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State Water Resources Control Board

## NOTICE OF PROPOSED EMERGENCY RULEMAKING

### Implementation of the Sustainable Groundwater Management Act of 2014

#### Amendments to Chapter 4.5, Division 3 of Title 23 of the California Code of Regulations

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#### 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 regulation to the Office of Administrative Law (OAL), 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 regulation to OAL, OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulation as set forth in Government Code section 11349.6. This notification provides the required notice.

#### Proposed Emergency Action

The [Sustainable Groundwater Management Act of 2014](#) (SGMA) was signed by Governor Edmund G. Brown Jr. on September 16, 2014. SGMA requires the formation of groundwater sustainability agencies (GSAs) in California's high- or medium-priority groundwater basins. GSAs are required to develop and implement groundwater sustainability plans that make basins sustainable within 20 years of plan implementation. In the event that local agencies are unable or unwilling to sustainably manage their groundwater basin, SGMA 1) requires groundwater extractors to report extractions to the State Water Resources Control Board (State Water Board or Board) pursuant to Part 5.2 (Commencing with section 5200) of Division 2 of the Water Code and 2) authorizes the State Water Board to temporarily protect the resource pursuant to Chapter 11 (Commencing with section 10735) of Part 2.74 of Division 6 of the Water Code.

SGMA requires the State Water Board to adopt an emergency regulation establishing a schedule of fees sufficient to recover the costs incurred by the Board to administer groundwater extraction reporting requirements and the activities required to temporarily protect groundwater resources. SGMA also authorizes the Board to adopt an emergency regulation requiring that groundwater extraction reports be filed electronically. ((Wat. Code, §§ 1530 & 348.))

On May 16, 2017, the State Water Board adopted a resolution to approve the Emergency Regulation for Implementation of the Sustainable Groundwater Management Act of 2014 (regulation), which amends Chapter 4.5 of Division 3 of Title 23 of the California Code of Regulations as part of this rulemaking process. The regulation will become effective upon approval by OAL and filing with the Secretary of State.

### **Proposed Text of Emergency Regulation**

The proposed text of the regulation is attached.

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

The Board finds that an emergency exists due to the requirements of Water Code sections 348, subdivision (b), and 1530, subdivision (b), which specify that the regulation be adopted as an emergency regulation in accordance with Chapter 3.5 (commencing with section 11340) of Part 1 of Division 3 of Title 2 of the Government Code and considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare. The adoption of the regulation is necessary and essential to address the emergency and to specifically allow for the provisions and requirements of sections 348, 1529.5, 1530, Part 5.2 (commencing with section 5200) of Division 2, and Chapter 11 (commencing with section 10735) of Part 2.74 of Division 6 of the Water Code to be effectively and efficiently administered and enforced to protect the State's groundwater resources.

The regulation will implement new requirements and allow for the timely collection of fees to recover costs incurred and expended from the Water Rights Fund in administering Chapter 11 (Commencing with section 10735) of Part 2.74 of Division 6. Notwithstanding chapter 3.5 (commencing with section 11340) of part 1 of division 3 of title 2 of the Government Code, the emergency regulation shall remain in effect until revised by the State Water Board. The Board has thoroughly evaluated the regulation and determined that the regulation is not inconsistent or incompatible with existing state regulations.

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

Sections 348, 1529.5, 1530, Part 5.2 (commencing with Section 5200) of Division 2, and Chapter 11 (commencing with Section 10735) of Part 2.74 of Division 6 of the Water Code.

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

#### Section 1030. Definitions.

This section defines terms as they are used in Chapter 4.5. Noteworthy definitions are summarized here.

(a) "Accuracy" is defined because the "accuracy" of a meter is a key component of the meter requirements outlined in Section 1042. "Accuracy" is the measured volume relative to the actual volume of water diverted.

(f) "De minimis extractor" is defined because 1) the Sustainable Groundwater Management Act (SGMA) exempts de minimis extractors from filing reports and paying filing fees pursuant to section 5202, subdivision (b), of the Water Code and 2) de minimis extractors required to file reports and pay filing fees pursuant to Section 5202, subdivision (a), of the Water Code pay a specific fee as outlined in section 1040, subdivision (b)(1). "De minimis extractor" is defined by reference to section 10721 of the Water Code, which states, "A de minimis extractor means a person who extracts, for domestic purposes, two acre-feet or less per year."

(g) “Domestic purposes” is defined in order to identify if an extractor meets the definition of a “de minimis extractor,” and has the same meaning as “domestic uses” in Section 660 of Division 3 of Title 23 of the California Code of Regulations.

(j) “Qualified individual” is defined to clarify who can install, design, calibrate, and maintain meters. A “qualified individual” is a California-registered Professional Engineer or Professional Geologist; California-licensed contractor authorized by the State License Board for C-57 well drilling or C-61 Limited Specialty/D-21 Machinery and Pumps; an individual 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; or the manufacturer of the device or a representative of the manufacturer.

(k) The regulation defines “report” to mean the report of groundwater extraction required by section 5202 of the Water Code.

#### Section 1032. Electronic Forms.

This section requires that a report of groundwater extraction (report) be filed electronically through the board’s website.

#### Section 1040. Annual Filing Fee Schedule.

This section establishes the annual filing fees that must be paid to the State Water Resources Control Board (Board) by a person required to file a report.

The filing fees consist of a base fee and volumetric charge. The base fee is \$300 per well. The volumetric charge is calculated by multiplying the volume of groundwater extracted from the well during the previous water year by one of four volumetric rates. Volumetric rates are based on the level of board activities occurring in a basin. Each progressive level is associated with increased board workloads and other costs.

The volumetric rate is \$10 per acre-foot for extractors in an unmanaged area that measure extractions with a meter that meets the requirements of section 1042. The volumetric rate is \$25 per acre-foot for extractors in an unmanaged area that do not use a meter to measure extractions. The board’s unmanaged area activities include identifying unmanaged extractors, collecting and reviewing reports, verifying extraction data, and evaluating the impact of unmanaged extractors on groundwater conditions in a basin. The increased volumetric rate for unmetered extractors accounts for the additional staff time needed to validate reported extraction volumes when a meter is not used — and to support the intent of SGMA to improve data collection and understanding about groundwater. If a groundwater sustainability agency (GSA) forms for an unmanaged area, the volumetric charge for an extractor in that area is based on the volume of groundwater extracted during the months of the previous water year that the extractor was unmanaged.

The volumetric rate is \$40 per acre-foot for extractors in a probationary basin. In addition to the workload associated with locating extractors and managing reports, the board’s probationary basin activities include evaluating basin conditions and investigating potential solutions for unsustainable conditions. The probationary basin status includes a timeline to fix the problems that lead the basin to be designated as probationary. When the timeline elapses, the volumetric rate increases to \$55 per acre-foot, to cover the costs associated with board development of an interim plan that contains corrective actions, a timeline to make the basin sustainable, and a monitoring plan to ensure corrective actions are working.

The filing fee for a de minimis extractor in a probationary basin is \$100 per well. This fee only applies if the board determines that de minimis extractors are likely to impact the sustainability of the basin and must file reports. De minimis extractors in unmanaged areas are not required to file reports or pay fees.

This section also establishes a late fee. In the event that a report is not filed by December 15, the extractor will be charged an initial late fee of 25 percent of the annual filing fee. Further, the extractor will be charged a subsequent late fee of 25 percent of the annual filing fee for each 30-day period after December 15 in which the report has not been filed.

#### Section 1041 Exception for Water Year Ending September 30, 2017.

This section describes exceptions to the annual fees for Water Year 2017 (WY-17). Reports for WY-17 are due by December 15, 2017. The annual fee for reports for WY-17 is \$300 per well. For extractions that are within the management of a GSA before the end of WY-17 (by September 30, 2017), the annual fee is waived. The late fee for WY-17 reports is \$100 for each 30-day period the report is late.

#### Section 1042 Meters.

This section establishes the meter criteria that must be met to qualify for the reduced volumetric rate (\$10 per acre-foot) described in section 1040. Among other things, a meter must be all of the following: equipped with a totalizer, permanently attached to the well discharge pipe, accessible for board inspection and verification, and calibrated to an accuracy of within  $\pm$  five percent by volume. This meter accuracy standard is comparable to the standards currently required by many agencies for measurement of groundwater extractions.

#### Section 1043. Joint and Several Liability.

The section declares that extractors are jointly and severally liable for the fees associated with the filing of a report. Joint and several liability means that each extractor is independently obligated for the full amount of the fees.

#### Section 1044. Administration of Fees.

This section establishes the date on which annual fees must be paid to the Board. Annual fees are due on February 15 following the report due date, or thirty days after the Board issues an invoice, whichever is later. For example, WY-17 reports are due by December 15, 2017. Fees for these reports will be due by February 15, 2018. However, if the Board issues the fee invoice on or after January 16, 2018, the filing fees will not be due until 30 days after the date of the invoice. This section also specifies that annual fees are based on the regulation in effect at the time of filing.

#### Section 1045. Petition for Reconsideration.

This section describes how a person who files a report can petition the State Water Board when the person believes that no fee is due or that the amount of the fee has been miscalculated.

#### Section 1046. Compliance.

This section clarifies the Board's enforcement authority pertaining to this emergency regulation and informs the regulated community that failure to comply with the requirements of this chapter is a violation subject to civil liability of up to \$500 per day pursuant to Section 1846 of the Water Code.

There is no comparable federal statute or regulation. The proposed regulation is consistent and compatible 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.

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

The State Water Board has determined that the emergency regulation does not impose a mandate on local agencies or school districts because the proposed regulation does not mandate a new program or a higher level of service of an existing program. The emergency regulation 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).)

The fiscal impacts of the regulation relevant to section 11346.5, subdivision (a)(6) of the Government Code are the costs that would be incurred annually by local government and state agencies that are subject to Water Code section 5202 to 1) electronically file groundwater extraction reports pursuant to section 1032 of the regulation and 2) pay applicable filling fees pursuant to section 1040 of the regulation.

The Board estimates that the total cost of the regulation on local governments is about \$22,000 for WY-17 and \$122,000 for WY-18. This breaks down to \$537 for WY-17 and \$1,506 for WY-18 per local government.

The Board estimates that the total cost of the regulation on state agencies is about \$22,800 for WY-17 and \$122,000 for WY-18. This breaks down to \$530 for WY-17 and \$1,505 for WY-18 per state agency.

Reports of groundwater extraction are required by SGMA and the associated costs would be incurred by local government and state agencies subject to Water Code section 5202 whether or not the emergency regulation requiring electronic reporting was adopted by the State Water Board.

The cost of filing fees beginning in WY-18 will depend on the actual volume of water extracted by state and local government agencies subject to Water Code section 5202. If local implementation of SGMA is successful, no local government or state agencies will incur costs associated with the regulation.

The proposed emergency regulation does not impose a mandate on local agencies or school districts requiring state reimbursement.

**California Code of Regulations**  
**Title 23. Division 3. Chapter 4.5. Procedures for Protecting Instream Beneficial Uses**  
**Implementation of the Sustainable Groundwater Management Act of 2014.**

**Article 1. Definitions.**

**Section 1030. 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.

(c) "Board" means the State Water Resources Control Board.

(d) "Board's website" means [www.waterboards.ca.gov](http://www.waterboards.ca.gov).

(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.

(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 1042.

(i) "Person" has the same meaning as defined in section 10735 of the Water Code.

(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 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.

(k) "Report" means a report of groundwater extraction as required by section 5202 of the Water Code, prepared on a form provided by the board and including the information required by section 5203 of the Water Code.

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

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

References: Sections 5202, 5203, 10721 and 10735, Water Code and Section 660 of Division 3 of Title 23, California Code of Regulations.

## **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: Part 5.2 of Division 2, Water Code.

## **Article 3. Filing Fees.**

### **Section 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 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 December 15, 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 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 (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 Exception for Water Year Ending September 30, 2017.**

An exception to section 1040 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:

(a) For 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 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.

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

### **Section 1042 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):

(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 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).

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

### **Section 1043. Joint and Several Liability.**

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

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

### **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: Section 1120, Water Code and Section 768 of Chapter 2 of Division 3 of Title 23, California Code of Regulations.

**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: Section 1846, Water Code.

Reference: Section 1846, Water Code.