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 of 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.
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;
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](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;
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.
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 exists.

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
appropriate; or as a preliminary cease and desist order hearing pursuant to Water Code Section 1834.
(d) The board may issue an order requiring prevention or termination thereof.

Authority cited: Section 1058, Water Code.
Reference: Sections 100, 275, 183, 1051, 1401, 1675.1 and 1834, Water Code.


If a permittee or licensee does not comply with any order issued pursuant to Section 857957 within such reasonable period of time as allowed by the board, or such extension thereof as may for good cause be allowed by the board, and if such order includes a finding that waste, unreasonable use, method of use, or method of diversion has occurred in connection with exercise of a right evidenced by a permit or license issued by the board, a revocation action may be commenced by the board:
(a) If the hearing has been noticed as a permit or license revocation hearing, and if the board finds that misuse has occurred or continues to occur, the board may order the permit or license revoked or impose appropriate additional or amended terms or conditions on the entitlement to prevent recurrence of the misuse;
(b) If the hearing pursuant to Section 857957 has been noticed as a preliminary cease and desist order hearing, and if the board finds that misuse has occurred or continues to occur, the board may issue a preliminary cease and desist order.

Authority cited: Section 1058, Water Code.

$ 959. Specific Requirements for Irrigation Proofs. [Repealed] $ 859. § 959. Noncompliance with Other Order.

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

Authority cited: Section 1058, Water Code.
Reference: Section 275, Water Code.


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

Authority cited: Section 1058, Water Code.
Reference: Section 275, Water Code.
§ 961. Signature of Deponent. [Renumbered]
§ 735. § 961. Napa River, Special.
(a) Budding grape vines and certain other crops in the Napa Valley may be severely
damaged by spring frosts. During a frost, the high instantaneous demand for water for
frost protection by numerous vineyardists and other water users frequently exceeds the
supply in the Napa River stream system. This results in uncoordinated diversions and
possible infringements upon other rights. Therefore, all diversions of water from the
stream system between March 15 and May 15 determined to be significant by the board
or a court of competent jurisdiction shall be considered unreasonable and
a violation of Water Code Section 100 unless controlled by a watermaster administering
a board or court approved distribution program. Diversions for frost protection and
irrigation during this period shall be restricted to: (1) replenishment of reservoirs filled
prior to March 15 under an appropriative water right permit, or (2) diversions permitted
by the court.
(b) The service area of the distribution program may be revised at any time by order of
the board or the court. The board will retain jurisdiction to revise terms and conditions of
all frost protection permits should future conditions warrant.
(c) Under this section diversion of water during the spring frost season from March 15 to
May 15 to replenish water stored in reservoirs prior to the frost season is “regulation,” as
defined in Chapter 2, Article 2, Section 657: Replenishment diversion must be to
reservoirs for which a permit or license authorizing winter storage prior to the frost
season has been issued.

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

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

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

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
NMFS and DFG. 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 risk assessment shall be evaluated and updated annually.

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

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

(A) The frost inventory, including diversion data.

(B) Stream stage monitoring data.

(C) The risk assessment and its results, identification of the need for any additional data or analysis, and a schedule for obtaining the data or completing the analysis.

(D) A description of any corrective action plan that has been developed, any corrective actions implemented to date, and a schedule for implementing any additional corrective actions.

(E) Any instances of noncompliance with the WDMP or with a corrective action plan, including the failure to implement identified corrective actions. The report shall document consultations with DFG and NMFS regarding the stream stage monitoring program and risk assessment and shall explain any deviations from recommendations made by DFG or NMFS during the consultation process. In addition, the annual report shall evaluate the effectiveness of the WDMP and recommend any necessary changes to the WDMP, including any proposed additions or subtractions of program participants. Any recommendations for revisions to the WDMP shall include a program implementation plan and schedule. The board may require changes to the WDMP, including but not limited to the risk assessment, corrective action plan, and schedule of implementation, at any time.

(d) The governing body may develop and submit for the Deputy Director for Water Rights' approval, criteria, applicable to any participant in its WDMP, for identifying groundwater diversions that are not hydraulically connected to the Russian River stream system. The governing body may submit to the Deputy Director a list of groundwater diverters that appear to meet these criteria and could be exempted from this section. The Deputy Director is authorized to exempt the listed groundwater diverters, or identify the reason for not exempting the listed groundwater diverters. Beginning three years
from the effective date of this section, if an individual groundwater diverter can
independently demonstrate to the satisfaction of the Deputy Director that the diversion is
not hydraulically connected to the Russian River stream system, the Deputy Director is
authorized to exempt the groundwater diverter from this section.

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

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

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

(a) As used in this article:
(1) “Commercial agricultural use meeting the definition of Government Code section
51201, subdivision (b)” includes irrigation, frost protection and heat control, but does not
include cleaning, processing or other similar post-harvest activities.
(2) “Total potable water production” means all potable water that enters into a water
supplier’s distribution system, excluding water placed into storage and not withdrawn for
use during the reporting period, or water exported outside the supplier’s service area.
(3) (2) “Urban water supplier” means a supplier that meets the definition set forth in
Water Code section 10617, except it does not refer to suppliers when they are
functioning solely in a wholesale capacity, but does apply to suppliers when they are
functioning in a retail capacity.
(4) “Water year” means the period from October 1 through the following September 30.
Where a water year is designated by year number, the designation is by the calendar
year number in which the water year ends.
(3) “Turf” has the same meaning as in Section 491.
(4) “Incidental runoff” means unintended amounts (volume) of runoff, such as
unintended, minimal overspray from sprinklers that escapes the area of intended use.
Water leaving an intended use area is not considered incidental if it is part of the facility
or system design, if it is due to excessive application, if it is due to intentional overflow or
application, or if it is due to negligence.
(b)(1) The use of water is prohibited as identified in this subdivision for any of the following actions:

(A) The application of water to outdoor landscapes in a manner that causes more than incidental runoff such that water flows onto adjacent property, non-irrigated areas, private and public walkways, roadways, parking lots, or structures;

(B) The use of a hose that dispenses water to wash a motor vehicle, except where the hose is fitted with a shut-off nozzle or device attached to it that causes it to cease dispensing water immediately when not in use;

(C) The application of potable water directly to driveways and sidewalks;

(D) The use of potable water in an ornamental fountain or other decorative water feature, except where: (D)(i) the water is part of a recirculating system; or (D)(ii) the fountain is registered on the National Register of Historic Places;

(E) The application of water to irrigate turf and ornamental landscapes during and within 48 hours after measurable rainfall of at least one-tenth fourth of one inch of rain. In determining whether measurable rainfall of at least one-tenth fourth of one inch of rain occurred in a given area, enforcement may be based on records of the National Weather Service, the closest CIMIS station to the parcel, or any other reliable source of rainfall data available to the entity undertaking enforcement of this subdivision;

(F) The serving of drinking water other than upon request in eating or drinking establishments, including but not limited to restaurants, hotels, cafes, cafeterias, bars, or other public places where food or drink are served and/or purchased, during a period for which the Governor has issued a proclamation of a state of emergency under the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code) based on drought conditions; and

(G) As of January 1, 2025, the irrigation of turf on public street medians or publicly owned or and maintained landscaped areas between the street and sidewalk, except where:

(i) the turf serves a community or neighborhood function, including, but not limited to, recreational uses and civic or community events;

(ii) the turf is irrigated incidentally by an irrigation system, the primary purpose of which is the irrigation of trees; or

(iii) the turf is irrigated with recycled water through an irrigation system installed prior to January 1, 2018; and.

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

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

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

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

(c) To promote water conservation, operators of hotels and motels shall provide guests with the option of choosing not to have towels and linens laundered daily. The hotel or motel shall prominently display notice of this option in each guestroom using clear and easily understood language.
(d)(1) To prevent the waste and unreasonable use of water and to promote water conservation, any homeowners’ association or community service organization or similar entity is prohibited from:

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

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

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

(2) As used in this subdivision:

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

(B) “Homeowners’ association” means an “association” as defined in section 4080 of the Civil Code.

(C) “Common interest development” has the same meaning as in section 4100 of the Civil Code.

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

(E) “Governing documents” has the same meaning as in section 4150 of the Civil Code.

(F) “Separate interest” has the same meaning as in section 4185 of the Civil Code.

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

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

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

(g) A decision or order issued under this article by the Board or an officer or employee of the Board is subject to reconsideration under article 2 (commencing with section 1122) of chapter 4 of part 1 of division 2 of the Water Code.
Authority: Section 1058, Water Code.