

Draft Emergency Regulation for State Intervention Fees

The Sustainable Groundwater Management Act (SGMA) requires the State Water Resources Control Board (State Water Board or Board) to adopt, by emergency regulation, a schedule of fees to cover the costs associated with state intervention. A [draft Emergency Regulation for State Intervention Fees](#) is available for public comment until April 7, 2017.

SGMA and State Intervention

In 2014, Governor Edmund G. Brown Jr. signed SGMA, which creates a framework for sustainable, local groundwater management for the first time in California history. SGMA requires the formation of local groundwater sustainability agencies (GSAs) in California's high- or medium-priority groundwater basins.¹ GSAs are required to develop groundwater sustainability plans that make basins sustainable within 20 years of implementation. If locals are unable or unwilling to sustainably manage their basin, the State Water Board is authorized to intervene. State intervention is triggered by one of the following events:

- July 1, 2017 No GSA for entire basin
- February 1, 2020 Basin is in critical overdraft and there is no plan or DWR fails plan
- February 1, 2022 No plan or DWR fails plan and basin is in long-term overdraft
- February 1, 2025 DWR fails plan and basin has significant surface water depletions

Beginning July 1, 2017, portions of basins not within the service area of a GSA are considered unmanaged. Any person that extracts groundwater from an unmanaged area must submit annual reports to the State Water Board.² If locals fail to form a GSA, fail to develop an adequate sustainability plan, or fail to implement the plan successfully, the Board may designate the basin probationary and directly manage groundwater extractions.³ Any person who extracts groundwater from a probationary basin must submit annual reports to the State Water Board, although the Board has discretion to exclude certain extractors from reporting.⁴

Annual reports are due to the Board by December 15 of each year for extractions made during the previous water year (October 1 - September 30). A report must be submitted for each well and must identify well owner information, well location, well capacity, monthly extraction volumes, and place(s) and purpose(s) of use. Extraction volumes must be measured by a method satisfactory to the Board.⁵

State Water Board Fee Authority

Any person that files an extraction report must pay a filing fee to cover the Board's SGMA-related costs.⁶ The Board must adopt an emergency regulation specifying the fees.⁷ The emergency regulation allows

the Board to update the fee schedule as necessary to reflect changing conditions and programmatic costs. These fees will not apply in basins where local implementation of SGMA is successful.

Early Input

In 2016, the State Water Board held outreach meetings and presented fee schedule proposals at local events to get a better understanding of stakeholder concerns and solicit feedback on how to best structure the annual fees. The draft emergency regulation incorporates input provided by a range of stakeholders including local governments, water suppliers, businesses, and individuals.

Levels of State Intervention

The proposed schedule of fees is tied to the “level” of state intervention occurring in a basin. Each level is associated with particular types of activities increasing staff workloads and other costs.

1. **Unmanaged Area:** An unmanaged area is a portion of a basin not within the service area of a GSA. Extractors in unmanaged areas must submit annual reports to the Board.⁸ Board staff will have to identify unmanaged extractors, collect and review reports, verify extraction data, and evaluate the impact of unmanaged extractors on groundwater conditions in a basin.
2. **Probationary Basin:** If local failure triggers state intervention, the Board may designate the basin “probationary.”⁹ Extractors in probationary basins are required to submit annual extraction reports to the Board.¹⁰ In addition to the workload associated with locating extractors in a basin and managing reports, Board staff will have to evaluate basin conditions and investigate potential solutions for unsustainable conditions.
3. **Interim Plan:** In certain cases, the Board will need to directly manage extractions in a basin. In those instances, the Board must develop an interim plan that contains corrective actions, a timeline to make the basin sustainable, and a monitoring plan to ensure corrective actions are working.¹¹ Interim plan activities will significantly increase Board staff workloads.

Proposed Schedule of Fees

Fee Category	Annual Fee Amount	Applicable Parties
Base Filing Fee	\$300 per well	All extractors required to report
Unmanaged Area Rate	\$10 per acre-foot, if metered	Extractors in unmanaged areas
	\$25 per acre-foot, if unmetered	
Probationary Basin Rate	\$40 per acre-foot	Extractors in probationary basins
Interim Plan Rate	\$55 per acre-foot	Extractors in probationary basins where the Board determines an interim plan is required.
De minimis Fee	\$100 per well	Parties that extract, for domestic purposes, two acre-feet or less per year from a probationary basin, If the Board decides the extractions will likely be significant.
Late Fee	25% of total fee amount per month late	Extractors that do not file reports by the due date.

In addition to the annual filing fees detailed on the previous page, the Board has the authority to order extractors in a probationary basin to prepare and submit technical or monitoring program reports. Therefore, the costs associated with these reports are not currently included in the proposed fee schedule.¹²

Metered Extraction Discount

To be eligible for the \$10 per acre-foot unmanaged area rate, extractors must measure groundwater extraction volumes with a meter that meets the following requirements:

- The meter must be equipped with a totalizer and permanently attached to the well.
- No water use can occur between the point of extraction and the meter.
- The meter must be calibrated by a qualified individual to be accurate to within \pm five (5) percent by volume upon installation and at least once every five years.
- The meter must be accessible for reading, inspection, testing, repair and replacement.
- The meter must be available for inspection by the State Water Board.

Extractors are responsible for the installation and maintenance of meters and all related costs.

Fee Examples

1. The following table highlights how the different levels of state intervention would impact the annual fees required of a hypothetical 50-acre farm that extracts 175 acre-feet of groundwater (3.5 acre-feet per acre) each year from a single well:

Intervention Level	Rate per acre-foot	Total fee	Cost per acre
Unmanaged Area (metered)	\$10	\$2,050	\$41
Unmanaged Area (unmetered)	\$25	\$4,675	\$94
Probationary Basin	\$40	\$7,300	\$146
Interim Plan	\$55	\$9,925	\$199

2. The following table highlights how the different levels of state intervention would impact the annual fees required of a hypothetical municipal water supplier or industrial user extracting 5,000 acre-feet per year from a single well:

Intervention Level	Rate per acre-foot	Total fee
Unmanaged Area (metered)	\$10	\$50,300
Unmanaged Area (unmetered)	\$25	\$125,300
Probationary Basin	\$40	\$200,300
Interim Plan	\$55	\$275,300

Simplified Fees for the 2017 Water Year

In an effort to prioritize GSA formation and well registration, and to avoid undue burden to unmanaged extractors, State Water Board staff is proposing simplified fees for the 2017 Water Year, as detailed on the following page:

- The annual fee for reports due by December 15, 2017 will be a flat fee of \$300.
- The late fee for reports due by December 15, 2017 will be \$100 for each month late up to a maximum of \$1200 (this is in addition to the \$300 annual fee).
- If a GSA forms between July 1, 2017 and September 30, 2017, extractors within the GSA service area are considered unmanaged for the 2017 water year and must report to the Board by December 15, 2017, but the annual fee will be waived.

Based on Board assumptions, the simplified fees would recuperate between \$750,000 and \$1.9 million.

Annual Fees when a GSA Forms or Dissolves after September 30, 2017

Typically, annual fees will be based on the volume of groundwater extracted during the entire previous water year. There is an exception for extractors in areas where a GSA forms after September 30, 2017. These extractors will be required to report for the entire water year, but the annual fee will be limited to extractions made during the months the extractors were unmanaged. For example, if a GSA forms on March 15, 2018, extractors in that area will only be charged for extractions made during the entire months of October 2017 through March 2018. On the other hand, if a GSA rescinds its formation notice and an extractor is no longer within the management of a GSA after September 30, 2017, the fee will be based on extractions made during the entire previous water year.

De minimis Extractors

SGMA defines a de minimis extractor as “a person who extracts, for domestic purposes, two-acre feet or less per year.”¹³ A person who extracts two acre-feet or less per year for a non-domestic purpose is not considered a de minimis extractor. Domestic purposes do not include commercial activities. A person who extracts more than two acre-feet per year from a parcel is not a de minimis user. De minimis users are exempt from reporting in unmanaged areas. However, the State Water Board may require de minimis extractors to report in a probationary basin if necessary.¹⁴

Interim Plans and Groundwater Sustainability Plans

State intervention is intended to temporarily protect groundwater resources until local authorities can demonstrate their ability and willingness to manage groundwater sustainably. An interim plan is not intended for permanent management of a basin. Local efforts to address the deficiencies that caused state intervention will need to be funded by local agencies while groundwater extractors also pay State Water Board fees; this will likely result in a scenario of extractors paying both local and state fees.

State Water Board Flexibility

SGMA provides the State Water Board with three means of flexibility in the intervention process. The provisions described below will affect the applicability of the state intervention fees.

1. Areas in compliance with the sustainability goal will be excluded from probation.¹⁵
2. Extractors may be excluded from probationary reporting and related fees.¹⁶
3. Successful elements of a local sustainability plan will be incorporated into an interim plan.¹⁷

Fee Development Timeline

Event	Schedule*
Release draft emergency regulation for public review and comment	March 8, 2017
State Water Board Workshop on draft emergency regulation	March 21, 2017
Public comment period for draft emergency regulation ends	April 7, 2017
Public release of proposed emergency regulation	May 6, 2017
State Water Board meeting to adopt proposed emergency regulation	May 16, 2017
Submission of adopted emergency regulation to Office of Administrative Law	June 2017
Emergency regulation effective	July 1, 2017

*All dates are subject to change.

SGMA Information and Resources

State Water Board: waterboards.ca.gov/gmp

Department of Water Resources: water.ca.gov/groundwater/sgm

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References

¹ Basin prioritization information available at water.ca.gov/groundwater/sgm/SGM_BasinPriority.cfm

² Water Code Section 5202(a)(2)

³ Water Code Sections 10735.2 and 10735.8

⁴ Water Code Section 10735.2(c)

⁵ Water Code Sections 5202 and 5203

⁶ Water Code Section 5202(f)

⁷ Water Code Section 1530

⁸ Water Code Section 5202(a)(2)

⁹ Water Code Section 10735 et. seq.

¹⁰ Water Code Section 5202(a)(1)

¹¹ Water Code Section 10735.8

¹² Water Code Section 10736.6

¹³ Water Code Section 10721(e)

¹⁴ Water Code Section 10735.2(c)(2)

¹⁵ Water Code Section 10735.2(e)

¹⁶ Water Code Section 10735.2(c)

¹⁷ Water Code Section 10735.8(e)