

## CALIFORNIA WATER RIGHTS COMPLIANCE CHECKLIST FOR 2018

This checklist provides a summary of state water right reporting requirements and applicable deadlines for users of surface or groundwater in California for calendar year 2018.\* If you have questions about the information contained in this checklist, or otherwise wish to discuss the maintenance and protection of your water rights, please contact [Stephanie Hastings](#) at Brownstein Hyatt Farber Schreck, LLP.\*\*

### CALENDAR OF KEY ANNUAL STATE FILING DEADLINES

Filing Deadline	Reporting Period	Water Source	Form/Information to Submit
<b>April 1</b>	Preceding Calendar Year	Surface water	Annual License Report
<b>April 1</b>	Preceding Calendar Year	Surface water	Permittee Progress Report
<b>April 1</b>	Preceding Calendar Year	Surface water	Report of Registration and Certificate Holders
<b>July 1</b>	Preceding Calendar Year	Surface water	Supplemental Statement of Diversion and Use & Water Diversion Measurement
<b>July 1</b>	Preceding Calendar Year	Groundwater	Notice of Extraction and Diversion of Water (counties of Riverside, San Bernardino, Los Angeles and Ventura)
<b>December 15</b>	Preceding Water Year	Groundwater	Extraction Reporting for Probationary Basins and Basins without a Groundwater Sustainability Agency
<b>December 31</b>	Preceding Water Year	Groundwater	Notice of Cessation and Use

**Abbreviations:**

- CDFW – Department of Fish and Wildlife
- DWR – Department of Water Resources
- GSA – Groundwater Sustainability Agency
- GSP – Groundwater Sustainability Plan
- SWRCB – State Water Resources Control Board
- SGMA – Sustainable Groundwater Management Act

\* Additional reporting requirements may also apply pursuant to the terms and conditions of a permit or other approval or to the use of water generally. (See, e.g., Water Code § 10608 et seq.). Please note that this checklist includes only California state reporting requirements applicable to water rights; local and federal reporting requirements may also apply.

\*\* This document is intended to provide a summary of water right filing requirements and deadlines for California water users. The contents of this document are not intended to provide specific legal advice. If you have any questions about the contents of this document or if you need legal advice, please contact us. This communication may be considered advertising in some jurisdictions.

# SUMMARY OF STATE FILING REQUIREMENTS

## SURFACE WATER

### One-Time Filings

- Initial Statement of Diversion and Use.** Non-exempt persons who divert surface water must file a Statement of Diversion and Use with the SWRCB.<sup>1</sup> Failure to file may subject the diverter to civil liability. The Statement of Diversion and Use form requests information such as the source of the water, the point of diversion, place of use, purpose of use and the quantity of water diverted. The initial form should be filed for the year in which water is first diverted (or for ongoing diversions when no prior filing has been made) and should be submitted to the SWRCB by July 1 of the following year. The form is available [here](#).
- Streambed Alteration Notification.** Any person who plans to undertake any activity that will substantially divert or obstruct the natural flow of, or substantially change the bed, channel or bank, of any river, stream or lake must first notify CDFW.<sup>2</sup> CDFW may require the diverter to enter into a streambed alteration agreement (SAA), which may place conditions on the diversion. The initial term of an SAA is typically five years, but may be renewed. The Lake or Streambed Alteration Notification Form (LSA) and instructions are available [here](#).
- Small Domestic, Small Irrigation and Livestock Stockpond Use Registration.** Individuals diverting water for small domestic, small irrigation or livestock stockpond uses must register with the SWRCB.<sup>3</sup> Depending on the type of use, registration authorizes users to divert a maximum amount of water for specific purposes.<sup>4</sup> Registrants for small domestic uses and livestock stockpond uses are allowed to divert up to 4,500 gallons per day or 10 acre-feet per year to storage for aesthetic, recreational, fish and wildlife, fire protection and other purposes. Registrants for small irrigation uses are allowed to divert up to 42,000 gallons per day (a maximum of 20 acre-feet per year) for irrigation, heat control or frost protection. Registrants submitting forms for small irrigation uses must also submit a copy of the completed form and supporting documentation to the Water Rights Coordinator of the appropriate regional office of the CDFW.  
[Small Domestic Use Appropriation registration form](#)  
[Small Irrigation Use Appropriation registration form](#)  
[Livestock Stockpond Use Appropriation registration form](#)

### Annual Filings

- Licensee Report.** SWRCB license holders must submit their Report of Licensee providing their actual water diversions and use annually. Beginning in 2016, the license reporting deadline was modified and is now April 1.<sup>5</sup> If final data is unavailable by the deadline, a licensee may submit provisional data, with final data due within one month of the time that “final streamflow data” is available.<sup>6</sup> Reports must also include information on the device or method used to calculate the amount of water diverted.<sup>7</sup> These forms must be submitted using the SWRCB’s [electronic Water Right Information Management System \(eWRIMS\)](#). A sample license report is available [here](#).
- Permittee Progress Report.** SWRCB permit holders must submit permittee progress reports describing the status of any permitted appropriations of water annually. Consistent, timely submission of these

reports is recommended. In the event the user requests an extension of time within which to put water to beneficial use, the filed progress reports and reported beneficial use of water may be used to demonstrate due diligence. Beginning in 2016, the permittee progress-reporting deadline was modified and is now due by April 1. Reports must include information on the device or method used to calculate the amount of water diverted.<sup>8</sup> If final data is unavailable by the deadline, a permittee may submit provisional data, with final data due within one month of the time that “final streamflow data” is available.<sup>9</sup>

These forms must be submitted using [eWRIMS](#). A sample of the permittee progress report is available [here](#).

- Reports of Registration and Certificate Holders.** Annually, every holder of a small irrigation, small domestic, or livestock stockpond registration or certificate is required to submit a report that includes the quantity of water diverted and the maximum diversion rate by month, if available (or shorter time frame, if SWRCB requires).<sup>10</sup> Reports are due April 1, with the first report due for the 2016 reporting year on April 1, 2017.<sup>11</sup>
- Supplemental Statements of Diversion and Use.** After a water user files an initial Statement of Diversion and Use (see above), the user must file Supplemental Statements of Diversion and Use annually by July 1.<sup>12</sup> Also, statement filers must include information on the device or method used to calculate the amount of water diverted.<sup>13</sup> These forms must be submitted to the SWRCB using [eWRIMS](#). A sample of the supplemental statement is available [here](#).
- Water Diversion and Storage Measurement Requirements.** The 2016 Drought Emergency Regulation for Measuring and Reporting on the Diversion of Water (Measurement Regulations)<sup>14</sup> impose new measurement requirements for certain surface water users filing Supplemental Statements of Water Diversion and Use, Progress Reports by Permittees, Reports of Licensees, and Reports of Registration and Certificate Holders. Right holders diverting more than 10 acre-feet of water per year are required to employ diversion measurement methods capable of measuring the rates of direct diversion, collection to storage and withdrawal or release from storage.<sup>15</sup> The effective date of this requirement is phased in according to the size of a user’s claimed right, with the earliest effective date being Jan. 1, 2017, for anyone with a right to divert 1,000 acre-feet per year or more.<sup>16</sup> The required accuracy levels and specifications for measurement devices vary according to several criteria, including the size of the claimed water right, whether the device is laboratory-certified and whether the device was installed prior to Jan. 1, 2016.<sup>17</sup> A qualified individual includes diverters who have: (1) completed an instructional course regarding the devices or measurement method administered by the University of California Cooperative Extension; and (2) passed a proficiency test before completion of the course.<sup>18</sup> Water users subject to new measurement requirements must file documentation of compliance as part of the first annual report submitted after installation.<sup>19</sup> The SWRCB may consider an alternative compliance plan where strict compliance would be infeasible, “unreasonably expensive” or result in the waste or unreasonable use of water.<sup>20</sup> For a more detailed discussion of the Measurement Regulations, [click here](#). See also the SWRCB’s website [here](#).

### Every Five Years

- Renewal for Registration and Certificate Holders.** Small domestic, small irrigation and livestock stockpond use registration must be renewed every five years after the initial registration.<sup>21</sup> After initial registration, the SWRCB will send each registrant a renewal form in the year the registration expires.

The deadline to submit the renewal form is the last day of the month in which the original registration was filed. For example, if an initial registration was filed on Nov. 2, 2005, the renewal form would be due by Nov. 30, 2010.

- **Evidence of Properly Functioning Measurement Equipment.** At five-year intervals or upon SWRCB's request, right holders required to install water measurement devices (see "Measurement Requirements" above) must submit evidence that such equipment is functioning properly, through a form available on the SWRCB website.<sup>22</sup> A sample measurement method form is available [here](#). Updates to the form will be posted [here](#).

## GROUNDWATER

### One-Time Filings

- **Initial Notice of Extraction and Diversion of Water.** Groundwater users in the counties of Riverside, San Bernardino, Los Angeles and Ventura who extract more than 25 acre-feet per year of groundwater must file an Initial Notice of Extraction and Diversion of Water with the SWRCB (or if applicable, the SWRCB-designated local entity).<sup>23</sup> For the purpose of this requirement, "groundwater" is defined as "water beneath the surface of the ground whether or not flowing through known and definite channels."<sup>24</sup> The deadline for filings is March 1; penalties for not filing (deemed equivalent of non-use) begin to accrue by July 1. Filings must contain the requested information for the preceding calendar year.<sup>25</sup> The form is available [here](#).

### Annual Filings

- **Notice of Extraction and Diversion of Water.** After the initial filing (see above), groundwater users in the counties of Riverside, San Bernardino, Los Angeles and Ventura must report their annual production for the prior calendar year by July 1.<sup>26</sup> These forms must be submitted using [eWRIMS](#).
- **Local Groundwater Extraction Reporting Requirements.** Individual counties may impose additional groundwater extraction reporting requirements. Please contact us for more information on local requirements that may apply to you.
- **Notice of Cessation or Reduction of Use.** Annually, users of groundwater may file a Notice of Cessation of Use of groundwater to preserve a claim of right to groundwater not produced in the prior year as a result of the use of an alternative supply of water from a non-tributary source.<sup>27</sup> For the purposes of this filing, "groundwater" means: "water beneath the surface of the ground, whether or not flowing through known and definite channels."<sup>28</sup> A "non-tributary source" includes water imported from another watershed, or water conserved and saved in the watershed by a water conservation plan, without which the water would not have reached the groundwater supply. Filing a Notice of Cessation of Use is voluntary; however, the failure to file prohibits a groundwater user from claiming the benefit of Water Code section 1005.1 for any year in which the form is not filed. The reporting period for each filing is Nov. 1 to October 31, and the deadline for submission is December 31. Please note that special provisions and reporting periods apply to groundwater users in San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Orange, San Diego, Imperial, Riverside and San Bernardino counties.<sup>29</sup> Before filing a Notice of Cessation of Use, groundwater users should consult legal counsel

to formulate a strategy for claiming any cessation or reduction of use of groundwater. The Notice of Cessation of Use form is not available online. Please contact our office for a copy.

- **Reporting Requirements For Groundwater Extractions From Unmanaged Basins.** SGMA requires groundwater users to file with the SWRCB reports of their extractions from: (1) “probationary basins” 90 days after the basin has been designated by the SWRCB as probationary, or (2) an area within a “high- or medium-priority basin” not managed by a GSA.<sup>30</sup> De minimis extractors—users who pump two acre-feet or less per year—are exempt.<sup>31</sup> These groundwater extraction reports are due each year by December 15 for extractions made in the preceding water year. Under SGMA, “groundwater” means: “water beneath the surface of the earth within the zone below the water table in which the soil is completely saturated with water, but does not include water that flows in known and definite channels” and “water year” means: “the period from October 1 through the following September 30.” For more information on how the SGMA may affect you, please contact us.

### **Well Permit Application Disclosure and Notice Requirements**

**NEW Well Permit Applications in Critically Overdrafted Basins.**<sup>32</sup> Beginning January 1, 2018, every city and county overlying a critically overdrafted basin must require applicants for wells to be located within a critically overdrafted basin to provide additional information in any well permit application, including the quantity of water produced from existing wells on the property and the estimated cumulative extraction volume before January 1, 2020.<sup>33</sup> When a city or county receives the new well permit application, the city or county must make the information provided easily accessible and available to both the public and to GSAs located within the basin where the new well is located. If the applicant provides the required information and complies with additional regional and local requirements, the city or county may issue the new well permit. These disclosure and notice requirements do not apply to:

- (1) de minimis extractors;
- (2) applicant for replacement water well so long as the amount of extraction requested is not more than the amount of water extracted from the existing well;
- (3) a city or county that has adopted an ordinance that substantially complies with this law;
- (4) applicant of new well outside any critically overdrafted basin;
- (5) area subject to a GSP;
- (6) public agency that substantially meets or exceeds the requirements of this article through another requirement of law; and
- (7) city or county well that provides water supply solely for residents of the city or county.

This law will sunset on Jan. 30, 2020—once the state approves local GSPs under SGMA.

### **Request for Notice**

**RECOMMENDED Request to Be Added to Interested Persons List(s).** We strongly recommend that all groundwater users make a written request to be added to the “interested persons” list of any GSA.<sup>34</sup> A list of current GSAs is available [here](#). This request will ensure that the groundwater user receives notice of any actions taken by the GSA potentially affecting the user’s local groundwater resources or water rights.

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- <sup>1</sup> Water Code § 5100 *et seq.* All citations are to the California Codes and the California Code of Regulations.
- <sup>2</sup> Fish & Game Code § 1602.
- <sup>3</sup> Water Code § 1228 *et seq.*
- <sup>4</sup> Water Code § 1228.1.
- <sup>5</sup> See Cal. Code Regs., tit. 23, §§ 907(e), 929(b).
- <sup>6</sup> C.C.R. tit. 23, § 929(b).
- <sup>7</sup> C.C.R. tit. 23, § 929(c)(4).
- <sup>8</sup> C.C.R. tit. 23, §§ 907(e), 925(b), (c)(4).
- <sup>9</sup> C.C.R. tit. 23, § 925(b).
- <sup>10</sup> C.C.R., tit. 23, § 924(a).
- <sup>11</sup> C.C.R. tit. 23, §§ 907(e), 924(a), (c).
- <sup>12</sup> Water Code § 5104; C.C.R. tit. 23, §§ 907(e), 920(a).
- <sup>13</sup> C.C.R. tit. 23, § 920(c)(6).
- <sup>14</sup> C.C.R. tit. 23, § 907 *et seq.*
- <sup>15</sup> Water Code § 1840(a)(1); see also C.C.R. tit. 23, § 932(a).
- <sup>16</sup> C.C.R. tit. 23, § 932(c)(1)(a).
- <sup>17</sup> Water Code § 1840(b)(1)(A); C.C.R. tit. 23, § 933.
- <sup>18</sup> See Assembly Bill 589 [adding Section 1841.5 to the Water Code].
- <sup>19</sup> C.C.R. tit. 23, § 937(a)(2).
- <sup>20</sup> Water Code § 1840(b)(2); C.C.R. tit. 23, § 935(a).
- <sup>21</sup> Water Code § 1228.5.
- <sup>22</sup> Water Code § 1840(a)(1)(A); C.C.R. tit. 23, § 937(a)(3).
- <sup>23</sup> Water Code § 4999 *et seq.*
- <sup>24</sup> Water Code §§ 5000.
- <sup>25</sup> Water Code § 5001; C.C.R. tit. 23, §§ 907(d)(4).
- <sup>26</sup> C.C.R. tit. 23, §§ 907(d)(4).
- <sup>27</sup> Water Code § 1005.1.
- <sup>28</sup> Water Code § 1005.1.
- <sup>29</sup> Water Code §§ 1005.2, 1005.4.
- <sup>30</sup> Water Code § 5202.
- <sup>31</sup> Water Code § 10721(e).
- <sup>32</sup> See Senate Bill 252 (adding Article 5 [commencing with Section 13807] to Chapter 10 of Division 7 of the Water Code).
- <sup>33</sup> Water Code § 13808.
- <sup>34</sup> Water Code § 10723.4.

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