
Appendix 10: Public Agency and Government Fiscal Impact Analysis

Summary

This cost estimate considers the fiscal effect of the proposed regulation. On July 2, 2014, the State Water Board approved Resolution No. 2014-0031, adding sections 875 and 878.3 and amending section 878.1 and 879 in title 23, division 3, chapter 2, article 24 of the California Code of Regulations (2014 emergency regulation). After approval by the Office of Administrative Law (OAL), the 2014 emergency regulation went into effect on July 16, 2014 and would expire automatically on April 14, 2015 (effective for 270 days).

On March 17, 2015, the State Water Board updated and readopted only section 879, subdivision (c). After approval by OAL on March 27, 2015, the emergency regulation went into effect and would expire automatically on December 12, 2015. On December 1, 2015, the State Water Board approved a resolution to readopt as an emergency regulation section 879, subdivision (c), with minor updates.

Fiscal Effect of Proposed Section 879, Subdivision (c)

The only fiscal effect of the proposed regulation relevant to Government Code section 11346.5, subdivision (a)(6) is the cost that would be incurred by state and local government agencies to complete and submit an online informational form and supporting documentation. The State Water Board estimates that the total cost to state and local government agencies to complete and submit the online informational form and supporting documentation will be approximately \$504,530. The proposed regulation is not anticipated to have a financial impact on state agencies or school districts or to result in costs or savings in federal funding to the State.

Analysis of Fiscal Effects of Proposed Section 879, Subdivision (c)

The proposed regulation imposes two potential obligations, or costs, on a diverter that would not exist without the proposed emergency regulation. Under an Informational Order issued pursuant to the proposed regulation, the Board will direct the recipient of the order to provide sufficient supporting documents to verify the claimed right and also requires recent (2015) and projected (2016) water use. The reporting of water diversion and use is an existing requirement on almost all diverters, excepting certain de minimus diversions and diversions reported by other methods; however current reporting obligations require less information, less often. Reporting of projected water use is a new requirement for drought planning. The proposed regulation also may result in the provision of additional information regarding a diverter's basis of right; currently diverters may only be required to provide statements regarding their bases of right, without providing supporting documentation. Filling out the online informational form and providing the supporting documentation is the only additional burden-to state and local government agencies associated with the proposed emergency regulation.

To conservatively estimate the cost of the proposed regulation, the Board determined the total number of state and local government agencies in California and multiplied that number by an estimated average time to complete the online informational form and submit any supporting documentation, multiplied by an average staff cost per hour.

The estimated costs associated with the proposed regulation are based on a worst-case scenario that all state and local government agencies with active water rights within the state will ultimately be issued an Informational Order. Based on information compiled from the State Water Board's eWRIMS database, there are approximately 2,483 water right claims held by state and local government agencies (8.7% of all active riparian, and appropriative water rights) that could be affected. The amount of time required to complete the online informational form and submit supporting documentation will depend on whether each agency already has documentation regarding its basis of right or needs to obtain such information (e.g., parcel and patent information for riparian diversions). Only minimal additional time is expected to be needed to provide 2015 diversion records and projected 2016 water use. All riparian and appropriative water right diverters are already required to file Statements of Water Diversion and Use (Statements) (Wat. Code, §§ 5100 et. seq.; Cal. Code Regs., tit. 23, §§ 847, 925, 929.) and to maintain diversion records. Thus, recordation of water use is not a new requirement with a new fiscal impact. Only the projection of 2016 use is new. For most diverters, this can be expected to be similar to the 2015 diversion data, as the years are likely to be similarly dry, and will require only minimal additional time to prepare. Some diverters may have different plans for the upcoming year. For example, some diverters may plan to take fields out of or putting them back into production, or implement new conservation practices. However, the type of events that would change anticipated water needs are generally known in advance and require advance planning, and therefore reporting on the anticipated changes should not require much additional time.

Completion of the online form is expected to take less than 1 hour. The 2,483 claims consists of 2,058 post-1914 water rights and 425 riparian and pre-1914 claims of right. For the 2,058 post-1914 water rights held by state and local governments, the informational order will only require diversion reporting since proof of right is established by the Board. However, for the 425 riparian and pre-1914 rights held by state and local governments the total time for compilation of records will vary depending on whether an agency has documentation of its basis of right, or must complete patent and other research to document the right. For agencies that have the documentation, it will take minimal time to assemble the records (estimated to be 3 to 5 hours). This assumes that the agencies exercising riparian rights have their assessor's parcel information, patent, purchase deed, and, for severed riparian parcels, chain of title deeds, and that agencies exercising pre-1914 appropriative rights have information regarding the rights' priority date and use.

Agencies that lack documentation would need to identify and potentially procure the patents associated with their assessor's parcels to verify the priority date of the right and obtain chain of title deeds for severed riparian parcels, or information supporting pre-1914

rights. To provide direction and assistance in finding patent records, the Board has provided a link to the U.S. Bureau of Land Management's patent database and is posting State Lands Commission patent data on its website. The time required to find and collect the requested documentation will vary depending on expertise in records research, whether the task is contracted out to a firm with experience locating such records, etc. It is estimated to take between 8 and 24 hours and is contingent on whether the agency has partial records or no records readily accessible.

Thus, the time range to collect and provide documentation that may be requested for riparian and pre-1914 claims is estimated to be between 6 hours (5 hours to assemble records plus 1 hour to complete form) and 25 hours (24 hours to obtain and assemble records plus 1 hour to complete form). Inasmuch as agencies are required to exercise due diligence prior to using public funds to purchase property, it is estimated that at least half of the agencies will have partial or complete records. The remaining agencies will likely have incomplete records. Thus, the average time is expected to be 15.5 hours.

The estimated average total hourly staff costs of state and local government agency staff required to complete the online informational form and provide the supporting documentation is conservatively estimated using \$65 per hour, or \$65 per form for post-1914 rights and \$1,007.50 per form for riparian and pre-1914 claims. There are a total of 2,058 post-1914 rights and 425 riparian and pre-1914 water right claims held by state and local government agencies. It is unknown whether there are additional diversions by agencies that have not been documented in accordance with the existing law. In 2015, the State Water Board issued Informational Orders on 57 of the 425 riparian and pre-1914 rights, reducing the number of potential future orders to 368. Thus, the potential cost of the regulation is \$504,530 ($2,058 * \$65 + 368 * \$1,007.50 = \$504,530$).

The estimated costs associated with the proposed regulation are conservative, based on the unlikely scenario that all agencies with water right claims within the state will ultimately be issued an Informational Order. In reality, the Informational Orders are likely to be focused only on some water right holders, diverters and users in watersheds with high competition for water and significant demand/supply imbalances during drought, as the Board does not have the resources to investigate each diversion in the state, and the regulation limits issuance of Information Orders depending on the filing of a complaint, the response (or lack thereof) to a curtailment order, curtailment notice or an investigation, or on the Board having information that a diversion may be unauthorized, or there is a threat of waste, unreasonable use or unreasonable method of diversion. The total number of Informational Orders will likely be a small percentage of the total number of claimed water rights held by state or local government agencies throughout California. Therefore, the total costs to state and local government agencies will likely be much less than the maximum estimated cost.