



THE NEW AGE OF WATER REGULATION— WHO WILL FLOAT TO THE TOP?

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Water is on everyone's mind, from the Central Valley farmer to the suburban gardener, from the Kern County oil driller to the Central Coast retiree. We've reached the inevitable point where there just isn't enough to go around. So what happens next?

As with any high-stakes environmental issue, the lawyers step in. Lawmakers are struggling to figure out how to manage California's most critical resource against a backdrop of arcane water rights law governed primarily by cases decided in the nineteenth century. Water law, such as the big-money fights over rights to divert water from the Colorado River, has traditionally been the stuff of law school textbooks. Not for long.

Considering Governor Jerry Brown's recent executive action to limit urban water use significantly, the passage of the game-changing Sustainable Groundwater Management Act (SGMA), and a 2014 Scott Valley decision that applies the public trust doctrine, state regulators have developed a variety of relatively new and powerful tools for regulating water quantity and quality. The approval in November of Proposition 1, a \$7.5 billion water bond, provides the state with significant resources to reshape the way California manages water. The water wars are coming to Main Street—these high-stakes disputes will be hashed out in courtrooms for decades to come, and the outcomes will shape the fate of California in the twenty-first century.

WATER-USE RESTRICTIONS

Governor Brown's April 1, 2015, seven-page executive order mandating a 25 percent reduction in statewide water use is the first of its kind in California, the culmination of two years of Brown flexing his executive muscle to manage water.

The order takes a heavy-handed approach to managing urban water use, mandating reductions in statewide use compared to 2013 levels. Per the terms of the order, the Department of Water Resources (DWR) will focus restrictions on heavy urban water users. DWR's April 7, 2015, proposed framework for implementing the law assigns a re-



duction requirement for each water supplier, requiring the heaviest users (more than 165 gallons per day per capita) to reduce usage by 35 percent. By contrast, in areas where per capita use is less than 55 gallons per day per capita, use need only be reduced by 10 percent. DWR also apparently intends to impose new reporting requirements on industrial, commercial, and institutional users.

DWR's proposed framework appears to acknowledge that its enforcement capacity is limited, stating that additional enforcement tools may be adopted by emergency regulation as part of this program.

The order charges DWR with leading a statewide initiative to replace 50 million square feet of lawns with drought-tolerant plants and with funding programs for underserved communities. It requires the State Water Resources Control Board (State Water Board) to impose restrictions on use of potable water on campuses, golf courses, and cemeteries, and to prohibit irrigation of street medians with potable water. It also requires the State Water Board to "direct urban water suppliers to

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develop rate structures and other pricing mechanisms . . . to maximize water conservation." And perhaps most notably, it requires a significant uptick in enforcement against what the order terms "water waste."

The order does far less to limit agricultural use of water. Irrigation districts are directed to develop drought management plans, and some agencies are required to monitor and report water-usage levels. But the order does not prohibit particular uses and does not empower the agencies to dictate what crops are planted.

The terms of the order are controversial, to say the least. One major criticism is that the order focuses primarily on municipal and urban water uses, which make up less than 25 percent of Californians' overall water use, leaving the agricultural industry to its own devices.

But while many urban water users are only starting to feel the effects of the drought, farmers have already been heavily hit. More than 400,000 acres were left unplanted last year, dealing a \$2 billion blow to the state's economy. For the second year in a row, most Central Valley farmers are expecting no deliveries from the valley's big federal irrigation project, and the State Water Project will provide only 20 percent of requested deliveries this year.

This order comes on the heels of significant restrictions on surface-water use that were implemented in 2014. Acting under the authority of Governor Brown's January 2014 emergency declaration, the State Water Board, beginning in May of last year, issued a series of curtailment notices and orders that limited