



California Water Rights Newsletter

JANUARY | 2010

VOLUME: 1 • ISSUE: 1

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A Note from the Executive Director

The State Water Board is starting this newsletter to communicate with Californians about important water right laws and news. This month, we want to spread the word about major changes to water diversion and use reporting laws. Among these changes are new monetary penalties for failure to report water diversion and use and for reporting incorrect information. Other changes include increased staffing to ensure compliance with reporting and other water right requirements. Additionally, in the past, water diversion and use reports were filed on paper forms provided by the State Water Board. The State Water Board recently released a new online feature that allows those who file water use reports to do so from their home computers. We hope you will find this information useful, and we look forward to working with all Californians to ensure that our water is put to beneficial use.

Any questions or comments regarding the content of this newsletter can be directed to Marie Hoffman at MHoffman@waterboards.ca.gov

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New Penalties for Water Diversion and Use Report Violations

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

State law requires those who divert water from our lakes, rivers, streams, and creeks to report their monthly diversion and use. For the health of California, it is important that we understand how much water is available versus how much is being used. There are four types of water use forms that diverters file with the Board. The new penalties apply specifically to Statements of Diversion and Use.

With some exceptions, those who divert water after January 1, 2009 and commit any of the four categories of violation are subject to the new penalties. Those who do not have to file statements may have to file other types of use reports which are subject to different laws and provisions.

Those who **do not** have to file Statements of Diversion and Use include:

- Those who divert from a spring that does not flow off the property on which it is located, if the total diversion is not more than 25 acre-feet per year.
- Those who divert under a small domestic or livestock stockpond registration or certificate.
- Those who divert under a permit or license to appropriate water issued by the State Water Board.
- Those who divert from a source regulated by a court or state appointed watermaster where the watermaster maintains records of the diversion.

If a violation is discovered, the State Water Board will notify those responsible and may assess the initial penalty. The period for correcting the violation begins on the date of notification. The penalty increases each day after the correction period has passed. The deadline to file water use for 2009 is July 1, 2010.

Current law requires supplemental statements to be filed every three years. Supplemental statements can be filed using our new online reporting system. First time filers may print the paper Statement of Diversion and Use from the Publications and Forms page of our website at: http://www.waterboards.ca.gov/waterrights/publications_forms/forms/index.shtml#statement

Comparison: Water Diversion and Use Reporting Penalties in Kansas

The California State Water Board began requiring water diverters to file Statements of Diversion and Use in 1966 but, until this year, there has not been a penalty for not filing. This lack of enforcement ability has undermined our water availability data for decades. Meanwhile, other states have legislated penalties for violations of water use reporting laws. Since adopting water use reporting violation statutes in 1988, Kansas has gained a reputation for accurate water availability data.

Water rights in Kansas are managed by the Kansas Department of Agriculture's Division of Water Resources. Annual water use reports are mailed during the first week of the year and are due back in the office by March 1. If a report is not filed or is filed late the Division of Water Resources accepts a reduced fine of \$50, provided the report is filed before June 1. After June 1, the full \$250 fine stands. If they fail to respond, some violators have had the penalties deducted from their state tax refunds. Because of the serious and persistent prosecution of delinquent reports, 94 percent of Kansas' annual water use reports are filed on time. By comparison, Supplemental Statements of Water Diversion and Use are only filed in California about 35 percent of the time, and many of the filings are deficient.

One similarity in California's and Kansas' laws is the criminality of reporting false information. In Kansas, purposefully providing false information on a water diversion and use report is considered a class C misdemeanor, punishable by up to thirty days in jail. California law also classifies a willful misstatement as a misdemeanor, punishable by a \$1,000 fine and up to six months in jail. However, under existing law, there was no penalty for failure to file. The new statutes impose civil liabilities for failure to file and for fraudulent reporting, in addition to the criminal liabilities. The initial administrative penalty that the State Water Board can impose for fraudulent reporting is \$25,000. The amount of these penalties reflects the serious damage that can result from reporting false information. California's new laws are the first step towards a greater understanding of water availability, which will benefit the environment, economy and people all over the state.

Online Water Use Reporting

In past years the State Water Board has asked that water use reports be filed on paper forms. A new online reporting component to the Electronic Water Rights

Information Management System (eWRIMS) has been developed to provide the option of reporting monthly diversion and use electronically. There are four types of water use reports supported by the system:

1. Supplemental Statements of Diversion and Use
2. Report of Licensee
3. Report of Permittee
4. Groundwater Extraction Notices (Counties of Riverside, San Bernadino, Los Angeles, and Ventura)

Water use report forms mailed in February and March 2010 will include a username and password for each water right. Filing these reports online will give the Board a more accurate picture of overall water availability by putting diversion and use data directly into eWRIMS. Please note that online reporting is optional this year, but the State Water Board plans to adopt new regulations in 2010 that will require all future water use reports to be submitted through the online system.

Instructions for filling out online reports will be posted to the eWRIMS website in February. To assist water diverters and answer questions about water rights, staff from the Division of Water Rights will be visiting a number of locations in Northern California in late April. Class schedules, locations and registration information will be released in February's newsletter.

New Funding for Investigations

Senate Bill No. 8, adopted by the Legislature in extraordinary session and signed into law by the Governor in November, authorized funding for 25 new enforcement positions in the Division of Water Rights. It is estimated that these new staff will nearly triple our ability to protect California's waters from illegal, unreasonable, and wasteful use.

Water users are responsible for complying with state water rights law. If an investigation determines that a misuse of water is occurring, the State Water Board may take an enforcement action such as 1) revoking a water right permit or license, 2) issuing a Cease and Desist Order seeking a court order to stop the diversion, 3) assessing a monetary penalty, or 4) allowing voluntary corrective action, depending on the nature of the violation. If the Division issues a formal enforcement order and the water user disagrees that a violation occurred, the water user may request a hearing before the State Water Board.

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