

FAQ: Streamlined Groundwater Recharge Permitting and Eligibility

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What is the streamlined process for diverting high flow events to underground storage, and why is it needed?

The Division of Water Rights has developed a streamlined permitting process for diversions of water from high flow events to underground storage. The streamlined permitting process was developed in response to the recent California drought, the need for California to better prepare for changes in hydrology related to climate change, the state's growing population, and to provide greater flexibility for conjunctive use. In particular, the streamlined permitting process targets diversion of high flow (e.g., flood) events during the winter, which will help address long-term concerns over water availability. The streamlined process will directly assist groundwater sustainability agencies (GSAs) and other local agencies working to address adverse impacts caused by the extraction of groundwater and to better manage their groundwater basins under the requirements of the Sustainable Groundwater Management Act (SGMA). The process applies to water right applications that are unlikely to injure other legal users of water, unlikely to adversely affect fishery resources, or unlikely to adversely affect other public trust resources, because the diversions are limited to a portion of peak flows during winter months when stream flows are highest.

The streamlined permitting process consists of an administrative adjustment in [priorities and process](#). No statutory or regulatory changes are necessary to implement the streamlined permitting process, except for an adjustment (lowering) of the associated fee schedule. Eligibility for the streamlined permitting process is assessed by the Division of Water Rights, based on criteria described below.

How is the streamlined underground storage permitting process different from the Division of Water Rights' regular permitting process?

The most common delays in processing a water right application are related to completion of environmental impact assessments required under the California Environmental Quality Act (CEQA), uncertainty regarding whether water is available for appropriation, and public protest related to potential effects on fish, wildlife, or other senior water right holders. The streamlined process is only applicable to a subset of projects that divert high flow events during the winter. Furthermore, the streamlined approach would only apply to projects that are able and willing to accept terms and conditions to their right that should either eliminate or minimize the effect of the diversion on fish, wildlife, and senior water right holders. The same procedural steps apply to processing an application and issuing a water right, but eligible projects are likely to proceed through these steps more quickly and will be given a higher priority for processing. Additional information is available on the [Application webpage](#).

Do I have to comply with all of the same laws, regulations, and policies as I would under the standard water right permitting process?

Yes. All current laws, regulations, and policies apply to both the standard and streamlined water right permitting processes. There are no statutory or regulatory changes proposed by the Division. The

applicant must complete a CEQA document, and the application will be publicly noticed similarly to any other water right application. The streamlined permitting process is only available for applications that are likely to avoid typical obstacles to permit issuance and applies an administrative adjustment to prioritize those applications. The applicant must accept a number of permit terms and conditions that will ensure the new diversions are not causing injury to others or the environment.

Are the application and annual fees different under the streamlined permitting process?

Yes – the application filing fees and the permit and license annual fees are lower for streamlined permitting projects. On September 18, 2019 the State Water Board adopted a fee structure that includes a reduced application filing fee and annual fee for water rights issued pursuant to the streamlined permitting process. The reduced fees will go into effect in late 2019 or early 2020. Parties who apply prior to any specialized fee structure going into effect should expect to pay the existing standard application filing fee.

How does the streamlined underground storage permitting process relate to the Sustainable Groundwater Management Act (SGMA)?

The state legislature enacted SGMA to address widespread overdraft and other undesirable results caused by groundwater conditions in California's groundwater basins. SGMA requires Groundwater Sustainability Agencies (GSAs) or local agencies in high and medium priority basins to develop plans to address these undesirable results. The plans must achieve sustainability in the basin within 20 years of implementation. For critically over-drafted basins, the deadline for achieving sustainability is 2040. For the remaining high and medium priority basins, the deadline for achieving sustainability is 2042.

Groundwater recharge is likely to be an important part of achieving sustainability in groundwater basins, but GSAs or local public agencies may lack the water rights to divert and use that water later. The streamlined permitting process for diversion of high flows to underground storage was developed, in part, to assist GSAs or local public agencies to obtain necessary water rights. Those water rights will, in turn, help GSAs or local agencies reach their sustainability goals more quickly.

Is this the streamlined permitting process the right pathway for me?

We advise that before embarking on a pathway to obtain recharge water, you identify all possible pathways for securing a water source and weigh the pros and cons of each option. The following are options for obtaining a source of water to use for underground storage, and questions to explore as you decide how to proceed with your project.

- a. **Contract water:** Are you an existing contractor of a party with a water supply? If so, does the supplier have additional water for you to purchase? If you are not an existing customer, is there any party that could operationally supply you water? If so, would they entertain having you become a contractor?
- b. **Recycled water:** Do you operate a wastewater treatment plant? If yes, have you evaluated if you can recycle some of the water you currently discharge and use instead for recharge? If you do not operate a wastewater treatment plant, is there someone that could operationally supply you with such water? As with #1, you might be able to become a customer of an entity providing recycled water.

c. Existing pre-1914 appropriative water rights, including possible changes under Water Code 1706:

Do you hold a pre-1914 claim or right that could be re-purposed (assuming need for recharge is higher than historic need for diversion) while maintaining the established season of diversion, diversion quantity and rate seasonality pattern?

d. Existing post-1914 appropriative water rights (e.g. permit or license), including possible changes under Water Code 1700: Do you hold a permit or license that you could change? Could you purchase water through a water right transfer of a party who holds a permit or license?

e. New post-1914 appropriation (e.g. application for permit): Are you proposing diversion from a watershed/stream that is on the [Fully Appropriated Streams](#) (FAS) List? If yes, you will need to petition to open FAS before an application can be accepted. Please note much of the Tulare Lake Basin has been designated as FAS. The Kings River has been designated as fully appropriated year round and is currently involved in the FAS petition process. The Kern River completed the FAS petition process. In response, multiple parties have filed applications and are in the application acceptance stage of processing. For more information on the Kings River FAS petition, [visit the Kings River FAS website](#). For more information on the FAS proceeding for the Kern River, [visit the Kern River FAS website](#).

Is your project viable given the availability and frequency of unappropriated high flows in the watershed (see WAA guidance)? If yes, you may want to consider the streamlined pathway. Prospective applicants for the streamlined pathway should note that applications cannot increase the requested amount or season of diversion after filing with the Division (Cal. Code Regs. § 699). Applicants are encouraged to carefully design proposed projects considering both their water needs and the criteria identified below. If no, you may want to consider the standard/non-streamlined pathway.

What criteria are used to determine whether an application is eligible for streamlined permit processing?

- f. The applicant proposes diversions during high flow events between December 1 and March 31 with a minimum bypass or diversions in accordance with flood control operations, as follows:
 - 1. Diversions during high flows with bypass –
 - a. Streamflow at the point of diversion is above the 90th percentile, calculated on a daily basis from the gage data during the period-of-record;
 - b. The diversion rate is limited to 20% of the total streamflow; and
 - 2. Diversions only when flows in the source waterbody at or near the point of diversion exceed thresholds that trigger flood control actions necessary to mitigate threats to human health or safety, according to established written flood management protocols adopted by a flood control agency.
- g. The application includes the information required by Water Code section 1260 and the [Underground Storage Supplement](#) to the [Application to Appropriate Water by Permit](#)
- h. The application is submitted by a Groundwater Sustainability Agency (GSA) or local agency as defined by the Sustainable Groundwater Management Act (SGMA).

- i. The application proposes to divert water to underground storage in a groundwater basin identified in Bulletin 118.
- j. The applicant has completed any environmental documents required under the California Environmental Quality Act (CEQA).

What if the application meets some, but not all, of the eligibility criteria for the streamlined permitting process?

An application that meets some but not all of these criteria is still likely to be processed more quickly than applications that do not meet any of these criteria. 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.

Who can apply for a permit for diversion to underground storage under the streamlined process?

The Water Code allows any person, including corporations, local agencies, and other types of legal entities, to file a water right application, including applications for diversion to underground storage. However, one of the criteria for streamlined permitting is the submission of the application by or in partnership with a Groundwater Sustainability Agency (GSA) or other local public agency that has water supply, water management, or land use responsibilities within a groundwater basin. First, applications submitted by local public agencies often require less processing as compared to those submitted by private parties because the local public agency has conducted the necessary environmental review under CEQA. Second, applications submitted in partnership with a GSA are more likely to include measurement and accounting methods that are consistent with a groundwater sustainability plan (GSP) or other groundwater management plan. Finally, groundwater management projects undertaken by local agencies are a priority for the Division to support SGMA implementation.

What is the concept of a “general” or “umbrella” permitting and why is it encouraged?

A “general” or “umbrella” permitting, as the term is used here, refers to a permit that allows multiple points of diversion all within the same water right. Umbrella water rights provide greater flexibility by maximizing the area where groundwater can be recharged, without having to obtain a new water right at each single point of diversion. An “umbrella” water right option has historically been used for rights issued to large irrigation districts or water purveyors and may, for example, include multiple points of diversion, multiple places of infiltration, and a proposed place of use that includes much or all of the jurisdictional area of the local agency.

By obtaining an umbrella water right, the local agency can manage the diversion, storage, and extraction of water on a landowner-by-landowner basis from one high flow event to the next, or from one year to the next. Consolidating individual operations under an umbrella water right that is held by a local groundwater management agency will create a more efficient permitting, reporting, gaging and measurement, and compliance process. Operation of these projects pursuant to an umbrella water right, with a single priority date, will greatly simplify accounting needs for purposes of administering the water rights priority system.

Are there instances where I can apply to divert from a stream that is listed on the State Water Board's Declaration of Fully Appropriated Stream Systems (Order WR 98-08)?

The State Water Board's [Declaration of Fully Appropriated Stream Systems \(Order WR 98-08\)](#) designates stream systems where the Board has determined there is no water remaining for appropriation. Fully Appropriated Streams (FAS) can be designated either year-round or during specified months of the year. Generally, the Board does not accept water right applications for diversion from a FAS. In stream systems that are declared "fully appropriated" for only a portion of the year, water may be appropriated during the non-FAS months of the year.

However, there is a process by which a water right applicant can ask the Board to revise its FAS determination. Permit applicants can submit a petition to the Board to open the FAS designation for a water body. A petition requesting to open a FAS determination requires a separate fee (currently \$10,000) and must include hydrology data, stream flow data, or other pertinent information to support the claim that unappropriated water is present in the system. The process of reviewing and acting upon a petition to revise or revoke a FAS determination typically takes several years to complete and must occur before permit application processing commences.