



Consideration of Regulations for the Model Water Efficient Landscape Ordinance (MWELo)
(Action Item)

Introduction

The Department of Water Resources (DWR) must obtain approval from the California Water Commission for rules and regulations not pertaining to the management and administration of DWR pursuant to Water Code section 161. DWR's Water Use Efficiency Branch (WUE) is amending the Model Water Efficient Landscape Ordinance (MWELo) for the January 2023 to December 2025 period. The proposed MWELo amendments aim to streamline the regulation by reducing ambiguities, providing clarity, and improving MWELo's organization. This facilitates better collaboration among MWELo users and smoother program implementation for local agencies. This administrative update has broad support.

The Commission heard an introductory briefing about MWELo at its August 16, 2023, meeting. On May 15, 2024, the Commission approved the proposed updates, but will now reconsider approval based on changes to the updates requested by the Office of Administrative Law (OAL). WUE began the MWELo amendment rulemaking with a 60-day public comment period that ended on January 16, 2024, with a public hearing held on January 9, 2024. DWR received substantial and related comments, which required an additional 15-day public comment period that ended on April 3, 2024. WUE deemed the comments received during the second comment period non-substantial. WUE submitted the rulemaking record to OAL on June 27, 2024, and OAL provided feedback on August 9. Based on the feedback, changes were made to the MWELo amendments to incorporate by reference external standards and improve the clarity for specific requirements. These changes, while not changing any existing requirement, were substantive and necessitated a second 15-day public comment period that ends on September 9, 2024.

Staff from WUE will present information about the proposed MWELo amendments. The Commission must approve the regulations before DWR re-submits the final changed regulations to OAL for its review.

Commission Decision

The Commission may approve the proposed changes as presented, defer approval pending additional information, or disapprove the proposed changes. If the Commission defers approval or disapproves, DWR will not have sufficient time to make changes to this rulemaking and will need to start the rulemaking process again to change the MWELo regulations.

Background

MWELo (Title 23, Chapter 2.7 of the California Code of Regulations) provides a standard for the design, installation, management, and maintenance of landscapes to use water efficiently without water waste. The MWELo requires all statewide local agencies (cities, counties, and water

districts) to adopt, implement, and enforce MWELO or a local WELO that is at least as effective. MWELO was first adopted in 1992 and updated in 2009 and again in 2015. DWR must update the MWELO every three years or release findings that a revision would not be useful or effective in increasing the efficiency of landscape water use or the administration of the MWELO.

MWELO was developed by DWR in coordination with irrigation and landscape experts as a model for local agencies to enforce minimum standards in landscape design, construction, and management. It does this through specific requirements related to soil, plants, irrigation, and water sources. A landscape designed, built, and managed to meet MWELO standards can use water more efficiently and can help improve the well-being, health, safety, and resiliency of California communities.

Annual implementation reports provided to DWR suggest, and two recent independently developed reports by UC Davis and the Landscape Statewide Advisory Group (LSAG) demonstrate, that there is inconsistent implementation and management of the ordinance at the local level. The reports, the UC Davis Survey on Barriers to MWELO Implementation (2022) and the LSAG Summary report for Updating MWELO (August 2019), suggest that MWELO's organization and lack of clarity in certain provisions is a current barrier to consistent and effective implementation of the ordinance. Recognizing the need to facilitate MWELO's implementation, the Governor's Water Resilience Portfolio (January 2022) includes Action 2.2 - Simplify the Model Water Efficient Landscape Ordinance.

The proposed MWELO amendments intend to simplify MWELO by reducing ambiguities, providing clarity, and improving MWELO's organization. The amendments will facilitate more consistent implementation of MWELO by making the ordinance easier to understand and follow. The amendments implement two new statutory requirements from Government Code §65596 that have been added since the most recent MWELO update in 2015 and otherwise do not change any other requirements.

This action will advance Goal Three of the Commission's Strategic Plan, which calls on the Commission to "carry out its statutory authorities associated with the Department of Water Resources to ensure that the DWR's decisions on key programs and activities are based on sound information and advance climate resiliency," stating that the Commission will "review, consider, and approve, as appropriate, all regulations by the Department, and provide public participation in the rulemaking process."

Meeting Overview

At the September meeting, Shem Stygar, Senior Water Resources Engineer with WUE, will provide a short overview of the need for and changes made since the Commission's last approval and, if necessary, a summary of public comments received and DWR's draft response. DWR requests the Commission to approve the regulations.

This is an action item.

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Meeting Date: September 18, 2024

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