

INITIAL STATEMENT OF REASONS

PROBLEM STATEMENT

(Gov. Code, §11346.2, subd. (b)(1))

The California State Water Resources Control Board (State Water Board), promulgates regulations reasonably necessary to efficiently administer the water rights system of the State, including but not limited to, regulations detailing reporting requirements and regulations requiring prompt notification to the Board of the transfer (whether by sale, inheritance, gift, or other means) of water rights or claims to divert waters of the State for beneficial use.

All those who hold or claim the right to divert and use water of the State are subject to regulations adopted by the State Water Board requiring notification to the State Water Board when the water right holder's or claimant's contact information changes, when a new agency is established, or when the water right or claim is transferred to a new owner. Such information is necessary to achieve the State Water Board's primary responsibility of administering the State's water rights system by being able to communicate with lawful water users.

State Water Board regulations currently require notification of changes in name, address, and ownership, but many property owners acquire water rights/claims when they buy real estate and may be unaware of or confused by the existing regulations. As a result, changes occur without the required notification to the State Water Board. Thus, the State Water Board's electronic Water Rights Information Management System (eWRIMS) is not updated with the new information. Without the notification of changes in name, address, or ownership, the State Water Board may be unable to notify the current water right holder or claimant of important information associated with the right or claim. Similarly, without the required change notification, the water right holder or claimant may not be able to file required reports and, thus, unduly affecting the Board's ability to effectively administer water rights in the State of California. In fact, a significant subset of delinquent annual water use reports can be traced to failure to file the required notification of a change of name, address, or ownership. By the time the error is identified and corrected, the holder or claimant may have already accrued administrative civil liability which, if not paid, may be recorded as a lien on the underlying property.

While the existing regulations already require notification to the State Water Board of such changes, the existing regulations are ambiguous regarding the party or parties responsible for filing the required notifications, and the existing regulations are not explicit about the possible penalty for failure to file them.

State Water Board regulations set the reporting deadlines and reporting periods for licensees, permittees, and registration and certificate holders. The current reporting deadline for those diverters is April 1 and the reporting period is the calendar year (Jan 1 through December 31). The regulations also describe the reporting periods and deadlines for supplemental statements of water diversion and use and notices of extraction and diversion. Recent legislation (Senate Bill 155) changed the 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) to the water year (October 1 through

September 30 of the following year) and the respective reporting deadlines to February 1.

The existing regulations establish different reporting periods and deadlines for different types of diversions. The existing regulatory reporting periods and reporting deadlines for supplemental statements of water diversion and notices of extraction also conflict with the recent legislative changes, and, thus, need to be updated. The disparate reporting periods and deadlines impact the ability of the State Water Board to efficiently administer the water rights system.

Pursuant to Water Code section 1058, the State Water Board has the authority to adopt the subject regulations.¹

STATEMENT OF PURPOSE

The purpose of the proposed regulations is to:

- Provide the public with increased understanding of the obligations to notify the board of changes in ownership of water rights, agency and/or contact information.
- Protect the State's water resources by ensuring the State Water Board can efficiently and effectively administer the water rights system.
- Ensure compliance with water rights regulations with fair, transparent, and efficient enforcement of State Water Board regulations.

STATEMENT OF BENEFITS

The proposed regulations are expected to provide the following benefits:

- Clarifying the parties responsible for timely notification of changes affecting water rights and claims.
- Clarifying the Board's authority to impose administrative civil liability for failure to file the required notifications.
- Aligning reporting deadlines and reporting periods.

Aligned reporting deadlines and timely notification of changes affecting water rights and claims by responsible parties will contribute to the welfare of California residents by improving the State Water Board's ability to more effectively (1) administer the use of the State's water; (2) provide for the reasonable protection of the beneficial uses of waters of the State, and (3) prevent the waste and unreasonable use of water pursuant to Article X, section 2 of the California Constitution.

SPECIFIC DISCUSSION OF PROPOSED REGULATIONS

Pursuant to Water Code sections 1058, 1840, 1841, 5001, 5100, 5101, 5102, and 5103, the State Water Board proposes the below noted changes to title 23. The proposed regulations are contained in California Code of Regulations, title 23, division 3, chapter 2 (article 19), and title 23, division 3, chapter 2.7 (article 1 and article 2).

¹ This provision states that the State Water Board may make such reasonable rules and regulations as it may from time to time deem advisable in carrying out its powers and duties under this code.

Chapter 2, Article 19. Change of Ownership and of Address - Notices

- Amend section 831 to clarify that the obligation to notify the Board of a change in ownership of a permit, license or registration, is on both the transferor (old owner), and the transferee (new owner), and that such notification must be submitted electronically on a form accessible on the Board's website
- Amend section 831 to include subsection (b) to clarify the Board's authority to impose administrative civil liability exclusively on the new owner for failure to file the required notifications within a 30-day grace period following the transfer.

Chapter 2.7, Article 1. Definitions

- Amend section 907, subdivision (e) to change the definition of "twelve month reporting period" from the calendar year beginning Jan 1 and ending December 31 to water year beginning October 1 and ending September 30 of the following year.
- Amend section 907, subdivision (d) to change the reporting period.

Chapter 2.7, Article 2. Declaration of Policy

- Amend section 915 to include subdivision (a), which clarifies that a notice of change in contact information for a water right permit, license or registration must be filed electronically on a Contact Information Update Form within 30 days of the change.
- Amend section 915 to include subdivision (b), which requires any party required to submit a Statement of Water Diversion and Use (pre-1914 and riparian rights/claims) to update contact information electronically by filing a Supplemental Statement for Change Form within 30 days of the change.
- Amend section 915 to include subdivision (c), to clarify the Board's authority to impose administrative civil liability for failure to file the required notifications within 30 days of the change.
- Amend section 920, subdivision (a) to conform with the clarification in section 915 that a change of contact information following the transfer of an unadjudicated claim of pre-14 or riparian rights must be filed within 30 days on a Supplemental Statement for Change Form.
- Amend section 920 to include a new subdivision (c), noting that within 30 days following the transfer of a right or claim which is subject to Water Code section 5101, either the transferor or the transferee shall notify the board by completing and electronically submitting the Supplemental Statement for Change Form available on the board's website.
- Amend section 920 to include a new subdivision (d), clarifying the Board's authority to impose administrative civil liability for failure to file the required Supplemental Statement for Change Form, exclusively on the transferee (new owner), if the notification is not filed within 30 days of the change.
- Amend section 920 to include a new subdivision (e), clarifying that filing the Supplemental Statement for Change Form does not eliminate the requirement to file an annual Supplemental Statement of Water Diversion and Use.

- Amend section 920 to renumber existing subdivision (c), to subdivision (f).
- Amend section 920 to renumber existing subdivision (d), to subdivision (f)(12).
- Amend section 920 to renumber existing subdivision (e), to subdivision (g).
- Amend section 920 to renumber existing subdivision (f), to subdivision (h).
- Amend section 920 to reflect the statutory reporting deadline of February 1.
- Amend section 924 to change the reporting deadline from April 1 to February 1.
- Amend section 925 to change the reporting deadline from April 1 to February 1.
- Amend section 929 to change the reporting deadline from April 1 to February 1.
- Amend section 930 to reflect the statutory reporting deadline of February 1 and statutory reporting period as the water year.

PRESCRIPTIVE OR PERFORMANCE STANDARD

(Gov. Code, §§11340.1, subd. (a), 11346.2, subd. (b)(1), and 11346.2, subd. (b)(4)(A))

The proposed regulations neither impose performance standards, nor mandate the use of specific technologies or equipment.

SHOWING OF NECESSITY

(Gov. Code, §11346.2, subd. (b)(1))

The State Water Board has determined that the proposed regulations are necessary to remedy the ambiguity identified in the existing regulations and to carry out the Board's primary goal of efficiently administering the State's water right system. The proposed regulations are necessary to reflect the recently updated statutory reporting periods and reporting deadlines for supplemental statements of water diversion and use and notices of extractions and diversions. The proposed regulations are reasonably necessary to further the Board's goal of efficiently administering the State's water right system by aligning reporting periods and deadlines for licensees, permittees, and registration and certificate holders with the reporting periods and deadlines for statements of water diversion and use, supplemental statements of water diversion of use, and notices of extraction and diversion.

ECONOMIC IMPACT ASSESSMENT

(Gov. Code, §11346.3, subd. (a)(3) and 11346.3, subd. (b))

Based on the documents and other evidence identified in the Documents Relied Upon listed herein, with additional findings provided in Standard Form 399, the State Water Board has made an initial determination that the economic impact of the proposed regulations would be negligible statewide over the course of 20 years, would not exceed \$50 million in a 12-month period, would not have a significant statewide adverse economic impact directly affecting businesses, would not affect the ability of California businesses to compete with businesses in other states, and that the regulations would not therefore be considered a Major Regulation as defined by California Code of Regulations, title 1, section 2000, subdivision (g).

The State Water Board has further determined that the proposed regulations are not expected to:

Initial Statement of Reasons

Revised Water Right Ownership Notice Requirements

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

The proposed regulations are not expected to result in the creation or elimination of jobs in California because there would be no significant change in personnel needed for compliance with the new requirements. The proposed regulations are expected to benefit the state's environment and the health and welfare of California residents as the State Water Board is able to more effectively and efficiently administer the water rights system of the State. Adoption of these proposed regulations would not result in the creation or elimination of businesses. The economic impact of the proposed regulations would be insignificant.

As discussed in detail in Attachment A, Change of Ownership Challenges Examples, Calendar Years 2017-2020, the State Water Board has estimated that the annual amount of time spent researching the lack of water rights change of ownership notification to be 600 State Water Board staff hours each year.

ALTERNATIVES

(Gov. Code, §11346.2, subd. (b)(4))

The State Water Board does not believe that there are any reasonable alternatives to the proposed regulations. In particular, the State Water Board does not believe that there are other alternatives that are less burdensome and equally effective.

DETERMINATION OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS

(Gov. Code, §11346.2, subd. (b)(5))

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 change notification requirements, and clarify the Board's 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. Though many water right holders are businesses, the proposed regulations will not increase the cost of owning a water right.

The proposed changes to reporting periods and deadlines for licensees, permittees, and holders of certificates and registrations give reporters a longer timeframe between the close of the reporting period and the deadline to report. Existing regulations only give three months from the end of the calendar year until the reporting deadline of April 1. The proposed regulations will give them four months from the close of the water year (September 30) until the deadline of before February 1. The proposed regulatory changes to the reporting periods and deadlines for supplemental statements of water diversion and use and notices of extraction and diversion merely reflect the recent legislative changes

to statute. Though many reporters are businesses, the proposed regulations will not increase the cost of reporting. Therefore, there will be no adverse economic impact on businesses.

The State Water Board has determined that the proposed regulations only modify reporting deadlines, modify reporting periods, and clarify existing regulations that require notification to the State Water Board of changes in contact information, agency and/or ownership. To the extent that the proposed regulations apply to reporters or water rights holders/claimants that may be considered small businesses pursuant to Government Code 11346.3, subdivision (b)(4)(B), the proposed regulations will have no adverse economic impact on small businesses. The proposed regulations are essential to the State Water Board's core function of orderly and efficient administration of the State's water rights system, which directly benefits health, safety, and the welfare of the people of the State.

UNNECESSARY DUPLICATION WITH FEDERAL REGULATIONS

(Gov. Code, §11346.2, subd. (b)(6))

The State Water Board determined that the proposed regulations are neither duplicative of, nor in conflict with, any existing federal regulations.

DOCUMENTS RELIED UPON

(Gov. Code, §11346.2, subd. (b)(3))

Attachment A, Change of Ownership Challenges Examples, Calendar Years 2017-2020