

1 PROPOSED TEXT OF REGULATION

2
3 **Title 23. Waters**

4 **Division 3. State Water Resources Control Board and Regional Water Quality**

5 **Control Boards**

6 **Chapter 2. Appropriation of Water**

7 ~~Article 22. Prevention of Waste and Unreasonable Use~~

8 **Chapter 3. Determination of Right to the Use of Water**

9 **Article 2. Adjudications Under Water Code Sections 2500 Through 2900**

10 **Chapter 3.5. Conservation and the Prevention of Waste and Unreasonable Use**

11 **Article 1. Prevention of Waste and Unreasonable Use**

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14 ~~§ 955. Claims to Water Supplied by District or Water Company. [Renumbered]~~

15 ~~§ 855.~~ § 955. Policy and Definition.

16 (a) In investigating any uses of water and making the determinations required by this
17 article, the board shall give particular consideration to the reasonableness of use of
18 reclaimed recycled water or reuse of water.

19 (b) As used in this article, “misuse of water” or “misuse” means any waste, unreasonable
20 use, unreasonable method of use, or unreasonable method of diversion of water.

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22 Authority cited: Section 1058, Water Code.

23 Reference: Sections 100, 275, 1240, 1251, 1253 and 1257, Water Code; and Section 2,
24 Article X, California Constitution.

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27 ~~§ 956. Divided Interests. [Renumbered]~~

28 ~~§ 856.~~ § 956. Investigations.

29 The board staff shall investigate an allegation of misuse of water:

30 (1) when an interested person shows good cause, or

31 (2) when the board itself believes that a misuse may exist.

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33 Authority cited: Section 1058, Water Code.

34 Reference: Sections 100, 183, 275 and 1051, Water Code; and Section 2, Article X,
35 California Constitution.

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38 ~~§ 957. Undivided Interests. [Renumbered]~~

39 ~~§ 857.~~ § 957. Notifications, Hearings and Orders.

40 (a) If the investigation indicates that a misuse of water has occurred, the board staff shall
41 notify interested persons and allow a reasonable period of time in which to terminate
42 such misuse or demonstrate to the satisfaction of the board staff that misuse has not
43 occurred.

44 (b) At the end of the time set by the board staff, and upon application of any interested
45 person or upon its own motion, the board may hold a hearing to determine if misuse has
46 occurred or continues to occur.

47 (c) If the misuse is alleged to have occurred or to continue to occur in connection with
48 exercise of rights evidenced by a permit or license issued by the board, the board shall
49 notice the hearing as a permit revocation hearing pursuant to Water Code Section
50 1410.1, or as a license revocation hearing pursuant to Water Code Section 1675.1, as

51 appropriate; or as a preliminary cease and desist order hearing pursuant to Water Code
52 Section 1834.

53 (d) The board may issue an order requiring prevention or termination thereof.

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55 Authority cited: Section 1058, Water Code.

56 Reference: Sections 100, 275, 183, 1051, 1401, 1675.1 and 1834, Water Code.

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59 ~~§ 958. General Requirements for Proofs of Claims. [Repealed]~~

60 ~~§ 858. § 958. Noncompliance with Order Regarding Misuse Under Water Right~~
61 ~~Entitlement.~~

62 If a permittee or licensee does not comply with any order issued pursuant to Section
63 ~~857957~~ within such reasonable period of time as allowed by the board, or such
64 extension thereof as may for good cause be allowed by the board, and if such order
65 includes a finding that waste, unreasonable use, method of use, or method of diversion
66 has occurred in connection with exercise of a right evidenced by a permit or license
67 issued by the board, a revocation action may be commenced by the board:

68 (a) If the hearing has been noticed as a permit or license revocation hearing, and if the
69 board finds that misuse has occurred or continues to occur, the board may order the
70 permit or license revoked or impose appropriate additional or amended terms or
71 conditions on the entitlement to prevent recurrence of the misuse;

72 (b) If the hearing pursuant to Section ~~857957~~ has been noticed as a preliminary cease
73 and desist order hearing, and if the board finds that misuse has occurred or continues to
74 occur, the board may issue a preliminary cease and desist order.

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76 Authority cited: Section 1058, Water Code.

77 Reference: Sections 1410, 1675 and 1831, Water Code.

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80 ~~§ 959. Specific Requirements for Irrigation Proofs. [Repealed]~~

81 ~~§ 859. § 959. Noncompliance with Other Order.~~

82 If a person other than a permittee or licensee does not comply with any order issued
83 pursuant to Section ~~857957~~ within such reasonable period of time as allowed by the
84 board, or such extension thereof as may for good cause be allowed, and if such order
85 includes a finding that such person has misused or continues to misuse water, the board
86 may request appropriate legal action by the Attorney General.

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88 Authority cited: Section 1058, Water Code.

89 Reference: Section 275, Water Code.

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92 ~~§ 960. Uses Other than Irrigation. [Repealed]~~

93 ~~§ 860. § 960. Alternative Procedure.~~

94 The procedure established in this article shall be construed as alternative to, and not
95 exclusive of, the procedures established in Chapter 5 of Title 23, California
96 Administrative Code, in accordance with Section 4007 therein.

97

98 Authority cited: Section 1058, Water Code.

99 Reference: Section 275, Water Code.

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102 ~~§ 961. Signature of Deponent. [Renumbered]~~

103 ~~§ 735.~~ § 961. Napa River, Special.

104 (a) Budding grape vines and certain other crops in the Napa Valley may be severely
105 damaged by spring frosts. During a frost, the high instantaneous demand for water for
106 frost protection by numerous vineyardists and other water users frequently exceeds the
107 supply in the Napa River stream system. This results in uncoordinated diversions and
108 possible infringements upon other rights. Therefore, all diversions of water from the
109 stream system between March 15 and May 15 determined to be significant by the board
110 or a court of competent jurisdiction shall be considered ~~unreasonably~~unreasonable and
111 a violation of Water Code Section 100 unless controlled by a watermaster administering
112 a board or court approved distribution program. Diversions for frost protection and
113 irrigation during this period shall be restricted to: (1) replenishment of reservoirs filled
114 prior to March 15 under an appropriative water right permit, or (2) diversions permitted
115 by the court.

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117 (b) The service area of the distribution program may be revised at any time by order of
118 the board or the court. The board will retain jurisdiction to revise terms and conditions of
119 all frost protection permits should future conditions warrant.

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121 (c) Under this section diversion of water during the spring frost season from March 15 to
122 May 15 to replenish water stored in reservoirs prior to the frost season is "regulation," as
123 defined in Chapter 2, Article 2, Section 657: Replenishment diversion must be to
124 reservoirs for which a permit or license authorizing winter storage prior to the frost
125 season has been issued.

126

127 Authority cited: Section 1058, Water Code.

128 Reference: Section 2, Article X, California Constitution; and Sections 100, 275 and
129 1051.5, Water Code.

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132 ~~§ 962. Objections. [Renumbered]~~

133 ~~§ 862.~~ § 962. Russian River, Special.

134 Budding grape vines and certain other crops in the Russian River watershed may be
135 severely damaged by spring frosts. Frost protection of crops is a beneficial use of water
136 under section 671 of ~~this chapter 2 of this division~~. During a frost, however, the high
137 instantaneous demand for water for frost protection by numerous vineyardists and other
138 water users may contribute to a rapid decrease in stream stage that results in the
139 mortality of salmonids due to stranding. Stranding mortality can be avoided by
140 coordinating or otherwise managing diversions to reduce instantaneous demand.
141 Because a reasonable alternative to current practices exists, the Board has determined
142 these diversions must be conducted in accordance with this section.

143

144 (a) After March 14, 2012, except for diversion upstream of Warm Springs Dam in
145 Sonoma County or Coyote Dam in Mendocino County, any diversion of water from the
146 Russian River stream system, including the pumping of hydraulically connected
147 groundwater, for purposes of frost protection from March 15 through May 15, shall be
148 diverted in accordance with a board approved water demand management program
149 (WDMP). For purposes of this section, groundwater pumped within the Russian River
150 watershed is considered hydraulically connected to the Russian River stream system if
151 that pumping contributes to a reduction in stream stage to any surface stream in the
152 Russian River watershed during any single frost event.

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(b) The purpose of the WDMP is to assess the extent to which diversions for frost protection affect stream stage and manage diversions to prevent cumulative diversions for frost protection from causing a reduction in stream stage that causes stranding mortality. The WDMP, and any revisions thereto, shall be administered by an individual or governing body (governing body) capable of ensuring that the requirements of the program are met. Any WDMP developed pursuant to this section shall be submitted to the board by February 1 prior to the frost season.

(c) At a minimum, the WDMP shall include (1) an inventory of the frost diversion systems within the area subject to the WDMP, (2) a stream stage monitoring program, (3) an assessment of the potential risk of stranding mortality due to frost diversions, (4) the identification and timelines for implementation of any corrective actions necessary to prevent stranding mortality caused by frost diversions, and (5) annual reporting of program data, activities, and results. In addition, the WDMP shall identify the diverters participating in the program and any known diverters within the area subject to the WDMP who declined to participate. The WDMP also shall include a schedule for conducting the frost inventory, developing and implementing the stream stage monitoring program, and conducting the risk assessment.

(1) Inventory of frost diversion systems: The governing body shall establish an inventory of all frost diversions included in the WDMP. The inventory, except for diversion data, shall be completed within three months after board approval of a WDMP. The inventory shall be updated annually with any changes to the inventory and with frost diversion data. The inventory shall include for each frost diversion:

- (A) Name of the diverter;
- (B) Source of water used and location of diversion;
- (C) A description of the diversion system and its capacity;
- (D) Acreage frost protected and acres frost protected by means other than water diverted from the Russian River stream system; and
- (E) The rate of diversion, hours of operation, and volume of water diverted during each frost event for the year.

(2) Stream stage monitoring program: The governing body shall develop a stream stage monitoring program in consultation with National Marine Fisheries Service (NMFS) and California Department of Fish and Game (DFG). For the purposes of this section, consultation involves an open exchange of information for the purposes of obtaining recommendations. The governing body is authorized to include its own expert scientists and engineers in the consultation, and request board staff to participate, when desired.

The stream stage monitoring program shall include the following:

- (A) A determination of the number, type, and location of stream gages necessary for the WDMP to monitor and assess the extent to which frost diversions may affect stream stage and cause stranding mortality;
- (B) A determination of the stream stage that should be maintained at each page to prevent stranding mortality;
- (C) Provisions for the installation and ongoing calibration and maintenance of stream gages; and
- (D) Monitoring and recording of stream stage at intervals not to exceed 15 minutes.

(3) Risk assessment: Based on the inventory and stream stage information described above, and information regarding the presence of habitat for salmonids, the governing body shall conduct a risk assessment that evaluates the potential for frost diversions to cause stranding mortality. The risk assessment shall be conducted in consultation with

204 NMFS and DFG. The governing body is authorized to include its own expert scientists
205 and engineers in the consultation, and request board staff to participate, when desired.
206 The risk assessment shall be evaluated and updated annually.

207 (4) Corrective Actions: If the governing body determines that diversions for purposes of
208 frost protection have the potential to cause stranding mortality, the governing body shall
209 notify the diverter(s) of the potential risk. The governing body, in consultation with the
210 diverters, shall develop a corrective action plan that will prevent stranding mortality.
211 Corrective actions may include alternative methods for frost protection, best
212 management practices, better coordination of diversions, construction of off-stream
213 storage facilities, real-time stream gage and diversion monitoring, or other alternative
214 methods of diversion. Corrective actions also may include revisions to the number,
215 location and type of stream stage monitoring pages, or to the stream stages considered
216 necessary to prevent stranding mortality. In developing the corrective action plan the
217 governing body shall consider the relative water right priorities of the diverters and any
218 time delay between groundwater diversions and a reduction in stream stage. The
219 corrective action plan shall include a schedule of implementation. To the extent feasible,
220 the corrective action plan shall include interim corrective actions if long-term corrective
221 actions are anticipated to take over three years to fully implement. The diverters shall
222 implement corrective actions in accordance with the corrective action plan, or cease
223 diverting water for frost protection.

224 (5) Annual Reporting: The governing body shall submit a publically available annual
225 report of program operations, risk assessment, and corrective actions by September 1
226 following the frost season that is the subject of the report. The report shall include:

227 (A) The frost inventory, including diversion data.
228 (B) Stream stage monitoring data.
229 (C) The risk assessment and its results, identification of the need for any
230 additional data or analysis, and a schedule for obtaining the data or completing
231 the analysis.
232 (D) A description of any corrective action plan that has been developed, any
233 corrective actions implemented to date, and a schedule for implementing any
234 additional corrective actions.
235 (E) Any instances of noncompliance with the WDMP or with a corrective action
236 plan, including the failure to implement identified corrective actions. The report
237 shall document consultations with DFG and NMFS regarding the stream stage
238 monitoring program and risk assessment and shall explain any deviations from
239 recommendations made by DFG or NMFS during the consultation process. In
240 addition, the annual report shall evaluate the effectiveness of the WDMP and
241 recommend any necessary changes to the WDMP, including any proposed
242 additions or subtractions of program participants. Any recommendations for
243 revisions to the WDMP shall include a program implementation plan and
244 schedule. The board may require changes to the WDMP, including but not limited
245 to the risk assessment, corrective action plan, and schedule of implementation,
246 at any time.

247

248 (d) The governing body may develop and submit for the Deputy Director for Water
249 Rights' approval, criteria, applicable to any participant in its WDMP, for identifying
250 groundwater diversions that are not hydraulically connected to the Russian River stream
251 system. The governing body may submit to the Deputy Director a list of groundwater
252 diverters that appear to meet these criteria and could be exempted from this section.
253 The Deputy Director is authorized to exempt the listed groundwater diverters, or identify
254 the reason for not exempting the listed groundwater diverters. Beginning three years

255 from the effective date of this section, if an individual groundwater diverter can
256 independently demonstrate to the satisfaction of the Deputy Director that the diversion is
257 not hydraulically connected to the Russian River stream system, the Deputy Director is
258 authorized to exempt the groundwater diverter from this section.

259
260 (e) Compliance with this section shall constitute a condition of all water right permits and
261 licenses that authorize the diversion of water from the Russian River stream system for
262 purposes of frost protection. The diversion of water in violation of this section, including
263 the failure to implement the corrective actions included in any corrective action plan
264 developed by the governing body, is an unreasonable method of diversion and use and
265 a violation of Water Code section 100, and shall be subject to enforcement by the board.
266 The board has continuing authority to revise terms and conditions of all permits and
267 licenses that authorize the diversion of water for purposes of frost protection should
268 future conditions warrant.

269
270 Authority cited: Section 1058, Water Code.
271 Reference: Section 2, Article X, California Constitution; and Sections 100, 275 and
272 1051.5, Water Code.

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274

275 **Article 2. Wasteful and Unreasonable Water Uses**

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277 § 963. Wasteful and Unreasonable Water Use Practices.

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279 The State Water Resources Control Board (State Board) has determined that it is a
280 waste and unreasonable use of water under Article X, section 2 of the California
281 Constitution to divert or use water inconsistent with subdivision (a) regardless of water
282 right seniority, given the need for the water to support other more critical uses.

283

284 (a) As used in this article:

285 (1) “Commercial agricultural use meeting the definition of Government Code section
286 51201, subdivision (b)” includes irrigation, frost protection and heat control, but does not
287 include cleaning, processing or other similar post-harvest activities.

288 ~~(2) “Total potable water production” means all potable water that enters into a water~~
289 ~~supplier’s distribution system, excluding water placed into storage and not withdrawn for~~
290 ~~use during the reporting period, or water exported outside the supplier’s service area.~~

291 ~~(3) (2) “Urban water supplier” means a supplier that meets the definition set forth in~~
292 ~~Water Code section 10617, except it does not refer to suppliers when they are~~
293 ~~functioning solely in a wholesale capacity, but does apply to suppliers when they are~~
294 ~~functioning in a retail capacity.~~

295 ~~(4) “Water year” means the period from October 1 through the following September 30.~~
296 ~~Where a water year is designated by year number, the designation is by the calendar~~
297 ~~year number in which the water year ends.~~

298 ~~(3) “Turf” has the same meaning as in Section 491.~~

299 ~~(4) “Incidental runoff” means unintended amounts (volume) of runoff, such as~~
300 ~~unintended, minimal overspray from sprinklers that escapes the area of intended use.~~
301 ~~Water leaving an intended use area is not considered incidental if it is part of the facility~~
302 ~~or system design, if it is due to excessive application, if it is due to intentional overflow or~~
303 ~~application, or if it is due to negligence.~~

304

305 (b)(1) The use of water is prohibited as identified in this subdivision for ~~any of the~~
306 following actions:

307 (A) The application of water to outdoor landscapes in a manner that causes ~~more~~
308 ~~than incidental~~ runoff such that water flows onto adjacent property, non-irrigated
309 areas, private and public walkways, roadways, parking lots, or structures;
310 (B) The use of a hose that dispenses water to wash a motor vehicle, except
311 where the hose is fitted with a shut-off nozzle or device attached to it that causes
312 it to cease dispensing water immediately when not in use;
313 (C) The application of potable water directly to driveways and sidewalks;
314 (D) The use of potable water in an ornamental fountain or other decorative water
315 feature, except where: ~~(D)(i) the water is part of a recirculating system; or (D)(ii)~~
316 ~~the fountain is registered on the National Register of Historic Places;~~
317 (E) The application of water to irrigate turf and ornamental landscapes during and
318 within 48 hours after measurable rainfall of at least one-~~tenth~~ ~~fourth~~ of one inch of
319 rain. In determining whether measurable rainfall of at least ~~tenth~~ ~~fourth~~ of one
320 inch of rain occurred in a given area, enforcement may be based on records of
321 the National Weather Service, the closest CIMIS station to the parcel, or any
322 other reliable source of rainfall data available to the entity undertaking
323 enforcement of this subdivision;
324 (F) The serving of drinking water other than upon request in eating or drinking
325 establishments, including but not limited to restaurants, hotels, cafes, cafeterias,
326 bars, or other public places where food or drink are served ~~and/or~~ purchased,
327 ~~during a period for which the Governor has issued a proclamation of a state of~~
328 ~~emergency under the California Emergency Services Act (Chapter 7~~
329 ~~(commencing with Section 8550) of Division 1 of Title 2 of the Government Code)~~
330 ~~based on drought conditions; and~~
331 (G) ~~As of January 1, 2025, the~~ irrigation of turf on public street medians or
332 publicly owned ~~or~~ ~~and~~ maintained landscaped areas between the street and
333 sidewalk, except where:
334 ~~(i) the turf serves a community or neighborhood function, including, but~~
335 ~~not limited to, recreational uses and civic or community events;~~
336 ~~(ii) the turf is irrigated incidentally by an irrigation system, the primary~~
337 ~~purpose of which is the irrigation of trees; or~~
338 ~~(iii) the turf is irrigated with recycled water through an irrigation system~~
339 ~~installed prior to January 1, 2018; and.~~

340 (2) Notwithstanding subdivision (b)(1), the use of water is not prohibited by this article
341 under the following circumstances:

342 (A) To the extent necessary to address an ~~immediate~~ health and safety need.
343 This may include, but is not limited to, street sweeping and pressure washing of
344 public sidewalks and the use of potable water in a fountain or water feature when
345 required by law to be potable.

346 (B) To the extent necessary to comply with a term or condition in a permit issued
347 by a state or federal agency.

348 (C) When the water is used exclusively for commercial agricultural use meeting
349 the definition of Government Code section 51201, subdivision (b).

350

351 (c) To promote water conservation, operators of hotels and motels shall provide guests
352 with the option of choosing not to have towels and linens laundered daily. The hotel or
353 motel shall prominently display notice of this option in each guestroom using clear and
354 easily understood language.

355

356 (d)(1) To prevent the waste and unreasonable use of water and to promote water
357 conservation, any homeowners' association or community service organization or similar
358 entity is prohibited from:

359 (A) Taking or threatening to take any action to enforce any provision of the
360 governing documents or architectural or landscaping guidelines or policies of a
361 common interest development where that provision is void or unenforceable
362 under section 4735, subdivisions (a) and (b) of the Civil Code;

363 (B) Imposing or threatening to impose a fine, assessment, or other monetary
364 penalty against any owner of a separate interest for reducing or eliminating the
365 watering of vegetation or lawns during a declared drought emergency, as
366 described in section 4735, subdivision (c) of the Civil Code; or

367 (C) Requiring an owner of a separate interest upon which water-efficient
368 landscaping measures have been installed in response to a declared drought
369 emergency, as described in section 4735, subdivisions (c) and (d) of the Civil
370 Code, to reverse or remove the water-efficient landscaping measures upon the
371 conclusion of the state of emergency.

372

373 (2) As used in this subdivision:

374 (A) "Architectural or landscaping guidelines or policies" includes any formal or
375 informal rules other than the governing documents of a common interest
376 development.

377 (B) "Homeowners' association" means an "association" as defined in section
378 4080 of the Civil Code.

379 (C) "Common interest development" has the same meaning as in section 4100
380 of the Civil Code.

381 (D) "Community service organization or similar entity" has the same meaning as
382 in section 4110 of the Civil Code.

383 (E) "Governing documents" has the same meaning as in section 4150 of the
384 Civil Code.

385 (F) "Separate interest" has the same meaning as in section 4185 of the Civil
386 Code.

387 (3) If a disciplinary proceeding or other proceeding to enforce a rule in violation of
388 subdivision (d)(1) is initiated, each day the proceeding remains pending shall constitute
389 a separate violation of this regulation.

390

391 (e) To prevent the waste and unreasonable use of water and to promote water
392 conservation, any city, county, or city and county is prohibited from imposing a fine
393 under any local maintenance ordinance or other relevant ordinance as prohibited by
394 section 8627.7 of the Government Code.

395

396 (f) The taking of any action prohibited in subdivision (b) (d) or (e), or the failure to take
397 any action required in subdivision (c), is an infraction punishable by a fine of up to five
398 hundred dollars (\$500) for each day in which the violation occurs. The fine for the
399 infraction is in addition to, and does not supersede or limit, any other remedies, civil or
400 criminal.

401

402 (g) A decision or order issued under this article by the Board or an officer or employee of
403 the Board is subject to reconsideration under article 2 (commencing with section 1122)
404 of chapter 4 of part 1 of division 2 of the Water Code.

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407 Authority: Section 1058, Water Code.
408 References: Article X, Section 2, California Constitution; Sections 4080, 4100, 4110,
409 4150, 4185, and 4735, Civil Code; Sections 102, 104, 105, 275, 350, and 10617, Water
410 Code; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463.