



# REPORTING REQUIREMENTS FOR SURFACE WATER DIVERSIONS

**Updated August 9, 2010**

## *GUIDANCE DOCUMENT for FARM BUREAU MEMBERS*

One piece of the comprehensive package of water bills passed last year, Senate Bill 8 by Sen. Darrell Steinberg, D-Sacramento, requires all surface water diversions to be reported, with a few exceptions (see below). Even before this legislation passed, Section 5101 of the California Water Code required statements of diversion and use, but there were no legal consequences for failure to report. Now, there are.

Since 1966, California law has required those who divert surface water or pump groundwater from a known subterranean stream<sup>1</sup> to file a **Statement of Water Diversion and Use**, or diverters to file an **application to appropriate water** with the State Water Resources Control Board, Division of Water Rights.

The new law removes some exemptions and assesses fines on diverters who fail to submit the required reports, and for willful misstatements, and/or tampering with monitoring equipment. The new law also appropriates \$3.75 million to the State Water Resources Control Board for 25 new staff positions to manage water diversion reporting, monitoring and **enforcement**.

A Statement of Water Diversion and Use is required to be filed if water is diverted and used under a claim of **riparian** entitlement to the natural stream flow. A valid riparian claim is a vested right that is superior to any permit or license issued by the State Water Resources Control Board to appropriate water. For this reason, it is in your best interest to document your riparian claim by filing a Statement of Water Diversion and Use for all or part of your diversion. A Statement of Water Diversion and Use is also required for **pre-1914** water rights.

**Failure to file a statement for each diversion that occurred after January 1, 2009, may be subject to civil liabilities that carry a maximum fine of \$1,000 plus \$500 for each day the violation continues after 30 days of the State Water Board notification of the violation.**

<b>VIOLATION</b>	<b>Old Penalty (before 2009)</b>	<b>New Penalty (2009 and after)</b>	<b>Correction Period</b>	<b>Per Day After Correction Period</b>
<b>Failure to File</b>	None	\$1,000	30 Days	\$500
<b>Accidental Misstatements*</b> <small>*Including those caused by a broken water measuring device</small>	\$500	\$250	60 Days	\$250
<b>Willful Misstatements*</b> <small>*Including those caused by tampering with a water measuring device</small>	\$1,000	\$25,000	30 Days	\$1,000
<b>Other Violations</b>	None	\$500	30 Days	\$250

<sup>1</sup> Subterranean streams have not been completely identified or mapped in all areas of California. If you have a shallow well in close proximity to a waterway, you may be pulling water from “underflow” and should research your particular situation. The State Water Resources Control Board has a four-part test that it uses to make a subterranean stream determination: 1) a subsurface channel is present; 2) with a relatively impermeably bed and banks; 3) the course of the channel must be able to be known; and 4) groundwater must be flowing in the channel. Whether groundwater is subject to the board’s permitting authority under this test is a factual determination. Water that does not fit this test is “percolating groundwater” and is not subject to the board’s permitting authority.

### **Additional information regarding subterranean streams:**

The State Water Resources Control Board has issued decisions that find that groundwater under the following streams constitutes a “subterranean stream flowing through known and definite channels” and is therefore subject to the board’s permitting authority:

- Los Angeles River in Los Angeles County
- Sheep Creek in San Bernardino County
- Mission Basin of the San Luis Rey River in San Diego County
- Bonsall Basin of the San Luis Rey River in San Diego County
- Pala Basin of the San Luis Rey River in San Diego County
- Carmel River in Monterey County
- Garrapata Creek in Monterey County
- Big Sur River in Monterey County
- Russian River
- Chorro Creek in San Luis Obispo County
- Morro Creek in San Luis Obispo County
- North Fork Gualala River in Mendocino County

Contact the State Water Resources Control Board, Division of Water Rights for specific stream reaches and other details of these decisions.

If you have not previously reported your water diversions you must first file an **Initial Statement of Water Diversion and Use** for each point of diversion and it should identify the amount of water diverted each month in 2009. The Statement must be filed with the State Water Resources Control Board Division of Water Rights **before July 1, 2010**. Once a Statement is received at the state water board, it is reviewed and will be assigned a Statement Number and a password for future electronic reporting. If a Statement is inadequate, the division will notify you of the deficiencies. All correspondence concerning these Statements should refer to the assigned Statement Number.

Supplemental Statements are filed by the diverter at three-year intervals and must be filed with the Division of Water Rights prior to July 1 of that year. Changes in the name and address of the person diverting the water should be made on the Supplemental Statement, or may be made by using a Notice of Assignment form so that the division’s database can be updated. If the location of the existing point of diversion as identified on the Supplemental Statement has changed, the new location must be identified. If there is a new point of diversion, a separate Statement must be filed with the division.

### **Those who do NOT need to file Statements of Water Diversion and Use include:**

- A diversion from a spring that does not flow off the property on which it is located and from which the diversion does not exceed 25 acre-feet in any year;
- A diversion that is covered by a permit or license to appropriate water that is on file with the State Water Resources Control Board;
- A diversion that is covered by a registration for small domestic or livestock stockpond uses with a storage capacity of 10 or less acre-feet, was constructed prior to January 1, 1969, and the State Water Resources Control Board issued a water right certificate;
- When a notice is filed with the State Water Resources Control Board for recording groundwater extractions and diversions in Los Angeles, Riverside, San Bernardino, and Ventura counties;

- A diversion that is regulated by a watermaster<sup>2</sup> appointed by the Department of Water Resources and included in annual reports filed with a court or the State Water Resources Control Board by the watermaster, which reports identify the persons who diverted water and describe the general purposes and the place, the use, and the quantity of water that has been diverted from each source;
- A diversion that is included in annual reports filed with a court or with the State Water Resources Control Board by a watermaster appointed by a court or filed pursuant to statute to administer a final judgment determining rights to water, which reports identify the persons who have diverted water and give the general place of use and the quantity that has been diverted from each source;

**or if the diversion occurred before January 1, 2009, where:**

- The Department of Water Resources reports the diversion in its annual hydrologic data bulletins;
- The diversion is included in the consumptive use data for the delta lowlands published by the department in its hydrologic data bulletins;
- The diversion is covered by an application to appropriate water on file with the water board;
- The diversion is from a spring that does not flow off the property on which it is located and from which the person's aggregate diversions do not exceed 25 acre-feet in any year.

Instructions for locating and downloading the required USGS maps and finding the coordinates of your diversion site for your **Initial Statement of Water Diversion and Use**.

**USGS Maps:**

1. Go to <http://topomaps.usgs.gov/>
2. Click on [Finding and ordering USGS topographic maps](#) on the left side toolbar
3. Go to the [Map Locator](#) in the center of the webpage and click on the icon
4. Scroll the map to find your location and magnify to find your specific location
5. Click on [Satellite](#) for a real picture of your location
6. Click the [Mark Points](#) circle to insert a maker at your location
7. Click the marker to produce a balloon on your point of diversion
8. Click on the balloon to download or order your map
9. Your latitude and longitude will appear in a box on your screen, i.e. (38-47.827N, 121-53.011W), so in this example your latitude is 38 degrees and 47 minutes, your longitude is 121 degrees and 53 minutes

**Measuring your Diversion:**

Measuring your diversion rates can require a little research and a small investment in metering equipment. California Water Code, Section 5100 (a) states, "Best available technologies" means technologies at the highest technical practical level, using flow totaling devices, and if necessary, data loggers and telemetry. The specific wording in this section seems to indicate the Legislature's preference for a physical measuring device that includes the ability to directly measure flow and collect a relatively continuous stream of measurements in order to determine how much water has been diverted, however indirect methods of measurement might be acceptable on a "case by case" basis. Consequently, anyone who is required to file a Statement of Water Diversion and Use and who utilizes a raw estimate or computational method to determine monthly diversion and use should be prepared to defend these methods in a formal evidentiary enforcement hearing if necessary.

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<sup>2</sup> According to the water board, most watermasters, including DWR watermasters, were not previously reporting diversion numbers. Therefore, it is in your best interest to contact your watermaster to be sure your diversion and use information is now being reported, and to request a copy of any reports submitted to the water board.

Your local Farm Advisor, pump company, or Resource Conservation District can be good resources. The following locations on the State Water Resources Control Board website will further your understanding of the reporting requirements and assist you when filing your statements:

- **Initial Statement of Water Diversion and Use:**  
[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)
- **California Water Rights Newsletter Subscription:**  
[http://www.waterboards.ca.gov/waterrights/press\\_room/newsletter/index.shtml](http://www.waterboards.ca.gov/waterrights/press_room/newsletter/index.shtml)
- **Frequently Asked Questions:**
  - ✓ General Water Rights Questions:  
[http://www.waterboards.ca.gov/waterrights/board\\_info/faqs.shtml](http://www.waterboards.ca.gov/waterrights/board_info/faqs.shtml)
  - ✓ Statement of Water Diversion Use Program Questions:  
[http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/diversion\\_use/faqs.shtml](http://www.waterboards.ca.gov/waterrights/water_issues/programs/diversion_use/faqs.shtml)
  - ✓ Electronic Reporting and Filing Questions:  
[http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/ewrims/online\\_faqs.shtml](http://www.waterboards.ca.gov/waterrights/water_issues/programs/ewrims/online_faqs.shtml)
- **Electronic Water Rights Information Management System (eWRIMS) Training and Assistance:**  
[http://www.swrcb.ca.gov/water\\_issues/programs/ewrims/training.shtml](http://www.swrcb.ca.gov/water_issues/programs/ewrims/training.shtml)  
*The tutorial found on this webpage will walk you through each of Chapters 1 through 5. This site is only applicable for those currently reporting their diversion and use triennially.*
  - Chapter 1: System Basics
  - Chapter 2: Permittee Report (*for those holding a project permit to divert water*)
  - Chapter 3: Licensee Report (*for those projects that have been licensed by the State Water Resources Control Board*)
  - Chapter 4: Supplemental Statement (*filed prior to July 1 every three years by all those required to report their diversions*)
  - Chapter 5: Groundwater Extraction Notice (*only applies in Los Angeles, Riverside, San Bernardino, and Ventura Counties*)
- **State Water Resources Control Board, Division of Water Rights General Information:**  
<http://www.swrcb.ca.gov/waterrights/>
- **Mapping Points of Diversion:**  
<http://waterrightsmaps.waterboards.ca.gov/ewrims/gisapp.aspx>
- **Water Rights Forms:** [http://www.swrcb.ca.gov/waterrights/publications\\_forms/forms/](http://www.swrcb.ca.gov/waterrights/publications_forms/forms/)

After you have thoroughly read through and researched this information and if you still have questions, you may contact:

**Danny Merkley**  
**Director of Water Resources**  
**California Farm Bureau Federation**  
**dmerkley@cfbf.com**