

## MEMORANDUM

To: California Association of Mutual Water Companies

From: James D. Ciampa

Re: Senate Bill 814 Compliance

Date: September 28, 2016

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On August 29, Governor Brown signed Senate Bill 814 (Hill) into law. This new law adds a chapter to the Water Code to address excessive water use during times of drought. The new law, as discussed below, requires urban retail water suppliers to select between two alternative courses of action to address customers' excessive water use during a drought. In enacting SB 814, the Legislature found it was necessary to "further important state water policies of encouraging water conservation and protecting water resources in the interest of the people and for the public welfare."

This memorandum, in question and answer format, provides guidance to mutual water companies that are "urban retail water suppliers" in complying with SB 814's new mandates.

**1. To Whom does SB 814 Apply?** SB 814 applies to "urban retail water suppliers," as defined in Water Code Section 10608.12 as "a water supplier, either publicly or privately owned, that directly provides potable municipal water to more than 3,000 end users or that supplies more than 3,000 acre-feet of potable water annually at retail for municipal purposes." Thus, if your company has more than 3,000 service connections or supplies more than 3,000 acre-feet of water to retail customers, you must comply with SB 814.

**2. When does SB 814 Apply?** SB 814 applies in the following three instances:

(i) **Statewide and Local Drought:** during a period when the governor has proclaimed a statewide drought emergency and an urban retail water supplier has moved to a stage of action in its water shortage contingency plan that requires mandatory water use restrictions due to a local water supply shortage;

(ii) **Local Drought (no Governor Declaration)**: where an urban retail water supplier has moved to a stage of action in its water shortage contingency plan that requires mandatory water use restrictions due to a local water supply shortage; or

(iii) **Local Drought (Governor Declaration regarding Local Conditions)**: where an urban retail water supplier is affected by local drought conditions during a period where the governor has declared a state of drought emergency based on local drought conditions.

Thus, SB 814 can apply in situations where the governor proclaims statewide or local drought conditions (subdivisions i and iii, respectively), or where the local water supplier requires mandatory water use restrictions under its water shortage contingency plan due to local water shortage conditions, regardless of the governor's proclamation of drought (subdivision ii).

**3. What Actions Must an Urban Retail Water Supplier Take to Comply with SB 814?** If one of the conditions specified in Item 2, above, is met, then the urban retail water supplier must establish a method to identify and discourage excessive water use by either:

(i) **Establishing a rate structure that discourages excessive water use.** Such a rate structure may be tiered rates, water budgets or rate surcharges for excessive water use that are over and above base rates, but any such structure must comply with applicable constitutional and statutory limitations (for mutual water companies, that would essentially be the limitation of providing water service "at cost," which means without profit, as the constitutional limitations of Proposition 218 do not apply to mutuals); or

(ii) **Establishing an excessive water use rule, or amending an existing rule.** Such a rule must include a definition of, or a procedure to identify and address, excessive water use by metered customers (i.e., single-family metered residences or multi-unit housing where each unit is individually metered). That rule **may** include a process to issue written warnings to a customer and perform a site audit of customer water usage prior to deeming the customer in violation.

**4. What is Considered "Excessive Water Use" for Purposes of SB 814?** Under SB 814, the water supplier is to create its own definition as to what constitutes "excessive water use" in its jurisdiction. Water Code Section 366(b)(2)(B) specifies the factors an urban retail water supplier may consider in developing that definition of "excessive water use." Those factors include: (i) average daily use; (ii) full-time occupancy of households; (iii) amount of landscaped land; (iv) rate of evapotranspiration; and (v) seasonal weather changes. SB 814 does not preclude other factors from being considered in that definition.

**5. What Penalties are Authorized by SB 814?** SB 814 authorizes the water supplier to determine the penalty for an excessive water use violation, but specifically

authorizes fines of up to \$500 per 100 cubic foot billing unit used above the supplier's particular excessive water use threshold. The exact fine amount is left up to the discretion of the water supplier and is not a mandatory amount. Any such fine is to be added to the violating customer's next water bill, to be due and payable with that bill. The water supplier must also have a process in place, consistent with due process (i.e., notice and an opportunity to be heard), with respect to the possible non-payment of the fine, and that process must be reasonably similar to the supplier's existing process for non-payment of a water bill, such as for terminating water service.

**6. What are a Customer's Appeal Rights under SB 814?** The water supplier must establish an appeal process to allow a customer to contest any fine imposed for excessive water use. That appeal process must allow the customer to present evidence that there was not excessive water use or of a bona fide reason for the excessive water use, such as a water leak, a medical reason or any other reasonable justification for the water use. As part of that appeal, the water supplier must provide documentation demonstrating the excessive water use.

**7. How do We Comply with SB 814?** SB 814 will take effect on January 1, 2017. Thus, those companies that are urban retail water suppliers subject to this new law must take steps to comply with its provisions. We suggest the following:

(i) Determine what alternative your company will pursue to identify and discourage excessive water use – either by rate structure or by rule.

(ii) If you choose the rate structure alternative, you will need to develop that structure in a manner that includes a component that specifically discourages excessive water use. That rate structure must therefore include a determination of what level of use will constitute "excessive water use." It would be prudent to engage a rate consultant to assist in developing that structure, or, if your company already has such a rate structure in place, to determine whether any changes are necessary to ensure compliance with SB 814.

(iii) If you choose to proceed with addressing SB 814's requirements by adopting a new rule, or amending an existing rule, then the following steps should be taken:

(a) If you are amending an existing rule, you must first review the existing provisions to determine what changes will be required to ensure compliance with SB 814. Such changes likely will include adding the definition of "excessive water use" (including the factors that would apply in making that determination), amending or adding any fine provisions (if so desired), describing any billing issues to be added relative to collection of fines and providing an appeal process.

(b) If you are adopting a new rule, you will need to include the same components mentioned in subdivision (a) in that rule. You also may want to include other water conservation-related issues in that ordinance or rule.

**Conclusion:** Each company is likely to have different thoughts as to how it desires to comply with SB 814 in light of its unique water supply situation, existing rate structure and existing water shortage or water conservation rules. The Association may want to facilitate an opportunity via a conference call for similarly situated mutual water companies that are subject to SB 814 to discuss how they intend to comply with these new requirements.