

State Water Resources Control Board

NOTICE OF STAFF WORKSHOP AND SOLICITATION OF COMMENTS REGARDING FEES AND PROCESSING FOR TEMPORARY PERMITS FOR GROUNDWATER RECHARGE AND STORAGE

NOTICE IS HEREBY GIVEN that staff of the State Water Resources Control Board (State Water Board) will hold a public workshop regarding 1) appropriate fee structures for temporary water rights permits to allow underground storage (i.e., groundwater recharge), and 2) the State Water Board's process for permitting these projects.

STAFF WORKSHOP

The workshop is for State Water Board staff to:

- provide background on potential surface water recharge of groundwater projects,
- solicit oral comments on appropriate fees for these types of projects and
- discuss stakeholder concerns regarding the permitting process for temporary projects that store water diverted from high flows.

The ongoing statewide drought has triggered increased interest in capturing high surface water flows and storing the water in groundwater aquifers (i.e., groundwater recharge) for later use. In anticipation of possible high-precipitation events this past winter and spring, the State Water Board adopted a low fee (starting at \$100) and expedited permitting for low-impact groundwater recharge projects using high flows, to encourage these projects. These changes were intended to serve as temporary measures to allow the State Water Board to develop a more comprehensive program for permitting groundwater recharge of high flows. Information gathered at this staff workshop will inform ongoing development of an efficient and protective permitting program for temporary groundwater recharge projects.

The workshop will be split into two parts:

- Part I will cover water rights fees in general and fees for temporary permits to capture high flows for groundwater recharge.
- Part II will cover the permitting process for these projects.

For each part of the workshop, staff will begin with a brief presentation, then will open the floor for recommendations and concerns from the public on the given topic. Although a quorum of the State Water Board may be present, the State Water Board will not take any action during the staff workshop. The location and time of the staff workshop is provided below.

Tuesday, April 26, 2016 – 1:00 p.m.
Joe Serna, Jr. – Cal/EPA Headquarters Building
Sierra Hearing Room
1001 I Street, Second Floor
Sacramento, CA

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

BACKGROUND

On November 13, 2015, Governor Edmund G. Brown Jr. issued Executive Order B-36-15, which required the State Water Board to prioritize temporary water right permits to accelerate approvals for projects that enhance the ability of a local or state agency to capture high precipitation events for local storage or recharge. The order suspended requirements under the California Environmental Quality Act (CEQA) related to these temporary permits as part of the drought response.

Temporary permits¹ can authorize temporary diversion and beneficial use of water when there is an urgent need for the water. Unless renewed, a temporary permit expires after 180 days. The State Water Board must make certain findings, described in the “Permitting Process” section below, before issuing a temporary permit. Issuing a temporary permit generally takes less time than issuing a standard permit because the action is temporary. Typically these actions cause fewer impacts and require less review.

Fees

On December 1, 2015, the State Water Board adopted an emergency regulation, amending the water rights fee schedule to include a modified filing fee for temporary permits for diversion of water from high flow events to underground storage for later beneficial use (temporary permits for recharge). The new fee will remain in effect until revised by the State Water Board.² Generally the State Water Board considers and adopts updated emergency fee regulations each Fall.

Application filing fees are based on the volume of water to be diverted. The December 1, 2015 regulation substantially reduces the filing fee for applications and renewals of temporary permits for recharge, as compared with standard temporary permits. The table below shows the difference in filing fees among standard permits, standard temporary permits, and temporary permits for recharge.³ The filing fee for a standard temporary permit for 40,000 acre-feet (af), for example, would be \$249,333, while the fee for an equivalent temporary permit for recharge would be \$400 or less, depending on how much water was actually diverted.

Application	Minimum Fee	Fee structure	Maximum
Standard Permit	\$1,000	\$1,000 + \$15 per af in excess of 10 af	\$498,665
Standard Temporary Permit	\$2,000	Half the fee for an equivalent standard permit or \$2,000, whichever is greater	\$249,333
Temporary Permit for Recharge	\$100	\$100 + \$1 per 100 af in excess of 10,000 af (based on water actually diverted)	N/A

The existing low fee for temporary recharge permits was designed to encourage groundwater recharge projects for drought recovery. Further, the State Water Board initially anticipated that the workload associated with these projects would not be significant. State Water Board staff would like to now review the temporary recharge fee structure in light of its experience with the

¹ See Water Code section 1425.

² See Water Code section 1530.

³ The complete Fiscal Year 2015-2016 water rights fee schedule can be found at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/fees/

program's workload and future anticipated costs of the program, available funding sources, and the public interest in encouraging such projects.

Permitting Process

As part of the permitting process for temporary permits,⁴ the State Water Board must:

- review existing information related to whether or not water is available for diversion,
- consult with the Department of Fish and Wildlife, and
- comply with CEQA unless CEQA has been suspended in application to the project.

The State Water Board must find that:

- the applicant has an urgent need for the water;
- the water may be diverted and used without injury to any lawful user of water;
- the water may be diverted and used without unreasonable effect upon fish, wildlife, or other instream users, and
- the proposed diversion and use are in the public interest.

All appropriative water rights, including temporary permits, must specify the eventual beneficial use of the diverted water (e.g., municipal, irrigation, fish and wildlife enhancement).

"Groundwater recharge" in and of itself is not considered a beneficial use under the Water Code.

Two temporary permits for recharge have been issued this year, but broad, programmatic questions remain for the permitting process for these projects. Staff is soliciting public comment on the following questions and issues:

Demonstration of Beneficial Use

- In some cases, a permittee may not be the party pumping water for beneficial use. How can a diverter, who is not the party consuming the water, demonstrate beneficial use? Additionally, wells that draw water stored under the temporary permit may not be equipped with measurement devices.
- Past permits have relied on previously developed groundwater models or existing groundwater monitoring systems to estimate beneficial use, but not all applicants will have these resources. How does an applicant who does not have a groundwater model or a monitoring system in place demonstrate beneficial use?
- Regarding accounting for beneficial use of stored water, how may a diverter identify and report that water is being extracted under a temporary permit versus another basis of right?
- Should there be a different level of accounting based on the end use of the water or any other aquifer characteristics?

⁴ Long-term groundwater recharge projects can also be authorized under a standard permit, although the process often takes substantially more time. More information on the standard permitting process can be found at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/.

Expedited Processing, Water Availability, and Thresholds for Diversions

1. Should there be an expedited process for diversion of higher flows versus available flows? An expedited process for temporary permits targeted at diversion of high flows may allow for a more streamlined permitting process; however, determining the flow at which diversions begin or must end for a particular surface water source may be complicated in many watersheds.
2. What approaches could be used to determine the availability of excess stream flow for a project? In some cases, unusually high flows may already be allocated to senior users.
3. How may thresholds be determined to differentiate high versus available flows? Some examples of a threshold could include a stream's identified "monitor stage"⁵, being at or above bank-full flow, exceedance probability, hydrological indices, or other stream-specific criteria.
4. How should "channel forming" flows be protected? Salmonids and other aquatic and riparian species may require periodic, high "channel-forming" flows for maintaining stream channel geometry, transport of gravel and woody debris, aquatic habitat, and natural flow variability.

SUBMISSION OF COMMENTS

Written comments on permitting and fees for groundwater recharge and storage projects will be accepted until **5 p.m., Friday, April 29**, and should be addressed to Sarah Sugar (contact information below); written comments submitted by Friday, April 22 may be incorporated into the workshop discussion. Oral comments must be made in-person at the workshop.

Comment letters may be submitted via email, in pdf text format (if less than 15 megabytes in total size), to Sarah Sugar (contact information below). If the file is greater than 15 megabytes in total size, then the comment letter may be submitted by fax at (916) 341-5400. Please indicate the subject line: "**Comment Letter – Groundwater Recharge.**" Couriers delivering hard copies of comment letters must check in with Cal/EPA Building lobby security personnel, who can contact Sarah Sugar (contact information below).

WEBCAST

A broadcast of the meeting will be available at: <http://www.calepa.ca.gov/broadcast/>.

TRAVEL, ACCESSIBILITY, AND SECURITY

Information regarding travel to the Joe Serna, Jr.-Cal/EPA Headquarters Building is available at: <http://www.calepa.ca.gov/EPABldg/location.htm>.

The building is accessible to persons with disabilities. Individuals who require special accommodations should contact the staff person listed below, at least five working days prior to the meeting. Persons with hearing or speech impairments may contact us using the California

⁵ "Monitor Stage: For non-leveed streams, the stage at which initial action must be taken by concerned interests...For leveed streams, the stage at which patrol of flood control levees by the responsible levee maintaining agency becomes mandatory, or the stage at which flow occurs into bypass areas from project overflow weirs." (2012 National Weather Service Manual 10-950).

Relay Service Telecommunications Device for the Deaf (TDD) at (800) 735-2929 or voice line at (800) 735-2922.

Due to enhanced security precautions, all visitors are required to register with security staff prior to attending any meeting. To sign in and receive a visitor's badge, visitors must go to the Visitor and Environmental Services Center, located just inside and to the left of the main public entrance. Depending on their destination and the building's security level, visitors may be asked to show valid picture identification. Valid picture identification can take the form of a current driver's license, military identification card, or state or federal identification card. Depending on the size and number of meetings scheduled on any given day, the security check-in could take up to 15 minutes. Please allow adequate time to sign in before being directed to the workshop.

INFORMATION REGARDING WORKSHOP

Please direct any inquiries concerning this notice to Sarah Sugar, at (916) 341-5426 or Sarah.Sugar@waterboards.ca.gov. Mail should be addressed as follows: State Water Resources Control Board, Division of Water Rights, Attn: Sarah Sugar, P.O. Box 2000, Sacramento, CA 95812-2000. Additional information is available at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/groundwater_recharge/.