

**FINAL STATEMENT OF REASONS**

Pursuant to Administrative Procedures Act Government Code Section 11346.9

**TITLE 23. WATERS  
DIVISION 2. DEPARTMENT OF WATER RESOURCES  
CHAPTER 5.1 WATER CONSERVATION ACT OF 2009  
Article 1. Industrial Process Water Exclusion  
In the Calculation of Gross Water Use**

<b>Table of Contents</b>		
<b>Section</b>	<b>Item</b>	<b>Page</b>
A	Update on Initial Statement of Reasons	2
B	Important Dates of Notices and Rulemaking Activities	2
C	Comments received during the public comment periods	3
D	Description of Regulatory Action	3
E.	Statutory Provisions Mandating Changes to the Regulation	3
F.	Changes to the Text Of Regulations	3
G	Summary and Responses from the noticed 45-day public comment period (February 23, 2011 through April 18, 2011)	3
H	Authority and Reference	4
I	Determinations	5
I.1	Local Mandate, Gov. Code, 11346.5 (a) (5)	5
I.2	Estimate of Cost and Savings, Gov. Code, 11346.5 (a) (6)	5
I.3	Economic Impact on Small Business, Gov. Code, 11346.5 (a) (8)	5
I.4	Alternatives, Gov. Code, 11346.5 (a) (13)	5
I.5	Assessment of Effect on Jobs/Business	5
I.6	Reports Required From Business	6
I.7	Significant Effect on Housing Cost	6
I.8	Small Business Determination	6
I.9	Alternative Determination	6
J	Updated Informative Digest	6

***FINAL STATEMENT OF REASONS***

**TITLE 23. WATERS  
DIVISION 2. DEPARTMENT OF WATER RESOURCES  
CHAPTER 5.1 WATER CONSERVATION ACT OF 2009  
Article 1. Industrial Process Water Exclusion  
In the Calculation of Gross Water Use**

**A. UPDATE ON INITIAL STATEMENT OF REASONS**

The Final Statement of Reasons, pursuant to Administrative Procedures Act Government Code Section 11346.9, is an update of information contained in the Initial Statement of Reasons. Consistent with Government Code Section 11347.3, the Department of Water Resources (the Department) has made a copy of its file of rulemaking in this matter available for public inspection.

**B. IMPORTANT DATES OF NOTICES AND RULEMAKING ACTIVITIES**

<b>Date of Notice of Proposed Rulemaking:</b>	February 23, 2011
<b>Date of Initial Statement of Reasons:</b>	February 23, 2011
<b>Date of Notice of Modifications to the Proposed Regulation and Modified Text of Regulation:</b>	No modifications
<b>Date of Notice of Addition of Documents and Information to Rulemaking File:</b>	None added
<b>Statement of 15-Day Notice of Availability of Documents and Information:</b>	No 15-day comment period
<b>Date of Notice on Status of Proposed Rulemaking:</b>	None required
<b>Date of Final Statement of Reasons:</b>	May 23, 2011
<b>Dates of all public participation events (comment periods and hearings):</b>	The mandatory 45-day public comment period on the Process Water regulation was held February 23, 2011 to April 18, 2011. The Department also conducted two public hearings on the proposed regulation on April 13, 2011 in Sacramento, California and April 19, 2011 in Los Angeles, California during the 45-day public comment period.

**C. PUBLIC COMMENTS RECEIVED DURING THE COMMENT PERIODS**

During the mandatory 45-day public comment period, the Department received three written comments. Please refer to the Department’s rulemaking file for copies of these comments. Pursuant to Government Code Section 11346.9 (a) (3) and (a) (5), the Department has summarized and responded to the comments beginning on page 3.

**D. DESCRIPTION OF REGULATORY ACTION**

“Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:”

This statement remains unchanged from the Initial Statement of Reasons.

**E. STATUTORY PROVISIONS MANDATING CHANGES TO THE REGULATION**

No change made

**F. CHANGES TO THE TEXT OF REGULATIONS**

No changes made.

**G. SUMMARY AND RESPONSES FROM THE NOTICED 45-DAY PUBLIC COMMENT PERIOD (FEBRUARY 23, 2011 THROUGH April 18, 2011)**

**Summary and Response: Overall Comments**

**G.1 Summary of Comment 1:**

A commenter stated, “Specifically, we have concerns with Section 596.2, which establishes the criteria for excluding process water use from the gross water use calculation. Subsection (a) establishes a 12 percent threshold to determine if industrial water use constitutes a “substantial percentage” of total water use in the determination of process water exclusions. This proposed threshold is too high and many districts will not meet the 12 percent even though they have substantial industrial water use in their districts. We would recommend reducing this threshold to 5 percent in order to properly implement the legal requirements of SB X7 7. Further, we would recommend the inclusion of an additional criterion that would allow a water supplier the flexibility to determine if process water must be excluded to avoid a disproportionate burden on another customer sector.”

**Department Response:** Reject.

The Department originally looked at a 4 percent threshold and it was determined to be too low and not flexible enough to allow for local determinations when looking at deducting process water. The current criteria allows for more local flexibility in

considering local conservation demand hardening, to address a disproportionate burden that may be imposed upon another water sector and to address disadvantaged communities. The net effect of the number of agencies Statewide that would be eligible to deduct process water is about the same as if the thresholds were lowered to 5 percent but would be too burdensome on some local water agencies.

### **G.2 Summary of Comment 2:**

A commenter stated, "There is significant potential for improving the efficiency of process water through technological improvements and the use of recycled water. Second, I would argue that waste and inefficiency are a much bigger threat to the long-term sustainability of California's industrial sector than the modest efficiency improvements under SB X7-7. The criteria in section 596.2 are much too broad. They will allow an estimated one-third of California water agencies to exclude process water, reducing the likelihood that California will meet a 20 percent reduction in per capita water use by 2020. The criteria for process water exclusion must be made narrower. In particular, Criteria B should be raised to 20 gallons per person per day. Additionally, Criteria C and D should be eliminated, as the justification for their inclusion is weak. While disadvantaged communities should be a consideration in all State policies, the process water exclusion provides few, if any, direct benefits. Programs to assist these communities should be a priority, but should be addressed through other mechanisms."

#### **Department Response:** Reject.

Comments that the current criteria are too broad are general objections directed at the proposed regulation. The current regulation allows for more local flexibility in considering local conservation demand hardening to address a disproportionate burden that may be imposed upon another water sector and to address disadvantaged communities. Comments regarding recycled water are general objections directed at the proposed regulation. Recycled water is specifically called out to not be counted towards the gross water calculation, therefore, it is by nature inherently encouraged to be utilized.

### **G.3 Summary of Comment 3:**

A commenter stated; "Comments to Emergency Rulemaking File #2010-1207-01E due 4.18.2011 Industrial Water." Many comments were directed at subjects other than what the proposed regulation targeted.

#### **Department Response:** Reject.

Comments had no bearing on proposed regulation.

## **H. AUTHORITY AND REFERENCE**

The Department is proposing this action pursuant to the authority vested by the Water Code, Division 6, Part 2.6, Section 10608.20 (i) (1) "The Department shall adopt regulations for implementation of the provisions relating to process water in accordance with subdivision (l) of Section 10608.12, subdivision (e) of Section 10608.24, and subdivision (d) of Section 10608.26."

The particular code sections that are being implemented, interpreted, or made specific are Water Code Sections 10608.20(i)(1), 10608.12 (l), 10608.24 (e), and 10608.26(d).

The Department proposes to add Chapter 5.1, Article 1, Sections 596, 596.1, 596.2, 596.3, 596.4, and 596.5. to Title 23, Division 2 of the California Code of Regulations.

## **I. DETERMINATIONS**

### **I.1 Local Mandate Determination:**

The proposed regulation does not impose a mandate on local agencies or school districts.

### **I.2 Estimate Cost and Savings:**

Pursuant to Administrative Procedure Act Government Code 11346.5 (a) (6), the Department originally responded “None” to the cost impact on representative private person or business in the Initial Statement of Reasons.

### **I.3 Economic Impact on Small Business:**

In accordance with section 10608.32 of the Water Code, all costs incurred pursuant to this part by a water utility regulated by the Public Utilities Commission may be recoverable in rates subject to review and approval by the Public Utilities Commission, and may be recorded in a memorandum account and reviewed for reasonableness by the Public Utilities Commission.

Section 10608.26 (d) (1) of the Water Code states, “Any ordinance or resolution adopted by an urban retail water supplier after the effective date of this section shall not require existing customers as of the effective date of this section, to undertake changes in product formulation, operations, or equipment that would reduce process water use, but may provide technical assistance and financial incentives to those customers to implement efficiency measures for process water. This section shall not limit an ordinance or resolution adopted pursuant to a declaration of drought emergency by an urban retail water supplier.”

Per Gov. Code sec. 11346.5(a)(8) This proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

### **I.4 Assessment of Cost Impacts Incurred By Private Sector:**

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

### **I.5 Assessment of Effect on Jobs/Business:**

The proposed regulation for industrial process water exclusion in the calculation of gross water use will not:

- Eliminate jobs within California;
- Eliminate existing businesses within California;
- Affect the expansion of businesses currently doing business within California

**I.6 Reports Required From Business:**

The proposed regulation for industrial process water exclusion in the calculation of gross water use will not require any new reports. The proposed regulation will set forth new criteria and methods for existing reporting of Urban Water Management Plans.

**I.7 Significant Effect on Housing Cost:**

None

**I.8 Small Business Determination:**

The proposed regulations may affect small businesses.

**I.9 Alternative Determination:**

Pursuant to Administrative Procedures Act Government Code 11346.5 (a) (13), the Department has determined for the reasons discussed above in this Final Statement of Reasons and in the summary and response to comments to the initial 45-day comment period that no alternatives considered would be more effective in carrying out the purposes for which the Industrial Process Water Exclusion in the Calculation of Gross Water is proposed or would be as effective and less burdensome to affected private persons than the adopted Industrial Process Water Exclusion in the Calculation of Gross Water.

**J. Updated Informative Digest:**

No revision to the original informative digest needed.