

**Board of Forestry and Fire Protection**

**Notice of Proposed Emergency Action, pursuant to GOV § 11346.1(b)**

**“Water Drafting Amendments, 2015”**

**Notice Date: August 20, 2015**

The Board of Forestry and Fire Protection (hereafter “Board”) has adopted an emergency regulation for water drafting operations that are associated with Timber Operations. This action is being taken in accordance with GOV §§ 11346.1, 11346.5 (2)-(6) and 11349.6. The Board adopted the emergency regulation at their regularly scheduled meeting on July 23, 2015. This regulation will be submitted to the Office of Administrative Law on **August 28, 2015**.

If you wish to comment on the adopted emergency regulations, you must submit the comment directly to the Office of Administrative Law (hereafter “OAL”) within five **calendar** days of OAL’s posting of the proposed emergency regulations on the OAL web site. You may submit comments on the adopted emergency regulations to:

**Mail:**

OAL Reference Attorney  
300 Capitol Mall, Suite 1250  
Sacramento, California 95814

**Fax:**

(916) 323-6826

**E-mail:**

[staff@oal.ca.gov](mailto:staff@oal.ca.gov)

OAL will accept all comments submitted by the specified deadline.

When you submit a comment to OAL, you must also submit a copy of your comment to the rulemaking agency’s specified contact person provided below.

**Mail:**

Thembi Borrás  
Regulations Coordinator  
Board of Forestry and Fire Protection  
P.O. Box 944246  
Sacramento, CA 944244-2460

**Fax:**

(916) 653-0989

**E-mail:**

[publiccomments@BOF.ca.gov](mailto:publiccomments@BOF.ca.gov)

This regulation will be submitted to the Office of Administrative Law on August 28, 2015. **The public comment period closes at 5:00 PM on September 2, 2015.**

OAL will confirm that the agency has received the comment. Pursuant to Title 1, California Code of Regulations, Section 55(b)(1) through (4), the comment must state that it is about an emergency regulation and include the topic of the emergency.

Pursuant to 1 CCR § 55, the Board is not required and, in this instance, not likely to respond to comments submitted. However, should the Board choose to respond, it must submit its response to OAL within eight (8) **calendar** days following the date of submission of the proposed emergency regulation to OAL, unless specific exceptions are applicable.

Pursuant to **GOV § 11346.1(a)(2)(A)**, the specific rule text associated with the proposed action immediately follows this notice.

Pursuant to **GOV § 11346.1(b)(2)**, following is a description of the facts demonstrating the existence of an emergency and the need for immediate action, and demonstrating, by substantial evidence, the need for the proposed regulation to effectuate the statute being implemented, interpreted, or made specific and to address only the demonstrated emergency.

**One:** The Board was compelled to respond in an expeditious manner to requests from the California Department of Forestry and Fire Protection (the Department) and the Department of Fish and Wildlife (CDFW) to adopt emergency regulations for the purposes of conserving water resources that may be impacted as a result of water drafting activities associated with commercial Timber Operations. Water drafting is a common practice that often accompanies commercial timber harvest activities. Water is often necessary for the purposes of dust abatement on unsurfaced roads to address safety of road use, controlling of fugitive dust from entering watercourses and to maintain road surface stability. Additional water is often utilized to facilitate construction of landings, roads, or watercourse crossings. It is often the case that long term water storage, through the use of reservoirs or tanks, is not an available source of water in remote portions of the State where commercial timber harvest activities are a common management practice. Therefore, water is often directly drafted from watercourses or developed springs into trucks that transport and apply water to targeted locations. Current regulations, in 14 CCR § 923.7(l), address water drafting operations in watersheds with listed anadromous salmonids, but do not specifically address water drafting activities outside of these watersheds. Adoption of this emergency regulation would extend a regulatory standard to all watersheds within the State when water drafting activities are proposed in conjunction with commercial timber harvest activities.

**Two:** The Board was compelled to respond in an expeditious manner to the Proclamations of Emergency put forth by the Administration in response to drought conditions throughout the State. This expedited action was taken to reduce the harmful impacts from drought which has the potential to be exacerbated by water drafting.

**Three:** Promulgation of these regulations is immediate and necessary to maintain public peace, health and safety, or the general welfare of the citizens of California, through implementation of mandated compliance with Department of Fish and Wildlife Section 1600 for water drafting activities for the purposes of conservation of water resources within the forested landscapes of the State.

**Four:** Promulgation of these regulations is immediate and necessary to protect aquatic habitats for all flora and fauna that depend on surface water within the forested environments of the State.

**Five:** Promulgation of these regulations is immediate and necessary to assure that supplies of domestic sources of water for rural communities and dwellings are not adversely affected by over utilization of surface water from water drafting activities.

**Six:** Promulgation of these regulations is immediate and necessary to assure that water resources are conserved within the forested landscapes of the State to allow for wildfire suppression activities in the event of the unfortunate ignition of wildfire within watersheds where water drafting associated with commercial timber activities is occurring.

**Seven:** Promulgation of these regulations is immediate and necessary to conserve water resources for the maintenance of recreational opportunities, where available, for the people of the State within watersheds where water drafting associated with commercial timber activities is occurring.

Pursuant to **GOV § 11342.545**, the severe drought conditions call for immediate action to avoid serious harm to the public peace, health, safety, or general welfare. The situation presents urgent challenges to the beneficial uses of water throughout the State, which water drafting has the potential to exacerbate. The Board was compelled to respond to the evidence, as described above, by promulgation of these regulations. According to the Department, these emergency regulations are necessary to recognize the severity of the drought and highlight potential impacts to fisheries and wildlife, as well as domestic water supplies from timber harvest related drafting operations. These regulations are immediate and necessary to, in part, facilitate appropriate measures be included in Plans to mitigate the risk of water drafting to the the beneficial uses of water.

The Board has not yet determined if they are going to pursue permanent rulemaking. However, if they did the regulation would not take effect prior to January 1, 2016 according to the timeline associated with regular rulemaking, pursuant to PRC § 4554.5, which specifies the Board's rules shall become effective on the next January 1 that is not less than 30 days from the date of approval of those rules or regulations by the Office of Administrative Law. This time lag is not congruent with making this regulation effective as soon as possible.

The Board is proposing action to adopt 14 CCR § 916.2 [936.2, 956.2] (d).

Pursuant to **GOV § 11346.1(b)(2)**, following are the list of each technical, theoretical and empirical study, report, or similar document, if any, upon which the Board relied to make the “emergency” finding:

Governor issued 2014 and 2015 Drought Proclamations of State of Emergencies issued as Executive Orders on January 17th, 2014, April 25th, 2014, and April 1, 2015

Notice Emergency Regulation to Implement “Water Drafting Amendments, 2014”, noticed on June 3, 2014

CAL FIRE Letter to the Board regarding Emergency Forest Practice Water Drafting Regulations in response to Governor Brown’s Drought Proclamations dated May 6, 2014

CAL FIRE Letter to the Board regarding Water Drafting Emergency Regulations dated July 14, 2015

CDFW Letter to the Board regarding Emergency Forest Practice Water Drafting Regulations in Response to Continued Drought and Governor Brown’s Drought Proclamations and Executive Orders dated July 10, 2015

CDFW presentation delivered to the Forest Practice Committee on July 21, 2015  
[http://bofdata.fire.ca.gov/board\\_business/binder\\_materials/2015\\_july\\_2015\\_fpc/fpc\\_1.2\\_dfw\\_presentation\\_emergency\\_water\\_drafting\\_rules\\_plead.pdf](http://bofdata.fire.ca.gov/board_business/binder_materials/2015_july_2015_fpc/fpc_1.2_dfw_presentation_emergency_water_drafting_rules_plead.pdf)

Fish and Game Code (FGC) § 1600 *et seq.*  
<http://leginfo.legislature.ca.gov/faces/codes.xhtml>

2015 North Coast Regional Water Quality Control Board (NCRWQCB) Letter to the Board regarding Comments on the Emergency Forest Practice Water Drafting Regulations in Response to Continued Drought and Governor Brown’s Drought Proclamations and Executive Orders dated July 22, 2015

Updated technical documentation on drought conditions:  
<http://www.casalmon.org/drought>  
<http://www.casalmon.org/disappearing-rivers>  
<http://ca.water.usgs.gov/data/drought/>  
<http://ca.gov/drought/>  
<http://ca.water.usgs.gov/data/drought/drought-impact.html>

Pursuant to **GOV § 11346.1(b)(2)**, following is the information required by **GOV § 11346.5(a)(2)**, which mandates the reference to the authority(s) under which the regulation is proposed and a reference(s) to the particular code sections or other provisions of law that are being implemented, interpreted, or made specific be provided.

**14 CCR § 916.2 [936.2, 956.2]** Note: Authority cited: Sections 4551, 4562.7 and 21000(g), Public Resources Code. Reference: Sections 751, 4512, 4513, 4551.5, 21000(g), 21001(b) and 21002.1, Public Resources Code; Sections 100, 1243 and 13050(f), Water Code; and Sections 1600 and 5650(c), Fish and Game Code.

Pursuant to **1 CCR § 20(c)(1)**, no documents are incorporated by reference in these regulations.

The Board had available the entire rulemaking file, including all information considered as a basis for this proposed regulation, available for public inspection and copying throughout the rulemaking process at its office in Sacramento, California.

Pursuant to **1 CCR § 48**, the notice required by Government Code section 11346.1(a) shall contain the following or substantially similar statement:

“Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.”

Pursuant to **1 CCR §50(a)(5)(A)** and **GOV § 11346.1(a)(2)** the Board provided a five working day notice. The proposed action was, at a minimum, posted on the Board’s website (pursuant to **GOV § 11346.4(a)(6)**), sent to the Board mailing list (pursuant to **GOV § 11346.4(a)**) and widely distributed via email (pursuant to **GOV § 11340.85**) at least five working days prior to being submitted to the Office of Administrative Law.

Pursuant to **GOV § 11346.1(b)(2)**, following is the information required by **GOV § 11346.5(a)(3)**:

**INFORMATIVE DIGEST**

Pursuant to the Z’berg-Nejedly Forest Practice Act of 1973, PRC § 4511 *et seq.*, the Board is authorized to construct a system of forest practice regulations applicable to timber management on State and private timberlands, including but not limited to Timber Operations conducted under Plans.

Pursuant to this statutory authority, in 2014, the Board adopted emergency water drafting regulations on May 15, 2014 entitled, "Water Drafting Emergency Regulations, 2014", which expanded the application of 14 CCR § 916.9 (r)(1) –(2) from watersheds designated as Anadromous Salmonid Protection (ASP) to non-ASP watersheds. Through emergency rulemaking, this became effective on 06/19/14 and expired on

12/17/14. *Note: 14 CCR § 916.9 (r) was substantially moved to 14 CCR § 923.7(l) as part of the Road Rules, approved in 2014.*

Existing regulation for non-ASP watersheds do not specifically address water drafting activities. However there are requirements that direct Licensed Timber Operators (LTO) not remove water from watercourses in amounts deleterious to fish, wildlife, beneficial function of riparian zones, or the quality and beneficial uses of water pursuant to 14 CCR § 916(b).

On July 23, 2015, the Board adopted an emergency regulation entitled "Water Drafting Amendments, 2015" identical in express terms to the emergency regulation for water drafting that was effective for the latter part of 2014. Specifically, the Board is proposing action to amend 14 CCR § 916.2 [936.2, 956.2] through the inclusion of a new subsection (d).

The effect of the proposed action is to require Registered Professional Foresters (RPF) planning Timber Operations to consider beneficial uses of water, including the potential impacts to drinking water, Statewide. Specifically, some of the provisions for water drafting for Timber Operations in watersheds with listed anadromous salmonids (ASP watersheds) will be applicable in non-ASP watersheds. The proposed action brings further emphasis to compliance with Section 1600 of the Fish and Game Code for water drafting activities and also mandates that descriptions of both the drafting site and drafting activities be provided in Plans that are submitted to the Department. The description of drafting proposals will facilitate the Department and other Responsible Agency's assessment of potential impacts to the beneficial uses of water in light of the severe drought conditions. Another effect of the proposed action will be increased awareness regarding the drought and the potential water quality impacts affiliated with water drafting and Timber Operations.

According to the Department, the "Water Drafting Emergency Regulations, 2014" provided critical information to the review team agencies to ensure timber harvesting operations were effectively analyzed and appropriate measures were included in plans to mitigate potential impacts exacerbated by the drought. However, the Department also documented that the Forest Practice Review process and compliance with Sections 1600 *et seq.* of the Fish and Game Code provides the necessary protection of water quality and beneficial uses during drafting operations. Nevertheless, given the continuing drought conditions, and based on actions by the Governor (three Proclamations of State of Emergencies issued as Executive Orders on January 17th, 2014, April 25th, 2014, and April 1, 2015) in response to unprecedented drought conditions that the State is currently experiencing and to address the serious nature of current impacts to the waters of the State, the Department recommended the Board consider adoption of the emergency rules previously adopted by the Board. They also recommended including provisions for self-monitoring, which the Board declined to adopt.

The CDFW recommended, and the NCRWQCB supported, the Board expanding the application of 14 CCR § 923.7(l), in its entirety, from ASP watersheds to non-ASP watersheds.

The primary benefit of the proposed action is the protection of the beneficial uses of water for purposes including, but not limited to, a habitable environment for aquatic organisms, domestic utilization, and fire suppression activities. The CDFW contributed the following additional information:

The proposed emergency water drafting regulations will benefit the State's environment and specifically, fish and wildlife resources that occur outside Anadromous Salmonid Protection watersheds through:

1. Helping to ensure compliance with Fish and Game Code Section 1600 *et seq.*, including, the development of Lake and Streambed Alteration Agreements with site-specific effective measures at water drafting locations to provide for minimum instream flows and measures to avoid discharge of pollutants to the benefit of aquatic species and their habitats;
2. Requiring timber harvesting plans to include a description of the water drafting sites and parameters to improve the review team agencies' abilities to assess potential impacts and as warranted establish measures to avoid or mitigate impacts;
3. Calling for LTOs and RPFs to evaluate drafting sites in the midst of drought conditions compounded by the effects of increased illegal diversions to ensure drafting rates are adjusted to avoid the dewatering of streams at water drafting sites;
4. Requiring timber harvesting plans to include a discussion of water drafting alternative methods and measures, effects downstream, and cumulative effects in the watershed; and
5. Generating increased awareness by landowners, RPFs and LTOs of the effects of the continuing drought and, specifically, the extended low-flow conditions throughout the State and how water drafting needs to be conducted with care and due diligence to avoid exacerbating these effects.

The proposed action does not differ substantially from an existing comparable federal regulation or statute

The proposed regulation is not inconsistent or incompatible with existing State regulations; it amends it.

Pursuant to **GOV § 11346.1(b)(2)**, following is the information required by **GOV § 11346.5(a)(4)**.

There are no other matters as are prescribed by statute applicable to the specific State agency or to any specific regulation or class of regulations.

Pursuant to **GOV § 11346.1(b)(2)**, following is the information required by **GOV § 11346.5(a)(5)**. The Board finds that the proposed regulation does not impose a mandate on local agencies or school districts.

Pursuant to **GOV § 11346.1(b)(2)**, following is the information required by **GOV § 11346.5(a)(6)**.

No costs or savings to any State agency are expected. “Cost or savings” means additional costs or savings, both direct and indirect, that a public agency necessarily incurs in reasonable compliance with regulations. Following are responses returned from two reviewing agencies:

According to the Department, it doesn’t foresee a significant amount of personnel time needed to review information submitted with plan in regards to this regulation.

According to the CDFW, there will not be a significant increase in costs to the CDFW from the Emergency Water Drafting regulations recently approved by the Board of Forestry and Fire Protection.

The proposed regulation does not impose a reimbursable cost to any local agency or school district (under Part 7 (commencing with Section 17500 of Division 4)). There are no other nondiscretionary costs or savings imposed on local agencies. There are no costs or savings in federal funding to the State.

Pursuant to **GOV § 11349(f) and 1 CCR §12**, following is the information required by **1 CCR §12, an Explanation for why the Proposed Action Duplicates and/or Rephrases Statute and Existing Rules**.

The regulation repeats or rephrases in whole or in part existing regulation, specifically 14 CCR §§ 923.7(l) and 1034(x)(4)(C) because 14 CCR § 923.7(l) is specific to ASP watersheds. The proposed action provides protection of all beneficial uses, so 14 CCR § 916.2(d) was the location selected and portions of 14 CCR § 923.7(l), plus a mapping component from 1034(x)(4)(C), were used to construct the regulation associated with the proposed action.

This is necessary to satisfy the “clarity” standard of Government Code Section 11349.1(a)(3). Additionally, it would be cumbersome to wholly require a person to have to cross reference the statute and other portions of the Forest Practice Rules (14 CCR).

Duplication of relevant existing regulations in the proposed action was determined to be a prudent measure because they were developed and informed by experts in the field of forestry and through a collaborative effort between landowner, industry, agency and environmental representatives. These duplicated regulations were subsequently used to develop the provisions described in the proposed action.

Where the statute is made specific or interpreted, an explanation regarding why the proposed rule is reasonably necessary to carry out the purpose and to address the problem for which it is proposed is provided.

**SPECIFIC PURPOSE OF EACH ADOPTION, AMENDMENT OR REPEAL (pursuant to GC § 11346.2(b)(1)) AND THE RATIONALE FOR THE AGENCY'S DETERMINATION THAT EACH ADOPTION, AMENDMENT OR REPEAL IS REASONABLY NECESSARY TO CARRY OUT THE PURPOSE(S) OF THE STATUTE(S) OR OTHER PROVISIONS OF LAW THAT THE ACTION IS IMPLEMENTING, INTERPRETING OR MAKING SPECIFIC AND TO ADDRESS THE PROBLEM FOR WHICH IT IS PROPOSED (pursuant to GC §§ 11346.2(b)(1) and 11349(a) and 1 CCR § 10(b)). *Note: For each adoption, amendment, or repeal provide the problem, purpose and necessity.***

The Board took action to authorize emergency rulemaking based on the findings provided pursuant to GOV § 11346.1(b)(2). The problem that the Board has addressed in the proposed action is also described in these findings. The fundamental problem is the severe drought conditions that present urgent challenges to the beneficial uses of water throughout the State, which water drafting has the potential to exacerbate.

The purpose of the proposed action is to address the severe drought conditions, which have heightened the need for the regulated public to provide information in Plans so that reviewing agencies can better evaluate proposed water drafting activities to enable them to make informed decisions regarding mitigations to protect the beneficial uses of water.

**Adopt 14 CCR § 916.2 [936.2, 956.2 ](d)**

The purpose of the first sentence in this subsection is to establish the type of activity for which the requirements that follow apply. Water drafting refers to the use of suction to move water from a body of water below the intake of a suction pump. Water drafting and water diversion are used interchangeably in this document. Timber Operations is defined in PRC § 4527.

Water drafting is a common practice that often accompanies Timber Operations. Water is often necessary for the purposes of dust abatement on unsurfaced roads to address safety of road use, controlling of fugitive dust from entering watercourses and to maintain road surface stability. Additional water is often utilized to facilitate construction of landings, roads or watercourse crossings. It is often the case that long term water storage, through the use of reservoirs or tanks, is not an available source of water in remote portions of the State where Timber Operations are common. Therefore, water is often directly drafted from watercourses or developed springs into trucks that transport and apply water to targeted locations.

The proposed action is reasonably necessary to address the severe drought conditions which present urgent challenges to the beneficial uses of water throughout the State. Water drafting has the potential to exacerbate the challenges to the beneficial uses of water. Accordingly, the Board found it necessary to make some of the provisions, in 14 CCR § 923.7(l), required for water drafting for Timber Operations in watersheds with listed anadromous salmonids applicable in non-ASP watersheds. The severe drought conditions have heightened the need for the regulated public to provide information in Plans so that reviewing agencies can better evaluate proposed water drafting activities to enable them to make informed decisions regarding mitigations to protect the beneficial uses of water.

**Adopt 14 CCR § 916.2 [936.2, 956.2](d)(1)**

This provision requires compliance with FGC § 1600 *et seq.* (also known as the Streambed and Alteration Notification) for water drafting associated with Timber Operations.

Pursuant to FGC § 1602(a), an entity may not substantially divert or obstruct the natural flow of, or substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake, or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake, unless several conditions are met including the CDFW receiving written notification regarding the activity in the manner prescribed by DFW.

In non-ASP watersheds, water drafting may not be considered by the project proponent to constitute a substantial diversion. However, given the severe drought conditions, what may have rightfully not been considered by the project proponent to constitute a substantial diversion in non-drought conditions may now constitute a substantial diversion. As such, it is necessary to call attention to the requirement to comply with FGC § 1600 *et seq.* given the increased risk of impacting the beneficial uses of water.

**Adopt 14 CCR § 916.2 [936.2, 956.2](d)(1)(A)**

This provision recognizes that some landowners have entered into master or long-term agreements with DFW that cover the activity of water drafting. These landowners may be exempt from the provisions of the proposed action depending on the level of specificity regarding water diversion that are addressed in these agreements and whether they serve as proof of compliance with 14 CCR § 916.2 [936.2, 956.2](d)(1). This is necessary to make this known to the project proponent to prevent unnecessary duplication, thereby yielding greater efficiency.

**Adopt 14 CCR § 916.2 [936.2, 956.2](d)(2)**

This provision is a leading statement that informs the project proponent that the description of the water drafting site conditions and the proposed water drafting activity must include the information in provisions 14 CCR § 916.2 [936.2, 956.2](d)(2)(A)-(I) within a Plan submitted to the Department.

Given that water drafting has the potential to exacerbate the challenges to the beneficial uses of water, this provision is necessary because the severe drought conditions have heightened the need for the regulated public to provide information in Plans so that the project proponent and reviewing agencies can better evaluate proposed water drafting activities to enable them to make informed decisions regarding mitigations to protect the beneficial uses of water.

**Adopt 14 CCR § 916.2 [936.2, 956.2](d)(2)(A)**

This provision requires the project proponent provide a general description of the conditions and proposed water drafting within a Plan submitted to the Department. This may include the general size of the water hole, the channel configuration, the hydrology, the geomorphology, whether it is in channel or off channel, whether the diverted water will be impounded, whether excavation will be required, whether water will be diverted into a tank, or whether the diverted water is spring fed or not.

Given that water drafting has the potential to exacerbate the challenges to the beneficial uses of water, this provision is necessary because the severe drought conditions have heightened the need for the regulated public to provide information in Plans so that the project proponent and reviewing agencies can better evaluate proposed water drafting activities to enable them to make informed decisions regarding mitigations to protect the beneficial uses of water.

For example, in terms of channel configuration, the potential for dewatering is greater in a flat broad alluvial channel as compared to in confined channels, so with this information the project proponent and the reviewing agencies can make more informed decisions regarding mitigations to protect the beneficial uses of water.

**Adopt 14 CCR § 916.2 [936.2, 956.2](d)(2)(B)**

This provision requires the project proponent provide a map showing the proposed water drafting locations within a Plan submitted to the Department. This spatial information enables the project proponent and reviewing agencies to put the proposed activity in the context of cumulative effects. Another way the information can yield more informed decisions is, for example, if the water diversion is in the headwaters of a fish bearing watercourse, mitigations specific to that scenario can be developed. This spatial information also facilitates compliance and enforcement.

Given that water drafting has the potential to exacerbate the challenges to the beneficial uses of water, this provision is necessary because the severe drought conditions have heightened the need for the regulated public to provide information in Plans so that the project proponent and reviewing agencies can better evaluate proposed water drafting activities to enable them to make informed decisions regarding mitigations to protect the beneficial uses of water.

Mapping the location of water drafting sites is already required in 14 CCR § 1034(x)(4)(C); the reason existing regulation is duplicated is to facilitate preparation of the required information by the project proponent, specific to water drafting, by having all the information being required in one location.

**Adopt 14 CCR § 916.2 [936.2, 956.2](d)(2)(C)**

This provision requires the project proponent provide the watercourse classification within a Plan submitted to the Department. There are four watercourse classifications, I - V. For example, class I watercourses are fish bearing watercourse or have domestic water supplies within 1,000 feet. This information enables the project proponent and reviewing agencies to efficiently identify the resources at risk associated with the source of the water diversion and determine if it is congruent with the proposed water drafting activity. This information also facilitates compliance and enforcement.

Given that water drafting has the potential to exacerbate the challenges to the beneficial uses of water, this provision is necessary because the severe drought conditions have heightened the need for the regulated public to provide information in Plans so that the project proponent and reviewing agencies can better evaluate proposed water drafting activities to enable them to make informed decisions regarding mitigations to protect the beneficial uses of water.

**Adopt 14 CCR § 916.2 [936.2, 956.2](d)(2)(D)**

This provision requires the project proponent provide the drafting parameters including the months the site is proposed for use; estimated total volume needed per day; estimated maximum instantaneous drafting rate and filling time; and disclosure of other water drafting activities in the same watershed within a Plan submitted to the Department. This information enables the project proponent and reviewing agencies to efficiently identify the sensitivity of the proposed water drafting activity and to put the proposed activity in the context of cumulative effects. This information also facilitates compliance and enforcement.

Given that water drafting has the potential to exacerbate the challenges to the beneficial uses of water, this provision is necessary because the severe drought conditions have heightened the need for the regulated public to provide information in Plans so that the project proponent and reviewing agencies can better evaluate proposed water drafting activities to enable them to make informed decisions regarding mitigations to protect the beneficial uses of water.

For example, in terms of the months the site is proposed for use, typically streamflow is lowest in August, September and the first part of October, so if the activity were being proposed for this time of year, the reviewing agencies may field check the site and ask additional questions.

Other examples, in terms of estimated total volume needed per day and estimated maximum instantaneous drafting rate and filling time:

- A typical water truck holds 3,000 to 5,000 gallons and may take 4 to 5 loads per day.
- A typical draft rate is 200 gallons per minute (gpm). If the water truck holds 4,000 gallons, the fill time would be 20 minutes.

So if the activity being proposed were comprised of elements outside the typical realm, the reviewing agencies may again field check the site and ask additional questions.

**Adopt 14 CCR § 916.2 [936.2, 956.2](d)(2)(E)**

This provision requires the project proponent provide the estimated drainage area (acres) above the point of diversion within a Plan submitted to the Department. This information enables the project proponent and reviewing agencies to efficiently estimate the flow contribution, how much water may be available for drafting and the resources at risk.

Given that water drafting has the potential to exacerbate the challenges to the beneficial uses of water, this provision is necessary because the severe drought conditions have heightened the need for the regulated public to provide information in Plans so that the project proponent and reviewing agencies can better evaluate proposed water drafting activities to enable them to make informed decisions regarding mitigations to protect the beneficial uses of water.

**Adopt 14 CCR § 916.2 [936.2, 956.2](d)(2)(F)**

This provision requires the project proponent provide the estimated unimpeded streamflow, pumping rate, and drafting duration within a Plan submitted to the Department. Streamflow allows the reviewing agency to put into context the relative impact of diversion, and make recommendations accordingly. For example, pumping rate and drafting duration can be adjusted to reduce the impact to the resources at risk. This information also facilitates compliance and enforcement.

Although the proposed action does not require the provisions of 14 CCR § 923.7(l)(3)(E), including bypass flows in the source stream during drafting of at least 2 cubic feet per second, a diversion rate not to exceed 10 percent of the surface flow and a pool volume reduction not to exceed 10 percent, this required information does enable the project proponent and reviewing agencies to efficiently estimate the percent instantaneous flow being removed during drafting and study whether the bypass flows will be sufficient to avoid dewatering the watercourse and maintain aquatic life downstream.

Given that water drafting has the potential to exacerbate the challenges to the beneficial uses of water, this provision is necessary because the severe drought conditions have heightened the need for the regulated public to provide information in Plans so that the project proponent and reviewing agencies can better evaluate proposed water drafting activities to enable them to make informed decisions regarding mitigations to protect the beneficial uses of water.

For example, in terms of estimated unimpeded streamflow, pumping rate, and drafting duration, there is a 22% reduction in stream flow when streamflow is two (2) cubic feet per second (cfs) and the drafting rate is 200 gpm is, so if these conditions and activities were proposed, the reviewing agencies may recommend a mitigation to reduce the pump rate and increase the drafting duration.

**Adopt 14 CCR § 916.2 [936.2, 956.2](d)(2)(G)**

This provision requires the project proponent provide a discussion of the effects on aquatic habitat downstream from the drafting site(s) of single pumping operations, or multiple pumping operations at the same location, and at other locations in the same watershed within a Plan submitted to the Department.

This information enables the project proponent and reviewing agencies to efficiently put the proposed activity in the context of cumulative effects.

Given that water drafting has the potential to exacerbate the challenges to the beneficial uses of water, this provision is necessary because the severe drought conditions have heightened the need for the regulated public to provide information in Plans so that the project proponent and reviewing agencies can better evaluate proposed water drafting activities to enable them to make informed decisions regarding mitigations to protect the beneficial uses of water.

For example, in terms of single pumping operations, or multiple pumping operations at the same location, and at other locations in the same watershed, if single pumping operations at the same location were proposed, the reviewing agencies may recommend a mitigation to use multiple

sites, if available, instead of focusing pumping operations on one site.

**Adopt 14 CCR § 916.2 [936.2, 956.2](d)(2)(H)**

This provision requires the project proponent provide a discussion of proposed alternatives and measures to prevent adverse effects to fish and wildlife resources and other beneficial uses of water, such as reducing hose diameter; using gravity-fed tanks instead of truck pumping; reducing the instantaneous or daily intake at one location; describing allowances for recharge time; using other dust palliatives; and drafting water at alternative sites within a Plan submitted to the Department.

This information enables the project proponent and reviewing agencies to efficiently identify feasible alternatives, some of which the reviewing agencies may return to the project proponent in the form of recommendations.

Given that water drafting has the potential to exacerbate the challenges to the beneficial uses of water, this provision is necessary because the severe drought conditions have heightened the need for the regulated public to provide information in Plans so that the project proponent and reviewing agencies can better evaluate proposed water drafting activities to enable them to make informed decisions regarding mitigations to protect the beneficial uses of water.

**Adopt 14 CCR § 916.2 [936.2, 956.2](d)(2)(I)**

This provision requires the project proponent provide the methods that will be used to measure source streamflow prior to the water drafting operation and the conditions that will trigger streamflow to be measured during the operation within a Plan submitted to the Department. There are several methodologies of streamflow measurement including USGS stream gauge, flow/current meter, float method, bucket (volumetric) method, weirs or flumes and the tracer/dye method. The first three are the most common. The “eyeball” method is not suitable.

This information enables the project proponent and reviewing agencies to efficiently verify the merit of the data associated with the proposed activity and documents when drafting stops or shifts to another location, which facilitates compliance and enforcement.

Given that water drafting has the potential to exacerbate the challenges to the beneficial uses of water, this provision is necessary because the severe drought conditions have heightened the need for the regulated public to provide information in Plans so that the project proponent and reviewing agencies can better evaluate proposed water drafting activities to enable them to make informed decisions regarding mitigations to protect the beneficial uses of water.

For example, in terms measuring source streamflow, if the “eyeball” method was used, the reviewing agencies would likely recommend another method be selected.

1 **Board of Forestry and Fire Protection**

2 **“Water Drafting Emergency Regulations, 2015”**

3 **Title 14 of the California Code of Regulations (14 CCR),**

4 **Division 1.5, Chapter 4, Subchapters 4, 5, & 6, Article 6**

5  
6 **AMEND:**

7 **§ 916.2 [936.2, 956.2] Protection of the Beneficial Uses of Water and Riparian**  
8 **Functions**

9  
10 \*\*\*\*\*

11 (d) **Water drafting** - Water drafting for timber operations shall:

12 (1) Comply with Fish and Game Code Section 1600, et seq.

13 (A) Timber operations conducted under a Fish and Game Code  
14 Section 1600 master or long-term agreement that includes water drafting may provide  
15 proof of compliance with 14 CCR § 916.2 [936.2, 956.2] (d)(1).

16 (2) Describe the water drafting site conditions and proposed water  
17 drafting activity in the plan, including:

18 (A) a general description of the conditions and proposed water  
19 drafting;

20 (B) a map showing proposed water drafting locations;

21 (C) the watercourse classification;

22 (D) the drafting parameters including the months the site is  
23 proposed for use; estimated total volume needed per day; estimated maximum  
24 instantaneous drafting rate and filling time; and disclosure of other water drafting  
25 activities in the same watershed;

1                   (E) the estimated drainage area (acres) above the point of  
2 diversion;

3                   (F) the estimated unimpeded streamflow, pumping rate, and  
4 drafting duration;

5                   (G) a discussion of the effects on aquatic habitat downstream from  
6 the drafting site(s) of single pumping operations, or multiple pumping operations at the  
7 same location, and at other locations in the same watershed;

8                   (H) a discussion of proposed alternatives and measures to prevent  
9 adverse effects to fish and wildlife resources and other beneficial uses of water, such as  
10 reducing hose diameter; using gravity-fed tanks instead of truck pumping; reducing the  
11 instantaneous or daily intake at one location; describing allowances for recharge time;  
12 using other dust palliatives; and drafting water at alternative sites; and \_\_\_\_\_

13                   (I) The methods that will be used to measure source streamflow  
14 prior to the water drafting operation and the conditions that will trigger streamflow to be  
15 measured during the operation.

16

17 Note: Authority cited: Sections 4551, 4562.7 and 21000(g), Public Resources Code.

18 Reference: Sections 751, 4512, 4513, 4551.5, 21000(g), 21001(b) and 21002.1, Public

19 Resources Code; Sections 100, 1243 and 13050(f), Water Code; and Sections 1600

20 and 5650(c), Fish and Game Code.

21