

## California Water Rights: Compliance Checklist for 2016

January 20, 2016

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 2016.\* 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 Brownstein Hyatt Farber Schreck, LLP.

### CALENDAR OF KEY ANNUAL STATE FILING DEADLINES

Deadline	Water Right(s)	Water Source	Form/Information to Submit
April 1	License	Surface water	Annual License Report
April 1	Permit	Surface water	Permittee Progress Report
April 1**	Certificate, Registration	Surface water	Water Use Report
June 30	Riparian, Pre-1914	Surface water	Supplemental Statement of Diversion and Use & Water Diversion Measurement
June 30	Overlying, Appropriative	Groundwater	Annual Notice of Extraction and Diversion of Water
December 31	Overlying, Appropriative, Riparian	Groundwater or underflow of surface water	Notice of Cessation and Use

#### Abbreviations:

CDFW – Department of Fish and Wildlife

DWR – Department of Water Resources

SWRCB – State Water Resources Control Board

\* Additional reporting requirements may also apply to the use of water generally. For example, agricultural water suppliers and urban retail suppliers are required to report on their implementation of water efficiency measures. (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.

\*\* The first report will be due April 1, 2017, for water use in the 2016 calendar year. (Cal. Code Regs., tit. 23, § 924(c).)

## SUMMARY OF STATE FILING REQUIREMENTS

### SURFACE WATER

#### One-Time Filings

- **Initial Statement of Diversion and Use.** Non-exempt persons (including riparians and pre-1914 appropriators) 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 June 30 of the following year. The form is available at: [http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/diversion\\_use/docs/intl\\_stmnt\\_form.pdf](http://www.waterboards.ca.gov/waterrights/water_issues/programs/diversion_use/docs/intl_stmnt_form.pdf).
- **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 notification form and instructions are available at: <https://www.wildlife.ca.gov/Conservation/LSA>.
- **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 and pay a \$250 filing fee.<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.

The Small Domestic Use Appropriation registration form is available online at:  
[http://www.swrcb.ca.gov/waterrights/publications\\_forms/forms/docs/sdu\\_registration.pdf](http://www.swrcb.ca.gov/waterrights/publications_forms/forms/docs/sdu_registration.pdf).

The Small Irrigation Use Appropriation registration form is available online at:  
[http://www.swrcb.ca.gov/waterrights/publications\\_forms/forms/docs/siu\\_registration.pdf](http://www.swrcb.ca.gov/waterrights/publications_forms/forms/docs/siu_registration.pdf).

The Livestock Stockpond Use Appropriation registration form is available online at:  
[http://www.swrcb.ca.gov/waterrights/publications\\_forms/forms/docs/lisu\\_registration.pdf](http://www.swrcb.ca.gov/waterrights/publications_forms/forms/docs/lisu_registration.pdf).

## Annual Filings

- **MODIFIED REQUIREMENTS Annual License Report.** SWRCB license holders must report their diversions annually. Beginning in 2016, license reports are now due annually by 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 electronically using the SWRCB’s electronic Water Right Information Management System (eWRIMS) at:  
[http://ciwqs.waterboards.ca.gov/ciwqs/ewrims\\_online\\_reporting/login.jsp](http://ciwqs.waterboards.ca.gov/ciwqs/ewrims_online_reporting/login.jsp).  
A sample license report is available at:  
[http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/ewrims/docs/license.pdf](http://www.waterboards.ca.gov/waterrights/water_issues/programs/ewrims/docs/license.pdf).
- **MODIFIED REQUIREMENTS Permittee Progress Report.** Permit holders must submit annual permittee progress reports describing the status of any permitted appropriations of water. Timely submission of these reports demonstrates the user’s diligence in putting to beneficial use the maximum amount of water authorized under the permit. In the event the user requests an extension of time within which to put water to beneficial use, timely filing of the progress reports demonstrates due diligence. Consistent filing of the permittee progress reports also provides a record of the user’s constantly increasing beneficial use of water under its permitted right, which can be useful for extensions and/or licensing. Beginning in 2016, permittee progress reports are now due annually by April 1 and will need to 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 electronically using eWRIMS at:  
[http://ciwqs.waterboards.ca.gov/ciwqs/ewrims\\_online\\_reporting/login.jsp](http://ciwqs.waterboards.ca.gov/ciwqs/ewrims_online_reporting/login.jsp). A sample of the permittee progress report is available at:  
[http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/ewrims/docs/permit.pdf](http://www.waterboards.ca.gov/waterrights/water_issues/programs/ewrims/docs/permit.pdf).
- **NEW Annual Reports for Registration and Certificate Holders.** Under regulations promulgated pursuant to Senate Bill 88 (“SB 88 regulations”), every holder of a small irrigation, small domestic, or livestock stockpond registration or certificate is now required to submit a report each year 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 will be due April 1, with the first report due for the 2016 reporting year on April 1, 2017.<sup>11</sup>
- **NEW Water Diversion Measurement Requirements.** Under SB 88 regulations, right holders diverting over 10 acre-feet per year will be required to employ diversion measurement methods capable of measuring the rate of direct diversion, rate of collection to storage, and rate of withdrawal or release from storage.<sup>12</sup> The effective date of this requirement will be 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>13</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>14</sup> Water users subject to new measurement requirements must file documentation of compliance as part of the first annual report submitted after installation.<sup>15</sup> 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>16</sup>

- **MODIFIED REQUIREMENTS Supplemental Statements of Diversion and Use.** After a water user files an initial Statement of Diversion and Use (see Initial Statement of Diversion and Use above), the user must file Supplemental Statements of Diversion and Use. SB 88 increased the required frequency of this filing from triennial to annual,<sup>17</sup> with an annual June 30 deadline.<sup>18</sup> Under SB 88 regulations, statement filers must also include information on the device or method used to calculate the amount of water diverted.<sup>19</sup> These forms must be submitted to the SWRCB electronically using eWRIMS at:  
[http://ciwqs.waterboards.ca.gov/ciwqs/ewrims\\_online\\_reporting/login.jsp](http://ciwqs.waterboards.ca.gov/ciwqs/ewrims_online_reporting/login.jsp).  
A sample of the supplemental statement is available at:  
[http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/ewrims/docs/statement.pdf](http://www.waterboards.ca.gov/waterrights/water_issues/programs/ewrims/docs/statement.pdf).

### Every Five Years

- **Small Domestic, Small Irrigation and Livestock Stockpond Use Registration Renewal.** Small domestic, small irrigation and livestock stockpond use registration must be renewed every five years after the initial registration.<sup>20</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.
- **NEW Evidence of Properly Functioning Measurement Equipment.** At five-year intervals or upon SWRCB's request, right holders required to install water measurement devices (see "Water Diversion Measurement Requirements") must submit evidence that such equipment is functioning properly, through a form available on the SWRCB website.<sup>21</sup>

## GROUNDWATER

### One-Time Filings

- **First 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 must file an Initial Notice of Extraction and Diversion of Water with the SWRCB.<sup>22</sup> The form is due by March 1 and must contain the requested information for the preceding calendar year.<sup>23</sup> The form is available at:  
[http://www.waterboards.ca.gov/waterrights/publications\\_forms/forms/docs/gw\\_first\\_notice.pdf](http://www.waterboards.ca.gov/waterrights/publications_forms/forms/docs/gw_first_notice.pdf).

### Annual Filings

- **NEW DEADLINE Annual 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. Under SB 88 regulations, the new annual deadline is June 30.<sup>24</sup> These forms must be submitted electronically using eWRIMS at: [http://ciwqs.waterboards.ca.gov/ciwqs/ewrims\\_online\\_reporting/login.jsp](http://ciwqs.waterboards.ca.gov/ciwqs/ewrims_online_reporting/login.jsp).

- **Notice of Cessation of Use.** Annually, users of groundwater (whether or not flowing through known and definite channels) 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>25</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 typically Nov. 1 to Oct. 31, and the deadline for submission is Dec. 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>26</sup> Before filing a Notice of Cessation of Use, groundwater users should consult legal counsel to formulate a strategy for claiming any cessation of use of groundwater. The Notice of Cessation of Use form is not available online. Please contact our office for a copy.
  
- **Local Groundwater Extraction Reporting Requirements.** Individual counties may impose additional groundwater extraction reporting requirements. For example, well owners and operators in some areas of Monterey County are required to keep records showing their total monthly and annual water use, and those records must be submitted to the SWRCB by Feb. 15 for the previous water year (Nov. 1 through Oct. 31). Please contact us for more information on local requirements that may apply to you.
  
- **NEW Annual Extraction Reporting Requirements Beginning in 2017.** Beginning no sooner than July 2017, the Sustainable Groundwater Management Act of 2014 will require some groundwater users to file extraction reports with the SWRCB where extractions come from: (1) “probationary basins” designated after June 30, 2017, or (2) areas within a “high- or medium-priority basin” not managed by a groundwater sustainability agency (GSA) and where the county does not assume the responsibility to be the GSA.<sup>27</sup> These groundwater extraction reports will be due each year by Dec. 15 for extractions made in the preceding water year.<sup>28</sup> For more information on how the Sustainable Groundwater Management Act of 2014 may affect you, please contact us.

### **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 local agency that has given notice of their intent to become a groundwater sustainability agency pursuant to the Sustainable Groundwater Management Act of 2014.<sup>29</sup> A list of these agencies is available at: [http://www.water.ca.gov/groundwater/sgm/gsa\\_table.cfm](http://www.water.ca.gov/groundwater/sgm/gsa_table.cfm). This request will ensure that the groundwater user receives notice of any actions taken by the local agency potentially affecting the user’s local groundwater resources or water rights.

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- <sup>1</sup> Cal. Water Code § 5100 *et seq.*
  - <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 § 1840(a)(1); see also C.C.R. tit. 23, § 932(a).
  - <sup>13</sup> C.C.R. tit. 23, § 932(c)(1)(a).
  - <sup>14</sup> Water Code § 1840(b)(1)(A); C.C.R. tit. 23, § 933.
  - <sup>15</sup> C.C.R. tit. 23, § 937(a)(2).
  - <sup>16</sup> Water Code § 1840(b)(2); C.C.R. tit. 23, § 935(a).
  - <sup>17</sup> Water Code § 5104.
  - <sup>18</sup> C.C.R. tit. 23, §§ 907(e), 920(a).
  - <sup>19</sup> C.C.R. tit. 23, § 920(c)(6).
  - <sup>20</sup> Water Code § 1228.5.
  - <sup>21</sup> Water Code § 1840(a)(1)(A); C.C.R. tit. 23, § 937(a)(3).
  - <sup>22</sup> Water Code § 4999 *et seq.*
  - <sup>23</sup> Water Code § 5001.
  - <sup>24</sup> C.C.R. tit. 23, §§ 907(d)(4).
  - <sup>25</sup> Water Code § 1005.1.
  - <sup>26</sup> Water Code §§ 1005.2, 1005.4.
  - <sup>27</sup> Water Code § 5202(a).
  - <sup>28</sup> Water Code § 5202(b).
  - <sup>29</sup> Water Code § 10723.4.

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.

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