

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – OFFICE OF RESEARCH PLANNING AND PERFORMANCE
FEBRUARY 20, 2018**

ITEM 5

SUBJECT

CONSIDERATION OF A PROPOSED RESOLUTION ADOPTING A REGULATION PROHIBITING WASTEFUL WATER USES TO IMPLEMENT EXECUTIVE ORDERS B-37-16 and B-40-17

BACKGROUND ON PROPOSED REGULATORY ACTION

California droughts are becoming longer and more severe as warmer winter temperatures, driven by climate change, reduce water held in the Sierra Nevada snowpack and result in drier soil conditions. The state is adapting to climate change through implementation of the [California Water Action Plan](#), which includes making conservation a [California Way of Life](#).

After severe drought experienced in winter of 2013-14, Governor Edmund G. Brown Jr. issued a proclamation on January 17, 2014, declaring a drought State of Emergency to exist in California. On April 25, 2014, Governor Brown issued an executive order (EO) to strengthen the State's ability to manage water and habitat effectively in drought conditions, directing the State Water Board to adopt emergency regulations. On July 16, 2014, the State Water Board adopted [Resolution No. 2014-0038](#), adding to the Board's regulations, through the emergency rulemaking process, requirements for monthly reporting of urban water use and prohibiting certain wasteful water use practices during the drought. As the drought progressed and later lessened, the Board modified and readopted the emergency water conservation regulation several times, most recently in February 2017. Governor Brown ended the drought State of Emergency in April 2017. In response, the Board eliminated most of the drought emergency water conservation rules that had applied during the drought emergency. However, several provisions of the February 2017 emergency regulation, specifically those prohibiting certain wasteful water practices and requiring urban water supplier reporting, continued until the emergency regulation expired on November 25, 2017.

On May 9, 2016 Governor Brown issued EO B-37-16 to *Make Conservation a California Way of Life*. EO B-37-16 sets forth actions designed to ensure water is used more wisely, eliminate water waste, strengthen local drought resilience, and improve agricultural water use efficiency and drought planning. To eliminate water waste, it directs the Board to permanently prohibit practices that waste potable water, such as:

- *Hosing off sidewalks, driveways and other hardscapes;*
- *Washing automobiles with hoses not equipped with a shut-off nozzle;*
- *Using non-recirculated water in a fountain or other decorative water feature;*
- *Watering lawns in a manner that causes runoff, or within 48 hours after measurable precipitation; and*
- *Irrigating ornamental turf on public street medians.*

The proposed regulation would establish in California Code of Regulations, title 23, division 3, a new chapter 3.5 on Conservation and the Prevention of Waste and Unreasonable Use; and within chapter 3.5, a new article 2 pertaining to Wasteful and Unreasonable Uses. The

proposed regulation would make permanent, with some minor modifications and clarifications, the prohibitions adopted by the Board during the drought emergency, specifically those identified in California Code of Regulations, title 23, section 864 that expired November 25, 2017, and that were further modified as part of the public review process.

DISCUSSION

To promote water conservation and prevent the waste and unreasonable use of water, the proposed regulation would prohibit several activities and practices, with exemptions to address health and safety needs or to comply with a term or condition in a permit issued by a state or federal agency.

The formal rulemaking process and public comment period began in November 2017. State Water Board staff proposed a set of prohibited water uses to the Board on November 21, 2017. Public comment was accepted through December 26, 2017. Staff have reviewed all comments, prepared responses, and proposed some minor changes to the regulatory text to respond to comments.

Background information—such as the Initial Statement of Reasons, the draft Initial Study/Negative Declaration, and the draft Form 399 and Attachment—on this proposed regulation is available at this web site:

https://www.waterboards.ca.gov/water_issues/programs/conservation_portal/regs/wasteful_water_uses.html.

The direct link to the Initial Statement of Reasons:

www.waterboards.ca.gov/water_issues/programs/conservation_portal/regs/docs/wwu_isor.pdf

The direct link to the draft Initial Study/Negative Declaration:

www.waterboards.ca.gov/water_issues/programs/conservation_portal/regs/docs/wwu_ceqa_is_negdec.pdf

The direct link to the draft Form 399 and Attachment:

www.waterboards.ca.gov/water_issues/programs/conservation_portal/regs/docs/wwu_399_attachment.pdf

POLICY ISSUE

Should the State Water Board adopt the proposed resolution and accompanying regulation?

FISCAL IMPACT

State Water Board staff work associated with or resulting from this action will be addressed with existing resources.

REGIONAL BOARD IMPACT

Regional Board staff may receive a small number of allegations of wasteful water use.

STAFF RECOMMENDATION

Staff recommends that the State Water Board adopt the proposed resolution adopting the regulation.

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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2018-

TO ADOPT A REGULATION PROHIBITING WASTEFUL WATER USE PRACTICES

WHEREAS:

1. On May 9, 2016 Governor Brown issued [Executive Order \(EO\) B-37-16](#) to Make Conservation a California Way of Life. The Executive Order directed state agencies to transition from emergency water conservation to permanent, long-term improvements in water use, conservation and efficiency by taking specific actions, such as eliminating water waste. To eliminate water waste, EO B-37-16 directs the State Water Resources Control Board (State Water Board) to permanently prohibit practices that waste water, listing a number of examples;
2. Prior to issuing EO B-37-16, the Governor directed the State Water Board to adopt, and the State Water Board had adopted, drought emergency water conservation regulations pursuant to Water Code section 1058.5. These regulations, among other things, prohibited certain wasteful water uses. The State Water Board's first drought emergency water conservation regulation was adopted by [Resolution No. 2014-0038](#). The State Water Board subsequently readopted the regulations several times, with modifications that responded to the then-current circumstances each time (e.g., [Resolution No. 2015-0013](#), [Resolution No. 2015-0032](#), [Resolution No. 2016-0007](#), [Resolution No. 2016-0029](#), [Resolution No. 2017-0024](#));
3. On April 7, 2017 Governor Brown issued [Executive Order B-40-17](#), directing the State Water Board to rescind portions of its existing drought emergency water conservation regulations that require a stress test or mandatory conservation standard for urban water agencies. EO B-40-17 also directs the State Water Board to continue development of permanent prohibitions on wasteful water use and to continue the portions of the emergency regulations that prohibit certain wasteful water use practices until permanent requirements are in place;
4. In response to Executive Order B-40-17, the State Water Board adopted Resolution No. 2017-0024, rescinding portions of Resolution No. 2016-0029. The emergency conservation regulations, including the prohibitions on wasteful water use practices, remained in place until November 25, 2017;
5. The [California Water Action Plan](#) calls for making conservation a way of life, increasing regional water self-reliance, and expanding storage capacity, among other actions. The conservation requirements implemented in response to critical drought conditions differ from actions needed optimize urban water use efficiency and build resilience over the long term;
6. In many urban areas, 50 percent or more of daily water use is for lawns and outdoor landscaping. Outdoor water use is generally discretionary, and many irrigated landscapes will survive while receiving a decreased amount of water;

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7. Wasteful water uses, such as watering landscapes when it's raining and landscape irrigation that causes more than incidental runoff onto non-irrigated surfaces, reduce available water supplies and decrease resiliency to water shortages;
8. Water conservation is the easiest, most efficient and most cost-effective way to quickly reduce water demand and extend supplies, providing flexibility for all California communities;
9. Education and enforcement against water waste is a key tool in conservation programs. When conservation becomes a social norm in a community, the need for enforcement is reduced or eliminated;
10. Public information and awareness is critical to achieving conservation goals, and the Save Our Water campaign, run jointly by the Department of Water Resources (DWR) and the Association of California Water Agencies, is an excellent resource for conservation information and messaging that is integral to effective conservation and efficiency (<http://saveourwater.com>). Appropriate messaging regarding applicable state and regional drought conditions, when they occur, will increase public awareness and understanding of why conservation measures should be implemented;
11. Many California communities have faced and continue to face social and economic hardship due to the recent drought. Groundwater basins remain critically low in some areas and it could take years to recover to pre-drought conditions. Conservation extends available supplies immediately, and by conserving now we can take advantage of available supplies to replenish local storage and recharge groundwater basins. We can all make adjustments to our water use, including landscape and landscape irrigation choices that conserve even more water;
12. Climate change is impacting California's hydrology. Hydrologic changes include declining snowpack, earlier snowmelt, more precipitation as rain than snow, more frequent and longer droughts, and consequent impacts on water quality and water availability. As of February 1, 2018, the statewide snowpack [measured 27 percent of historic average](#). The last time there was so little Sierra snow at the beginning of February was in 2015, when it was 23 percent of its historic average;
13. The California Constitution declares, at article X, section 2, that the water resources of the state must be put to beneficial use in a manner that is reasonable and not wasteful. The California Supreme Court has clarified that "what may be a reasonable beneficial use, where water is present in excess of all needs, would not be a reasonable beneficial use in an area of great scarcity and great need. What is a beneficial use at one time may, because of changed conditions, become a waste of water at a later time." (*Tulare Dist. v. Lindsay Strathmore Dist.* (1935) 3 Cal.2d 489, 567.);
14. The State Water Board has the authority under article X, section 2 of the California Constitution and Water Code section 100 to prevent the waste or unreasonable use, unreasonable method of use, or the unreasonable method of diversion of all waters of the State. Water Code section 275 directs the State Water Board to "take all appropriate proceedings or actions before executive, legislative, or judicial agencies . . ." to enforce the constitutional and statutory prohibition against waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion, commonly referred to as the reasonable use doctrine. Accordingly, this regulation is in furtherance of article X, section 2;

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15. When performed carelessly, some otherwise reasonable water use practices can be wasteful and unreasonable, as is the case with the wasteful practices identified in the regulation. In general, water conservation, and, analogously here, eliminating wasteful and unreasonable water use practices, has many benefits such as conserving water for source watershed stream flows; conserving energy, as significant electricity use is embedded in moving and using water; generating additional economic activity, such as investments in drought tolerant landscaping; increased water quality in receiving waters due to lower runoff volume and reduced pollutant loading; increased awareness and a shared sense of responsibility among water users; reduced potential for severe economic disruption due to future water shortages; and more equitable management of water supplies;
16. On November 2, 2017, in accordance with applicable state laws and regulations, the State Water Board issued [public notice](#) of the availability of regulatory documents for public review, including the proposed text of the regulation, the Initial Statement of Reasons, the Economic and Fiscal Analysis with an appendix containing a Standard Form 399, and the draft Initial Study/Negative Declaration; the notice also announced a public workshop held on November 21, 2017, in accordance with applicable state laws and regulations;
17. On January 31, 2018, in accordance with applicable state laws and regulations, the State Water Board issued [public notice](#) of the availability of regulatory documents for public review, specifically changes to the proposed regulatory text; the notice also announced the adoption hearing held on February 20, 2018, in accordance with applicable state laws and regulations;
18. The State Water Board proposes to adopt the regulation in accordance with title 2, division 3, part 1, chapter 3.5 of the Government Code (commencing with section 11340);
19. The State Water Board prepared an Initial Study and Negative Declaration in accordance with the requirements of the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). As there is no substantial evidence that the project will have a significant effect on the environment and as the negative declaration reflects the lead agency's independent judgment and analysis, the State Water Board adopts the proposed negative declaration (Pub. Resources Code, § 21083 et seq.);
20. As required by Government Code sections 11346.3 and 11346.5, subdivision (a)(6), and State Administrative Manual Chapter 6600, the State Water Board has prepared an economic and fiscal analysis, which is contained in the Final Statement of Reasons and titled "STD Form 399 and Attachment: Economic and Fiscal Impacts of the Proposed Regulation to Permanently Prohibit Certain Wasteful Water Use Practices." The analysis anticipates that implementation of the regulation will not require additional positions for the State Water Board. Work will be incorporated into ongoing conservation efforts. The Final Statement of Reasons also includes the responses to comments on the draft regulatory documents submitted during the rulemaking period;
21. The State Water Board has carefully considered all oral and written comments received on the proposed regulation, responses to comments, and all other materials in the record.

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THEREFORE BE IT RESOLVED THAT:

1. The State Water Board certifies that the negative declaration has been completed in compliance with CEQA. The State Water Board has reviewed and considered the information contained in these documents, which reflect the State Water Board's independent judgment and analysis;
2. The State Water Board adopts the regulation as set forth in Exhibit A attached hereto;
3. The State Water Board directs the Executive Director to finalize the responses to comments on the proposed rulemaking and all other pertinent documents. Once the Executive Director has finalized the documents, staff shall submit the regulation and any necessary documents to the Office of Administrative Law (OAL) for final approval;
4. If, during the approval process, State Water Board staff, the State Water Board, or OAL determines that minor corrections to the language of the regulation or supporting documentation are needed for clarity or consistency, the State Water Board Executive Director or the Executive Director's designee may make such changes;
5. The State Water Board directs staff to condition funding upon compliance with the regulation, to the extent feasible; and
6. The State Water Board directs staff to work with the Department of Water Resources and the Save Our Water campaign to disseminate information regarding the regulation.

THEREFORE BE IT FURTHER RESOLVED THAT:

7. Nothing in the regulation or in the enforcement provisions of the regulation precludes a local agency from exercising its authority to adopt more stringent conservation measures. Local agencies are encouraged to develop their own progressive enforcement practices to promote conservation; and
8. The State Water Board calls upon all homeowners' associations to support and cooperate with water suppliers' and their residents' efforts to eliminate wasteful water use practices in community apartment projects, condominium projects, planned developments, and stock cooperatives statewide.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on February 20, 2018.

Jeanine Townsend
Clerk to the Board

PROPOSED TEXT OF REGULATION

Title 23. Waters

Division 3. State Water Resources Control Board and Regional Water Quality Control Boards

Chapter 2. Appropriation of Water

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

Chapter 3. Determination of Right to the Use of Water

Article 2. Adjudications Under Water Code Sections 2500 Through 2900

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

Article 1. Prevention of Waste and Unreasonable Use

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

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

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

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

Authority cited: Section 1058, Water Code.

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

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

~~§ 856.~~ § 956. Investigations.

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

- (1) when an interested person shows good cause, or
- (2) when the board itself believes that a misuse may exist.

Authority cited: Section 1058, Water Code.

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

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

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

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

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

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

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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.

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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.

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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.

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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.

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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.

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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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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.

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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.

405

406

EXHIBIT A

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.