

The California State Water Resources Control Board Issues Guidance For 2012 Water Diversion Measurements Requirements

The California State Water Resources Control Board ("State Water Board") recently posted the final Guidance for Complying with Water Diversion Measurement Requirements for Statement Holders. The document provides guidance on how to comply with the 2012 water diversion measurement requirements under the California Water Code for diverters of water who file Statements of Water Diversion and Use ("Statement").

Background

California law requires each person who uses diverted surface water or pumped groundwater from a known subterranean stream to: 1) file a Statement of Water Diversion and Use; or 2) file an application to appropriate water. The main purpose of the Statement is to create a central repository for records of diversions and uses of water. This repository differs from the records of appropriated water rights that are permitted and licensed. The law also enables the State Water Board to notify water users about applications to appropriate water that might affect their supply. A Statement should be filed to document water diversion and use under a riparian entitlement or for water appropriated prior to the establishment of the State Water Commission (the predecessor to the State Water Board) on December 19, 1914.

The Statement must be filed with the State Water Board before July 1 of the following year. Failure to file a Statement for each diversion that occurred after January 1, 2009 may result in civil liabilities that carry a maximum fine of \$1,000 plus \$500 for each day the violation continues after the 30-day window following notification of the violation by the State Water Board.

2012 Measurement Requirements

In 2009, the California Water Code was modified to require diverters of water who file Statements to measure their monthly water diversions beginning in January 2012. Measurements shall be made using best available technologies and best professional practices, but the Water Code does not require implementation of practices that are "not locally cost effective." The State Water Board recently issued a guidance document for how to comply with the new water diversion measurement requirements.

by *Nathan A. Metcalf*



There will be two options for measurements incorporated into the supplemental reporting form. These options allow Statement holders to: 1) report on their measuring device; or 2) provide information regarding why implementation of best available technologies and best professional practices to measure their water diversion are "not locally cost effective." Permissible measuring devices include, but are not limited to:

- Propeller Meter
- Acoustic Meter
- Sluice/slide gate
- Wier

If use of a measuring device is "not locally cost effective," Statement holders must explain why that conclusion was reached and describe the alternative measuring methods used in lieu of measuring devices. The State Water Board may request additional information from the Statement holder to demonstrate that the implementation of best available technologies and best professional practices is "not locally cost effective." Valid reasons why implementation is "not locally cost effective" may include, but are not limited to:

- Diversion is small or minimal in size
- Diversions are infrequent
- No power at diversion point
- Cost of device is high in relation to the economic value of diversion

The measurement requirement will be reported in the Supplemental Statement of Water Diversions and Use for 2012. Supplemental Statements must be filed every three years. The State Water Board will notify affected Statement holders in February 2013 of the need to file the 2010-2012 Supplemental Statement report with the State Water Board by July 1, 2013.

After review of the 2012 water diversion measurement information, the State Water Board will decide whether to provide additional guidance and/or develop water diversion measurement regulations for future reporting years.

Recommendations

Starting in 2012, water users who file a Statement must measure water diversions. Those who divert in locations where it is impractical to use standard measuring devices should document any efforts to measure water and the limitations on the use of measuring devices at each diversion point. Further, alternative methods of measurement should also be documented. Keeping accurate records of these activities will assist in showing compliance with the new water diversion measurement requirements. Contact the authors with any questions or for assistance in reporting water diversion and use to the State Water Board.

For more information, please contact:

Nathan A. Metcalf, Partner
415-995-5838
nmetcalf@hansonbridgett.com