

May Revise Drought/Prop 1 Trailer Bills

[820] Drought – Expanded Local Enforcement Authority

Summary

California's local water agencies have a diverse range of authorities to enforce local conservation measures. Some local agencies under existing law have enforcement authority, others do not. Last year's drought legislation (SB104/2014, Budget Committee) authorized infractions of \$500/day for violations of emergency drought regulations. Not all local agencies could exercise this authority. It required a court proceeding and any penalties assessed pursuant to the process would have gone through a cost-sharing mechanism with the courts, county, and local agency that initiated the enforcement action.

This proposal would provide a minimum set of enforcement tools to all local water agencies, including wholesalers, retailers, and non-urban water agencies. The tools would allow local water agencies to enforce their own water conservation ordinances, as well as emergency conservation regulations adopted by the State Water Board. Penalties assessed under the new authority would be directed to local conservation programs.

Specifically, the proposal:

- Allows local water agencies to enforce their water conservation ordinances;
- Allows public entities to issue and assess civil liabilities for violations of local water conservation ordinances and State Water Board conservation regulations;
- Authorizes a penalty of up to \$10,000 for the first violation;
- After 30 days of continued violations, authorizes an additional penalty of up to \$10,000 plus up to \$500/day of additional violations beyond 30 days;
- Allows the new civil penalties to be assessed by the local agency pursuant to a process that conforms with due process or by court;
- Requires the local agency or court to consider a variety of factors in determining the penalty (e.g., the nature and persistence of the violation, the extent of the harm caused by the violation, the length of time over which the violation occurs, and any corrective action taken by the violator);
- Allows the local agencies to deputize staff to issue complaints and citations for violations of conservation ordinances and regulations; and
- Provides that any penalties collected under the new authority go to the local agency's conservation programs.

[823] Drought Penalties

Summary

Penalties assessed by the State Water Board or a court for violation of the State Water Board's emergency drought regulations are deposited in the Water Rights Fund. They are commingled with other deposits into the Water Rights Fund, and subject to appropriation by the Legislature for the authorized fund uses. In the Water Rights Fund, these penalties increase the fund balance and reduce the need for fee increases. This proposal would require the State Water Board to separately account for penalties assessed for violations of emergency conservation regulations. Those funds would then be available for appropriation by the Legislature to support water conservation activities and programs.

The proposal would ensure that penalties assessed by the State Water Board for violations of emergency water conservation regulations are expended to further statewide conservation efforts.

[824] Drought Monitoring and Reporting

Summary

Most surface water diversions in California are required to be reported to the State Water Board on either an annual or three-year cycle, depending on the type of water right. There are not uniform standards for measuring the diversions, although persons typically have to be able to describe the amount of water diverted in a specific month. The lack of timely and accurate water diversion data has frustrated California's ability to respond to the drought and enforce the water rights seniority system.

This proposal would provide a baseline of annual diversion reporting to the State Water Board for all classes of water rights and specify minimum measuring accuracy for diversions in excess of 10 acre feet per year. The State Water Board could provide exemptions to the measuring requirements based on certain factors, including feasibility and cost. The proposal would provide authority for the State Water Board to develop the measurement device regulations as emergency regulations not subject to the California Environmental Quality Act, and would generally allow the State Water Board to adopt regulations to further the reporting requirements. The permanent regulations adopted by the State Water Board could be enforced by assessing a civil liability, extending some of the State Water Board's emergency drought authority (SB104/2014, Budget Committee) to apply outside of a drought.

Specifically, the proposal:

- Extends existing civil liability enforcement authority beyond emergency drought regulations and during a drought emergency to permanent regulations adopted by the State Water Board;
- Provides that diversions in excess of 10 acre feet per year, subject to certain exceptions, must have a measuring device that satisfies certain minimum requirements for accuracy and frequency of reporting;

- Measuring device requirements would be staggered with diversions subject to the State Water Board's permit and license authority required to begin measuring after January 1, 2016, and other right holders after July 1, 2016;
- Provides authority for the State Water Board to adjust the measuring device requirements if strict compliance with the law would be infeasible, unreasonably expensive, unreasonably affect public trust resources, or would result in a waste or unreasonable use of water;
- Establishes a minimum, annual water diversion and use reporting frequency to the State Water Board; and
- Authorizes the State Water Board to adopt emergency regulations not subject to CEQA to implement the measuring device requirements.

[825] Drought Water System Consolidation

Background

- Some water systems lack capacity to adequately serve their customers. During this drought, some have run out of water completely. Nearby water systems may or may not be willing to serve the customers of the failing system.
- This proposal would authorize the State Water Resources Control Board to require consolidation under certain limited circumstances.

[826] Drought Submetering

Summary

- 1) Would encourage responsible water consumption and conservation by providing residents with accurate information about the volume and cost of their water use through a process known as submetering.
- 2) Would require the measurement of water consumption by individual dwelling units in newly constructed multi-unit residences through submetering.
- 3) Provides framework for the charging of water used by tenants by property owners and third party builders.
- 4) Requires an update to the plumbing and building codes: 1) to provide notice to developers and local governments and 2) promote state uniformity .

[827] Groundwater Well Permits- CEQA Exemption for Local Ordinances for Groundwater Protection

Summary

- Counties typically issue well permits. Those permits are typically ministerial. In this drought, some counties have adopted ordinances to limit new groundwater wells.

- This proposal would do two things. First, it would include legislative findings clarifying that local governments may regulate groundwater pursuant to their police power.
- Second, it would provide a limited CEQA exemption for adopting a groundwater protection ordinance. That exemption would expire within two years, or upon the cessation of the current Drought State of Emergency, whichever is later. The exemption is needed to protect counties that wish to adopt groundwater protections from CEQA lawsuits. Such a lawsuit could delay implementation of such an ordinance and this provision is intended to provide immediate relief.

[830] Drought Stormwater Plans

Summary

Proposition 1 grants for stormwater and dry weather runoff capture projects are only available for projects that have a stormwater resource plan that is in compliance with part 2.3 (commencing with section 10560) of division 6 of the Water Code. Part 2.3 was amended last year (SB 985, Pavley) to require the State Water Board by July 1, 2016, to adopt guidelines so that local agencies could adopt compliant stormwater resource plans. Unlike funding guidelines in Proposition 1, the guidelines required by part 2.3 were not provided a streamlined approval process to accelerate the award and disbursement of Proposition 1 funds.

This proposal would make the State Water Board's guidelines for stormwater resource plans subject to the same expedited process and rulemaking exemptions as Proposition 1 guidelines. Absent the proposal, the \$100 million for stormwater projects in the Governor's May Revise would be delayed until after the State Water Board adopted guidelines through an Administrative Procedure Act rulemaking process. That would not occur until the existing statutory deadline of July 1, 2016.

[831] CEQA Exemption for Drought Mitigation

- The administration is examining ways to speed delivery of such projects. The requirements of the California Environmental Quality Act have been identified as potential impediments.
- Even on small projects, CEQA review may add several months to project delivery, and for larger projects, it can add years.
- The administration has proposed a set of narrow exemptions to speed delivery of a few key categories of drought relief projects.
- Historically, CEQA has included various exemptions for projects that advance an interest that the legislature determines are worth forgoing full environmental review. For example, in recent years, the legislature has exempted certain projects for roadway safety, pipeline safety, emergency telecommunications, railroad crossings, and bicycle plans.

Exemption for Certain Projects During a Drought State of Emergency

Background

- The Public Resources Code exempts projects responding to a disaster for which a state of emergency has been declared. It also exempts projects that mitigate or prevent an “emergency.” At least one court has interpreted the word “emergency” to exclude drought.
- This proposal would exempt certain specified drought relief projects that are approved during a declared state of emergency.

[832] CEQA Exemption for Building Code Provisions Regarding Plumbing for Recycled Water

Background

- AB 2282 required BSC and HCD to study codes to include requirement for dual plumbing. Changes to the building code would typically need to undergo CEQA. Exempting those changes from CEQA would allow the development of new water saving codes much quicker.