

July 16, 2024

Services

[Public Finance](#)

Contact

Cyrus Torabi
Irvine
(949) 417-0999
cyrus.torabi@kutakrock.com

California State Water Resources Control Board Adopts Permanent Water Conservation Regulations

In the past decade, California has endured two multi-year droughts that have led to temporary restrictions on water use. The temporary restrictions were lifted when drought conditions eased. In an effort to ensure sufficient water supplies for future dry periods, the California Legislature passed two bills (AB 1668 and SB 606) in 2018 which mandate water conservation measures on a permanent basis. The legislation laid out a new long-term water use framework for urban water suppliers in California and called for the California State Water Resources Control Board (the "SWRCB") to adopt implementing regulations for the following:

- Indoor residential water use;
- Outdoor residential water use;
- Landscape irrigation; and
- Water loss.

On July 3, 2024, the SWRCB adopted the required implementing regulations. Although the regulations go into effect on January 1, 2025, no water use reductions will be enforced until 2027. The regulations do not directly restrict water use by individuals or businesses and they do not apply to suppliers of irrigation (i.e., non-potable) water, suppliers with fewer than 3,000 connections or those that supply less than 3,000 acre-feet of water per year. The regulations will apply to approximately 405 urban water suppliers (including cities, water districts and private water companies) that supply approximately 95% of California's population with potable water. However, many of these suppliers are already carrying out water conservation efforts that meet the regulatory standards.

For suppliers whose conservation efforts will need to be ramped up, the regulations do not establish a one-size-fits-all approach. Instead, water conservation thresholds for each supplier will be customized based on factors such as local climate and precipitation, local land uses (with higher thresholds for newly built residential areas and land used for livestock or agriculture), the level of recycled water deliveries, and historical water use. In recognition that it may be more difficult and more costly for lower-income areas to meet the standards, median household income is also taken into account. [Information about each affected supplier's service area characteristics can be found here.](#)

Suppliers must establish annual water budgets for their customers' indoor residential, outdoor residential and landscape irrigation uses as well as limits on water losses, which will be combined to establish a Water Use Objective (the "WUO"). The WUO includes allowances for certain variances and temporary adjustments, such as the use of water in cooling centers during periods of extreme heat or to counter

negative impacts to wastewater collection and treatment, and bonuses for potable reuse efforts. In lieu of water budgets for landscape irrigation, suppliers can adopt alternative measures such as installing dedicated irrigation meters or providing rebates to replace inefficient irrigation fixtures, replace turf or install green infrastructure (e.g., swales or rain gardens).

The WUO will be met even if individual components in the formula exceed their budgeted use limits in a given year. For example, if indoor residential water use by a supplier's customers exceeds the budgeted amount, the WUO will still be met if the sum of water use in all categories does not exceed the total WUO budget. Suppliers will be presumed to be in compliance with the regulations if their customers' water use in 2040 does not exceed 70% of their water use in 2026. The regulations require suppliers to reduce their water budgets no less frequently than during each five-year period through 2040.

The regulations also require each urban water supplier to provide to the SWRCB in a machine-readable format, by January 1 of each year, commencing January 1, 2025: (i) its WUO; and (ii) a report detailing actual water use among the various user categories for the prior year. Fines for non-compliance with the regulations can reach as much as \$10,000 per day.

The expectation is that compliance with the regulations will be more cumbersome for smaller urban water suppliers in lower-income areas, as many larger suppliers have already adopted water budget-based rates. Environmental groups have criticized the regulations as requiring too little conservation in the near term, while water industry groups have called for financial support from the SWRCB or other state agencies to ensure that the standards can be met without undue hardship to retail customers.

Kutak Rock LLP's [Public Finance Practice Group](#) has served on numerous occasions as bond and disclosure counsel to urban water suppliers throughout California and nationwide. Please contact [Cyrus Torabi](#) in Kutak Rock's Irvine office for further information about the water conservation regulations. You may also visit us at www.KutakRock.com.

