



# Newsom Issues Executive Order N-7-22 Outlining California's New Drought Strategies

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As part of a busy few weeks that revealed the severity of the drought California is currently facing, Governor Gavin Newsom issued Executive Order N-7-22. The executive order is the latest in a series of orders aimed at addressing the impacts of the drought and could impact water users throughout the state.

## State Water Resources Control Board Actions

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Governor Newsom gives the State Water Resources Control Board (State Water Board) much of the responsibility for carrying out Executive Order N-7-22, including for the two "headline" actions – the possibility that urban water suppliers may be required to adopt more stringent water conservation strategies and the ban on irrigating "non-functional turf."

### Urban Water Suppliers

Governor Newsom directed the State Water Board to consider adopting emergency regulations focused on urban water suppliers. If adopted, the potential regulations would require the vast majority of urban water suppliers to enact Level 2 of their water shortage contingency plans. Those plans are developed by the suppliers and provide actions they will take if their water supplies are cut to certain levels. Here, Level 2 would represent the suppliers acting as if their water supply had been reduced by 20%. For the other 55 water providers (roughly 14% of the total) that have not yet submitted water shortage contingency plans, the State Water Board would create plans modeled off of the submitted plans. If the State Water Board chooses to adopt the emergency regulations, the effects would likely be felt throughout the state.

### Non-Functional Turf

The executive order also directs the State Water Board to consider adopting emergency regulations defining "non-functional turf" by May 25, 2022. Both the executive order and corresponding press release

confirm that the definition should only apply to ornamental turf that is not functional, excluding turf such as school fields, sports fields and parks from the definition. If the definition is adopted, the State Water Board must then consider banning irrigation of the non-functional turf in the commercial, industrial and institutional sectors (with limited exceptions). The proposed ban is anticipated to save several hundred thousand acre-feet of water per year.

### **Other State Water Board Responsibilities**

The State Water Board is also required to:

- “[E]xpand inspections to determine whether illegal diversions or wasteful or unreasonable use of water are occurring and bring enforcement actions against illegal diverters and those engaging in the wasteful and unreasonable use of water;”
- “[E]xpeditiously consider petitions that add a fish and wildlife beneficial use or point of diversion and place of storage to improve conditions for anadromous fish;” and
- Along with the Regional Water Quality Control Boards, “prioritize [approvals/etc.] to accelerate approvals of projects for capturing high precipitation events for local storage or recharge.”

### **Department of Water Resources Actions**

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The Department of Water Resources also takes a central role in the executive orders. Its primary responsibilities are:

- “[P]repare for the potential creation and implementation of a multi-year [water] transfer program pilot project;”
- “[W]ork with other state agencies to modify, repair, or reconstruct failed household or small community or public supply wells;” and
- Consult with industry to “develop strategies for improving water conservation, including direct technical assistance, financial assistance, and other approaches.”

### **Actions for All State Agencies**

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Governor Newsom also requires that all state agencies:

- “[C]ollaborate with tribes and federal, regional, and local agencies on actions related to promoting groundwater recharge and increasing storage;” and
- Submit proposals focusing on mitigating the effects of severe drought by April 15, 2022.

### **Orders Directly Impacting Other Parties**

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The executive order also includes actions directly applicable to many stakeholders.

- The executive order suspends California Environmental Quality Act (CEQA) requirements for the urban water suppliers and non-functional turf actions. Potentially more impactful though is the order suspending CEQA for “any other projects and activities for the purpose of water conservation to the extent necessary to address the impacts of the drought” and related permits. These actions streamline the process to take such actions.
- The executive order seeks to promote water hauling by suspending any ordinances/etc. that ban water hauling outside of its original water basin. The suspension is limited though and only applies to “communities or residences threatened with the loss of affordable safe drinking water.”
- The executive order includes limitations on building new wells or altering existing ones, as long as the well at issue provides at least two acre-feet per year of groundwater. The general limitation requires findings that

extracting the groundwater (1) would not interfere with nearby wells and (2) is not likely “to cause subsidence that would adversely impact or damage nearby infrastructure.”

- The executive order also includes a separate requirement for wells in a medium- or high-priority basin under the Sustainable Groundwater Management Act (SGMA). There, the Groundwater Sustainability Agency must make written findings that the well would not (1) be inconsistent with the applicable Groundwater Sustainability Plan and (2) decrease the likelihood of achieving an applicable sustainability goal. In short, the order stiffens the SGMA requirements for medium- and high-priority basins.
- Lastly, the executive order requires that parties implementing certain recharge projects list certain actions and permits on their websites.

### **What the Executive Order Did Not Cover**

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The most notable exclusion from the executive order is water for agricultural use. Agriculture accounts for about 40% of all of the water used in California, which rises to about 80% when focusing on the water directly used by humans (i.e. excluding environmental use). Any actions the government takes that exclude restrictions or limitations on agricultural use have limited ceilings.

The executive order also does not include any mandatory cuts in water usage/any moderation of demand. Assuming the State Water Board issues the regulations banning the irrigation of non-functional turf and requiring urban water suppliers to activate Level 2 on their water shortage contingency plans, those regulations will likely have a direct impact on decreasing water usage. However, since urban water suppliers create their own plans and are in charge of implementing it themselves, it is unclear what impact Level 2 will have on demand.

### **How Will This Impact the Drought in California?**

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Governor Newsom’s executive order touches on a variety of areas and may increase the state’s ability to manage its water supplies during the current severe drought. However, it still uses a fairly light touch in its requirements and actions. As illustrated by the focus on urban water suppliers, the executive order continues to focus on local action to drive the proper response to the drought, while avoiding confrontations with agricultural interests and avoiding direct restrictions on Californians. We will have to see what, if any, future steps California will take to address the drought and its impacts on water users throughout the state.