause the entry of new suppliers or the exit of existing ones.

Based on increased expenditures by suppliers on residential water use efficiency measures and CII measures, and also on increased expenditures by urban forestry and landscape management agencies, and wastewater management agencies, the top industries experiencing increased sales growth rates include greenhouse, nursery, and floriculture production (including compost and mulch operations); major household appliance manufacturing; valve and fittings other than plumbing; architectural, engineering, and related services; and watch, clock, and other measuring and controlling device manufacturing. Sales growth can be met by increases in the size of existing firms or the creation of new firms in these industries. For traditionally local and small scale, labor-intensive firms such as landscapers or nurseries, sales growth will probably encourage new small businesses. On the other hand, existing manufacturers of major household appliances and plumbing fixtures may expand production.

Competitive Advantages or Disadvantages for California Businesses

The proposed regulation would not put in-state firms at a disadvantage. As noted, before, households and CII customers purchase water from their local water supplier, and they generally do not have a choice between their water service supplier and an out-of-state enterprise. Landscape services are labor-intensive and will likely be provided by existing California-based businesses. Products needed for residential and CII water conservation, such as laundry equipment and valve and fittings manufacturing, tend to be provided by sectors that already compete across state lines. Thus, the proposed regulation is not expected to affect the relative interstate competitiveness of California as a location for those industries.

Increase or Decrease in Investment in California

The increased production by various businesses, due to increased spending by suppliers, households, urban forestry and landscape management agencies, and local wastewater management agencies, should be met through increased production by in-state companies. Landscape services will grow, and given that these are labor-intensive, it seems unlikely that out-of-state companies will displace local landscaping companies. Production and manufacturing in other growth industries, including greenhouse and nursery production, valve and fittings manufacturing, household laundry equipment, and plumbing fixture manufacturing, will experience growth as well, which should attract in-state producers. The growth of these firms will require investment in capital equipment and raw materials.

Additionally, as discussed above, local wastewater management agencies are expected to invest in wastewater infrastructure improvements, such as pipe replacement in wastewater collection systems, and other related infrastructure projects, amounting to approximately \$1.6 billion from 2025 to 2040. These investments in wastewater-related infrastructure will in turn increase production and manufacturing in other industries including fabricated pipe and pipe fitting manufacturing, and pump and pumping equipment manufacturing, which, again, should attract in-state manufacturers. The growth of these firms will require further investment in capital equipment and raw materials.

Incentives for Innovation

Spending by suppliers is expected to spur innovation in certain areas. Given the noticeable increase in spending on landscape conservation programs, the Board anticipates that the industry will respond by developing new technologies and products, for example, new irrigation systems and products, new climate-ready landscapes, improved composting and mulch operations and processes, and by improving on existing installation processes. Many households will seek new low-cost climate-ready landscape strategies, and entrepreneurs who can supply products and services accordingly will grow. Additionally, leak detection equipment and infrastructure are growing and developing, and the increased spending by suppliers will hasten those developments.

Benefits of the Regulation

As explained before, one of the benefits of the proposed regulation that can be quantified is the water savings to suppliers and their customers. As a result of the proposed regulation, suppliers will spend less to acquire water, and similarly, customers will spend less on their water bills. The benefits to suppliers from the CII performance measures also include avoided stormwater-related expenses. Upgrading to more efficient fixtures and appliances leads to both water savings and energy savings. In particular, because more efficient washers use less water than inefficient ones, less water needs to be heated, and less energy is used.

The proposed regulation is expected to yield benefits that are not possible to quantify given the existing data. Compliance with the proposed regulation likely will:

1. Reduce the overall pressure on the limited water resources that many sectors in California compete for and reduce the need to cut water use—in any sector—when there is a drought.
2. Free up suppliers' water for their future use.
3. Improve water quality, improve soils, and sequester more carbon.
4. Improve safety, such as reductions in over-irrigation, mosquito breeding pools and slip hazards.
5. Reduce some landscape maintenance costs.
6. Reduce state costs of disposing of organic materials that should not go to landfills by increasing demand for mulch.
7. Protect biodiversity and support ecosystems.

Department of Finance Comments and State Water Board Responses

The SRIA was submitted to the Department of Finance (DOF) on March 13, 2023. DOF provided comments to the State Water Board on April 12, 2023. DOF generally concurred with the State Water Board's methodology in the SRIA and made three comments. The three comments, and the State Water Board's response to those comments, are as follows:

Comment 1: The version of the SRIA that DOF reviewed assumes that the estimated impacts will be not biased by the omission of water use data for the suppliers that did not provide the requested data, which account for about 11 percent of the affected population. However, if those water districts' water usage is significantly different, the estimated costs may be higher or lower. The SRIA must provide an analysis that shows the omitted suppliers have generally similar water usage patterns to the suppliers that provided data. For example, the SRIA can show that the omitted districts are generally consistent with the state average on publicly available characteristics that are correlated with water use.

Response to Comment 1: An analysis of omitted suppliers was added to the updated SRIA (see SRIA Appendix H). Twenty suppliers without available data had been omitted. The omitted suppliers are on average smaller (fewer than 10,000 connections) than the suppliers included in the least-cost analysis and represent less than 2 percent of all potentially affected connections. The omission of the suppliers, however, should not materially affect the findings in the SRIA. Using data on the number of connections for the 20 suppliers to extrapolate per-connection-year assumptions, present discounted values for residential cost and benefit were calculated. Residential cost and benefit would be approximately \$260 million and \$341 million, respectively, across all 20 suppliers and for the entire 2025-2040 period. These amounts represent approximately 2.5 percent of the combined residential cost and benefit estimated for all suppliers for which data were sufficiently available.

Comment 2: The version of the SRIA that DOF reviewed assumes that customers will apply an average use throttling (e.g., opening a faucet partially, rather than all the way) of 67 percent on their faucets and waterheads. If, instead, customers averaged 80 percent or 40 percent then the costs would change accordingly. The SRIA must provide evidence that the 67 percent assumption is the most accurate or provide a sensitivity analysis to show how the impacts may vary based on average throttling.

Response to Comment 2: An explanation of the 67 percent throttling assumption and supporting evidence was added to the updated SRIA (see SRIA Appendix D). Throttling assumptions were obtained from existing research on residential end use. More specifically, measured average flow rate for showerheads, bathroom faucets, and kitchen faucets was gathered from the residential end use studies' various data collection periods. This included data from: 1996 to 1998, 2005 to 2010, and 2010 to 2013. To calculate throttling rates, the measured average flow rate was then compared to the respective fixture standard during the data collection period. The calculated throttling rate ranged from 50 percent to 86 percent, with an average of 67 percent.

Comment 3: The version of the SRIA that DOF reviewed assumes that California energy costs from 2025 to 2040 will be equal to projected U.S. energy costs over the

same period despite acknowledging that historically energy prices have been more costly in the state than nationwide. The SRIA should either adjust the projected energy costs to account for this historical difference or justify the energy cost assumptions.

Response to Comment 3: The assumed projected U.S. energy costs were replaced in the SRIA with projected California energy costs obtained from the California Energy Commission, and the analysis was updated accordingly (see Energy Savings section of the SRIA). More specifically, annual energy price forecasts for natural gas and electricity for the 2025-2035 period were obtained from California Energy Commission's Energy Demand Forecasts (CEC 2021 and 2022 Integrated Energy Policy Reports). The estimated annual energy cost savings for residential customers of both privately-owned suppliers and publicly-owned suppliers were updated accordingly. Under the assumed California energy costs, the replacement inefficient clothes washers with more efficient clothes washers across suppliers' service areas would result in approximately \$49 million in energy savings in 2025 and increased energy cost savings thereafter, reaching approximately \$100 million in 2040.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

[Gov. Code, § 11346.5(a)(9); Cal. Code Regs., tit. 1, § 4(a) and(b)]

Typical Business

To assess the direct cost impact on the typical regulated business (all regulated businesses are privately-owned suppliers), the Board analyzed the 67 privately-owned suppliers for which data were available. Combined, they serve approximately six million people statewide. For this analysis, a typical business is defined as a hypothetical privately-owned supplier with the average size and average attributes. The typical supplier thus defined has 22,000 service connections and serves approximately 92,000 people. The typical supplier would incur a direct cost of approximately \$7.5 million in 2025. In subsequent years, the typical supplier would incur direct costs ranging between \$1 million and \$5 million.

Individual

The proposed regulation applies to urban retail water suppliers only. Customers who elect to participate in rebate and incentives programs their suppliers may offer will incur upfront costs associated with the implementation of the residential water use efficiency measures. If an average of 38.9 million individuals are assumed to reside in the service areas of all suppliers in the 2025-2040 period, then, before rebates, the upfront expenses incurred by customers with the residential water use efficiency measures are approximately \$102.6 per person on average in 2025, and range between \$1.3 and \$7.7 per person on average, per year, in the following years.

BUSINESS REPORT

[Gov. Code, § 11346.5(a)(11), § 11346.3(d)]

As a result of the proposed regulation, urban retail water suppliers likely will have to develop water reduction strategies, including rebate and other incentives programs, and submit annual progress reports. It was assumed that there will be ongoing administrative compliance costs of reporting. The annual reporting costs per supplier,

whether privately-owned or publicly-owned, was estimated to be approximately \$5,000, and is based on the annual cost of one eight-hour day each month for a typical engineer (the median California wage for a mechanical engineer is \$53.99 per hour as reported by the Employment Development Department). These work-hour estimates for the reporting costs were obtained based on outreach with suppliers across California and a review of conservation programs statewide. The State Water Board has concluded that it is necessary for the health, safety, or welfare of the people of the state that the regulation apply to businesses.

SMALL BUSINESS

[Cal. Code Regs., tit. 1, § 4(a)]

Urban retail water suppliers are water companies (utilities) providing drinking water to the public and, pursuant to Government Code section 11342.610, are not small businesses.

CONSIDERATION OF ALTERNATIVES

[Gov. Code, § 11346.5(a)(13)]

The Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Board invites interested persons to present statements or arguments with respect to alternatives at the public hearing or during the written comment period.

ALTERNATIVES CONSIDERED BY THE BOARD

The State Water Board considered two alternatives to the proposed regulation. The two alternatives were evaluated for costs and benefits, economic impacts, and cost-effectiveness relative to the proposed regulation, and both alternatives were rejected. A fuller discussion of Alternatives Considered by the Board can be found on pages 28-29 in the Initial Statement of Reasons.

FORMS OR DOCUMENTS INCORPORATED BY REFERENCE

[Cal. Code Regs., tit. 1, § 20(c)(3)]

None.

STATE WATER BOARD CONTACT PERSONS

[Gov. Code, § 11346.5(a)(14)]

Requests for copies of the proposed regulatory text, the Initial Statement of Reasons, subsequent modifications of the proposed regulatory text, if any, or other inquiries concerning the proposed action may be directed to:

Charlotte Ely
Environmental Program Manager
State Water Resources Control Board
Email address: charlotte.ely@waterboards.ca.gov

Karina Herrera
Senior Environmental Scientist
State Water Resources Control Board
Email address: karina.herrera@waterboards.ca.gov

In the event Charlotte Ely and Karina Herrera are not available to respond to requests or inquiries, please contact:

Paola Gonzalez
Environmental Scientist
State Water Resources Control Board
Email address: paola.gonzalez@waterboards.ca.gov

Climate and Conservation inbox
ORPP-WaterConservation@Waterboards.ca.gov

Please identify the regulation by using the State Water Board regulation package identifier, “**Proposed Making Conservation a California Way of Life Regulation**” in any inquiries or written comments.

AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATION AND THE RULEMAKING FILE

[Gov. Code, § 11346.5(a)(16)]

The State Water Board has prepared and has available for public review an initial statement of reasons for the proposed regulation, all the information upon which the proposed regulation is based, the text of the proposed regulation, and all other required forms, statements, and reports. In order to request that copies of these documents or alternative formats of these documents be mailed or emailed to you, please write to or email the Contact Persons. Upon specific request, these documents will be made available in Braille, large print, or CD.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

[Gov. Code, § 11346.5(a)(16)]

After holding the hearing and considering relevant comments received in a timely manner, the State Water Board may adopt the proposed regulation substantially as described in this notice. If the State Water Board makes modifications that are substantially related to the originally proposed text, the State Board will make the modified text – with changes clearly indicated – available to the public for at least 15 days before the State Water Board adopts the modified regulation. Any such modifications will also be posted on the State Water Board Web site. Please send requests for copies of any modified regulation to the attention of the contact persons provided above (“Contact Persons”). The State Water Board will accept written comments on the modified regulation for 15 days after the date on which they were made available.

AVAILABILITY OF FINAL STATEMENT OF REASONS

[Gov. Code, § 11346.5(a)(19)]

The State Water Board will prepare a final statement of reasons pursuant to Government Code section 11346.9 after final adoption of the regulation, and when ready will make the final statement of reasons available. A copy of the Final Statement of Reasons may be obtained from the contact persons or the State Water Board program webpage, listed in the next section.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

[Gov. Code, § 11346.4(a)(6); § 11346.5(a)(20)]

Copies of this Notice of Proposed Rulemaking, the Initial Statement of Reasons, and the text of the regulation may be found on the [Rulemaking to Make Conservation a California Way of Life | California State Water Resources Control Board](#) page.

August 18, 2023

Date



Courtney Tyler
Clerk to the Board