

**State of California  
Office of Administrative Law**

**In re:**  
**State Water Resources Control Board**

**Regulatory Action:**

**Title 23, California Code of Regulations**

**Adopt sections: 879**

**Amend sections:**

**Repeal sections:**

**NOTICE OF APPROVAL OF EMERGENCY  
REGULATORY ACTION**

**Government Code Sections 11346.1 and  
11349.6; Water Code Section 1058.5**

**OAL Matter Number: 2016-1006-02**

**OAL Matter Type: Emergency Readopt (EE)**

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The State Water Resources Control Board (Board) submitted this emergency action to readopt section 879 of title 23 of the California Code of Regulations, previously adopted in OAL file nos. 2014-0708-02E, 2015-0320-07EE, and 2015-1211-01EE. The emergency regulations pertain to informational orders issued by the Board's Deputy Director or Assistant Deputy Director for the Division of Water Rights to water right holders, diverters, or users under specified circumstances.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code and section 1058.5 of the Water Code.

This emergency regulatory action is effective on 10/17/2016 and will expire on 7/15/2017. The Certificate of Compliance for this action is due no later than 7/14/2017.

**Date:** October 17, 2016



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Richard L. Smith  
Senior Attorney

**For:** Debra M. Cornez  
Director

**Original:** Thomas Howard  
**Copy:** Andrew Tauriainen

**NOTICE PUBLICATION/REGULATIONS SUBMISSION**

(See instructions on reverse)

For use by Secretary of State only

# EMERGENCY

STD. 40C (REV. 01-2013)

<b>OAL FILE NUMBERS</b> Z-	<b>NOTICE FILE NUMBER</b>	<b>REGULATORY ACTION NUMBER</b>	<b>EMERGENCY NUMBER</b> 2016-1006-02EE
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For use by Office of Administrative Law (OAL) only

<p>2016 OCT -6 A 11: 54</p> <p>OFFICE OF ADMINISTRATIVE LAW</p>	<p>2016 OCT -6 A 11: 54</p> <p>OFFICE OF ADMINISTRATIVE LAW</p>
NOTICE	REGULATIONS

**ENDORSED - FILED**  
In the office of the Secretary of State  
of the State of California

OCT 17 2016

1:53 p.m.

**AGENCY WITH RULEMAKING AUTHORITY**  
State Water Resources Control Board

**AGENCY FILE NUMBER (if any)**  
Resolution No. 2016-0045

**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)	
<b>OAL USE ONLY</b> <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE		

per agency request

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S) Informational Orders authority during drought	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2014-0708-02E, 2015-0320-07 EE, 2015-1211-01 EE
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
<b>SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)</b>	ADOPT 879, subdivision (c) (readopt without changes) <span style="float: right;">per agency request</span>
	AMEND
	REPEAL
TITLE(S) 23	

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input checked="" type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input checked="" type="checkbox"/> Other (Specify) <u>Emerg. Readopt Wat. Code § 1058.5(c)</u>	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal	
<input type="checkbox"/> Other (Specify)			

7. CONTACT PERSON Andrew Tauriainen	TELEPHONE NUMBER 916-341-5445	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 10/6/16
TYPED NAME AND TITLE OF SIGNATORY Thomas Howard, Executive Director	

For use by Office of Administrative Law (OAL) only

**ENDORSED APPROVED**

OCT 17 2016

Office of Administrative Law

## Informational Order Emergency Regulation

August 16, 2016

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Title 23, Division 3, Chapter 2, Article 24, re-adopt Section 879 to read:

### **§ 879. Reporting.**

(a)(1) The Deputy Director may issue an informational order, as provided in paragraph (2), in any of the following circumstances:

(A) Upon receipt of a complaint alleging interference with a water right by a water right holder, diverter or user that staff determines to merit investigation;

(B) Where a water right holder, diverter or user asserts a right to divert under a pre-1914 or riparian right in response to an investigation, curtailment order or any notice of curtailment, and no statement(s) of water diversion and use required by Water Code, division 2, part 5.1 for such right was on file with the Board as of January 17, 2014;

(C) Where a water right holder, diverter or user fails to respond to an investigation, curtailment order or any notice of curtailment, or responds by asserting a right to divert under a contract or water transfer for which the Board has not approved a change petition and for which no record has been filed with the Board; or

(D) Upon receipt of information that indicates actual or threatened waste, unreasonable use, unreasonable method of diversion, or unlawful diversions of water by any water right holder, diverter or user.

(2) The Deputy Director may issue an order under this article requiring a water right holder, diverter or user to provide additional information related to a diversion or use described in (a)(1), including the claim of right; property patent date; the date of initial appropriation; diversions made or anticipated during the current drought year; basis of right and amount of water transfer not subject to approval of the Board or Department of Water Resources; or any other information relevant to authenticating the right or forecasting use and supplies in the current drought year.

(3) Any party receiving an order under this subdivision shall provide the requested information within thirty (30) days. The Deputy Director may grant additional time for submission of information supporting the claim of right upon substantial compliance with the 30-day deadline and a showing of good cause.

(4) The failure to provide the information requested within 30 days or any additional time extension granted is a violation subject to civil liability of up to \$500 per day for each day the violation continues pursuant to Water Code section 1846.

(5) Orders issued under previous versions of this subdivision shall remain in effect and shall be enforceable as if adopted under this version. The provisions of Article 12 of this Chapter (commencing with section 768) shall govern petitions for reconsideration of orders issued under this subdivision.

(6) The Deputy Director may delegate the authorities under this subdivision to an Assistant Deputy Director for the Division of Water Rights.

Authority: Sections 1058 and 1058.5, Water Code.

Reference: Sections 100, 183, 186, 187, 275, 348, 1050, 1051, 1058.5, 1846, 5101, 5102, 5103 and 5104 Water Code.