

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – OFFICE OF RESEARCH, PLANNING & PERFORMANCE
MAY 16, 2017**

ITEM 8

SUBJECT

CONSIDERATION OF A PROPOSED RESOLUTION TO ADOPT AN EMERGENCY REGULATION FOR STATE WATER BOARD IMPLEMENTATION OF THE SUSTAINABLE GROUNDWATER MANAGEMENT ACT

DISCUSSION

The Sustainable Groundwater Management Act of 2014 (SGMA) requires the formation of local groundwater sustainability agencies (GSAs) in California's high- and medium-priority groundwater basins. GSAs must develop groundwater sustainability plans (plan) that make basins sustainable within 20 years of plan implementation. If local agencies are unable or unwilling to sustainably manage their groundwater basins, the State Water Board can step in to protect groundwater using a process called state intervention. State intervention is triggered by one of the following events:

- July 1, 2017 Entire basin is not covered by GSA(s)
- Feb. 1, 2020 Basin is in critical overdraft and there is either 1) no plan or 2) the Department of Water Resources (DWR) fails the plan.
- Feb. 1, 2022 There is either 1) no plan or 2) long-term overdraft and DWR fails the plan.
- Feb. 1, 2025 DWR fails plan and basin has significant surface water depletions

Well owners in a basin subject to state intervention must file annual groundwater extraction reports to the State Water Board and pay filing fees. The purpose of the filing fees is to recover the costs incurred by the State Water Board in the implementation of state intervention activities. SGMA requires the Board to adopt the filing fees by emergency regulation. SGMA also authorizes the Board to require, by emergency regulation, that groundwater extraction reports be filed electronically. The filing fees and electronic reporting requirements need to be in place by July 1, 2017, the first SGMA triggering event.

In 2016, the State Water Board held outreach meetings across the State to introduce the reporting requirements, get a better understanding of stakeholder concerns, and solicit feedback on how to best structure the filing fees. On March 9, 2017, the State Water Board released a draft Emergency Regulation for State Intervention Fees for public comment. The draft Emergency Regulation for State Intervention Fees was considered during a State Water Board workshop on March 21, 2017. The proposed Emergency Regulation for State Water Board Implementation of SGMA incorporates the draft Emergency Regulation for State Intervention Fees and reflects input provided by a range of stakeholders including local governments, water suppliers, businesses, and individuals.

POLICY ISSUE

Should the State Water Board adopt the proposed Emergency Regulation for State Water Board Implementation of SGMA, which includes 1) a schedule of fees for groundwater extraction reports and 2) electronic reporting requirements for groundwater extraction reports?

FISCAL IMPACT

Individual fee amounts are based on the volume of water extracted by the well owner. The minimum fee amount is \$300 per report. The Board has discretion to require that de minimis extractors file reports and pay applicable fees. The de minimis fee amount is \$100 per report. The filing fees are only paid by well owners that are located in areas that do not comply with SGMA requirements. If all basins in the State comply with SGMA requirements, no reports will be submitted and no fees collected by the State Water Board.

REGIONAL BOARD IMPACT

None.

STAFF RECOMMENDATION

The State Water Board should adopt the emergency regulation as drafted.

<p>State Water Board action on this item will assist the Water Boards in reaching Goal(s) 3 and 5 of the Strategic Plan Update: 2008-2012 to increase sustainable local water supplies available for meeting existing and future beneficial uses and improve transparency and accountability by enhancing and improving accessibility of data and information.</p>
--

DRAFT

STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2017-

TO ADOPT AN EMERGENCY REGULATION FOR IMPLEMENTATION OF THE SUSTAINABLE GROUNDWATER MANAGEMENT ACT OF 2014 BY THE STATE WATER RESOURCES CONTROL BOARD

WHEREAS:

1. The [Sustainable Groundwater Management Act of 2014](#) (SGMA) was signed by Governor Edmund G. Brown Jr. on September 16, 2014. The State Water Resources Control Board (State Water Board or Board) is adopting the Emergency Regulation for Implementation of the Sustainable Groundwater Management Act of 2014 (hereafter, regulation) to implement requirements of SGMA related to reports of groundwater extraction and associated fees;
2. SGMA requires the formation of groundwater sustainability agencies (GSAs) in groundwater basins designated as high- or medium-priority by the Department of Water Resources (Department). GSAs in these basins must develop and implement a groundwater sustainability plan (GSP) that will achieve groundwater sustainability in the basin within 20 years of implementation. (Wat. Code, §§ 10720.7 & 10727.2, subd. (b).) The State Water Board may designate a high- or medium-priority basin as a probationary basin in accordance with the deadlines and procedures provided by SGMA. Probationary designation can occur where no local agency or collection of local agencies intends to develop a GSP for the entire basin, where the GSA or collection of GSAs does not adopt a GSP or GSPs for the entire basin, where the Department determines that a GSP is inadequate, or where the Department determines that a GSP is not being implemented in a manner that will likely achieve the sustainability goal (Wat. Code, § 10735.2.);
3. A person who extracts groundwater on or after July 1, 2017, in an area within a high- or medium-priority basin that is not within the management area of a GSA must file a report of groundwater extraction with the Board by December 15 of each year for extractions made in the preceding water year (October 1 through September 30). A person who extracts groundwater from a probationary basin 90 days or more after the Board designates the basin probationary must file a report of groundwater extraction by December 15 of each year for extractions made in the preceding water year. Extractions by de minimis extractors and certain other extractions are not subject to reporting requirements unless so designated by the Board (Wat. Code, § 5202.);
4. Groundwater extraction reports must be prepared on a form provided by the Board and include, among other information: the name and address of the person extracting groundwater, the person filing the report, well location, well capacity, monthly records of extractions, and the place and purpose of use of the extracted water. Groundwater extraction reports must be filed with the Board by the person extracting water or on that person's behalf by an agency that person designates and that maintains a record of the extracted water (Wat. Code, §§ 5202 & 5203.);
5. SGMA authorizes the Board to require by emergency regulation that groundwater extraction reports be filed electronically. (Wat. Code, § 348.) The Board is requiring by this regulation that groundwater extraction reports be filed electronically. This requirement is consistent with electronic reporting required by section 910 of title 23 of the California Code of

DRAFT

Regulations for supplemental statements of water diversion and use, Water Right Progress Reports by Permittees, Reports of Licensees, Reports of Registration and Certificate Holders, Notices of Groundwater Extraction and Diversion, and reports filed by watermasters pursuant to Water Code section 5101, subdivisions (d) and (e);

6. The State Water Board is developing a web-based electronic reporting system for the preparation and submission of reports of groundwater extraction. The reporting system will increase the reliability and standardization of information collected, and will ensure that information is maintained in a form that will be a resource to local agencies when groundwater management is returned to local control. The reporting system will ease the burden of preparing reports by 1) providing resources to identify groundwater extraction information; 2) identifying information on behalf of extractors; and 3) providing mapping resources in lieu of well owners acquiring maps or consulting services to satisfy requirements for locational information. The reporting system will also provide benefits to both extractors and State Water Board staff by increasing staff efficiency and allowing effective compilation and analysis, thereby offsetting potential future increases in the schedule of fees;
7. The State Water Board is required to adopt a schedule of fees by emergency regulation to recover costs incurred in administering SGMA, and set fees in an amount sufficient to cover all costs incurred and expended from the Water Rights Fund for this purpose. Such fees may include a fee for the filing of a groundwater extraction report and may be graduated in accordance with the amount of water involved. In setting fees, the State Water Board is not required to fully recover costs in the same year or the year immediately after the costs are incurred, but may recover costs over a period of years (Wat. Code, §§ 1529.5 & 1530.);
8. State Water Board staff performed extensive outreach to solicit public input on the fee schedule. In 2016, State Water Board staff held regional stakeholder meetings in Tulare, Redding, Modesto, and San Luis Obispo Counties. On October 7, 2016, State Water Board staff held a public meeting in Sacramento and via live webcast to collect public input on the fee schedule. On March 9, 2017, the State Water Board issued a draft Emergency Regulation for State Intervention Fees (draft regulation) and allowed 29 days for members of the public to submit written comments. On March 21, 2017, the State Water Board held a workshop and received oral comments on the draft regulation. The regulation has been revised to incorporate comments received;
9. The regulation establishes a schedule of fees based on the level of state intervention occurring in a basin. Each progressive level of state intervention is associated with greater State Water Board staff workloads and costs. The fee schedule incorporates a base filing fee per well and volumetric rates per acre-foot of groundwater extracted during the preceding water year. Volumetric rates reflect an equitable approach to distributing state intervention costs by requiring persons who extract more groundwater to pay higher fees. To reflect State Water Board staff time required to address late and delinquent reports, the fee schedule includes a late fee for reports that are submitted after the due date;
10. SGMA requires that groundwater extractions reported to the Board be measured using a methodology, water-measuring device, or combination thereof that is satisfactory to the Board. (Wat. Code, § 5203, subd. (e).) The use of a flow meter is the most accurate method of measuring groundwater extraction volumes. To account for the additional staff time needed to validate reported extraction volumes when a flow meter is not used — and to support the intent of SGMA to improve data collection and understanding about groundwater

DRAFT

(see Water Code, section 10720.1, subdivision (f)) — the regulation includes a reduced volumetric fee for extractions from unmanaged areas that are measured with a flow meter;

11. The flow meter accuracy standard in this regulation is comparable to the standard currently required by many agencies for measurement of groundwater extractions, including Ventura County (five percent), Fox Canyon Water Management Agency (five percent), Santa Clara Valley Water District (two percent), and the standards developed by the American Water Works Association (two percent);
12. A person who extracts, for domestic purposes, two acre-feet or less of groundwater per year is considered a “de minimis extractor.” (Wat. Code, § 10721, subd. (e).) De minimis extractors are not required to report extractions and pay associated fees for extractions made from an unmanaged area. (Wat. Code, § 5202, subd. (c).) De minimis extractors may be required to file reports with the State Water Board for extractions made from a probationary basin if the State Water Board finds that de minimis extractions are likely to have a substantial impact on basin withdrawals. (Wat. Code, § 10735.2, subd. (c)(2).) The proposed regulation establishes a base filling fee, plus applicable late fees, for de minimis extractors required to report extractions made from a probationary basin;
13. To encourage timely GSA formation and well registration that will advance the purposes of SGMA and reduce the Board’s future costs, volumetric fees are waived for extractions made between July 1, 2017, and September 30, 2017, and base fees are waived for extractions made between July 1, 2017, and September 30, 2017, in an area that was unmanaged but is within the management area of a GSA by September 30, 2017;
14. Because implementation of SGMA is in the initial stages and state intervention under SGMA will only occur when local efforts are unsuccessful, the number and volume of extractions subject to the Board’s fee schedule is currently unknown and will continue to change over time. Therefore, State Water Board staff must estimate the programmatic costs and expected revenue when developing and revising the fee schedule. To establish a fee schedule sufficient to fund programmatic expenses but not exceed costs, State Water Board staff will review the fee schedule annually and revise the schedule as necessary. The Board may further adjust the annual fees to compensate for the over or under collection of revenue in any given year;
15. The Board finds that the application and interpretation of Part 2.74 of division 6 of the Water Code in the regulation, including but not limited to the definitions of “domestic purpose” and “meter,” are reasonably necessary for the allocation, administration, or collection of fees authorized pursuant to Section 1529.5;
16. The regulation will be contained in Chapter 4.5 of Division 3 of Title 23 of the California Code of Regulations (Commencing with Section 1030);
17. The State Water Board finds that, in accordance with section 1552 of the Water Code, the funds collected pursuant to the regulation will be used for administration of the Board’s intervention activities under SGMA. The funds collected are for the purpose of meeting operating expenses; purchasing or leasing supplies, equipment, or materials; and maintaining a prudent financial reserve for administration of the Board’s program under SGMA. Because the fees are used for these purposes, adoption of the regulation is exempt from the California Environmental Quality Act (CEQA) as provided in section 21080, subdivision (b)(8) of the Public Resources Code. The regulation’s requirement that reports

DRAFT

of groundwater extraction be submitted electronically does not have the potential to cause a significant effect on the environment, and therefore is exempt from CEQA pursuant to section 15061, subdivision (b)(3), of title 14 of the California Code of Regulations;

18. The regulation will take effect upon filing with the Secretary of State and will remain in effect until revised by the State Water Board.

THEREFORE BE IT RESOLVED THAT:

1. The State Water Board adopts Chapter 4.5 of Division 3 of Title 23 of the California Code of Regulations appended to this resolution as an emergency regulation;
2. State Water Board staff will submit the emergency regulation to the Office of Administrative Law (OAL) for final approval;
3. If, during the approval process, State Water Board staff, the State Water Board, or OAL determine that minor corrections to the language of the regulation of supporting documentation are needed for clarity or consistency, the State Water Board Executive Director, Director for the Office of Research, Planning and Performance, or their designees, may make such changes.

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 May 16, 2017.

Jeanine Townsend
Clerk to the Board

California Code of Regulations

~~Title 23, Division #, Chapter #, State Intervention Fees~~

Title 23, Division 3, Chapter 4.5, Implementation of the Sustainable Groundwater Management Act of 2014.

Article ~~1#~~ Definitions Fees.

Section ~~1030XXXX~~ Definitions.

- (a) "Accuracy" means the measured volume relative to the actual volume, expressed as a percent. The percent shall be calculated as $100 \times (\text{measured value} - \text{actual value}) / \text{actual value}$.
- (1) "Measured value" is the value indicated by the device or measurement method or determined through calculations, such as flow rate combined with duration of flow.
- (2) "Actual value" is the value as determined through laboratory, design, or field testing protocols.
- (b) "Agency" means a groundwater sustainability agency as defined in [section 10721 of the Water Code](#) ~~section 10721(j)~~.
- (c) "Board" means the State Water Resources Control Board.
- ~~(e)~~(d) "Board's website" means www.waterboards.ca.gov.
- ~~(d)~~(e) "Calibration" means the process used to check or adjust the accuracy of a meter following relevant industry established protocols.
- (f) "De minimis extractor" has the same meaning as defined in [section 10721 of the Water Code](#) ~~section 10721~~.
- ~~(e)~~(g) "Domestic purposes" has the same meaning as "domestic uses" as defined in [section 660 of Division 3 of Title 23 of the California Code of Regulations for the purposes of identifying if an extractor is a de minimis extractor](#).
- (h) "Meter" means a device that measures groundwater extractions and that meets the requirements of [section 1042XXX.3](#).
- ~~(f)~~(i) "Person" has the same meaning as defined in [section 10735 of the Water Code](#).
- ~~(g)~~(j) "Qualified individual" means one of the following:
- (1) A California-registered Professional Engineer or Professional Geologist.
 - (2) A California-licensed contractor authorized by the State License Board for C- 57 well drilling or C-61 Limited Specialty/D-21 Machinery and Pumps.
 - (3) An [individual person](#) under the supervision of a California-registered Professional Engineer or Professional Geologist and employed to install, operate, and maintain water measurement and reporting devices or methods.
 - (4) The manufacturer of the device or a representative of the manufacturer.
- ~~(h)~~(k) "Report" means a report of groundwater extraction as required by [section 5202 of the Water Code](#) ~~section 5202~~, prepared on a form provided by the board and including the information required by [section 5203 of the Water Code](#) ~~section 5203~~.

(l) "Water year" has the same meaning as defined in [section 10721 of the Water Code](#) ~~section 10721~~.

Authority: [Sections 348, 1529.5, 1530, 5107, 5208, and 10736\(d\)\(3\), Water Code.](#)

References: [Sections 5202, 5203, and 10721, Water Code](#)

Article 2. Report of Groundwater Extraction.

Section 1032. Electronic Forms.

[Reports required pursuant to Part 5.2 of Division 2 of the Water Code shall be submitted to the board electronically on forms available at the board's website.](#)

Authority: [Section 348, Water Code.](#)

References: [Section 5200, Water Code.](#)

Article 3. Filing Fees.

Section ~~1040.XXXX.1~~ Annual Filing Fee Schedule.

Except as provided in section ~~1041.XXX.1~~, 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:](#)

~~(a) For persons required to file a report pursuant to Water Code section 5202(a)(2) who are not required to file a report pursuant to Water Code section 5202(a)(1):~~

- (1) The annual fee is \$300 per well plus ~~one of the following volumetric charges~~:
 - (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](#) ~~persons extracting groundwater~~ in an area that ~~became~~ [becomes](#) part of an agency's management area during the [preceding](#) water year and ~~was~~ [is](#) within an agency's management area as of September 30, volumetric charges required by [subdivision section XXXX.1\(a\)\(1\)](#) will be based on the volume of groundwater ~~the person~~ 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](#) ~~persons extracting groundwater~~ in an area that is not within the management area of an agency as of September 30, the volumetric charges

required by [subdivision section XXXX.1\(a\)\(1\)](#) 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](#)~~For persons required to file a report pursuant to Water Code section 5202(a)(1):~~

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

(2) For ~~persons extracting~~ 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](#) ~~Water Code Section 10735.4(c) or 10735.6(b)~~ 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](#)~~reporting period~~ shall apply to the fee required by subdivision (b)(1).

(c) For persons required to file a report ~~pursuant to Water Code section 5202~~ who fail to file the report by December 15, the annual fee shall include an additional charge of 25 [percent](#)% of the annual fee described in [subdivisions](#)~~subsections~~ (a) and (b), plus 25 [percent](#)% of the annual fee described in [subdivisions](#)~~subsections~~ (a) and (b) for each 30-day period after December 15 in which the report has not been filed. In no case shall the additional charge exceed three times the annual fee described in [subdivisions](#)~~subsections~~ (a) and (b).

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

References: [Sections 5202, 5202\(a\)\(1\), 5202\(a\)\(2\), 10735.4\(c\), and 10735.6\(b\), Water Code.](#)

Section [1041](#)~~XXXX.2~~ Exception for Water Year Ending September 30, 2017~~s~~.

[An exception to section 1040](#) ~~The following exceptions to section XXX.1~~ applies for annual fees for the water year ending September 30, 2017, for which [any person required to file a report shall submit to the board an annual filing fee in accordance with the following schedule](#)~~the annual fee will be one of the following:~~

(a) For ~~persons extracting~~ groundwater [extractions](#) in an area that is within the management area of an agency by September 30, 2017, the annual fee is waived.

(b) For [groundwater extractions](#) ~~persons~~ not subject to subdivision (a)(1), the annual fee is \$300 per well with no additional volumetric charge.

(c) For persons [required to file a report](#) who fail to file a report by December 15, 2017, the annual fee shall include an additional charge of \$100, plus \$100 for each 30-day period after December 15, 2017 in which the report has not been filed. In no case shall the additional charge exceed ~~\$900~~[\\$1,200](#).

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

Section ~~1042~~ ~~XXXX.3~~ Meters

- (a) A measurement device must be all of the following to be a “meter” used to measure groundwater extractions from the well for purposes of [section 1040, subdivision \(a\)\(1\)\(A\)](#) ~~Section XXX.4~~:
- (1) Equipped with a totalizer that records the total volume of groundwater extracted from the well.
 - (2) Permanently attached to the well discharge pipe between the point of extraction and the point of delivery for beneficial use.
 - (3) Calibrated to ~~be accurate to~~ [an accuracy of](#) within \pm five (5) percent by volume. The calibration must be conducted by a qualified individual upon installation and at least once every five years thereafter, or more frequently if necessary to ensure accuracy is maintained.
 - (4) Installed, maintained, operated, inspected, and monitored to ensure the accuracy requirement of subdivision (3).
 - (5) Installed in a manner such that it is readily accessible for reading, inspection, testing, repair and replacement.
 - (6) Reasonably accessible and available for inspection by an authorized representative of the board upon request.
- (b) The board may conduct a field inspection or request additional information from the extractor to determine if a meter is properly installed and meets the requirements of this section. Failure to provide reasonable access for an inspection or to provide records of calibration by a qualified individual upon request by the board is a sufficient basis for the board to determine that a meter has not been used to measure groundwater extractions for purposes of [section 1040, subdivision \(a\)\(1\)\(A\)](#) ~~xxx.4~~.

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

Section ~~1043. Joint and Several Liability~~ ~~XXXX.4 Enforcement~~.

If more than one person is liable for a fee under this chapter, then that liability shall be joint and several.

- ~~(a) Failure to pay the annual fee is a violation of this regulation.~~
~~(b) Submitting any information related to measurement methods or extraction volumes that is found to be materially false by the board is punishable by a fine of up to one thousand dollars (\$1,000) or by imprisonment in the county jail for up to six months, or both, and a civil liability for up to twenty-five thousand dollars (\$25,000), plus one thousand dollars (\$1,000) for each day on which the violation occurs. Fine and civil liability for the violation are in addition to, and do not supersede or limit, any other remedies, civil or criminal.~~

Authority: [Sections 1529.5, 1530, 5107, 5208, and 10736\(d\)\(3\), Water Code.](#) ~~Water Code sections 1529.5, 1530, 5107, 5208, and 10736(d)(3).~~

References: ~~Water Code sections 5202, 5202(a)(1), 5202(a)(2), 5203, 5203(e), 10735.4, and 10735.6~~

Section 1044. Administration of Fees.

Annual filing fees shall be based on the regulations in effect at the time of filing. Annual filing fees for the report for the prior water year are due and payable on February 15, or thirty days after the Board issues an invoice, whichever is later.

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

Section 1045. Petition for Reconsideration.

The board's determination that a person is required to pay a fee, or determination regarding the amount of the fee, shall be subject to reconsideration under chapter 4 (commencing with Section 1120) of part 1 of division 2 of the Water Code. Any petition for reconsideration shall be submitted by the fee payer in accordance with that chapter and article 12 (commencing with section 768) of chapter 2 of division 3 of this title. The petition shall specify why the petitioner believes that no fee is due or how the petitioner believes that the amount of the fee has been miscalculated.

Authority: Section 1530, Water Code.

References: Sections 1120, Water Code.

Section 1046. Compliance.

Failure to meet any of the requirements of this Chapter is a violation subject to civil liability of up to \$500 per day pursuant to Water Code section 1846.

Authority: Sections 1529.5, 1530, 1846, 5107, 5208, and 10736(d)(3), Water Code.

Reference: Section 1846, Water Code.