

CALIFORNIA CODES

WATER CODE**SECTION 5100-5107**

5100. As used in this part:

(a) "Best available technologies" means technologies at the highest technically practical level, using flow totaling devices, and if necessary, data loggers and telemetry.

(b) "Best professional practices" means practices attaining and maintaining the accuracy of measurement and reporting devices and methods.

(c) "Diversion" means taking **water** by gravity or pumping from a surface stream or subterranean stream flowing through a known and definite channel, or other body of surface **water**, into a canal, pipeline, or other conduit, and includes impoundment of **water** in a reservoir.

(d) "Person" means all persons whether natural or artificial, including the United States of America, State of California, and all political subdivisions, districts, municipalities, and public agencies.

5101. Each person who, after December 31, 1965, diverts **water** shall file with the board, prior to July 1 of the succeeding year, a statement of his or her diversion and use, except that a statement is not required to be filed if the diversion is any of the following:

(a) From a spring that does not flow off the property on which it is located and from which the person's aggregate diversions do not exceed 25 acre-feet in any year.

(b) Covered by a registration for small domestic or livestock stockpond uses, or permit or license to appropriate **water** on file with the board.

(c) Included in a notice filed pursuant to Part 5 (commencing with **Section 4999**).

(d) Regulated by a watermaster appointed by the department and included in annual reports filed with a court or the board by the watermaster, which reports identify the persons who have diverted **water** and describe the general purposes and the place, the use, and

the quantity of **water** that has been diverted from each source.

(e) Included in annual reports filed with a court or the board by a watermaster appointed by a court or pursuant to statute to administer a final judgment determining rights to **water**, which reports identify the persons who have diverted **water** and give the general place of use and the quantity of **water** that has been diverted from each source.

(f) For use in compliance with Article 2.5 (commencing with **Section** 1226) or Article 2.7 (commencing with **Section** 1228) of Chapter 1 of Part 2.

(g) A diversion that occurs before January 1, 2009, if any of the following applies:

(1) The diversion is from a spring that does not flow off the property on which it is located, and the person's aggregate diversions do not exceed 25 acre-feet in any year.

(2) The diversion is covered by an application to appropriate **water** on file with the board.

(3) The diversion is reported by the department in its hydrologic data bulletins.

(4) The diversion is included in the consumptive use data for the Delta lowlands published by the department in its hydrologic data bulletins.

5102. The statement may be filed either by the person who is diverting **water** or, on his behalf, by an agency which he designates and which maintains a record of the **water** diverted. A separate statement shall be filed for each point of diversion.

5103. Each statement shall be prepared on a form provided by the board. The statement shall include all of the following information:

(a) The name and address of the person who diverted **water** and of the person filing the statement.

(b) The name of the stream or other source from which **water** was diverted, and the name of the next major stream or other body of **water** to which the source is tributary.

(c) The place of diversion. The location of the diversion works shall be depicted on a specific United States Geological Survey topographic map, or shall be identified using the California

Coordinate System, or latitude and longitude measurements. If assigned, the public land description to the nearest 40-acre subdivision and the assessor's parcel number shall also be provided.

(d) The capacity of the diversion works and of the storage reservoir, if any, and the months in which **water** was used during the preceding calendar year.

(e) (1) On and after January 1, 2012, monthly records of **water** diversions. The measurements of the diversion shall be made using best available technologies and best professional practices. Nothing in this paragraph shall be construed to require the implementation of technologies or practices by a person who provides to the board documentation demonstrating that the implementation of those practices is not locally cost effective.

(2) (A) The terms of, and eligibility for, any grant or loan awarded or administered by the department, the board, or the California Bay-Delta Authority on behalf of a person that is subject to paragraph (1) shall be conditioned on compliance with that paragraph.

(B) Notwithstanding subparagraph (A), the board may determine that a person is eligible for a grant or loan even though the person is not complying with paragraph (1), if both of the following apply:

(i) The board determines that the grant or loan will assist the grantee or loan recipient in complying with paragraph (1).

(ii) The person has submitted to the board a one-year schedule for complying with paragraph (1).

(C) It is the intent of the Legislature that the requirements of this subdivision shall complement and not affect the scope of authority granted to the board by provisions of law other than this article.

(f) The purpose of use.

(g) A general description of the area in which the **water** was used. The location of the place of use shall be depicted on a specific United States Geological Survey topographic map and on any other maps with identifiable landmarks. If assigned, the public land description to the nearest 40-acre subdivision and the assessor's parcel number shall also be provided.

(h) The year in which the diversion was commenced as near as is known.

5104. (a) Supplemental statements shall be filed at three-year intervals, prior to July 1 of the year next succeeding the end of

each three-year interval. They shall contain the quantity of **water** diverted and the rate of diversion by months in each of the preceding three calendar years and any change in the other information contained in the preceding statement.

(b) If there is a change in the name or address of the person diverting the **water**, a supplemental statement shall be filed with the board that includes the change in name or address.

5105. Upon failure of any person to file a statement required by this part, the board may, at the expense of such person, investigate and determine in writing the facts required by either Sections 5103 or 5104, provided the board first gives such person written notice of its intention to investigate and determine the facts and 60 days in which to file the statement without penalty.

5106. (a) Neither the statements submitted under this part nor the determination of facts by the board pursuant to **Section** 5105 shall establish or constitute evidence of a right to divert or use **water**.

(b) (1) The board may rely on the names and addresses included in statements submitted under this part for the purpose of determining the names and addresses of persons who are to receive notices with regard to proceedings before the board.

(2) Notwithstanding paragraph (1), any person may submit, in writing, a request to the board to provide notification to a different address, and the board shall provide the notification to that address.

(3) If the board provides notice to persons who file statements under this part, the notice shall not be determined to be inadequate on the basis that notice was not received by a person, other than a party to whom the board's action is directed, who fails to file a statement required to be filed under this part.

(4) This subdivision does not affect the requirement in **Section** 2527 to provide notice to all persons who own land that appears to be riparian to the stream system.

(c) In any proceeding before the board to determine whether an application for a permit to appropriate **water** should be approved, any statement submitted under this part or determination by the board pursuant to **Section** 5105 is evidence of the facts stated therein.

5107. (a) The making of any willful misstatement pursuant to this part is a misdemeanor punishable by a fine not exceeding one thousand dollars (\$1,000) or by imprisonment in the county jail for not to exceed six months, or both.

(b) Any person who fails to file a statement required to be filed under this part for a diversion or use that occurs after January 1, 2009, who tampers with any measuring device, or who makes a material misstatement pursuant to this part may be liable civilly as provided in subdivisions (c) and (d).

(c) Civil liability may be administratively imposed by the board pursuant to **Section** 1055 in an amount not to exceed the following amounts:

(1) For failure to file a statement, one thousand dollars (\$1,000), plus five hundred dollars (\$500) per day for each additional day on which the violation continues if the person fails to file a statement within 30 days after the board has called the violation to the attention of that person.

(2) For a violation resulting from a physical malfunction of a measuring device not caused by the person or any other unintentional misstatement, two hundred fifty dollars (\$250), plus two hundred fifty dollars (\$250) per day for each additional day on which the measuring device continues to malfunction or the misstatement is not corrected if the person fails to correct or repair the measuring device or correct the misstatement within 60 days after the board has called the malfunction or violation to the attention of that person.

(3) For knowingly tampering with any measuring device or knowingly making a material misstatement in a statement filed under this part, twenty-five thousand dollars (\$25,000), plus one thousand dollars (\$1,000) for each day on which the violation continues if the person fails to correct the violation within 30 days after the board has called the violation to the attention of that person.

(4) For any other violation, five hundred dollars (\$500), plus two hundred fifty dollars (\$250) for each additional day on which the violation continues if the person fails to correct the violation within 30 days after the board has called the violation to the attention of that person.

(d) When an additional penalty may be imposed under subdivision (c) for failure to correct a violation or correct or repair a malfunctioning measuring device within a specified period after the violation has been called to a person's attention by the board, the board, for good cause, may provide for a longer period for correction

of the problem, and the additional penalty shall not apply if the violation is corrected within the period specified by the board.

(e) In determining the appropriate amount, the board shall consider all relevant circumstances, including, but not limited to, all of the following factors:

- (1) The extent of harm caused by the violation.
- (2) The nature and persistence of the violation.
- (3) The length of time over which the violation occurs.
- (4) Any corrective action undertaken by the violator.

(f) All funds recovered pursuant to this **section** shall be deposited in the **Water** Rights Fund established pursuant to **Section** 1550.

(g) Remedies under this **section** are in addition to, and do not supersede or limit, any other remedies, civil or criminal.