

## Emergency Information Order Regulations for the Clear Lake Watershed

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In Title 23, Division 3, adopt Chapter 4.6, Article 1, sections 1050, 1051, and 1052, to read:

### **Chapter 4.6. Watershed Protection and Information**

#### **Article 1. Clear Lake Watershed**

##### **§ 1050. Definitions**

- (a) “Clear Lake Watershed” refers to the collective area within the following watersheds as defined by the National Watershed Boundary Dataset 12-digit Hydrologic Unit Codes: Thurston Lake (180201160301), Cole Creek (180201160302), Kelsey Creek (1802011603), McGaugh Slough-Frontal Clear Lake (180201160305), Adobe Creek (180201160304), Manning Creek-Frontal Clear Lake (180201160306), Rodman Slough-Frontal Clear Lake (180201160307), Lower Scott’s Creek (180201160104), Middle Scott’s Creek (180201160103), Upper Scott’s Creek (180201160102), South Fork Scott’s Creek (180201160101), Salt Flat Creek - Middle Creek (180201160204), West Fork Middle Creek (180201160202), East Fork Middle Creek (180201160201), Clover Creek ( 180201160203), Burns Valley - Frontal Clear Lake (180201160309), Schindler Creek - Frontal Clear Lake (180201160308), Copsey Creek (180201160601), Seigler Canyon Creek - Cache Creek (180201160602), and Clear Lake (180201160310).
- (b) “Deputy Director” means the Deputy Director of the State Water Resources Control Board’s Division of Water Rights.
- (c) “Diversion” means taking water by gravity or pumping from a surface stream or subterranean stream flowing through a known and definite channel, or other body of surface water, into a canal, pipeline, or other conduit, and includes impoundment of water in a reservoir, as defined in Water Code section 5100(c).
- (d) “Extraction” means taking groundwater.
- (e) “Groundwater” means water beneath the surface of the earth within the zone below the water table in which the soil is completely saturated with water, but does not include water that flows in known and definite channels unless included pursuant to Section 10722.5, as defined in Water Code section 10721, subd. (g).

Authority: Sections 186, 1058, 1058.5, Water Code

Reference: Cal. Const., Art. X, § 2; Sections 100, 100.5, 104, 105, 106.3, 109, 187, 275, 1011, 1011.5, 1051, 1058, 1058.5, 1253, 1825, 5106, Water Code; National Audubon Society v. Superior Court (1983) 33 Cal.3d 419; Environmental Law Foundation v. State Water Resources Control Board (2018) 26 Cal.App.5th 844.

##### **§ 1051. Information Orders**

Revised: November 3, 2023

- (a) The Deputy Director, or delegee, may issue an order to any water right holder or water user to provide information related to the diversion, extraction, or use of water in the Clear Lake watershed relevant to the Board's Clear Lake hitch protection efforts, including groundwater well location and depth, beneficial uses of diverted or extracted water, place of use of diverted or extracted water, volume and timing of diversions or extractions, the basis of right with supporting documents or other evidence, parcel information, or any other information relevant to forecasting use, impacts to surface flows, assessing compliance, or contingency planning for future impacts of drought. If this information is necessary for understanding stream flow in the watershed, Orders may request that recipients report diversions or extractions made in prior months and require recipients to record and report diversions or extractions during subsequent months; Orders may require recipients to report information on a repeated or ongoing basis. The Deputy Director will prioritize information orders for water users whose proximity to surface streams gives them the highest potential to impact surface flows.
- (b) Any water right holder or water user receiving an order under subdivision (a) of this section must provide the requested information within the deadlines specified in the order, which may not be less than 5 days following receipt of the order, including any recurring deadlines associated with ongoing reporting requirements as applicable. The Deputy Director or delegee may grant additional time for submission of information upon substantial compliance with the specified deadline and a showing of good cause. Information provided pursuant to subdivision (a) of this section must be submitted through an online reporting platform maintained by the State Water Board and accessible through its website, or through an alternative compliance mechanism as specified by the Deputy Director or delegee.
- (1) The Deputy Director or delegee may approve alternative compliance reporting mechanisms, such as reporting information through a third party authorized by the Deputy Director or delegee or participating in an existing data collection program, that the Deputy Director or delegee determines will provide a greater quality of information, improve reporting compliance, enhance data collection, or support local collaborative solutions.
- (c) Failure to provide the information required under subdivision (a) of this section within the deadlines specified in the order or any time extension granted by the Deputy Director or delegee is a violation subject to civil liability of up to the maximum allowed by statute per day for each day the violation continues pursuant to Water Code section 1846.
- (d) In determining whether to impose reporting requirements under subdivision (a) of this section, the Deputy Director will consider the need for the information and the burden of producing it and will make reasonable efforts to avoid requiring duplicative reporting of information that is already in the State Water Board's possession.
- (e) All orders issued under subdivision (a) of this section will be subject to reconsideration under article 2 (commencing with section 1122) of chapter 4 of part 1 of division 2 of the California Water Code.

- (f) Compliance with this article, including any conditions of certification or approval of a petition under this article, will constitute a condition of all water right permits, licenses, certificates and registrations for diversions from any watershed identified in this article.
- (g) Authorities delegated to the Deputy Director under this article may be redelegated.

Authority: Sections 186, 1058, 1058.5, Water Code

Reference: Cal. Const., Art. X, § 2; Sections 7, 100, 100.5, 104, 105, 106.3, 109, 187, 275, 1011, 1011.5, 1051, 1058, 1058.5, 1253, 1825, 1846, 5106, Water Code; National Audubon Society v. Superior Court (1983) 33 Cal.3d 419; Environmental Law Foundation v. State Water Resources Control Board (2018) 26 Cal.App.5th 844.

### **§ 1052. Compliance and Enforcement**

- (a) A water right holder or water user must comply with an order issued under this article, all conditions of certification or approval of a petition under this article, and all water right conditions under this article, notwithstanding receipt of more than one order. To the extent of any conflict between applicable requirements, the diverter must comply with the requirements that are the most stringent.
- (b) When conducting an inspection to assess a water user's compliance with this article, the State Water Board may obtain an inspection warrant pursuant to the procedures set forth in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure where access is not granted by the property owner.
- (c) Failure to meet the requirements of this article or of any order issued thereunder constitutes a violation subject to civil liability pursuant to Water Code section 1846, and an infraction pursuant to Water Code section 1058.5, subdivision (d), each of which can carry a fine of up to the maximum allowed by statute for each day in which the violation occurs.
- (d) Nothing in this section will be construed as limiting the enforceability of or penalties available under any other provision of law.

Authority: Sections 186, 1058, 1058.5, Water Code

Reference: Cal. Const., Art. X, § 2; Sections 100, 100.5, 104, 105, 106.3, 109, 187, 275, 1011, 1011.5, 1051, 1052, 1055, 1058, 1058.5, 1253, 1825, 1831, 1846, 5106, Water Code; National Audubon Society v. Superior Court (1983) 33 Cal.3d 419; Environmental Law Foundation v. State Water Resources Control Board (2018) 26 Cal.App.5th 844.