

Emergency Regulation for Implementation of the Sustainable Groundwater Management Act

On May 16, 2017, the State Water Resources Control Board (State Water Board or Board) adopted an [emergency regulation](https://www.waterboards.ca.gov/board_info/agendas/2017/may/051617_8.pdf) (https://www.waterboards.ca.gov/board_info/agendas/2017/may/051617_8.pdf) to implement State Water Board provisions of the Sustainable Groundwater Management Act (SGMA).

SGMA and State Intervention

In 2014, Governor Edmund G. Brown Jr. signed SGMA, which creates a framework for sustainable, local groundwater management for the first time in California history. SGMA requires the formation of local groundwater sustainability agencies (GSAs) in California's high- or medium-priority groundwater basins or the submittal of an alternative that demonstrates a basin is already sustainable.¹ GSAs are required to develop groundwater sustainability plans that make basins sustainable within 20 years of implementation. If locals are unable or unwilling to sustainably manage their basin, the State Water Board is authorized to intervene. State intervention is triggered by one of the following events:

- July 1, 2017 No GSA or Alternative for entire basin
- February 1, 2020 Basin is in critical overdraft and there is no plan or DWR fails plan.
- February 1, 2022 No plan or DWR fails plan and basin is in long-term overdraft
- February 1, 2025 DWR fails plan and basin has significant surface water depletions

Beginning July 1, 2017, portions of basins not within the service area of a GSA are considered unmanaged.² Any person that extracts groundwater from an unmanaged area must submit annual reports to the State Water Board.³ If locals fail to form a GSA, fail to develop an adequate sustainability plan, or fail to implement the plan successfully, the Board may designate the basin probationary and directly manage groundwater extractions.⁴ Any person who extracts groundwater from a probationary basin must submit annual reports to the State Water Board, although the Board has discretion to exclude certain extractors from reporting.⁵

Annual reports are due to the Board by December 15 of each year for extractions made during the previous water year (October 1 - September 30). A report must be submitted for each well and must identify well owner information, well location, well capacity,

monthly extraction volumes, and place(s) and purpose(s) of use. Extraction volumes must be measured by a method satisfactory to the Board.⁶

Electronic Filing of Reports

The emergency regulation includes a requirement that groundwater extraction reports be filed electronically, as authorized by SGMA.⁷ The State Water Board is developing a web-based electronic reporting system for the preparation and submission of reports of groundwater extraction.

The reporting system will increase the reliability and standardization of information collected, and will ensure that information is maintained in a form that will be a resource to local agencies when groundwater management is returned to local control.

The reporting system will ease the burden of preparing reports by 1) providing resources to identify groundwater extraction information; 2) identifying information on behalf of extractors; and 3) providing mapping resources in lieu of well owners acquiring maps or consulting services to satisfy requirements for locational information.

State Water Board Fees

Any person that files an extraction report must pay a filing fee to cover the Board's SGMA-related costs.⁸ The emergency regulation specifies these fees, as required by SGMA,⁹ and allows the Board to update the fees as necessary to reflect changing conditions and programmatic costs. These fees will not apply in basins where local implementation of SGMA is successful.

Fees for the 2017 Water Year

In an effort to prioritize GSA formation and well registration, and to avoid undue burden to unmanaged extractors, the State Water Board adopted simplified fees for the 2017 Water Year, as detailed below:

- The annual fee for reports due by December 15, 2017 is a flat fee of \$300.
- The late fee for reports due by December 15, 2017 is \$100 for each month late up to a maximum of \$1200 (inclusive of the \$300 flat fee).
- If a GSA forms between July 1, 2017 and September 30, 2017, extractors within the GSA service area are considered unmanaged for the 2017 water year and must report to the Board by December 15, 2017, but the annual fee is waived.

Fees for the 2018 Water Year

The fees are tied to the "level" of state intervention occurring in a basin. Each level is associated with particular types of activities increasing staff workloads and other costs.

1. **Unmanaged Area:** An unmanaged area is a portion of a basin not within the service area of a GSA. Extractors in unmanaged areas must submit annual reports to the Board.¹⁰ Board staff will have to identify unmanaged extractors, collect and review reports, verify extraction data, and evaluate the impact of unmanaged extractors on groundwater conditions in a basin.

2. **Probationary Basin:** If local failure triggers state intervention, the Board may designate the basin “probationary.”¹¹ Extractors in probationary basins are required to submit annual extraction reports to the Board.¹² In addition to the workload associated with locating extractors in a basin and managing reports, Board staff will have to evaluate basin conditions and investigate potential solutions for unsustainable conditions.
3. **Interim Plan:** In certain cases, the Board will need to directly manage extractions in a basin. In those instances, the Board must develop an interim plan that contains corrective actions, a timeline to make the basin sustainable, and a monitoring plan to ensure corrective actions are working.¹³

Annual Fees for Groundwater Extraction reports

Fee Category	Annual Fee Amount	Applicable Parties
Base Filing Fee	\$300 per well	All extractors required to report
Unmanaged Area Rate	\$10 per acre-foot, if metered	Extractors in unmanaged areas
Unmanaged Area Rate	\$25 per acre-foot, if unmetered	Extractors in unmanaged areas
Probationary Basin Rate	\$40 per acre-foot	Extractors in probationary basins
Interim Plan Rate	\$55 per acre-foot	Extractors in probationary basins where the Board determines an interim plan is required.
De minimis Fee	\$100 per well	Parties that extract, for domestic purposes, two acre-feet or less per year from a probationary basin, If the Board decides the extractions will likely be significant.
Late Fee	25% of total fee amount per month late	Extractors that do not file reports by the due date.

In addition to the fees detailed above, the Board has the authority to order extractors in a probationary basin to prepare and submit technical or monitoring program reports. Therefore, the costs associated with these reports are not currently included in the emergency regulation.¹⁴

Metered Extraction Discount

To be eligible for the \$10 per acre-foot unmanaged area rate, extractors must measure groundwater extraction volumes with a meter that meets the following criteria:

- The meter must be equipped with a totalizer and permanently attached to the well.
- No water use can occur between the point of extraction and the meter.
- The meter must be calibrated by a qualified individual to be accurate to within \pm five (5) percent by volume upon installation and at least once every five years.

- The meter must be accessible for reading, inspection, testing, repair and replacement.
- The meter must be available for inspection by the State Water Board.
- Extractors are responsible for the installation and maintenance of meters and all related costs.

Fee Examples

1. The following table highlights how the different levels of state intervention would impact the annual fees required of a hypothetical 50-acre farm that extracts 175 acre-feet of groundwater (3.5 acre-feet per acre) each year from a single well:

Intervention Level	Rate per acre-foot	Total fee	Cost per acre
Unmanaged Area (metered)	\$10	\$2,050	\$41
Unmanaged Area (unmetered)	\$25	\$4,675	\$94
Probationary Basin	\$40	\$7,300	\$146
Interim Plan	\$55	\$9,925	\$199

The following table highlights how the different levels of state intervention would impact the annual fees required of a hypothetical municipal water supplier or industrial user extracting 5,000 acre-feet per year from a single well:

Intervention Level	Rate per acre-foot	Total fee
Unmanaged Area (metered)	\$10	\$50,300
Unmanaged Area (unmetered)	\$25	\$125,300
Probationary Basin	\$40	\$200,300
Interim Plan	\$55	\$275,300

Annual Fees when a GSA Forms or Dissolves after September 30, 2017

Typically, annual fees are based on the volume of groundwater extracted during the entire previous water year. There is an exception for extractors in areas where a GSA forms after September 30, 2017. These extractors are required to report for the entire water year, but the annual fee is limited to extractions made during the months the extractors were unmanaged. For example, if a GSA forms on March 15, 2018, extractors in that area will only be charged for extractions made during the entire months of October 2017 through March 2018. On the other hand, if a GSA rescinds its formation notice and an extractor is no longer within the management of a GSA after September 30, 2017, the fee will be based on extractions made during the entire previous water year.

De minimis Extractors

SGMA defines a de minimis extractor as “a person who extracts, for domestic purposes, two-acre feet or less per year.”¹⁵ A person who extracts two acre-feet or less per year

for a non-domestic purpose is not considered a de minimis extractor. Domestic purposes do not include commercial activities. A person who extracts more than two acre-feet per year from a parcel is not a de minimis user. De minimis users are exempt from reporting in unmanaged areas. However, the State Water Board may require de minimis extractors to report in a probationary basin if necessary.¹⁶ The emergency regulation clarifies how the term “domestic purposes” will be interpreted when determining if an extractor is de minimis.

Stakeholder Input

The State Water Board held outreach meetings and presented fee schedule proposals at local events to get a better understanding of stakeholder concerns and solicit feedback on how to best structure the annual fees. A draft of the emergency regulation was released for public comment on March 10, 2017 and followed by a workshop on March 21, 2017. The emergency regulation incorporates input provided by a wide range of stakeholders including local governments, water suppliers, businesses, and individuals.

Interim Plans and Groundwater Sustainability Plans

State intervention is intended to temporarily protect groundwater resources until local authorities can demonstrate their ability and willingness to manage groundwater sustainably. An interim plan is not intended for permanent management of a basin. Local efforts to address the deficiencies that caused state intervention will need to be funded by local agencies while groundwater extractors also pay State Water Board fees; this will likely result in a scenario of extractors paying both local and state fees.

State Water Board Flexibility

SGMA provides the State Water Board with three means of flexibility in the intervention process. The provisions described below will affect the applicability of the state intervention fees.

1. Areas in compliance with the sustainability goal will be excluded from probation.¹⁷
2. Extractors may be excluded from probationary reporting and related fees.¹⁸
3. Successful elements of a local sustainability plan will be incorporated into an interim plan.¹⁹

SGMA Information and Resources

[State Water Board \(www.waterboards.ca.gov/gmp\)](http://www.waterboards.ca.gov/gmp)

[Department of Water Resources \(https://water.ca.gov/Programs/Groundwater-Management/SGMA-Groundwater-Management\)](https://water.ca.gov/Programs/Groundwater-Management/SGMA-Groundwater-Management)

(This fact sheet was updated on May 17, 2017)

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References

- ¹ [Basin prioritization information \(https://water.ca.gov/Programs/Groundwater-Management/Basin-Prioritization\)](https://water.ca.gov/Programs/Groundwater-Management/Basin-Prioritization)
- ² Areas included as part of an alternative to a GSP or adjudication are not considered unmanaged
- ³ Water Code Section 5202(a)(2)
- ⁴ Water Code Sections 10735.2 and 10735.8
- ⁵ Water Code Section 10735.2(c)
- ⁶ Water Code Sections 5202 and 5203
- ⁷ Water Code Section 348
- ⁸ Water Code Section 5202(f)
- ⁹ Water Code Section 1530
- ¹⁰ Water Code Section 5202(a)(2)
- ¹¹ Water Code Section 10735 et. seq.
- ¹² Water Code Section 5202(a)(1)
- ¹³ Water Code Section 10735.8
- ¹⁴ Water Code Section 10736.6
- ¹⁵ Water Code Section 10721(e)
- ¹⁶ Water Code Section 10735.2(c)(2)
- ¹⁷ Water Code Section 10735.2(e)
- ¹⁸ Water Code Section 10735.2(c)
- ¹⁹ Water Code Section 10735.8(e)