

**SUBCHAPTER B: REGULATION OF THE USE OF STATE WATER OR
WATERCOURSES**
§§304.11 - 304.16
Effective May 3, 2006

§304.11. Difference in Operations.

The executive director may establish different strategies, timetables, procedures, and other requirements for different water divisions or for different portions of a water division.

Adopted April 12, 2006

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§304.12. Identification of Diversion Facilities, Outlet Works, and Points of Return.

Each diverter shall advise the watermaster of all diversion facilities, reservoir controlling works, and significant return flow points to be employed in the use of state water or watercourses. This includes borrowed and rented pumps. The watermaster shall assign an identification number for each diversion facility and the controlling works of each reservoir authorized under a water right within the water division. Also, the watermaster may assign an identification number for any point of discharge or other point at which water is returned to a watercourse or reservoir.

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§304.13. Requirement for Measuring Devices.

(a) Each diverter, and each person that makes a significant return flow, shall install and maintain a measuring device at such point or points as may be determined by the watermaster to be necessary for proper and efficient administration of water rights. All such measuring devices are subject to approval of the watermaster. The measuring devices must measure within 5.0% accuracy, unless otherwise approved by the watermaster. The diverter shall provide reasonable access to such measuring device. The diverter, or person that makes a return flow, shall be liable for all expenses incurred in the acquisition, installation, maintenance, and operation of such measuring devices. In the event a measuring device becomes inoperable, the diverter, or person that makes a return flow, at the direction of the watermaster, shall provide an alternate method of measurement, or estimation acceptable to the watermaster.

(b) Unless required by a permit, certificate of adjudication, or other water right, the following types of diversions and return flows associated with such diversions shall be exempt from the requirement to install and maintain measuring devices; provided, however, that the watermaster may require any such diverter, or any person making return flows, to provide an alternate method of estimating diversions or return flows acceptable to the watermaster:

- (1) diversions of water by spreader dams;
- (2) diversions of water for hydroelectric generation;

- (3) salt water diversions;
- (4) diversions of water for direct input from a cooling pond or cooling reservoir into an electric steam power plant for cooling purposes and return flows of such water to a cooling pond;
- (5) wastewater effluent for which the return flow is being measured and reported in a manner consistent with commission standards relative to wastewater discharge regulations; and
- (6) any other diversion or return flow of water that the watermaster may deem appropriate.

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§304.14. Requirement for Outlets for Passage of Water.

The owner of any works for the diversion or storage of water shall maintain a substantial headgate at the point of diversion, or a gate on each discharge pipe of a pumping plant, constructed so that it can be located at the proper place by the watermaster, or a suitable outlet in a dam to allow the free passage of water that the owner of the dam is not entitled to divert or impound.

§304.15. Declarations of Intent to Divert, Transport, or Release Water.

(a) Prior to diverting state water, transporting water, or making a dedicated release, a diverter shall submit to the watermaster a declaration expressing the diverter's intent in regard to the anticipated diversion, transport, or release. Such a declaration of intent must be submitted within the time limitations established by the watermaster. Each diverter shall divert or release water only in accordance with the statements in the declaration of intent.

(b) Each declaration of intent to divert or transport water must identify the specific account under which water is to be diverted; the amount of water to be diverted or transported; a schedule for the diversions; the diversion facility to be used; and the rate at which water will be diverted. Diversion may only be made using authorized facilities, or at points associated with the water right under which the diversion is to be made. Use of water under an irrigation water right may be only for use on the tract(s) authorized by the water right.

(c) Each declaration of intent to make dedicated releases for downstream uses must identify the specific account(s) under which water is to be released; the schedule of releases; the amount of water to be released; the specific account(s) under which the water is to be used; the actual rate at which water will be released; and the identification and location of the user. Dedicated releases will be protected only if the preceding data is provided. Dedicated releases may only be diverted at points authorized by the water right under which the release is made, or an associated approved water contract.

(d) In regard to declarations of intent under either subsection (b) or (c) of this section, the watermaster may require any diverter to provide such additional information as may be necessary for the proper and efficient administration of water rights.

(e) The watermaster shall establish the duration of time for which declarations of intent will remain in effect and may change the duration as conditions warrant. After the end of the duration of a declaration of intent, no further diversion, transport, or release of state water shall be made under that account until a new declaration of intent has been submitted to the watermaster.

(f) A diverter may modify a declaration of intent in regard to the duration, the amount of water to be diverted, the diversion rate, or other specific elements in advance of the desired change.

(g) The watermaster from time to time may determine that it is necessary for the proper and efficient administration of water rights that diversions, impoundments of inflows, or releases of dedicated flow in certain areas, or by certain diverters, may not be made without prior approval by the watermaster. Any such determination will be effective for the period designated by the watermaster.

(h) Salt water diversions and the recirculation of water at a power plant are exempted from any requirements under this section. The watermaster may also exempt any other facility or water right from any requirement under this section due to extenuating circumstances.

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§304.16. Records of Diversions, Transport, Releases, and Impoundments.

(a) Each diverter that has submitted a declaration of intent shall submit to the watermaster a report including the actual amount of water diverted, transported, or released during the period of the subject declaration of intent. Water right owners with accounts for impoundment will submit reports of daily inflows, reservoir levels, transported volumes, diversions, and releases to the watermaster. The watermaster may specify a report period. The report period may be different from the period of the declaration of intent. The watermaster shall provide forms to be used for the reports. Each diversion or impoundment facility, including borrowed and rented pumps, used during the period of the declaration of intent shall be designated on the report by the identification number assigned by the watermaster. Reports must be complete and signed by the diverter. Reports must be received or postmarked within seven calendar days from the termination of the period of the declaration of intent, or other report period specified by the watermaster. If such report is incomplete or not timely filed, the watermaster may cancel any existing declaration of intent for that account and allow no further impoundment, transport, diversion, or dedicated release until the report is properly filed.

(b) To the extent that water was available for diversion during the period of a declaration of intent, the subject account will be charged as follows.

(1) If the actual diversion is within 10% of the amount stated in the declaration of intent, the charge will be the actual amount diverted.

(2) If the actual diversion is greater than 110% of the amount stated in the declaration of intent, the charge will be the amount actually diverted plus twice the amount greater than 110%.

(3) If the actual diversion is less than 90% of the amount stated in the declaration of intent, the charge will be 90% of the stated amount.

(4) For a declaration of intent that was modified, including cancellation or extension, the charge will consist of the sum of two parts, one for the period before modification, and one for the period after modification. For each of the two periods, the charge will be determined by applying paragraph (1), (2), or (3) of this subsection relative to the amount declared for the particular period. If a modified declaration of intent is subsequently modified further, resulting in multiple parts, the procedure described in this subsection will be applied to each part.

(c) Any amount charged under subsection (b) of this section will apply against the yearly authorization, but only the amount of water actually diverted will apply toward perfection of a water right.

(d) The watermaster shall have the discretion to waive the accounting provisions contained in subsections (b) and (c) of this section for excessive or inadequate diversions due to circumstances beyond the control of the diverter.

(e) In addition to the report to be submitted to the watermaster under subsection (a) of this section, each water right holder or his agent shall submit to the executive director a written report of the amount of water actually diverted and used during the preceding calendar year under a specific water right in accordance with §295.202 of this title (relating to Reports). This report is required even if no water is used. The form for this report can either be one furnished by the executive director, or be a form approved by the executive director prior to the submission of the report.

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