

**STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS**

**RESOLUTION ESTABLISHING GENERAL CONDITIONS TO BE APPLIED TO SMALL
IRRIGATION USE REGISTRATIONS FOR DIVERSION**

WHEREAS:

1. Assembly Bill 964 added Small Irrigation Use registration provisions to Article 2.7 of the Water Code. Pursuant to Water Code section 1229(b) registrations for Small Irrigation Use are not authorized until general conditions are established to protect instream beneficial uses. Pursuant to Water Code section 1229(c) general conditions for some methods of diversion or categories of small irrigation use may be established before others. Water Code section 1229(d) requires adoption of general conditions for registration of small irrigation use facilities used for frost protection in the area described in paragraph (1) of subdivision (a) of Water Code section 1259.4 prior to adopting other general conditions for small irrigation use.
2. Division staff consulted with a stakeholder group consisting of: the Department of Fish and Game; Trout Unlimited; Ellison, Schneider, and Harris; Wine Institute; and the California Association of Wine Grape Growers to develop general conditions pursuant to the requirements identified in Water Code section 1229.
3. The delegation of authorities from the State Water Resources Control Board to the Deputy Director for Water Rights (Resolution 2012-0029) authorizes the Deputy Director for Water Rights to establish and revise a list of general conditions to be applied to small irrigation use registrations.

THEREFORE BE IT RESOLVED THAT:

The Deputy Director for Water Rights establishes the general conditions listed below for the following methods of diversion and specific categories of Small Irrigation Use registrations:

- a) Diversions to offstream storage reservoirs with points of diversion located on Class I, II, or III streams not to exceed 20 acre-feet per annum where the reservoir is existing or proposed for construction within cultivated lands. Water appropriated under this category of Small Irrigation Use may be used for the irrigation, frost protection, or heat control of currently cultivated lands within the area described in paragraph (1) of subdivision (a) of Water Code section 1259.4. Uses may also include incidental aesthetic, fire protection, recreational, or fish and wildlife purposes.
- b) Diversions to onstream storage reservoirs located on Class III streams not to exceed 20 acre-feet per annum where the reservoir was constructed prior to January 1, 2012. Water appropriated under this category of Small Irrigation Use may be used for the irrigation, frost protection, or heat control of currently cultivated lands within the area described in paragraph (1) of subdivision (a) of Water Code section 1259.4. Uses may also include incidental aesthetic, fire protection, recreational, or fish and wildlife purposes.

GENERAL CONDITIIONS

5. **5c (use this term for projects including a single reservoir)**
The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed ____ acre-feet per annum to be collected from ____ of each year to **(season consistent with DFG certification)** of the succeeding year. The capacity of the reservoir shall not exceed ____ acre-feet which is the stated capacity shown in the registration. The rate of diversion to storage shall not exceed ____ **(rate consistent with DFG certification)** cubic feet per second **(this sentence is not included for onstream storage projects)**.

The total amount of water to be taken from the source shall not exceed _____ acre-feet per water year of October 1 to September 30.

5. **5d (use this term for projects including multiple reservoirs)**
The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed ____ acre-feet per annum to be collected from ____ of each year to **(season consistent with DFG certification)** of the succeeding year. The capacity of **(Res. Name)** shall not exceed ____ acre-feet and the capacity of **(Res. Name)** shall not exceed acre-feet **(etc.)** which is the stated capacities shown in the registration. The rate of diversion to storage shall not exceed _____ **(rate consistent with DFG certification)** cubic feet per second **(this sentence is not included for onstream storage projects)**.

The total amount of water to be taken from the source shall not exceed _____ acre-feet per water year of October 1 to September 30.

6. Appropriation of water pursuant to this registration shall be made in accordance with the information set forth in the completed registration form as to source, location of point of diversion, purpose of use, place of use, and quantity and season of diversion. This information is reproduced as conditions 1 through 5 of this certificate.
7. **(use this term if the DFG certification includes bypass flows)**
No water shall be diverted under this registration unless the flow in [SOURCE] is at or above **[AMOUNT]** cubic feet per second, as measured at **[LOCATION]**.
8. Registrant shall comply with all lawful terms and conditions identified in the Department of Fish and Game certification.
9. Pursuant to California Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this registration, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.
10. Registrant shall allow representatives of the State Water Board, and other parties as may be authorized from time to time by the State Water Board, reasonable and timely access to project works to determine compliance with the terms and conditions of this registration.
11. If the registrant does not own the point of diversion, this registration shall not be construed as conferring upon the registrant right of access to the point of diversion.

12. This appropriation is subject to prior rights. Registrant may be required to curtail diversion or release water stored during the most recent collection season should diversion under this registration result in injury to holders of legal downstream senior rights. If a reservoir is involved, registrant may be required to bypass or release water over, around, or through the dam. If release of stored water would not effectively satisfy downstream prior storage rights, registrant may be required to otherwise compensate the holders of such rights for injury caused.
13. To the extent that water available for use under this registration is return flow, imported water, or wastewater, this registration shall not be construed as giving any assurance that such supply will continue.
14. Diversion works shall be constructed and water applied to beneficial use with due diligence.
15. No work shall commence and no water shall be diverted, stored or used under this certificate until registrant has received a stream or lake alteration permit from the California Department of Fish and Game. Compliance with the terms and conditions of the permit is the responsibility of the registrant. If a permit is not necessary for this project, the registrant should retain a written waiver from the Department of Fish and Game.
16. In compliance with section 5937 of the Fish and Game Code, if storage or diversion of water under this registration is by means of a dam, registrant shall allow sufficient water at all times to pass through a fishway or, in the absence of a fishway, allow sufficient water to pass over, around, or through the dam to keep in good condition any fish that may be planted or exist below the dam; provided that, during a period of low flow in the stream, upon approval of the Department of Fish and Game, this requirement will be satisfied if sufficient water is passed through a culvert, waste gate, or over or around the dam to keep in good condition any fish that may be planted or exist below the dam if it is impracticable or detrimental to pass the water through a fishway. In the case of a reservoir, this provision shall not require the passage or release of water at a greater rate than the unimpaired natural inflow into the reservoir.
17. This registration does not supersede requirements to obtain and comply with other necessary federal, state, and local approvals, including obtaining and complying with any waste discharge requirements from the appropriate California Regional Water Quality Control Board.
18. This registration does not authorize any act which results in the taking of a threatened, endangered or candidate species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this water right, the registrant shall obtain authorization for an incidental take prior to construction or operation of the project. Registrant shall be responsible for meeting all requirements of the state and federal Endangered Species Acts authorized under this registration.
19. Pursuant to California Water Code section 1241 the appropriation registered herein shall be totally or partially forfeited for nonuse if the diversion is abandoned or if all or any part of the diversion is not beneficially used for a continuous period of five years.

20. Pursuant to California Water Code sections 1228.4, 1228.5, and 1228.6 the appropriation registered herein is subject to enforcement, including but not limited to revocation, by the State Water Board if 1) the State Water Board finds that the registrant knowingly made any false statement, or knowingly concealed any material fact, in the registration; 2) the registration is not renewed as required by the conditions of this certificate; or 3) the State Water Board finds that the registrant is in violation of the conditions of this registration.

21. The registration is subject to the submittal of a report of water use and satisfactory renewal of the registration, on forms to be furnished by the State Water Board, including payment of the then-current renewal fees prior to the expiration of each five-year period following the date of first filing the completed registration.

22. **(use for registrations for onstream reservoirs)**

No water shall be diverted under this registration unless the registrant is monitoring and reporting the withdrawal for beneficial use and the release of water from the reservoir(s). This recording shall be conducted using a device(s) and methods satisfactory to the Deputy Director for Water Rights. The device(s) shall be capable of continuous monitoring of the rate and quantity of water withdrawn for beneficial use or released to the stream channel from each reservoir and shall be properly maintained.

The registrant shall maintain a record of all withdrawals for beneficial use or releases to the stream channel under this registration that includes the date, time, rate of withdrawal or release, and the amount of water withdrawn or released at time intervals of one hour or less. The records shall be submitted with the renewal report or whenever requested by the Division of Water Rights.

23. **(use for registrations for diversion to offstream storage)**

No water shall be diverted under this registration unless the registrant is monitoring and reporting the diversion of water. This monitoring shall be conducted using a device(s) and methods satisfactory to the Deputy Director for Water Rights. The device(s) shall be capable of continuous monitoring of the rate and quantity of water diverted and shall be properly maintained.

The registrant shall maintain a record of all diversions under this registration that includes the date, time, rate of diversion at time intervals of one hour or less, and the amount of water diverted. The records shall be submitted with the renewal report or whenever requested by the Division of Water Rights. The State Water Board may require release of water held in storage that cannot be verified by monthly records. Failure to maintain or submit the required records may result in the requirement to release the entire content of the reservoir's storage.

24. **(use for registrations for onstream reservoirs)**

No water shall be diverted under this registration unless the registrant is monitoring and reporting water levels in the reservoir(s). This monitoring shall be conducted using a device(s) and methods satisfactory to the Deputy Director for Water Rights. The device(s) shall be capable of monitoring water surface levels from the maximum high water line to the minimum water line known to exist for the reservoir(s), and shall be properly maintained.

The registrant shall maintain a record of maximum and minimum water surface levels for each month and the dates these levels were reached. If water is used for frost protection or other authorized refill, the registrant shall also maintain a record of water surface levels

before withdrawal for frost protection and after each reservoir refill. The records shall be submitted with the renewal report or whenever requested by the Division of Water Rights. The State Water Board may require release of water held in storage that cannot be verified by monthly records. Failure to maintain or submit the required records may result in the requirement to release the entire content of the reservoir's storage.

25. The State Water Board intends to develop and implement a basin-wide program for real-time electronic monitoring and reporting of diversions, withdrawals, releases and streamflow in a standardized format if and when resources become available. Such real-time reporting will be required upon a showing by the State Water Board that the program and the infrastructure are in place to accept real-time electronic reports. Implementation of the reporting requirements shall not necessitate amendment to this right

26. **(use for registrations for onstream reservoirs)**

No water shall be diverted under this registration unless the registrant is operating in accordance with a mitigation plan satisfactory to the Department of Fish and Game or the Department of Fish and Game has waived this requirement. The mitigation plan shall address gravel and wood augmentation and/or eradication of non-native species. If required, the registrant shall submit a report on mitigation plan activities in accordance with the time schedule contained in the mitigation plan, and whenever requested by the Division of Water Rights.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:

Barbara Evoy, Deputy Director
DIVISION OF WATER RIGHTS

DATED: JUL 25 2012