

Proposed Sustainable Groundwater Management Act (SGMA) Fee Schedule

INTRODUCTION

The State Water Resources Control Board (State Water Board) is conducting a series of stakeholder meetings throughout summer and fall 2016 to assist in the development of a groundwater extraction reporting fee schedule, as required by the Sustainable Groundwater Management Act (SGMA). The objectives of the stakeholder meetings are as follows:

- Engage stakeholders in the SGMA fee schedule development process.
- Explain issues considered in drafting the proposed fee schedule.
- Gain a better understanding of stakeholder interests and concerns.

Following the stakeholder meetings, State Water Board staff will develop and release a draft fee schedule emergency regulation for public comment and hold at least one public meeting to receive public comment on the draft emergency regulation. The State Water Board will consider adoption of the proposed fee schedule emergency regulation in spring 2017. The fee schedule must be effective by July 1, 2017.

BACKGROUND

SGMA requires the formation of local groundwater sustainability agencies (GSAs) in California's high- and medium-priority groundwater basins. Sustainability agencies are required to develop groundwater sustainability plans that will bring basins into sustainability within 20 years of plan implementation. If locals are unable or unwilling to sustainably manage their basin, the State Water Board is authorized to intervene. State intervention can only be triggered by one of the following events:

Date	Trigger
July 1, 2017	Failure to form a GSA.
January 31, 2020	Failure to adopt and/or adequately implement a groundwater sustainability plan for a basin in a critical condition of overdraft.
January 31, 2022	Failure to adopt and/or adequately implement a groundwater sustainability plan in all other high- or medium-priority basins.
January 31, 2025	There are significant depletions of interconnected surface waters and the sustainability plan is not being implemented adequately.

STATE WATER BOARD FEE AUTHORITY

Portions of basins that are not within the management area of a GSA by July 1, 2017, are considered unmanaged areas. Groundwater extractors in unmanaged areas are required to file an annual groundwater extraction report with the State Water Board. (Wat. Code §5202, subd. (a)(2).) If locals fail to form a GSA, fail to develop an adequate sustainability plan, or fail to implement the plan adequately (based on the deadlines outlined above), the State Water Board may designate the basin as probationary and step in to directly manage groundwater extractions in the basin. (Wat. Code §§ 10735.2 & 10735.8.) All extractors in a probationary basin are required to submit an annual groundwater extraction report, although the State Water Board has discretion to exempt certain probationary extractors from reporting if appropriate. (Wat. Code §5202(a)(1).) Each annual extraction report must be accompanied by a fee to cover associated programmatic costs. (Wat. Code §§ 1529.5 & 5202, subd. (f).)

The State Water Board is required to adopt, by emergency regulation, a fee schedule to cover SGMA-related costs. (Wat. Code §1530.) The emergency regulation format allows the State Water Board to update the fee

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schedule annually to reflect changing conditions and programmatic costs. It also important to note that the fees described below will not be applicable if local implementation of SGMA is successful.

PROPOSED FEE SCHEDULE

There are three “levels” of State Water Board intervention, each level is associated with greater staff workloads and associated costs.

1. Unmanaged Area Intervention. Unmanaged areas are portions of basins that are outside of a GSA service area. Groundwater extractors in unmanaged areas are required to submit an annual report to the State Water Board detailing monthly groundwater extraction volumes, place of use, and purpose of use, and may be required to submit other information necessary to evaluate the basin.
2. Probationary Basin Intervention. A probationary basin is a basin that the State Water Board has designated to be probationary in accordance with the procedures described in Chapter 11 of SGMA. (Wat. Code §10735, et. seq.) The State Water Board will evaluate conditions in the basin and may designate the basin once one of the probationary triggers described by Water Code section 10735.2 has occurred. Probationary status will result in an increased amount of staff activities as solutions to deficiencies in basin management are developed or additional information necessary for basin management is acquired.
3. Interim Plan Intervention. The State Water Board may need to manage groundwater conditions in a probationary basin if the deficiencies that resulted in probation are not corrected. In such a scenario, the State Water Board will develop and implement an interim plan to manage groundwater extractions. (Wat. Code §10735.8.) The development and implementation of interim plans will require significant staff time, in addition to technical studies or data collection performed under contract.

The draft fee schedule ties the fees to the type of Board activity occurring in the basin, as follows:

Fee Category	Applicable Parties – Reporting Extractors	Fee Amount
Base Filing Fee ^(a)	Any extractor submitting an extraction report	\$100 per well
Fees based on intervention status ^(a)		
1. Unmanaged Area Rate	Extractors in an unmanaged area.	\$10 per acre-foot per year, if metered
		\$25 per acre-foot per year, if unmetered
2. Probationary Basin Rate	Extractors in a probationary basin.	\$40 per acre-foot per year
3. Interim Plan Rate	Extractors in a probationary basin after the time period identified by § 10735.4 or § 10735.6 (180 days or one year, accordingly).	\$55 per acre-foot per year
Fees independent of intervention status ^(b)		
Late Fee	Extractors that do not file reports by the due date.	25% of total fee amount, accrued monthly
Special Studies Fee	May apply to extractors when basin-specific special studies are required and the probationary or interim plan rates are insufficient. The additional cost of developing special technical studies such as groundwater investigations or modeling will be apportioned to extractors based on volume of water extracted.	

(a) Can apply to de minimis extractors in probationary basins at the Board’s discretion.

(b) These fees are paid in addition to the “Fees based on intervention status.”

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CHALLENGES TO DEVELOPING THE SGMA FEE SCHEDULE

There are two primary challenges in developing the SGMA fee schedule that create difficulties in anticipating programmatic costs: 1) uncertainty regarding the number and scope of unmanaged areas and probationary basins, and 2) the level of reporting compliance.

- 1) Staff workload, and resulting fees, are contingent on the number and scope of unmanaged areas and probationary basins. However, at this time there is significant uncertainty regarding the number and scope of unmanaged areas and probationary basins. In addition, the State Water Board's authority to designate probationary basins is phased in over a 10-year period and is ongoing from that point forward. Because the Board cannot pre-determine the number of unmanaged areas and probationary basins, it must rely on estimating the level of program activities.
- 2) State Water Board staff anticipate 30 to 50 percent reporting and fee submittal compliance in the first year of collecting fees; 50 to 60 percent in the second year; and 70 to 80 percent through year five. This anticipated compliance rate is applicable to the total number of extractors that must report, not the number of basins or areas generally in compliance with SGMA deadlines. SGMA authorizes the State Water Board to recover costs over a period of years, which will allow staff to create a workload history to better estimate future fees.

As a note, although there is uncertainty regarding the magnitude of program actions, the nature of the emergency regulations allows the State Water Board to update its fee schedule as the challenges described above are better understood over time.

DISCUSSION ON PROPOSED FEE CATEGORIES

The following questions are aimed at focusing input on elements of the draft fee schedule.

Establishing the Fee Structure

1. What are other options the State Water Board should consider? Examples include a cap on the maximum fee amount, a larger base fee, or tiered rates.
2. Is it appropriate to scale the fees based on volumes of water used? Examples of other options include scaling by irrigated acreage, service area size, or crop type.

Incorporating Incentives

1. Will the late fee incentivize report submittal compliance?
2. Are there are other incentives the State Water Board should consider?
3. Will the metering discount for unmanaged areas incentivize more accurate data reporting?

Fee Stability

1. Is it appropriate to apply the Special Studies Fee to individual basins?
2. Do you have suggestions on how the State Water Board can recover programmatic costs resulting from activities in specific basins during probationary or interim plan periods?

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SUPPORTING INFORMATION AND CLARIFICATIONS

Fee Example Scenarios

- The following table provides examples of how the proposed probationary fee rates for eight hypothetical farms would approximately relate to a fee based on irrigated acreage:

Crop	Irrigated Acreage	Acre Feet of Water Applied Annually Per Acre (DWR ^(b))	Probationary Rate	Cost per Acre	Total Cost
Alfalfa	150	5.05	\$40	\$202	\$30,300
Almonds	150	3.54	\$40	\$142	\$21,240
Corn	150	2.83	\$40	\$113	\$16,980
Cotton	150	3.09	\$40	\$124	\$18,540
Grapes	150	1.86	\$40	\$74	\$11,160
Misc. Fruit Trees	150	3.3	\$40	\$132	\$19,800
Pistachios	150	3.54	\$40	\$142	\$21,240
Rice	150	4.56	\$40	\$182	\$27,360

(b) State-wide averages, Department of Water Resources, Agricultural Land and Water Use Estimates, 2010

- The following table provides examples of how the proposed probationary fee rates would apply to a municipal water supplier and industrial user:

Purpose of Use	Example Volume	Probationary Rate	Total Cost
Municipal Water Supply	3,600 acre-feet	\$40	\$144,000
Semiconductor Factory (Industrial)	5,200 acre-feet	\$40	\$208,000

De Minimis Extractors

Water Code Section 10721, subdivision (e), defines a de minimis extractor as “a person who extracts, for domestic purposes, two-acre feet or less per year.” A person who extracts two acre-feet or less per year for a non-domestic purpose will not be considered a de minimis extractor. Domestic purposes do not include growing commercial crops or supporting commercial livestock. De minimis users are exempt from reporting in unmanaged areas. However Water Code Section 10735.2, subdivision (c)(2), authorizes the State Water Board to require de minimis extractors to report in a probationary basin if necessary. De minimis extractors that are required to report in a probationary basin will only pay the base filing fee and, if applicable, the late fee, but will not pay a per acre-foot rate.

Interim Plans and Groundwater Sustainability Plans

State intervention is intended to be a temporary measure to address conditions of long-term overdraft or significant depletions of interconnected surface waters. 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 are also paying intervention fees to the State Water Board, likely resulting in the potential scenario of extractors paying both local and state fees.

State Water Board Flexibility during Intervention

SGMA provides the State Water Board flexibility in how intervention proceeds in three important ways:

- Areas in compliance with the sustainability goal will be excluded from probation. (Wat. Code §10735.2, subd. (e).);
- Extractors may be exempted from probationary reporting and related fees if appropriate. (Wat. Code §10735.2, subd. (c).); and
- Successful elements of a GSP will be incorporated into an interim plan. (Wat. Code §10735.8, subd. (e).)