
State Water Resources Control Board

NOTICE OF PROPOSED EMERGENCY RULEMAKING

Sustainable Groundwater Management Act (SGMA) Fees

Amendments to Division 3 of Title 23 of the California Code of Regulations

Required Notice of Proposed Emergency Action

Government Code section 11346.1, subdivision (a)(2) requires that, at least five working days prior to submission of a proposed emergency action to the Office of Administrative Law, the adopting agency must 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 regulation as set forth in Government Code section 11349.6.

Proposed Emergency Action

Water Code section 1529.5 requires the State Water Resources Control Board (State Water Board or Board) to adopt emergency regulations establishing or revising fees to be deposited in the Water Rights Fund (WRF) in the State Treasury, including fees to cover costs incurred and expended from the WRF for purposes of implementing Chapter 11 (commencing with Section 10735) of Part 2.74 of Division 6 of the Water Code.

On March 19, 2024, the State Water Board adopted Resolution 2024-0011 to revise by emergency regulation the water rights fee schedules in title 23, section 1040 of the California Code of Regulations, pertaining to the Board's implementation administration of Chapter 11 of the Sustainable Groundwater Management Act (SGMA).

Proposed Text of Emergency Regulation

See the attached proposed text of the emergency regulation.

Finding of Emergency (Gov. Code, § 11346.1, subd. (b))

The State Water Board has a mandatory legal duty to assess fees and to adopt the schedule of fees by emergency regulation (Wat. Code, §§ 1529.5, 1530). Water Code section 1530, subdivision (b) states that "[t]he adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare." Notwithstanding chapter 3.5 (commencing with section 11340) of part 1 of division 3 the

Government Code, the emergency regulation shall remain in effect until revised by the State Water Board (Wat. Code, § 1530).

Moreover, the State Water Board finds that the proposed amendments to the Board's fee regulations must be adopted immediately in order to allow for the timely collection of fees to conform to amounts appropriated by the Legislature from the WRF for the support of SGMA Chapter 11 activities. Without fee revenue in the amounts appropriated, critical work pursuant to the Sustainable Groundwater Management Act would be in danger of being shut down. Continued administration of this program is essential to the economy and environment of the State of California. The SGMA program is also important for the protection of public health. In sum, adoption of the proposed regulation is necessary for the immediate preservation of public health and welfare.

The State Water Board is unable to address the situation through non-emergency regulations because, as discussed above, it has a mandatory legal duty to adopt the fee schedules by emergency regulation.

Authority and Reference (Gov. Code, § 11346.5, subd. (a)(2))

Water Code section 1530 provides authority for the emergency regulation. The emergency regulation implements, interprets, or makes specific Water Code sections 1529.5, 1530, 5107, 5208, 10735.4(c), 10735.6 and 10736(d)(3).

These statutes state “[t]he adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare.”

Informative Digest (Gov. Code, § 11346.5, subd. (a)(3))

To ensure groundwater resources are sustainably managed, SMGA gives the State Water Board the authority to protect groundwater resources through “state intervention” when local agencies are unable or unwilling to sustainably manage their groundwater basins. (Wat. Code, div. 6, pt. 2.74, ch. 11.) The State Water Board only collects extraction reports and fees when either: 1) there are areas of SGMA basins that are not managed by a groundwater sustainability agency, or 2) the State Water Board finds that a basin's management is deficient and designates the basin as probationary at a hearing. There have not yet been any basins designated as probationary.

The current fee schedule includes an annual base fee and volumetric fee. The current volumetric component of the fee is \$40 per acre-foot extracted and has not been revised since the SGMA fee schedule was first adopted in 2017. The proposed fee schedule reduces the volumetric component of the annual fee from \$40 per acre-foot extracted to \$20 per acre-foot. This adjustment balances revenue stability for the program with the uncertainty about whether the State Water Board will place any specific basin on probation, how long a basin might remain on probation, how much revenue would be collected from the basin(s), and other factors. No changes are being proposed for any other element of the SGMA extraction reporting fees at this time.

There is no comparable federal statute or regulation. After conducting a review for any regulations that would relate to or affect this area, the Board has determined that the proposed regulation is not inconsistent or incompatible with existing state regulations.

Other Matters Prescribed by Statute (Gov. Code, § 11346.5, subd. (a)(4))

No other matters are prescribed by statute or regulation applicable to the State Water Board's SGMA fees.

Local Mandate (Gov. Code, § 11346.5, subd. (a)(5))

The proposed emergency regulation does not impose a mandate on local agencies or school districts because it does not mandate a new program or a higher level of service of an existing program. The fee schedule applies equally to public and private entities and is not unique to local government. No state reimbursement is required by part 7 (commencing with section 17500) of division 4 of the Government Code.

Estimate of Cost or Savings (Gov. Code, § 11346.5, subd. (a)(6))

There are currently no local or state agencies that pay fees for groundwater extractions as described in section 5202, subdivision (a)(1) of the Water Code. Therefore, any local or state agencies that is subject to the proposed regulation would potentially be subject to increased costs if required to pay fees based on their basin being put into probationary status. The proposed revision to the fee schedule would, however, lower any potential costs compared to the existing fee schedule. Furthermore, state and local agencies may also pass their costs to their contractors or constituents; if a state or local agency were to be subjected to the fee schedule, it would likely pass along the costs to customers or contractors or otherwise recover such costs. As a result, it is unlikely that any state or local agencies will see increased costs due to the proposed regulations.

There is no cost to any local agency or school district for which reimbursement is required.

There is no cost or savings in federal funding to the state.

23 CCR § 1040
§ 1040. Annual Filing Fee Schedule

Except as provided in section 1041, any person required to file a report shall submit to the board an annual filing fee in accordance with the following schedule:

(a) For groundwater extractions described in section 5202, subdivision (a)(2) of the Water Code, but not section 5202, subdivision (a)(1) of the Water Code:

(1) The annual fee is \$300 per well plus:

(A) \$10 per acre-foot of groundwater extracted during the preceding water year if the person uses a meter to measure groundwater extractions and certifies on a form provided by the Board that the measurements were made using a meter.

(B) \$25 per acre-foot of groundwater extracted during the preceding water year if the person does not use a meter to measure groundwater extractions or fails to certify on a form provided by the Board that the measurements were made using a meter.

(2) For groundwater extractions in an area that became part of an agency's management area during the preceding water year and was within an agency's management area as of September 30, volumetric charges required by subdivision (a)(1) will be based on the volume of groundwater extracted during the portion of the preceding water year when the area was not within the management area of an agency.

(3) For groundwater extractions in an area that is not within the management area of an agency as of September 30, the volumetric charges required by subdivision (a)(1) will be based on the volume of groundwater the person extracted during the entire water year.

(b) For groundwater extractions described in section 5202, subdivision (a)(1) of the Water Code:

(1) The annual fee is \$300 per well plus a volumetric charge of ~~\$40~~**20** per acre-foot of groundwater extracted during the preceding water year, except that for de minimis extractors required to file a report, the annual fee is \$100 per well.

(2) For groundwater extractions in a basin where the board has determined pursuant to section 10735.4, subdivision (c) or section 10735.6, subdivision (b) of the Water Code that the deficiencies resulting in the probationary designation have not been remedied, an additional volumetric charge of \$15

per acre-foot of groundwater extracted during the preceding water year shall apply to the fee required by subdivision (b)(1).

(c) For persons required to file a report who fail to file the report by February 1, the annual fee shall include an additional charge of 25 percent of the annual fee described in subdivisions (a) and (b), plus 25 percent of the annual fee described in subdivisions (a) and (b) for each 30-day period after February 1 in which the report has not been filed. In no case shall the additional charge exceed three times the annual fee described in subdivisions (a) and (b).

Authority: Sections 1529.5, 1530, 5107, 5208 and 10736(d)(3), Water Code.

Reference: Sections 5202, 5202(a)(1), 5202(a)(2), 10735.4(c) and 10735.6(b), Water Code.