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## State Water Resources Control Board

### NOTICE OF PROPOSED RULEMAKING

#### Title 23. Waters

Division 3. State Water Resources Control Board and  
Regional Water Quality Control Boards  
Chapter 2. Appropriation of Water  
Article 19. Changes of Ownership and of Address-Notices  
Chapter 2.7 Water Diversion and Reports  
Article 1. Definitions  
Article 2. Declaration of Policy

### NOTICE OF PUBLIC HEARING TO CONSIDER ADOPTION OF PROPOSED REGULATION MODIFYING WATER RIGHT OWNERSHIP NOTICE REQUIREMENTS AND REPORTING DATES

(Gov. Code, §11346.5, subd. (a)(1))

**NOTICE IS HEREBY GIVEN** that the State Water Board will conduct an Administrative Procedure Act (APA) public hearing at the time and place described below. At the hearing, any person may present comments orally or in writing relevant to the proposed action described in this notice.

The public hearing will begin with a staff presentation summarizing the proposed regulations, followed by an opportunity for public comment. During the comment period, the public will be allowed three minutes to provide oral comments, unless additional time is approved.

DATE: September 20, 2022  
TIME: 9:30 a.m.  
LOCATION: 1001 I Street  
Sacramento, CA  
Coastal Hearing Room – 2<sup>nd</sup> Floor

#### **Video and Teleconference Participation**

The hearing will be recorded and will be webcast at <https://video.calepa.ca.gov/>.

For those who only wish to watch the hearing, the customary webcast remains available at <https://video.calepa.ca.gov/> and should be used UNLESS you intend to comment.

For those who wish to make oral comments, additional information about participating telephonically or via the remote meeting solution is available here:  
**[http://www.waterboards.ca.gov/board\\_info/remote\\_meeting/](http://www.waterboards.ca.gov/board_info/remote_meeting/)**

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Special Accommodation Request

Consistent with California Government Code section 7296.2, special accommodation or language needs may be provided for any of the following:

- (1) An interpreter to be available at the hearing;
- (2) Documents made available in an alternate format or another language; or
- (3) A disability-related reasonable accommodation.

To request these special accommodations or language needs, please contact the Clerk to the Board at (916) 341-5600 as soon as possible, but no later than 10 business days before the scheduled State Water Board hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Consecuente con la sección 7296.2 del Código de Gobierno de California, una acomodación especial o necesidades lingüísticas pueden ser suministradas para cualquiera de los siguientes:

- (1) Un intérprete que esté disponible en la audiencia
- (2) Documentos disponibles en un formato alterno u otro idioma
- (3) Una acomodación razonable relacionada con una incapacidad

Para solicitar estas comodidades especiales o necesidades de otro idioma, por favor llame a la oficina del Consejo al (916) 341-5600 lo más pronto posible, pero no menos de 10 días de trabajo antes del día programado para la audiencia del Consejo. TTY/TDD/Personas que necesiten este servicio pueden marcar el 711 para el Servicio de Retransmisión de Mensajes de California.

**WRITTEN COMMENT PERIOD AND SUBMITTAL OF COMMENTS**

(Gov. Code, §11346.4, subd. (a); §11346.5, subd. (a)(15))

Any interested person, or their representative, may submit written comments relevant to the proposed regulatory action to the Clerk to the State Water Board. Any written comments pertaining to these regulations, regardless of the method of transmittal, must be received by the Clerk to the State Water Board by **5:00 p.m., on August 31, 2022**, which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely. Persons wishing to use the California Relay Service may do so at no cost by dialing 711.

Written comments may be submitted as follows:

1. By email to: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov). The State Water Board requests but does not require that email transmission of comments, particularly those with attachments, contain the regulation package identifier "Comment Letter – Proposed Regulation Modifying Water Right Ownership Notice Requirements and Reporting Dates" in the subject line to facilitate timely identification and review of the comment;

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2. By fax transmission to: (916) 341-5620. The State Water Board requests but does not require that faxed comments contain the subject line “Comment Letter – Proposed Regulation Modifying Water Right Ownership Notice Requirements and Reporting Dates”;
3. By mail to: Clerk to the Board, Ms. Jeanine Townsend, State Water Resources Control Board, P.O. Box 997377, MS 7400, Sacramento, CA 95899-7377; or
4. Hand-delivered to: Clerk to the Board, Ms. Jeanine Townsend, State Water Resources Control Board, 1001 I Street, 24<sup>th</sup> Floor, Sacramento, CA 95814.

The State Water Board requests but does not require that written comments sent by mail or hand-delivered be submitted in triplicate.

The State Water Board requests but does not require that, if reports or articles in excess of 25 pages are submitted in conjunction with the comments, the commenter provide a summary of the report or article and describe the reason for which the report or article is being submitted or is relevant to the proposed regulation.

All comments, including email or fax transmissions, should include the author’s name and U.S. Postal Service mailing address in order for the State Water Board to provide copies of any notices for proposed changes to the regulation text on which additional comments may be solicited.

Please note that under the California Public Records Act (Gov. Code, §6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request.

**AUTHORITY AND REFERENCE**

(Gov. Code, §11345.5, subd. (a)(2); Cal. Code Regs., tit. 1, §14)

The State Water Board proposes to amend existing regulations under the authority granted by Water Code section 1058. It is implementing, interpreting, or making more specific Water Code sections 1250, 1252, 1840, 1841, 5001, 5100, 5101, 5102, 5103, and 5104.

**INFORMATIVE DIGEST**

(Gov. Code, §11346.5, subd. (a)(3))

Existing Laws and Regulations (Gov. Code §11346.5, subd. (a)(3)(A))

All diverters are subject to reporting regulations adopted by the State Water Board pursuant to Water Code sections 1840, 1841, 5001, 5100, 5101, 5102, and 5103. Currently, California Code of Regulations, title 23 section 831 requires water right holders and claimants to notify the Board “immediately” in the event of a change in name, address, or ownership, but this existing regulation does not specify the form of such notification. In addition, neither California Code of Regulations, title 23, sections 831 nor 915 specify consequences for noncompliance.

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Currently, California Code of Regulations, title 23, sections 924, 925, and 929 require reports to be filed by April 1 for registration and certificate holders, permittees, and licensees. California Code of Regulations, title 23, section 920 currently requires supplemental statements of water diversion and use to be filed by July 1 and section 930 requires notices of extraction and diversion to be submitted “within six months after the close of the succeeding calendar year.” Senate Bill 155 (2021) amended Water Code sections 5001, 5101, and 5104 to change the reporting deadlines for notices of extraction and diversion, statements of water diversion and use, and supplemental statements of water diversion and use to before February 1.

Currently, California Code of Regulations, title 23, section 907 defines “twelve month reporting period” as a calendar year beginning January 1 and ending December 31. The twelve month reporting period is used for supplemental statements of water diversion and use, water use reports of registration and certificate holders, progress reports by permittee, and reports of licensee. Senate Bill 155 (2021) amended Water Code sections 5001, 5101, and 5104 to change the reporting period from calendar year (January 1 through December 31) to water year (October 1 through September 30 of the following year) for notices of extraction and diversion, statements of water diversion and use, and supplemental statements of water diversion and use.

Effect of Proposed Rulemaking (Gov. Code §11346.5, subd. (a)(3)(A))

The key provisions of the proposed regulations:

- Clarify that required notification of a change of ownership is a shared obligation of both transferor (old owner) and transferee (new owner) of permits, licenses, and registrations.
- Clarify, similarly, that required notification of a change of ownership is a shared obligation of both transferor (old owner/claimant) and transferee (new owner/claimant) of pre-1914 or riparian rights or claims.
- Clarify that a water right holder or claimant is similarly required to notify the Board of changes in agency or contact information.
- Clarify the Board’s authority to impose administrative civil liability for failure to file required notifications:
  - Administrative civil liability may be imposed on the water right holder/claimant after a 30-day grace period following a change in agency or contact information.
  - In the case of a change of ownership, administrative civil liability may be imposed on the transferee (new owner/claimant), after a 30-day grace period following the transfer of ownership. The rationale for imposing administrative civil liability exclusively on the transferee is that only the new owner gains a benefit from the exercise of the underlying right/claim after the transfer takes place.

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- Administrative civil liability accrues from the end of the 30-day grace period until the required notification is submitted.
- Update the reporting deadlines and reporting periods for notices of extraction and diversion and supplemental statements of water diversion and use to reflect the statutory deadlines and reporting periods from SB 155.
- Align the reporting deadlines and reporting periods for registration and certificate holders, permittees, and licensees with the deadlines and reporting periods for statements of water diversion and use (Water Code section 5101), supplemental statements of water diversion and use (Water Code section 5104), and notices of extraction and diversion (Water Code section 5001).

Comparable Federal Statute and Regulations (Gov. Code §11346.5, subd. (a)(3)(B))

There are no comparable federal Statutes or Regulations.

Policy Statement Overview (Gov. Code, §11346.5, subd (a)(3)(C))

In order to improve the accuracy of water right ownership and contact information, the Board proposes to adopt regulations that clarify the obligations of both the transferor (old owner) and transferee (new owner) to notify the Board when a water right is transferred, or to a change in name, address, or ownership. The proposed regulations also clarify that failure to notify the Board of such changes in a timely fashion is a violation that may subject the violator to administrative civil liability. The revised regulations also align the reporting deadlines and reporting periods for notices of extraction and diversion, supplemental statements of water diversion and use, reports of registration and certificate holders, reports of licensees, and progress reports by permittees. These changes are essential to orderly and efficient administration of the State's water rights system which depends on the Board's ability to reliably communicate with water right holders and claimants.

Objectives

Broad objectives of this proposed regulatory action are to:

- Provide the public with increased understanding of the obligations to notify the Board of changes in name, address, or ownership of water rights and claims,
- Protect the State's water resources by ensuring the Board can reliably communicate with water right holders and claimants in the orderly and efficient administration of the State's water rights system,
- Provide transferors and transferees a 30-day grace period following the transfer of a water right or claim to notify the Board of such change; similarly, to provide a 30-day grace period to notify the Board following changes in name, address, or ownership information, and
- Ensure compliance with water rights regulations with fair, transparent, and efficient enforcement of Board regulations.

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Benefits

The proposed regulatory action is expected to improve the orderly and efficient administration of the State's water rights system by:

- Clarifying the parties who bear responsibility for notifying the Board of changes in name, address, or ownership related to all water rights and claims,
- Providing a 30-day grace period following a transfer or other change to allow a reasonable time for responsible parties to file the required notification, and
- Clarifying the Board's authority to impose administrative civil liability for failure to file the required notifications, and
- Aligning reporting deadlines and reporting periods.

Evaluation as to Whether the Proposed Regulations are Inconsistent or Incompatible with Existing State Regulations

(Gov. Code, §11346.5, subd. (a)(3)(D))

The Board reviewed its existing general regulations and regulations specific to water right reporting to evaluate whether the proposed regulations are inconsistent or incompatible with existing State regulations. It was determined that no other State regulation addressed the same subject matter and that this proposal, if adopted, would not be inconsistent or incompatible with other existing State regulations.

**OTHER STATUTORY REQUIREMENTS**

(Gov. Code, §11346.5, subd. (a)(4))

California Environmental Quality Act

The California Environmental Quality Act (CEQA) requires that State agencies consider the potentially significant environmental impacts of their discretionary actions, which include the development of regulations. Consistent with California Code of Regulations, title 14, section 15061, subdivision (b)(3), the Board will prepare a Notice of Exemption, concluding, with certainty, that there is no possibility that the proposed regulations would have a significant effect on the environment.

Safe, Clean, Affordable Water (Wat. Code, §106.3)

California Water Code section 106.3 states that it is the policy of the State that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking and sanitary purposes. In preparing the proposed regulations, the Board determined that the proposed regulations are consistent with this statewide policy. The proposed regulations will ensure the Board has the name, address, and ownership information necessary to effectively communicate with water right holders and claimants, many of whom divert water for drinking water and for human health and safety, and to efficiently administer the State's water rights system.

Pre-Notice Meeting with Affected Parties (Gov. Code §11346.45, subd. (a))

Government Code section 11346.45, subdivision (a) requires that prior to publication of the notice of proposed action, the agency proposing the regulation or regulations must

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involve parties who would be subject to the proposed regulations in public discussions, when the proposed regulations involve complex proposals or a large number of proposals that cannot be easily reviewed during the comment period. The regulations proposed here are neither complex nor involve large numbers of proposals that could not be easily reviewed during the comment period. Therefore, the Board has informally engaged a small group of lawyers, engineers and other consultants who represent a number water rights holders and claimants to describe the proposed regulations and to solicit oral and written comments. These oral and written comments have been taken into consideration in developing these proposed regulations.

**LOCAL MANDATE**

(Gov. Code, §11346.5, subd. (a)(5))

The proposed regulations would not impose a mandate on local agencies or school districts that requires State reimbursement. The proposed regulations clarify existing notification requirements, clarify the Board's existing authority to impose administrative civil liability for the failure to file the required notifications, and modify water use reporting periods and deadlines. The proposed regulations will not increase costs associated with ownership of a water right or claim and will not be a requirement unique to local government and will apply equally to all water rights holders.

**FISCAL IMPACT ESTIMATE—Direct and Indirect Costs** (Gov. Code, §11346.5, subd. (a)(6))(as detailed in the Cost Estimating Methodology in the Initial Statement of Reasons)

Estimated Fiscal Impact on Local Agency or School District

None

Estimated Fiscal Impact on State Government

Expected to reduce Board costs through reduced staff time devoted to identifying changes of name, address, or ownership of which the Board should have been but has not been notified because of a lack of clarity with respect to responsibility, timeliness, and/or consequences of the failure to file these required notifications. Expected to reduce Board costs through reduced staff time with aligned reporting periods and deadlines.

Estimated Fiscal Impact on Federal Funding of State Programs

None

Other Non-discretionary Cost or Savings Imposed on Local Agencies

None

Cost to Any Local Agency or School District which Must be Reimbursed in Accordance with Government Code Sections 17500 through 17630

None

**HOUSING COSTS** (Gov. Code, §11346.5, subd. (a)(12))

The Board has determined that the regulations will have no impact on housing costs.

**NO SIGNIFICANT, STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES IN CALIFORNIA**

(Gov. Code, §11346.5, subd. (a)(8); §11346.5, subd. (a)(10))

The proposed regulations will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed regulations clarify existing notification requirements and clarify the Board's existing authority to impose administrative civil liability for failure to file the notifications. The proposed regulations will not increase costs associated with ownership of a water right or claim. The proposed regulations will also not increase compliance costs associated with providing the necessary notification of a change in name, address, or ownership. The updated reporting periods and deadlines for notices of extraction and diversion and supplemental statements of diversion and use are already required in statute. The updated reporting periods and deadlines for licensees, permittees, and registration and certificate holders will not increase costs because the time between the proposed end of the reporting period (September 30) and the deadline (February 1) will be longer than the current end of the reporting period (December 31) and the current deadline (April 1). Though many reporters and water right holders are businesses, the proposed regulations will not increase costs to businesses.

**RESULTS OF ECONOMIC IMPACT ASSESSMENT**

(Gov. Code, §11346.5, subd. (a)(10); §11346.3, subd. (b)(1))

The Board has determined that the economic impact of the proposed regulations, which clarify existing requirements and align reporting periods and deadlines, would not exceed \$50 million in a 12-month period, and that the regulations, therefore, would not be considered a Major Regulation as defined by California Code of Regulations, title 1, section 2000, subdivision (g).

Based on the Board's Economic Impact Assessment (described in the Initial Statement of Reasons, with additional findings provided in Form STD 399), the proposed regulation is not expected to:

- (A) create or eliminate jobs within California,
- (B) create new businesses or eliminate existing businesses within California, or
- (C) expand businesses currently doing business within California.

Pursuant to Government Code section 11346.3, subdivision (b)(1)(D), the proposed regulations will result in benefits to the welfare of California residents and the state's environment by resulting in a more effective administration of water rights in the State of California. As noted previously, the proposed regulatory action is expected to improve the orderly and efficient administration of the State's water rights system by:

- Clarifying the parties who bear responsibility for notifying the Board of changes in name, address, or ownership related to all water rights and claims,



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- Providing a 30-day grace period following a transfer or other change to allow a reasonable time for responsible parties to file the required notification, and
- Clarifying the Board's authority to impose administrative civil liability for failure to file the required notifications, and
- Aligning reporting deadlines and reporting periods.

The proposed regulation is not expected to affect worker safety.

**COST IMPACTS ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS**

(Gov. Code, §11346.5, subd. (a)(9))

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. Similarly, the Board believes there will be no direct cost impacts that a representative private person or business would incur in reasonable compliance with the proposed regulations. Regulatory changes for notifications of transfers and changes in ownership will only affect water right holders and claimants and only to the extent of clarifying existing obligations and potential consequences of failing to meet the existing notification obligations associated with the right or claim. Aligning the reporting deadlines will not have any cost impacts because they either reflect recently imposed statutory deadlines or increase the time period between the end of the reporting period and the reporting deadline.

**BUSINESS REPORT**

(Gov. Code, §11346.5, subd. (a)(11); §11346.3, subd. (d))

Government Code section 11346.3, subdivision (d) requires that any administrative regulation adopted on or after January 1, 1993 that requires a report shall not apply to businesses, unless the state agency adopting the regulation makes a finding that it is necessary for health, safety, or welfare of the people of the State that the regulation apply to businesses.

The Board has determined that the proposed regulations only align reporting periods and deadlines and clarify existing obligations to notify the Board of changes of name, address, or ownership. To the extent that the proposed regulation applies to water rights holders that may be considered businesses pursuant to Government Code section 11346.3, subdivision (b)(4)(B), the required notifications and updated reporting deadlines are essential to the Board's core function of orderly and efficient administration of the State's water rights system, which directly impacts the health, safety and the welfare of the people of the State and the environment.

**SMALL BUSINESS**

(Cal. Code Regs, tit. 1, §4, subd. (a) and (b))

The proposed regulations on transfers and change of ownership apply to all water right holders and claimants equally, and clarify existing notification requirements and existing authority of the Board to impose administrative civil liability for failure to file the required

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notifications. The proposed regulations also align water use reporting periods and deadlines. Although the proposed regulation may affect small business, the proposed regulations will not increase costs associated with ownership of a water right or claim.

**CONSIDERATION OF ALTERNATIVES**

(Gov. Code, §11346.5, subd. (a)(13))

The Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be

- (1) more effective in carrying out the purpose for which the action is proposed,
- (2) as effective and less burdensome to affected private persons than the proposed action, or
- (3) more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Board has years of experience applying the existing notification regulations, has conferred with water right holders and claimants to understand the confusion caused by the existing regulations, and has conferred informally with water right representatives to develop the proposed regulations. The Board believes that the proposed regulations are the least burdensome and the most cost-effective way to accomplish the objective of improving the reliability of critical information necessary to administer the State's water rights system. However, the Board invites interested persons to comment on the proposed regulations or present possible alternatives at the scheduled hearing or during the written comment period.

**STATE WATER BOARD CONTACT PERSON**

(Gov. Code, §11346.5, subd. (a)(14))

Requests for copies of the proposed regulatory text, the Initial Statement of Reasons, subsequent modifications of the proposed regulatory text, if any, or other inquiries concerning the proposed regulations may contact:

Primary Contact

Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24th Floor  
Sacramento, CA 95814  
Telephone: (916) 341-5600  
Electronic mail: [Jeanine.Townsend@waterboards.ca.gov](mailto:Jeanine.Townsend@waterboards.ca.gov)

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Secondary Contact

David P. Coupe  
Attorney IV  
c/o San Francisco Bay Regional Water Quality Control Board  
1515 Clay Street, Suite 1400  
Oakland, CA  
Telephone:  
Electronic mail: [David.Coupe@waterboards.ca.gov](mailto:David.Coupe@waterboards.ca.gov)

**Please identify the action by using the State Water Board regulation package identifier, “Comment Letter – Proposed Regulation Modifying Water Right Ownership Notice Requirements and Reporting Dates” in any inquiries or written comments.**

**AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE**

(Gov. Code, §11346.5, subd. (a)(16))

The Board has prepared and has available for public review an Initial Statement of Reasons for the proposed regulations, all the information upon which the proposed regulations are based, the text of the proposed regulations, and all other required forms, statements, and reports. The Records Room, Division of Water Rights, State Water Resources Control Board, 1001 I Street, 2nd Floor, Sacramento, CA 95814 will be the location for inspection and copying of public records, including reports, documentation, and other material related to the proposed regulations (rulemaking file) throughout the rulemaking process.

**AVAILABILITY OF CHANGED OR MODIFIED TEXT**

(Gov. Code, §11346.5, subd. (a)(18))

The full text of any regulation which is changed or modified from the express terms of the proposed regulation will be made available by the Board’s Division of Water Rights at least 15 days prior to the date on which the Board adopts, amends, or repeals the resulting regulation. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available. Please send requests for copies of any modified regulations to the attention of the Division of Water Rights, at the address indicated above.

**AVAILABILITY OF FINAL STATEMENT OF REASONS**

(Gov. Code, §11346.5, subd. (a)(19))

The Board will prepare a final statement of reasons for promulgating the proposed regulations pursuant to Government Code section 11346.9 upon final adoption of the regulations. Please send requests for a copy of the final statement of reasons to the attention of the Division of Water Rights, at the address indicated above.


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**AVAILABILITY OF DOCUMENTS ON THE INTERNET**

(Gov Code, §11346.4, subd. (a)(6); §11346.5, subd. (a)(20))

Materials regarding the action described in this notice (including this public notice, the regulation text, and the Initial Statement of Reasons) are available via the Internet and may be accessed in the links within the announcements section from the [Division of Water Rights Proposed Regulation Modifying Water Right Ownership Notice Requirements and Reporting Dates Internet webpage](#).

Date July 8, 2022

  
\_\_\_\_\_  
Jeanine Townsend  
Clerk to the Board