
SENATE COMMITTEE ON NATURAL RESOURCES AND WATER

Senator Dave Min, Chair

2023 - 2024 Regular

Bill No:	AB 1572	Hearing Date:	July 3, 2023
Author:	Friedman		
Version:	June 19, 2023 Amended		
Urgency:	No	Fiscal:	Yes
Consultant:	Genevieve Wong		

Subject: Potable water: nonfunctional turf

BACKGROUND AND EXISTING LAW

Background

California, along with other Western states, experienced severe drought conditions from 2021 until this winter. Drought, even extreme drought, is not unusual for this region, but the fact that California experienced such severe dry conditions only a few years after its worst drought on record from 2012-16 has raised alarm bells across the state and the West. The situation in the Colorado River Basin has led U.S. Bureau of Reclamation Commissioner Camille Touton to call for a reduction in use of Colorado River water of between 2 million acre-feet (AF) and 4 million AF annually to avoid loss of power generation and to ensure water deliveries.

California drought emergency. Between 2021 – 2023, the state found itself in a drought emergency. The Governor first declared a drought emergency in Mendocino and Sonoma Counties on April 21, 2021, directing various actions to conserve water, and extended the emergency to an additional 39 counties on May 10, 2021. On October 19, 2021, the Governor declared a statewide drought emergency. In total, the emergency was extended seven times due to ongoing drought conditions. Because of worsening drought conditions in early 2022, the Governor expanded the state’s drought response by issuing Executive Order (EO) N-7-22 on March 28, 2022. EO N-7-22 directed a suite of actions, including that the State Water Resources Control Board (SWRCB) consider adopting an emergency regulation banning the irrigation of “nonfunctional turf” in the commercial, industrial, and institutional sectors. On March 28, 2023, Governor Newsom lifted the drought emergency for most regions of the state by issuing EO N-5-23.

Emergency regulation on nonfunctional turf. Following the Governor’s direction, SWRCB adopted an emergency regulation prohibiting the use of potable water for the irrigation of nonfunctional turf at commercial, industrial, and institutional sites, with limited exceptions. The emergency regulation defined “nonfunctional turf” as turf that is solely ornamental and not regularly used for human recreational purposes or for civic or community events. Under the regulations, nonfunctional turf does not include sports fields.

The emergency regulation took effect on June 10, 2022, and will be in effect until June 2024.

Governor’s “California’s Water Supply Strategy: Adapting to a Hotter, Drier Future” (August 2022). Governor Newsom released this strategy to address a projected 10%

decrease in water supply (6 million to 9 million AF of water) by 2040 due to climate change. To address this shortfall, the strategy sets targets and outlines actions for increased water recycling, desalination, stormwater capture, and water conservation as well as an expansion of 4 million AF of surface and underground storage. Achieving the targets laid out in the strategy would “close the evaporative gap.” One action highlighted is the conversion of 500 million square feet of ornamental turf by 2030. The Administration asserts this can be achieved through programs and policies that incentivize turf conversion and that, if this goal is achieved, it could save 66,000 AF of water annually at a cost of \$1 billion.

Nevada nonfunctional turf ban. In 2021, the Nevada Legislature enacted AB 356 (Committee on Ways and Means) that prohibits the use of Colorado River water to irrigate nonfunctional turf on commercial, multi-family, and institutional properties within the service territory of the Southern Nevada Water Authority (SNWA) or its member agencies beginning January 1, 2027. SNWA serves more than 2.2 million residents in Southern Nevada, including the Las Vegas metropolitan area. AB 356 directed SNWA to define nonfunctional turf and SNWA has, in turn, developed the following definition: “an irrigated grass area not providing functional use;” SNWA indicates that examples include streetscape turf; grass in front of, between, behind or otherwise adjacent to a properties not zoned single-family residential; and turf managed by an HOA that does not provide a recreational benefit to the community. This bill’s definition is similar to that used by SNWA.

Existing law

- 1) Imposes a penalty of up to \$500 per day for violations of water rights or orders or regulations adopted by SWRCB (Wat. C. § 1846).
- 2) Establishes a standard for indoor residential water use as follows: (a) 55 gallons per capita per day (gpcd) until January 1, 2025; (b) 47 gpcd beginning January 1, 2025; and (c) 42 gpcd beginning January 1, 2030 (Wat. C. § 10609.4).
- 3) Requires SWRCB, in coordination with DWR, to adopt long-term standards for outdoor residential use, outdoor irrigation of landscaped areas with dedicated irrigation meters in conjunction with commercial, industrial, and institutional (CII) water use, and a volume for water loss by June 30, 2022 (Wat. C. § 10609.2).
- 4) Defines the following terms relative to water conservation law (Wat. C. § 10608.12):
 - a) “Commercial water user” as a water user that provides or distributes a product or service.
 - b) “Disadvantaged community” as a community with an annual median household income that is less than 80 percent of the statewide average.
 - c) “Industrial water user” as a water user that is primarily a manufacturer or processor of materials or that is primarily engaged in research and development.
 - d) “Institutional water user” as a water user dedicated to public service, including higher education institutions, schools, courts, churches, hospitals, government facilities, and nonprofit research institutions.
 - e) “Large landscape” as a nonresidential landscape as described by performance measures for CII water use adopted by SWRCB.
 - f) “Urban retail water supplier” as either a public or private water supplier that provides potable municipal water to more than 3,000 end users or that supplies

more than 3,000 acre-feet annually at retail for municipal purposes.

- 5) Requires each “urban retail water supplier” to calculate its urban water use objective no later than January 1, 2024, and by January 1 every year thereafter. The urban water use objective shall be the sum of the following: (a) aggregate estimated efficient indoor residential water use; (b) aggregate estimated efficient outdoor residential water use; (c) aggregate estimated efficient outdoor CII water use; (d) aggregate estimated efficient water loses; (e) aggregate estimated water use with variances, as appropriate; and (f) bonus incentives for potable reuse (Wat. C. §10609.20).
- 6) Declares that the use of potable domestic water for nonpotable uses, including outdoor irrigation, is a waste or unreasonable use of water if recycled water is available for these uses (Wat. C. § 13550).

PROPOSED LAW

- 1) Defines “nonfunctional turf” as any turf that is not functional turf, and includes turf located within street rights-of-way and parking lots.
 - a) Defines “functional turf” as ground cover surface of turf located in a recreational use area or community space. Does not include turf enclosed by fencing or other barriers to permanently preclude human access for recreation or assembly.
- 2) Phases out the use of potable water for the irrigation of nonfunctional turf located on CII properties other than a cemetery as follows:
 - a) Beginning January 1, 2027:
 - i) All properties owned or leased by the Department of General Services.
 - ii) All properties owned by local governments, local or regional public agencies, and public water systems, except as specified.
 - b) Beginning January 1, 2028: All other institutional properties and all commercial and industrial properties.
 - c) Beginning January 1, 2029: All common areas of properties of homeowners’ associations, common interest developments, and community service organizations or similar entities.
 - d) Beginning January 1, 2031, or the date a state funding source is made available to fund the conversion of nonfunctional turf to climate-appropriate landscapes for these properties, whichever is later: All properties owned by local governments, local public agencies, and public water systems in a disadvantaged community.

Specifies that the use of potable water is not prohibited to the extent it is necessary to ensure the health of trees and other perennial nonturf plantings, or to the extent necessary to address an immediate health and safety need.

- 3) Authorizes SWRCB, upon showing of good cause, to postpone the above compliance deadlines by up to three years for certain persons, institutions, and businesses.
- 4) Requires public water systems, by January 1, 2027, to revise their regulations, ordinances, or policies governing water service to include these requirements

relating to the use of potable water, and requires the public water systems to communicate these requirements to their customers.

- 5) Requires an owner of CII property with more than 5,000 square feet of irrigated area, other than a cemetery, to certify to SWRCB, commencing in 2030 and every three years thereafter through 2039, that their property complies with these requirements.
- 6) Requires an owner of a property with more than 5,000 square feet of irrigated common area that is a homeowners' association, common interest development, or community service organization or similar entity to certify to SWRCB, commencing 2031 and every three years thereafter through 2040, that their property complies with these requirements.
- 7) A person or entity who does not comply with these provisions or regulations adopted pursuant to these provisions is subject to civil liability and penalties, as specified.
- 8) Authorizes a public water system, city, county, or city and county to enforce these provisions.
- 9) Requires the Department of Water Resources (DWR) to prioritize financial assistance for nonfunctional turf replacement to public water systems serving disadvantaged communities and to owners of affordable housing when using funds appropriated for water conservation for turf replacement.
- 10) Requires an integrated regional water management plan, which may be prepared and adopted by a regional water management group, to include identification and consideration of the water needs of owners and occupants of affordable housing, including the removal and replacement of nonfunctional turf.
- 11) Makes findings and declarations relating to the use of potable water for the irrigation of nonfunctional turf.

ARGUMENTS IN SUPPORT

According to the author, "[t]here is an urgent need for additional efforts to reduce unnecessary water use in urban areas. Although drought conditions from 2014-2017 were said to be the most severe drought since statehood, California saw dry conditions return quickly, with severe curtailments of State Project water deliveries imposed in 2022. At the same time, water supply conditions deteriorated rapidly in the Colorado River Basin, a major source of water for urban Southern California. The Commissioner of the US Bureau of Reclamation has stated that reductions of water withdrawals of from 2 to 4 million [AF] per year, or as much as 1/3 of the recent annual usage of Colorado River water, will be needed to protect water and power operations at Glen Canyon and Hoover Dams, and avoid catastrophic depletion of Lakes Powell and Mead. California and neighboring states have offered different scenarios for Reclamation to consider, but the proposals put forward all envision major reductions, a significant share of which will inevitably fall on California's urban water users.

A large portion of California's treated drinking water is used to irrigate urban landscapes. In a year without drought restrictions, roughly half of all publicly supplied water is used outdoors, primarily for landscape irrigation. In much of the state, turf

grass became a staple of urban development in both residential and commercial applications as well as public rights-of-way. In a study published in 2005, it was estimated that California had approximately 2.75 million acres of turf grass. Nearly all this turf requires irrigation to survive, and nearly all the irrigation is with treated drinking water.

AB 1572 is an extension of past and current state policies to reduce unnecessary water consumption in urban landscapes. It would prohibit the use of drinking water for the irrigation of nonfunctional turf located on commercial, industrial, municipal, and institutional properties, in stages between January 1, 2027 and January 1, 2031. This will help California businesses and communities save both water and money, and transition to sustainable alternatives that can keep landscapes beautiful.”

ARGUMENTS IN OPPOSITION

According to the Community Association Institute, “AB 1572 would impose a one-size fits all mandate that conflicts with the flexibility existing laws provide urban retail water suppliers to manage water supplies and meet customer demands and future growth.

CAI-CLAC respectfully requests the deletion of recent amendments to AB 1572 that include homeowner associations (HOA) in the application of its provisions to multifamily residential units. The irrigation of natural turf in an HOA setting can be complicated in that natural turf can be a feature provided in a common element, limited common element, or exclusive common element.

One example of the latter is a small natural turf element in front of a home or condominium that is similar to the front lawn of a single-family home but is cared for by the HOA. The cost to transition to non-potable irrigation in an HOA would be borne by the homeowner through increased assessments. The one-size-fits-all approach in your legislation will lead to uneven impacts in HOA communities.”

COMMENTS

Emergency regulation definition for “nonfunctional turf” differs from this bill. The definition for nonfunctional turf in the emergency regulation is slightly narrower in that it is limited to ornamental turf: “turf that is solely ornamental and not regularly used for human recreational purposes or for civic or community events. Non-functional turf does not include sports fields and turf that is regularly used for human recreational purposes or for civic or community events.” In contrast, this bill defines nonfunctional turf by what it is *not*: turf that *is not functional turf*. The bill defines “functional turf” as “a ground cover surface of turf located in a recreational use area or community space,” and provides that turf enclosed by fencing or other barriers to permanently preclude human access for recreation or assembly is not functional turf. Under AB 1572, any turf that does not fall within the definition of “functional turf” is nonfunctional turf, which includes turf located within street right-of-ways and parking lots.

Finding clarity. Generally, AB 1572 prohibits the use of potable water for irrigation of nonfunctional turf located on commercial, industrial, or institutional properties and would phase in this prohibition based on the type of property. Proposed Water Code § 10608.14(a)(4) applies the prohibition to “all common areas of properties of [HOAs], [CIDs], and community service organizations or similar entities beginning January 1, 2029.” However, HOAs and CIDs do not appear to fit within the definition for

commercial, industrial, or institutional properties. While AB 1572 does not define commercial, industrial, or institutional properties, it does define “commercial water user,” “industrial water user,” and “institutional water user.” “Commercial water user” means a water user that provides or distributes a product or service. “Industrial water user” means a water user that is primarily a manufacturer or processor of materials or an entity that is a water user primarily engaged in research and development. “Institutional water user” means a water user dedicated to public service, which includes higher education institutions, schools, courts, churches, hospitals, governmental facilities, and nonprofit research institutions. It is not clear that HOAs or CIDs fit within any of these definitions for commercial, industrial, or institutional.

If interpreting the provisions based on the plain language of the proposed statute, the language would be interpreted to prohibit all *common areas of properties of HOAs, CIDs, and community service organizations* that have *turf located on commercial, industrial, and institutional properties* from using potable water on nonfunctional turf beginning January 1, 2029, which is not likely to be the author’s intent.

Additionally, proposed Water Code § 10608.14(a)(4) also refers to “all common areas of properties of HOAs, CIDs, and community service organizations....” However, the definition of “common area” means “that portion of a multifamily residential property or common interest development that is not assigned or allocated to the exclusive use of the occupants of an individual dwelling unit within the property.” Thus, the definition of “common area” does not include HOAs or community service organizations.

These two “mismatches” have the potential to cause confusion on the scope of the bill. The committee may wish to amend the bill to clarify the bill’s prohibition applies to HOAs, CIDs, and community service organizations, even if not considered a commercial, industrial, or institutional property and to clarify the definition of “common area” such that it includes HOAs, CIDs, and community service organizations. (See Amendments 1 and 2).

Technical change. The author has requested the following technical change be made to the definition of “recreational use area”:

10608.12 (ab) “Recreational use area” means an area designated by a property owner or a governmental agency to accommodate human foot traffic for recreation, **such as including, but not limited to**, sports fields, golf courses, playgrounds, picnic grounds, or pet exercise areas. This recreation may be either formal or informal.

The committee may wish to amend the bill to make this change. (See Amendment 1).

Related legislation

AB 1573 (Friedman, 2023) makes changes to required provisions in the Model Water Efficient Landscape Ordinance developed by DWR, including requiring the use of more native or water efficient plants and a prohibition on the use of nonfunctional turf in new or renovated commercial and industrial areas. AB 1573 is pending before this Committee.

SB 606 (Hertzberg, Chapter 14, Statutes of 2018) requires SWRCB and DWR to adopt water efficiency regulations, outlines requirements for water suppliers, specifies

penalties for violations, and makes technical, conforming changes.

AB 1668 (Friedman, Chapter 15, Statutes of 2018), among other provisions, requires DWR, in consultation with SWRCB and other stakeholders, to identify small water suppliers and rural communities that may be at risk of drought and water shortage vulnerability by January 1, 2020. Further requires DWR by January 1, 2020, to propose recommendations and guidance regarding the development and use of countywide drought contingency plans to address drought planning for small water suppliers and rural communities.

SUGGESTED AMENDMENTS

AMENDMENT 1

Amend Water Code § 10608.12 as follows:

10608.12 (ab) "Recreational use area" means an area designated by a property owner or a governmental agency to accommodate human foot traffic for recreation, **such as including, but not limited to**, sports fields, golf courses, playgrounds, picnic grounds, or pet exercise areas. This recreation may be either formal or informal.

.
.
.

(g) "Common area" means that portion of a multifamily residential property or common interest development **or of a property owned or managed by a homeowners' association or a community service organization or similar entity** that is not assigned or allocated to the exclusive use of the occupants of an individual dwelling unit within the property.

AMENDMENT 2

Amend Water Code § 10608.14(a) as follows:

(a) The use of potable water for the irrigation of nonfunctional turf located on commercial, industrial, and institutional properties other than a cemetery **and on properties of homeowners' associations, common interest developments, and community service organizations or similar entities** is prohibited as of the following dates: ...

SUPPORT

Heal the Bay (co-sponsor)
Metropolitan Water District of Southern California (co-sponsor)
Natural Resources Defense Council (co-sponsor)
California Climate Action
California Coastal Protection Network
California Institute for Biodiversity
California Water Efficiency Partnership
Clean Water Action
Climate Action California
Climate Reality Project, California Coalition

Defenders of Wildlife
Environmental Working Group
Los Angeles Waterkeeper
Mono Lake Committee
Planning and Conservation League
Sierra Club California
Sonoma County Water Agency

OPPOSITION

Community Associations Institute's California Legislative Action Committee (unless amended)

-- END --