

LEGAL ALERTS | SEP 12, 2016

# Bill Addresses Excessive Water Use by Some California Urban Retail Water Purveyors

Tiered Water Rates and Surcharges Among Tools Agencies Can Use During Water Shortages



A new law signed by Gov. Jerry Brown requires that, when specified water shortage conditions are met, public and private urban retail water suppliers must establish a method to identify and discourage excessive water use by residential metered water customers. (This applies to water suppliers that

provide potable municipal water to more than 3,000 end users, or more than 3,000 acre-feet of potable water annually.) Under Senate Bill 814, signed Aug. 29, the authorized methods for discouraging excessive water use include tiered block water rates, budget-based tiered water rates, and fines and penalties.

For any public urban retail water supplier, the adoption of any such tiered block or budget-based tiered water rates, however, must still comply with the procedural and substantive requirements of California Constitution article XIII D, section 6 (commonly referred to as Proposition 218) governing property-related water service fees and charges.

SB 814 requires retail urban water suppliers to put in place rules that define “excessive water use” and impose them during the following prescribed water shortage periods:

1. during any period in which the Governor has issued an emergency proclamation based on statewide drought conditions to an urban retail water supplier that has moved into a water conservation stage of action requiring mandatory water use restrictions pursuant to its water shortage contingency plan;
2. during any period in which an urban retail water supplier has moved into a water conservation stage of action in response to a local water supply shortage requiring mandatory water use restrictions pursuant to its water shortage contingency plan; and
3. during any period in which the Governor has issued an emergency proclamation based on local drought conditions and an urban retail water

## People



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supplier is affected.

During these periods, urban retail water suppliers have two choices for addressing excessive water use by metered residential customers: 1.) they may impose tiered block water rates, budget-based tiered water rates, or rate surcharges, 2.) they may adopt an excessive water use ordinance, rule or tariff condition, and impose fines and penalties for violations. Under the second choice, a violation of an excessive water use ordinance, rule or tariff condition shall be subject to an infraction or a civil administrative fine or penalty. The penalty for a violation may include, but is not limited to, a fine of up to \$500 for each 100 cubic feet of water used above the excessive water use threshold established by the urban retail water supplier in a billing cycle. Additionally, the penalty may be added to a customer's water bill.

These requirements do not apply to an urban retail water supplier that is not fully metered. But such retail suppliers are required to have in place an ordinance, resolution, rule or tariff condition that imposes penalties for prohibited uses of water.

California remains in a drought emergency that Brown declared in January 2014.

In response to that drought emergency, from June 2015 to May of this year, the State imposed mandatory water conservation targets on cities and water districts, with potential fines for agencies that failed to meet them. In June, the California State Water Resources Control Board lifted those and instead allowed local agencies to set their own targets. The mandatory use targets, however, could be brought back starting in January 2017 if statewide conservation levels fail and rains do not materialize this upcoming winter to replenish water supplies. In that event, these new rules would impact retail urban water suppliers.

If you have any questions about this legislation or how it may impact your agency, please contact the attorney author of this Legal Alert listed to the right in the firm's [Public Finance](#) practice group, or your [BB&K attorney](#).

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