

**State of California
Office of Administrative Law**

In re:
State Water Resources Control Board

Regulatory Action:

Title 23, California Code of Regulations

Adopt sections: 1030, 1032, 1040, 1041,
1042, 1043, 1044, 1045,
1046

Amend sections:

Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**

OAL Matter Number: 2017-0619-02

OAL Matter Type: Emergency (E)

This emergency rulemaking by the State Water Resources Control Board (Board) adopts regulations to implement the reporting and fee requirements of the Sustainable Groundwater Management Act of 2014. Pursuant to Water Code sections 348 and 1530, these emergency regulations shall remain in effect until revised by the Board.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 6/29/2017.

Date: June 29, 2017



Kevin D. Hull
Senior Attorney

For: Debra M. Cornez
Director

Original: Thomas Howard
Copy: Nicole Kuenzi

EMERGENCY

STATE OF CALIFORNIA—OFFICE OF ADMINISTRATIVE LAW

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS Z-	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER 2017-0619-02E	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

per agency request 6/19/17

2017 JUN 19 P 1:48
OFFICE OF ADMINISTRATIVE LAW

ENDORSED - FILED
In the office of the Secretary of State
of the State of California

JUN 29 2017

2:13 pm

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY
State Water Resources Control Board

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY		ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Implementation of the Sustainable Groundwater Management Act of 2014	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 1030, 1032, 1040, 1041, 1042, 1043, 1044, 1045, 1046
	AMEND Chapter 4.5
	REPEAL
TITLE(S) 23	

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Adoption (Gov. Code, §11346.7)	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Other (Specify) _____		

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal	
<input type="checkbox"/> Other (Specify) _____			

7. CONTACT PERSON Nicole Kuenzi	TELEPHONE NUMBER (916) 322-4142	FAX NUMBER (Optional) (916) 341-5199	E-MAIL ADDRESS (Optional) Nicole.Kuenzi@waterboards.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 6/8/17
TYPED NAME AND TITLE OF SIGNATORY Michael Ann Lauffer, Acting Executive Director	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JUN 29 2017

Office of Administrative Law

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.

(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 that includes 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.

Article 2. Report of Groundwater Extraction.

Section 1032. Electronic Forms.

Reports as defined by section 1032, subdivision (k) shall be submitted to the board electronically on forms available at the board's website.

Authority: Section 348, Water Code.

References: Sections 1529.5, 1530, and 5202(f), 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.

References: Sections 1529.5, 1530, and 5202(f), 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.

References: Sections 1529.5, 1530, and 5202(f), 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.

References: Sections 1529.5, 1530, and 5202(f), 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.

References: Sections 1529.5, 1530, and 5202(f), 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.

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: Sections 1529.5, 1530, 1846, and 5202(f), Water Code.