

AMENDED IN ASSEMBLY APRIL 5, 2016
AMENDED IN ASSEMBLY MARCH 17, 2016
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2357

Introduced by Assembly Member Dahle

February 18, 2016

An act to amend Section ~~1840~~ 1841 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 2357, as amended, Dahle. Water rights: ~~measurement of diversion.~~ *monitoring and reporting.*

Existing law authorizes the State Water Resources Control Board to adopt regulations requiring measurement and reporting of water diversion and use by persons including, among others, those authorized to appropriate water under a permit, license, registration for small domestic, small irrigation, or livestock stockpond use, or a certification for livestock stockpond use.

This bill would restrict the state board's authorization to adopt regulations requiring measurement and reporting of water diversion and use by persons authorized to appropriate water under a registration or certification to uses that are year-round.

~~Existing law requires a person who diverts 10 acre-feet of water per year or more under a permit or license to install and maintain a device or employ a method capable of measuring the rate of direct diversion, rate of collection to storage, and rate of withdrawal or release from storage, as specified, and with certain exceptions.~~

~~This bill would delay those requirements for 2 years.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1841 of the Water Code is amended to
2 read:

3 1841. (a) The board may adopt regulations requiring
4 measurement and reporting of water diversion and use by either
5 of the following:

6 (1) Persons authorized to appropriate water under a permit,
7 license, registration for small domestic, small irrigation, or
8 livestock stockpond use, *if the registered use is year-round*, or
9 certification for livestock stockpond ~~use~~: *use, if the certified use*
10 *is year-round*.

11 (2) Persons required to comply with measurement and reporting
12 regulations pursuant to subparagraph (B) of paragraph (1) of
13 subdivision (e) of Section 5103.

14 (b) The initial regulations that the board adopts pursuant to this
15 section shall be adopted as emergency regulations in accordance
16 with Chapter 3.5 (commencing with Section 11340) of Part 1 of
17 Division 3 of Title 2 of the Government Code. The adoption of
18 the initial regulations is an emergency and shall be considered by
19 the Office of Administrative Law as necessary for the immediate
20 preservation of the public peace, health, safety, and general welfare.
21 Notwithstanding Chapter 3.5 (commencing with Section 11340)
22 of Part 1 of Division 3 of Title 2 of the Government Code, any
23 emergency regulations adopted under this section shall remain in
24 effect until revised by the board.

25 (c) The adoption of the initial regulations pursuant to this article
26 is exempt from Division 13 (commencing with Section 21000) of
27 the Public Resources Code.

28 ~~SECTION 1. Section 1840 of the Water Code is amended to~~
29 ~~read:~~

30 ~~1840. (a) (1) Except as provided in subdivision (b), a person~~
31 ~~who, on or after January 1, 2018, diverts 10 acre-feet of water per~~
32 ~~year or more under a permit or license shall install and maintain~~
33 ~~a device or employ a method capable of measuring the rate of~~
34 ~~direct diversion, rate of collection to storage, and rate of withdrawal~~
35 ~~or release from storage. The measurements shall be made using~~

1 the best available technologies and best professional practices, as
2 defined in Section 5100, using a device or methods satisfactory to
3 the board, as follows:

4 (A) A device shall be capable of continuous monitoring of the
5 rate and quantity of water diverted and shall be properly
6 maintained. The permittee or licensee shall provide the board with
7 evidence that the device has been installed with the first report
8 submitted after installation of the device. The permittee or licensee
9 shall provide the board with evidence demonstrating that the device
10 is functioning properly as part of the reports submitted at five-year
11 intervals after the report documenting installation of the device,
12 or upon request of the board.

13 (B) In developing regulations pursuant to Section 1841, the
14 board shall consider devices and methods that provide accurate
15 measurement of the total amount diverted and the rate of diversion.
16 The board shall consider devices and methods that provide accurate
17 measurements within an acceptable range of error, including the
18 following:

19 (i) Electricity records dedicated to a pump and recent pump test.

20 (ii) Staff gage calibrated with an acceptable streamflow rating
21 curve.

22 (iii) Staff gage calibrated for a flume or weir.

23 (iv) Staff gage calibrated with an acceptable storage capacity
24 curve.

25 (v) Pressure transducer and acceptable storage capacity curve.

26 (2) The permittee or licensee shall maintain a record of all
27 diversion monitoring that includes the date, time, and diversion
28 rate at time intervals of one hour or less, and the total amount of
29 water diverted. These records shall be included with reports
30 submitted under the permit or license, as required under subdivision
31 (c), or upon request of the board.

32 (b) (1) The board may modify the requirements of subdivision
33 (a) upon finding either of the following:

34 (A) That strict compliance is infeasible, is unreasonably
35 expensive, would unreasonably affect public trust uses, or would
36 result in the waste or unreasonable use of water.

37 (B) That the need for monitoring and reporting is adequately
38 addressed by other conditions of the permit or license.

39 (2) The board may increase the 10-acre-foot reporting threshold
40 of subdivision (a) in a watershed or subwatershed, after considering

1 the diversion reporting threshold in relation to quantity of water
2 within the watershed or subwatershed. The board may increase
3 the 10-acre-foot reporting threshold to 25 acre-feet or more if it
4 finds that the benefits of the additional information within the
5 watershed or subwatershed are substantially outweighed by the
6 cost of installing measuring devices or employing methods for
7 measurement for diversions at the 10-acre-foot threshold.
8 (e) At least annually, a person who diverts water under a
9 registration, permit, or license shall report to the board the
10 following information:
11 (1) The quantity of water diverted by month.
12 (2) The maximum rate of diversion by months in the preceding
13 calendar year.
14 (3) The information required by subdivision (a), if applicable.
15 (d) Compliance with the applicable requirements of this section
16 is a condition of every registration, permit, or license.