

# SGMA IMPLEMENTATION: WATER RIGHTS PERMITTING OPTIONS FOR GROUNDWATER RECHARGE PROJECTS

Maven

February 20, 2020

319



## **ACWA/State Water Board webinar presentation outlines temporary and permanent options, including a new streamlined permitting pathway for standard water rights permits**

Almost five years ago, in the midst of a historic drought, the legislature passed the Sustainable Groundwater Management Act of 2014 (SGMA). The centerpiece of the legislation is the principle of local groundwater basin management, requiring the establishment of local Groundwater Sustainability Agencies (or GSAs) and the preparation of Groundwater Sustainability Plans (or GSPs) for groundwater basins statewide. The plans detail how the basin will be managed to avoid undesirable results, such as salt water intrusion or land subsidence, and to achieve sustainability managed basins over a 20 year planning and implementation horizon.

As many groundwater basins work to achieve sustainability, many if not most will look to groundwater recharge as a tool to help balance supplies and demands. At a webinar held at the end of last year, State Water Board staff discussed new permitting options for Groundwater Sustainability Agencies pursuing recharge projects.

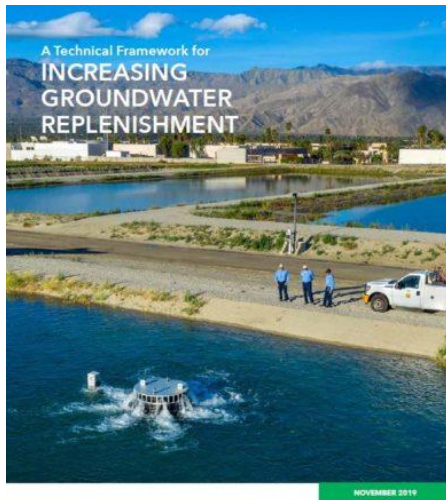
# AB 658

Adam Quinones, ACWA's Director of State Legislative Relations, briefly discussed [AB 658](#), which was passed by the legislature and signed by the Governor last year.

In 2015 and 2017, Governor Jerry Brown issued several executive orders directing the State Water Board to prioritize temporary water right permits for projects that enhance the ability of local or state agencies to capture surface water runoff during high flow events for local storage or recharge; those executive orders have really set the stage for legislation over the last few years, he said.

As a result, the legislature introduced several bills in 2019 aimed at increasing opportunities for groundwater recharge. Last year, [AB 658](#) was passed by the legislature which provides a path for local agencies or GSAs to apply for a five year temporary permit for capturing and diverting surface water during high flow events with the purpose of groundwater recharge for beneficial uses that advance the sustainability goal of a groundwater basin. The permit will be available in 2020 and proposed projects will be required to complete the CEQA process and other application criteria in order to receive a permit.

## ACWA's GROUNDWATER RECHARGE FRAMEWORK



Given the interest in groundwater recharge, ACWA approached the State Water Board to discuss the possibility of streamlining the water rights permitting process. ACWA recognized that under specific conditions and with considerations in place, the State Water Board could potentially develop an administrative streamlined water rights permitting process for permanent water rights for the purposes of capturing high available surface water flows for underground storage or recharge that are consistent with SGMA for GSAs and local agencies to meet their sustainability goal.

ACWA identified that there are certain times of the year or seasons where available surface water can be diverted for groundwater replenishment, and that there should be permanent permitting tools to be able to do that. For specific projects, hydrological conditions, equipment, conveyance needed

to capture and divert water are all considerations that are embedded in the important work that GSAs are doing developing their groundwater sustainability plans.

ACWA recently published a document, [A Technical Framework for Groundwater Replenishment](#), which summarizes the considerations when developing recharge projects and provides different resources and tools.

## INTRODUCTORY REMARKS

Erik Ekdahl, Deputy Director for the Division of Water Rights, noted that the State Water Board has permitting underground storage projects for decades, but the sense of urgency behind their work really picked up steam in relation to both the drought and the passage of the Sustainable Groundwater Management Act.



*“Those two pieces in conjunction have really highlighted the need for fast and efficient tools for water rights applicants to be able to capture high flow or flood events when the water is there and to be able to store and put it underground to accommodate some of our ongoing water need challenges,”* he said. *“With SGMA coming into place, there are going to be additional GSAs and GSPs working into the future to identify potential new supplies looking specifically at these high flow events.”*

*“In addition, if we look at climate change as a broader and longer term challenge for the State’s water resources, we need to start planning and looking at how our hydrograph may change,”* he continued. *“A lot of climate change scenarios seem to indicate that flood flows may become more severe and more pronounced during the winter. We need to be plumbed and prepared and adequately ready to grab that water when we can.”*

Mr. Ekdahl also pointed out the linkage to water resiliency portfolio that’s called for by the Governor and that groundwater recharge is one of the best ways to increase resiliency by looking at ways to make this more effective and to protect the state’s resources while also ensuring an ongoing safe and reliable supply.

## COMMON SOURCES OF WATER FOR RECHARGE

There are a number of different options for sourcing the water needed to recharge aquifers. The water could be recycled water from a wastewater treatment plant; urban stormwater flows, or capturing the stormwater before it enters the stream channel; or contract water obtained from the Central Valley Project or the State Water Project.

## COMMON SOURCES OF WATER FOR RECHARGE



California Water Boards

Existing pre-1914 water rights can be used as long as the water right has the appropriate season and rate. The season is what month of the year the claim allows diversion of water out of the stream. Both season and rate are things to check before pursuing this option, said Katie Lee, Supervisor for the Division's Russian River permitting unit.

Some parties may have an existing permit or license that allows underground storage, or they could pursue a change petition to add underground storage to an existing right. The Division has been issuing underground storage permits for more than 100 years, and there are a lot of these rights in Southern California and Monterey, she said. A party can rely on one of these or make changes to an above ground storage or direct diversion right, again as long as the water right has the correct season and rate.

Lastly, a party can apply for a permit to divert surface water for recharge. There are multiple pathways for this option, which is the focus of this webinar.

## APPLYING FOR A PERMIT TO DIVERT SURFACE WATER FOR RECHARGE

There are four permitting options which vary in the amount of time the resulting permit lasts:

- 180 day temporary permit
- 5 year temporary permit
- Standard permit (permanent authorization)
- Standard permit (permanent authorization) using the streamlined pathway

Ms. Lee noted that if the party seeking permanent authorization doesn't fit the new streamlined option, they can still use the standard option pathway for groundwater recharge. She then discussed each of these options in turn.

### 180 day temporary permit

The 180 day temporary permit allows the party to divert water out of the stream for 6

## 180-Day Temporary Permit

- Lasts for 180 days
- Typically fastest processing
- Findings:
  - Demonstrate urgent need
  - No unreasonable effect of fish or injury to other legal users
  - Public interest
- Subject to CEQA\* and objections



months.

California Water Boards

The water diverted to storage doesn't have to be used during that time, assuming there is appropriate accounting. This type of permit works well for pilot projects or when applicants need to get a diversion authorized quickly as these permits can be issued faster than other types of permits.

In order to issue the permit, the Division of Water Rights must make a number of findings, including that the applicant has an urgent need for the water, the water can be diverted with no injury to any lawful user of water and without any unreasonable effects upon fish, wildlife, or other instream beneficial uses, and that the proposed diversion is in the public interest.

Temporary permits are subject to CEQA; however, since 2015, various executive orders have suspended CEQA for underground storage project that enhance the ability to capture high flows when sought by a state or local agency. Also, Board staff has been prioritizing processing of these types of applications as directed in the executive orders.

Ms. Lee noted that several parties each year since 2015 have received permits under this pathway. The temporary permit process includes a public notice and the ability for interested parties to file objections as opposed to protests.

The application package includes:

- 
- Completed, signed [Application to Appropriate Water form](#);
- Completed [Underground Storage Supplement form](#);
- Application filing fee and CDFW fee;
- Information on [measuring devices](#) as required by California Code of Regulations, title 23, chapters 2.7 and 2.8;
- Two complete sets of color photographs of the project site;
- Data, reports, and other information to support required Findings under Water Code section 1425 (see below);
- If needed for your project, environmental review completed under the California Environmental Quality Act (CEQA).
- Information related to the temporary permit findings.

In order to get a temporary permit, applicants will need to provide information showing that water is available during the months they are applying for. This includes information include nearby flow information, preferably from a streamflow gauge with at least ten water years of data, unimpaired

seasonal flow volume, information on downstream demand, and any calculations that have been made regarding available water supply for the proposed project.

- [Click here for the Temporary Water Rights for Groundwater Recharge page at the State Water Board website.](#)
- [Click here for Water Rights for Groundwater Recharge main page at the State Water Board website.](#)

## 5 year temporary permit

Last year, Assembly Bill 658 was passed that provides for a five-year temporary permit for groundwater recharge. This new permit is meant to be a bridge for parties who will pursue a standard permit application and want to get their project up and running before they get their permanent authorization in hand.



*The reason we coordinated on development of this tool is because parties will likely be investing a lot of infrastructure into these projects, and the five year option gives them more certainty than coming back for 180 day approval, five years in a row,” said Ms. Lee. “Also, a five year timeline is more effective for staff and applicant resources as they don’t have to go through the temporary process five years in a row. As this process is intended to be a bridge and the standard permitting process takes time, five years is probably good coverage. If longer amounts of time are required, five year permits can be renewed, but they are not meant to be a substitute for standard processing.”*

There are specific eligibility requirements for the five-year permit. The applicant must be a groundwater sustainability agency or a local agency for the Sustainable Groundwater Management Act. The project must target high flows or flood flows, it must be for diversion to underground storage, and it must be for the advancement of sustainability of the groundwater basin.

Since the program is limited to groundwater sustainability agencies and local agencies, those agencies will be the CEQA lead agency. The legislation requires the CEQA document be completed before they apply rather than having CEQA done during the permitting process in order to speed up the process. Applicants will need to consult with the California Department of Fish and Wildlife on fisheries issues at least 30 days ahead of submitting their application.

As with any type of permit, applicants need to prepare their water availability analysis and have an accounting method for how they will divert, use, and store the water. Early outreach and consultation with Division staff is critical for water availability analysis development as prospective applicants will likely be completing the water availability analysis to support the prerequisite CEQA documents prior to filing an

## 5-Year Temporary Permit Findings

- No injury to lawful users
- No unreasonable effect of fish or injury to other legal users
- In public interest
- Consistent with GSP, if one exists

application.

California Water Boards

Prospective applicants are encouraged and in some cases required to discuss their projects with Division staff in advance and provide a draft copy of the water availability analysis for review and comment.

The Board needs to make the same findings as the 180 day temporary permit to issue a five year permit. Those findings are that there will be no injury to lawful users, no unreasonable effect of fish or injury to other legal users, and it is in public interest. In addition, the board must find the application is consistent with the groundwater sustainability plan, if one exists.

This permit is intended to be a bridge between temporary and permanent water rights, and one way the legislation supports this is the data that is collected when the five year temporary permit is implemented can be used to help streamline protest resolutions for their companion standard permit application. The application for a standard permit will be publicly noticed and may receive protests. The new legislation allows the temporary permit data to be used so that the standard application can use the division-led field investigation pathway instead of necessitating a board hearing, which can save the applicant and the division both resources and time.

- [Click here for the Temporary Water Rights for Groundwater Recharge page at the State Water Board website.](#)
- [Click here for Water Rights for Groundwater Recharge main page at the State Water Board website.](#)

## Standard permit

Neither the 180-day nor the 5-year temporary permit is meant to be a solution for groundwater sustainability agencies looking to have a long-term water supply to supplement their basin. The long-term pathway is the standard permit, which is a permanent authorization. A standard permit has a huge benefit over a temporary permit in that it secures a permanent priority date over other projects that come after it, and a California appropriative water right is all about first in time, first in right, reminded Ms. Lee.

## Standard Permit

- Permanent
- Secures a priority date for project relative to others
- Board must find unappropriated water is available
- Subject to CEQA and protests
- Typically slower processing (years)
- Two pathways – regular and streamlined



California Water Boards Standard permits have much the same requirements as the others with some added requirements. First, the water availability analysis to show unappropriated water is available is more intensive since the applicant is looking for a permanent authorization. Second, the applicant needs to comply with CEQA, just like temporary permits. And while temporary permits and standard permits include a public notice, a standard permit has protests which means there are more intensive processing steps.

The processing of a standard permit usually takes multiple years; exactly how long depends on the complexity of the situation, the availability of Board staff, and the motivation of the applicant since they usually hire consultants to produce much of the processing work product.

Within standard permitting, there are two pathways: regular and streamlined. Ms. Lee noted that those parties which don't fit the requirements of the streamlined pathway can still use the regular pathway.

- [Click here for the standard water rights permitting page at the State Water Board website.](#)
- [Click here for Water Rights for Groundwater Recharge main page at the State Water Board website.](#)

## Standard permit using the streamlined pathway

### STREAMLINED PERMITTING



Eligibility Requirements for filing an Application



Simplified Water Availability Analysis



Use and Storage Accounting in GSP



Umbrella permitting approach possible



Reduced Filing Fees and Annual Fees



California Water Boards The streamlined pathway is an administrative adjustment in priorities and process; no statutory or regulatory changes were



necessary to implement the streamlined permitting process, except for the lowering of the associated fee schedule. This means that all of the procedural parts of the code that protect outside parties' interests from injury are still in place – or in other words, the standard permitting process will still apply, said Ms. Lee.

The streamlined process hones in on some elements of that process to make them go faster. The main focus of the streamlining process is on the areas where there are delays due to uncertainty.

The streamlined process consists of five major components:

## **1. Eligibility requirements for the streamlined pathway**

The streamlined pathway is open to applicants if they meet the eligibility criteria. Specifically, the project must be designed to propose diversion of high flows within a season of diversion of December 1<sup>st</sup> to March 31<sup>st</sup>, and the applicants must prepare a simplified water availability analysis using one of the two trigger criteria within that season.

*“The idea here is to design a project that is unlikely to have or reduces the severity of injury to other legal users and impacts to instream beneficial uses,”* said Ms. Lee.

The second criterion requires that the application be for diversion of surface water placed in underground storage in a Bulletin 118 basin. The process is not about in lieu projects where surface diversions are used in place of aquifer withdrawals, she noted.

The third criterion is that the applicant must be a Groundwater Sustainability Agency or a local agency as defined by the Sustainable Groundwater Management Act.

The final criterion is that the applying party will be the CEQA lead and the applicant needs to have CEQA complete at the time of application. Completion of CEQA in advance greatly expedites the process, especially compared to regular standard permitting, where CEQA is typically completed during the application process, she said.

The streamlined pathway is meant for projects that meet all the criteria. However, these criteria are all about speeding up processing, so a party that can meet some criteria may still be faster to process, Ms. Lee said. Applications that incorporate a substantial portion of the criteria may also be administratively prioritized for processing over those that incorporate few to none of the criteria, depending on staff availability.

*“We do want to point out that the streamlined pathway won’t work everywhere,”* said Ms. Lee. *“There are certain parts of the state where the Board has listed a stream and its watershed as fully appropriated and where there is no water left to give out more permits. Much of the Tulare Basin has that status. There are board efforts going in both the Kings River and the Kern River watershed that involve Fully Appropriated Streams, but they have their own process that they will work for, and aren’t the type of low-hanging fruit situations where the streamlined pathway would be a good fit.”*

## **2. Simplified water availability analysis**

The season of diversion for streamlined permitting projects must fall within December 1<sup>st</sup> to March 31<sup>st</sup>. There are two options for the water availability analysis; both are targeting higher flows and therefore unlikely to injure other legal users or adversely affect instream resources.

The first option uses two thresholds. Diversions can only occur when flows are above the 90<sup>th</sup> percentile of that day and must be limited to 20% of the total daily flow. This option involves comparisons against senior demands and any known environmental need.

The second option is that diversions are only allowed when flows exceed thresholds to trigger flood control actions necessary to avoid threats to human health and safety for established written protocols by a flood control agency. If someone takes this option, a project is subject to our review to confirm diversion is meeting this condition, she said.

*“We included the second option to include a space for projects that take flood flows as a response to emergencies,”* said Ms. Lee. *“Some of these projects may now want to put these flood flows to use and therefore need a water right, but we don’t exactly know what the details would look like. We want to allow for these types of projects in the streamlined pathway. If you are interested in understanding how the board views flood control in the context of permitting, there is a [fact sheet on this topic on our webpage](#).”*

More information about the Water Availability Analysis here: [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/applications/groundwater\\_recharge/docs/streamlined\\_waa\\_guidance.pdf](https://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/groundwater_recharge/docs/streamlined_waa_guidance.pdf)

### **3. Use and storage accounting in the GSP**

Accounting is very important because water rights are about diversion and use and appropriate accounting is critical to demonstrate this, said Ms. Lee.

*“We aren’t looking for applicants to develop molecule for molecule accounting, which is probably impossible,”* she said. *“Ideally, a permit can rely on a GSA accounting because the project will be consistent with the overall groundwater sustainability plan. If this is not possible, perhaps a court decree or a last in/first out type of accounting could be used. We have used the last in/first out type of accounting on temporary permits. While there would certainly be components to work out if used in a standard streamlined permit, generally this concept considers groundwater pumpers using water under the streamlined permit prior to or in place of their individual rights. Like all water right holders, the party will need to report annually on the amount of water they divert, store, and use.”*

Ms. Lee noted that the State Water Board has a fact sheet regarding purposes of use for underground storage projects, which includes additional guidance regarding beneficial uses, accounting, and different uses, such as extractive, non-extractive, or in situ uses.

*“Groundwater recharge is not a beneficial use of water, but rather is one method of diverting and storing water that takes advantage of the natural storage capacity of aquifers,”* she said. *“To obtain a water right for diversion to underground storage, the applicant must identify the eventual beneficial use of the water just as with above ground surface water projects.”*

### **4. Umbrella permitting approach possible**

The concept of umbrella permitting is encouraging a practice the water boards already have to allow for operational flexibility and ease of oversight which is an approach typical for large irrigation or water purveyors, said Ms. Lee.

She explained: *“In an on-farm recharge scenario, the permit may include a large infiltration area or spreading grounds owned by many different growers. The permittee may annually contact growers to determine if they want to participate in a given year and would turn on and off portions of the spreading grounds this way. This concept pairs nicely with having a GSA or local agency applicant*

*who is involved in aquifer management and would have oversight over diversions and extractions for multiple points and associated accounting. It could conceivably be more complex to administer multiple smaller rights with different priority dates.”*

## 5. Reduced filing fees and annual fees

In September, the Board adopted special fees for projects that elect to follow the streamlined standard permit pathway. These include a reduced filing fee and reduced permit and license annual fees once the water right is issued. The application filing fee: is reduced by 25% and the annual water right fee for permits and licenses is 75% of standard annual fee or based on amount diverted, whichever is greater.

## What does a streamlined permit look like?

In general, all water rights including streamlined permits will have a priority date based on the filing date. Ms. Lee said that applicants should also expect to see limits on their diversion including limits to season, amount, rate, and timing – for example, diversion may only be allowed when the high flow triggers in the water availability analysis section are present. Permits will include monitoring requirements to ensure these limits are adhered to, including installing and maintaining telemetered and public available gauges to monitor streamflow at the points of diversion and possibly downstream. Permits will include accounting and reporting requirements to demonstrate how much water has been diverted, how much water has been beneficially used, and how much remains in underground storage. Applicants may also see special terms depending on project specifics.

- [Click here for the Streamlined Processing for Standard Groundwater Recharge Page at the State Water Board website.](#)
- [Click here for Water Rights for Groundwater Recharge main page at the State Water Board website.](#)

## IN CONCLUSION ...

Ms. Lee said that they are excited to be releasing the new streamlined pathway and looking forward to gearing up with the new five year temporary permit option. She noted that in attending various events on recharge over the last several years, they hear a lot of interest in recharge options from parties in the process of figuring out their water rights coverage.

*“While parties may use other sources of water or basis of rights, we expect at least some of the approximately 265 GSAs to come to us under this new streamlined pathway for standard permitting, regular standard permitting, or for one of the temporary options we outlined, and when they may come will depend on when they are ready as they complete work figuring out their project design.”*

*“One important thing to remember is that appropriative water rights are first in time, first in right,” Ms. Lee continued. “Therefore, underground storage applicants may have competition for surface water from both above ground and below ground applicants. I’ll caveat this reminder with messaging that applicants need to come to us with a project that is ready. We encourage prospective applicants to coordinate and consult with us during their application development process, including things like sharing a draft water availability analysis, and consulting on the CEQA document, and then submit an application for processing.”*

## Options: Groundwater Recharge Projects Seeking New Water Right Permits

Permit Pathway	Temporary		Standard	
	180-Day Temporary Permit	5-Year Temporary Permit	Streamlined Permit	Standard Permit
Best Use	Pilot effort or need for short-term approval	Bridge to divert water (for projects that qualify) while a standard app is in process	For projects that qualify seeking permanent authorization	For permanent projects that don't qualify under the streamlined pathway
Water Availability Analysis	✓ Simplified WAA	✓ Simplified WAA	✓ Streamlined WAA	✓
CEQA	For some types of projects, CEQA is suspended per E.O. # B-39-17	✓ Applicant as lead/Before applying	✓ Applicant as lead/Before applying	✓
Who can apply?	All	GSA or Local Public Agency	GSA or Local Public Agency	All
Public Engagement: Any interested party can respond to public notice	Objection	Objection Data collection allows for quicker protest resolution on Standard Permit	Protest	Protest
Accounting/Permit Conditions: Standard, Mandatory, & Project specific	✓	✓	✓	✓

## QUESTIONS & ANSWERS

**Question: Do private landowners need to permit recharge basins or only public agencies?**

**Amanda Montgomery, Permitting Manager for the Division:** *"In general, parties aren't getting permits for an entire recharge basin, since that's a natural feature. What they are getting a permit for is to store surface water in an underground basin that likely has other sources of water, such as water from overlying groundwater users. Any party, a private entity or a public entity, can apply for a water right permit. You should note that there are certain pathways that are for GSAs or local public agencies. I will highlight those. One is the five year temporary permit that we've discussed today; that is limited to GSAs or local public agencies. Another is the streamlined pathway of the standard permit. However, and individual landowner can still obtain a standard permit under the standard pathway. Also within the 180 day temporary permit, the CEQA exemption under the Governor's executive order is limited to local public agencies."*

**Question: What is happening at the state level to ensure that all state and federal regulatory agencies are on the same page with this push to expedite this kind of permitting?**

**Erik Ekdahl, Deputy Director for the Division of Water Rights:** *“There’s a lot of work going on right now across all state agencies to try to ensure that the objectives of SGMA are streamlined and as focused as possible. Part of that has been a considerable amount of work with the State Water Board and Department of Fish and Wildlife. In terms of coordinating and consulting, we worked pretty closely on AB 658 as it was going through and putting together the consultation requirements that went into that. If you look at those, they are pretty effective and there is a much shorter consultation process than otherwise might be there, and that was because CDFW was very willing to come to the table and talk with us and work through with us these broader objectives.”*

*“There’s also another very large effort underway at the Department of Water Resources called [Flood MAR or Flood Managed Aquifer Recharge](#). The permitting pathways what we’re talking about today are an element of Flood MAR, and the Department is looking at ways to broadly align all kinds of different permits, not just CDFW’s, but if you’re doing projects that may involve levee work or others, there may be federal agencies involved. It’s an ongoing effort, but I think there is the recognition that it is one that needs to be closely coordinated and to be effective, we really need to all the same page and we’re working and trying to do that.”*

**Question: Is the 5 year temporary permit for the purpose of groundwater sustainability available to a local public agency in an adjudicated basin, which is exempt from SGMA?**

**Nicole Keunzi, attorney with the State Water Board:** *“The short answer is yes. The five year temporary permit could be used by local agencies in adjudicated basins that are otherwise exempt from SGMA with the exception of the upper Los Angeles River basin and Owens Valley, which are specifically exempt under the new statute. Keep in mind, the ability of the Board to issue a temporary permit may be affected by the terms of the adjudication so we would have to look to that. Whether or not future permits are allowed to be issued by the Board, and even where the adjudication does allow for the issuance of additional permits, the Board would have to consider whether water is in fact available for appropriation, so it really would be a case by case determination as to how it would work in a particular basin under a particular adjudication. Note that temporary permits such as the five year temporary permit may be issued for streams that have been declared fully appropriated by the Board; however, once again, we would be looking at water availability in those situations.”*

**Question: What is the different between submitting a protest versus an objection, and the second part of this question, is can you propose a permit condition when submitting an objection?**

**Nicole Keunzi, attorney with the State Water Board:** *“A protest is the language used in the water code and the board’s regulations for formally commenting on a pending standard water rights application. There are specific rules about what must be included in protests and how those are processed and submitted to the Board. An objection is the term used for commenting on applications for temporary permits or temporary changes, and it’s a somewhat less formal process but in many ways it is analogous to submitting a protest. It’s generally a way to comment on or object to the issuance of a temporary permit or the approval of a temporary change, and those*

comments, yes, they may include and it's often very helpful to include a proposed permit condition or permit term that would help to resolve the objection."

### **Question: Are there specific differences in permitting when discharging to an unconfined aquifer versus a confined aquifer?**

**Erik Ekdahl, Deputy Director for the Division of Water Rights:** *"The very short answer is there could be. It's going to be site specific. We will have to take a look at the geology and what the applicant is proposing and why they are proposing it and see how it would affect things like the accounting and the umbrella permit, if those were options they were including."*

### **Question: Some of the requirements within the temporary permit and the five year applications have similar requirements for a standard water right. Are there easy ways to transition a permit application from one type to another?**

**Amanda Montgomery, Permitting Manager for the Division:** *"You could see there are some fairly similar things when we were going through the presentation. You can build on the information that you have for your temporary permit for your standard permit. You should just be aware that we usually ask for more detailed information for standard permitting. I'll give an example of that that was highlighted in the presentation with water availability. When you're looking at water availability for 180 day temporary permit, you're just concerned with the year that's coming, and when you're going for water availability for standard permitting, you're trying to predict the future, so things like climate change come into the play and the wide variability of California's climate is much more important, so that analysis for standard permitting tends to be more detailed, but you're starting with the building blocks in your temporary permit."*

*"Another point to highlight is the five year temporary permit has a neat feature where the information that you develop in that permit, that data that you're collecting since you're actually implementing your project, can be used to help shorten the protest process that you're going through on your standard application, so the Board can use that information to pursue the field investigation pathway, instead of having to go to a more lengthy board hearing."*

### **Question: Is a water right needed for collection of stormwater for groundwater recharge or otherwise reuse that has not been discharged to a stream or river?**

**Amanda Montgomery, Permitting Manager for the Division:** *"This question has been coming up more recently as some of the urban parties are interested in implementing SGMA or just acquiring additional water supplies. So one factor in water rights is jurisdiction for permitting. We look to see if the water that's proposed to be diverted is in a channel, so that can either be a natural channel or an artificial channel that is functioning as a natural channel, so it's really going to depend on the situation. Urban environments can be highly modified and it usually takes a fairly close look to be able to discern it out, but some portion of what's happening in urban environments is likely what we call sheet flow. Sheet flow is where you have this lateral flow of water off the land where it isn't channelizing, so that portion is likely outside of permitting jurisdiction, but the part that would be in a channel, especially a natural channel or an artificial channel functioning as a natural channel, that part is where they should be talking to us about acquiring a permit."*

**Erik Ekdahl, Deputy Director for the Division of Water Rights:** *“One other note. It may be outside the Board’s permitting authority, but that doesn’t mean it’s outside of all permitting authority. There was a recent low impact development stormwater capture project we were made aware of down in Ventura County and it was outside of the Board’s permitting jurisdiction, but there was still an issue with the wildlife agencies being concerned about effects on instream flows. In that circumstance, the applicant actually did an instream flow study to satisfy the wildlife agencies because it was needed in that circumstance, so there are scenarios where even though the Board wasn’t involved at all, you may still need to go through and check on the effects of downstream water right holders and the environment.”*

**Question: For the five year temporary permitting option, what criteria will the board use to find consistency with an adopted GSP, interim plan, or alternative pursuant to SGMA? Is the board planning to publish this criteria for reference on its website?**

**Nicole Keunzi, attorney with the State Water Board:** *“Some of this is really looking forward because we haven’t had those GSPs come in, but what we expect at this point to determine consistency is we would first look at those sustainability criteria and see how the plan fits in. It would be very helpful to have references to the project itself included within the GSP and we expect that many of these projects would be included in the GSP as potential projects. The GSP may include information about how the project fits in with the sustainability goals and how it’s going to help achieve those thresholds that are necessary, and so that’s the first place we’re going to look. In terms of publishing criteria, certainly providing outreach materials on all sorts of things, it’s on our list of things to do and I think we’re going to know more as we go forward and as we start to see those GSPs and we start to see these projects come in. This is an evolving program, especially the streamlined permitting process, and we expect there’s going to be additional guidance and there will be updates to the programs as we start to see those applications come in.”*

**Question: Will the Board prioritize processing any of these permits by status of groundwater subbasin, ie critical or medium priority basins?**

**Erik Ekdahl, Deputy Director for the Division of Water Rights:** *“Potentially. I think we’re going to look at the standard workload that we have and we do have a fair number of existing permits already backlogged, and looking at the relative complexity of the proposed permit. We do have a prioritization scheme that’s on our website and you can take a look at that. One thing we could consider is the overall need and the importance of the project relative to the state of California, so there is the potential to do that but it’s not a certainty.”*

## **CLOSING REMARKS**

Finally, Erik Ekdahl, Deputy Director for the Division of Water Rights , gave some closing remarks.

*“As you start your projects and you start contemplating them and really starting to put them together, one of things we found over the last couple of years is that the best thing to do to actually expedite the permit is to call us early and call us often, and get to know your local water right permitting. We can work through questions with you, we can work through issues you might have and in many respects, help advise you on how to develop your application even before it comes in. So we found that’s the effective thing to do over the last couple of years. Please really do give us a call. We find that it’s really worthwhile for both of us.”*

*“One thing we commonly hear is water rights are complicated and they’re confusing, and my response would be yes, they are. They are complicated and they are confusing and we’re trying on our end to make it as streamlined and as effective and simple as we can, but water rights is really not a simple process. We have 40 million people in California, we have millions of acres of irrigated agriculture, the timing and use of that water has to be really carefully coordinated with other users, with ecosystems, with species needs, and so it takes a while to figure out what things look like and how to best permit a project.”*

*“The amount of information that we now have on our website, thanks to the staff who have worked above and beyond to put this information together, it’s leaps and bounds above what we had, even just five years ago, and we really do have a nice step through set of directions on how to do the water availability, how to do the general or standard application, what FAQs you might have, we have answers and responses to them, we really encourage people to take a look at those.”*

## **FOR MORE INFORMATION:**

- [Water Rights for Groundwater Recharge main page at the State Water Board website.](#)
- [Fact sheet: Purposes of Use for Underground Storage Projects](#)
- [Fact sheet: Flood Control, Groundwater Recharge, and Water Rights](#)
- [FloodMAR webpage at Department of Water Resources website](#)
- [ACWA Document: A Technical Framework for Groundwater Replenishment](#)
- [Explore groundwater recharge resources at the Groundwater Exchange](#)

**Featured image credit:** Cormorants, egrets, ducks, and pelicans congregate at Anaheim Lake in Anaheim, CA, one of Orange County Water District’s groundwater recharge basins, February 26, 2015. Orange County Water District is responsible for managing the vast groundwater basin that provides most of northern and central Orange County’ s drinking water. Photo by Florence Low / DWR