

Registering Your Marin County Farm Pond with the State Water Resources Control Board

Introduction

Farm and ranch ponds provide an important source of water for livestock, irrigation, and domestic use in areas of Marin County where groundwater is very limited. In some instances, ponds were built without required permits, so current landowners do not have a registered right to use the water that they capture and hold. In other situations ranchers and farmers may want to seek building new and additional water storage on their farms and ranches. For both of these scenarios, pond “registration” may be the best solution.

In acknowledgement of the complex and multi-year process sometimes involved in acquiring a licensed, perfected water right, the Water Rights Permitting Reform Act of 1988 (California Water Code, § 1228) established regulations allowing small ponds for domestic, irrigation and livestock uses to be legalized via “registration”, a simplified process in comparison to that of licensing larger ponds. A registration is a water right, but one that must be renewed every five years, while a licensed and perfected water right is permanent and does not require renewal. An enforcement sweep by the SWRCB in 2010 notified many landowners of the need to legalize unregistered and unlicensed ponds, raising awareness of this requirement and the state’s registration program.

Whether you have or have not received a notification letter from the SWRCB, legalizing unlicensed or unregistered ponds is a good idea, because in watersheds where the quantity of water that can be legally diverted is limited, licenses and registration are on a first come, first served basis. The longer you wait to legalize your water source, the more likely it is that the total volume of water available within a watershed will have already been claimed by others. To check the current status of ponds on your property and see what water rights may already be attached to your land, you can consult SWRCB’s eWRIMS online database: www.waterboards.ca.gov/waterrights/water_issues/programs/ewrims/index.shtml

NOTE: The one exception to capturing and using water through the licensing or registration process is the capture and use of water from sheetflow¹ which requires no permit from the State Water Resource Control Board (SWRCB).

What Types of Ponds Are Eligible for Registration?

Three categories of ponds are potentially eligible for registration depending on water use and pond size. Ponds eligible for registration include those for:

1. Small Irrigation Use: “This means water that is either: (a) An irrigation use, heat control use, or frost protection use, not to exceed diversion to storage of 20 acre-feet per annum, including impoundment for incidental aesthetic, fire protection, recreational, or fish and wildlife purposes; and (b) An irrigation use not to exceed direct diversion of 42,000 gallons per day, or up to a maximum of 20 acre-feet per annum.” (California Water Code, § 1228.1, subd.

¹ Sheetflow is defined by the State as: “Water that flows over land in a thin, continuous film over relatively smooth surfaces that does not concentrate into channels larger than rills. Very few ponds have been constructed to capture sheet flow, as such ponds are much more costly to build, and are less efficient in capturing water. Additionally, the State classifies many landforms as “streams” that don’t necessarily flow with water in a way that you might commonly think of a stream, but serve to concentrate and direct water towards a destination. This means that ponds constructed to capitalize on such landforms are still regarded as diverting (taking water) from a stream and not as capturing sheetflow.

What is a water right? The California State Water Resources Control Board defines a water right as “legal permission to use a reasonable amount of water for a beneficial purpose such as swimming, fishing, farming or industry.”

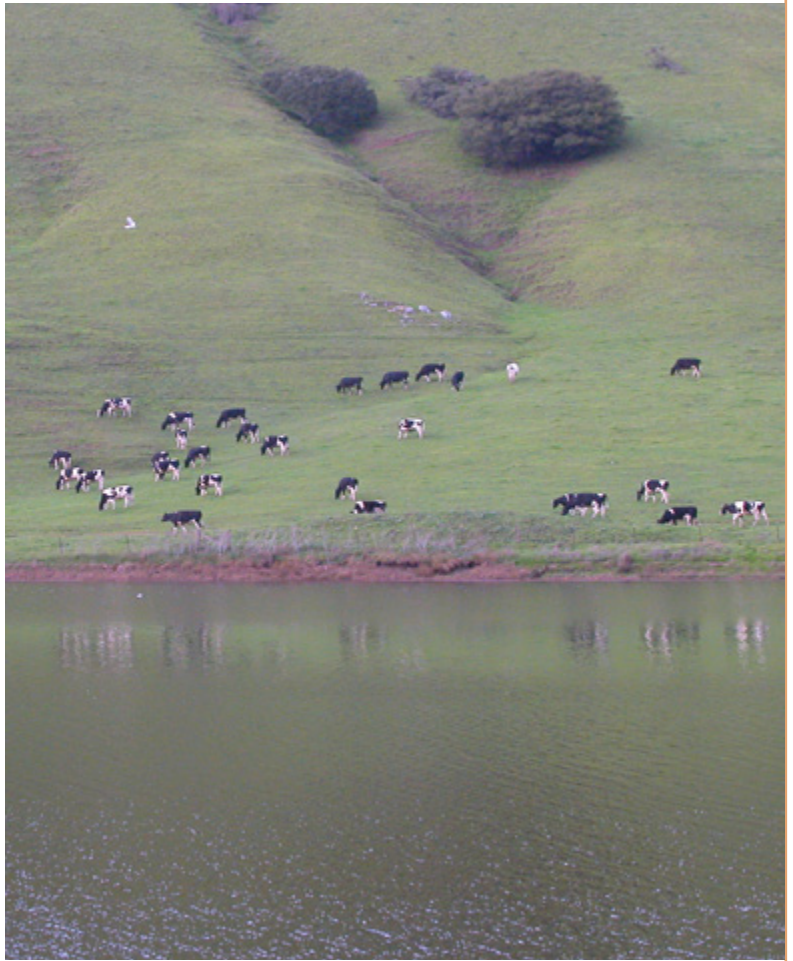
When do you need a water right? The [California Water Code](#) (Division 2) requires that you have a water right if you take water from a lake, river, stream, or creek, or from underground supplies for a [beneficial](#) use. Because California water right law is complicated, you may have a water right even if you do not have a [water right permit](#) issued by the state.

You should not assume that you have a water right just because you have a water diversion or a dam on your property. You can check with the Division of Water Rights to determine if you have a water right permit, license, certificate or registration, or if someone has claimed a water right for your water project.

(b)(2).) The SWRCB website refers to irrigation of “cultivated land,” but this also includes irrigated pasture. More than one registration for small irrigation use may be in effect at any time if the diversion or storage facilities do not exceed the ratio of one per 20 irrigated acres, and if the total water use on all acreage covered by the registrations, including any water use based on other rights, does not exceed 100 acre-feet per annum.

2. Small Domestic Use: “This means water that is defined by Board rule, or use for aesthetic, fire protection, recreational, or fish and wildlife purposes that is associated with a dwelling or other facility for human occupation that does not exceed direct diversion of 4,500 gallons per day or diversion to storage of 10 acre-feet per annum.” (California Water Code, § 1228.1, subd. (b)(1).)

3. Livestock Stockpond Use: “a water impoundment structure constructed for livestock watering use not to exceed direct diversion of 4,500 gallons per day, or diversion to storage of 10 acre-feet per year, as that use is defined by the Board, and including impoundment for incidental aesthetic, recreational, or fish and wildlife purposes.” (California Water Code, § 1228.1, subd. (b)(3).) One livestock stockpond is allowed per 50 acres per registrant.



Registration Stacking

Use registrations can be combined for a single pond, referred to as “registration stacking” by the SWRCB. For example, a Small Irrigation Use registration may be combined with either a Domestic Use registration or a Stockpond Use registration within the same pond, but only if the total combined water use covered by the registrations does not exceed 20 acre-feet per year. Domestic and Stockpond Uses can be combined for the same pond but cannot exceed 10 acre-feet per year.

CDFW Involvement in Registrations

The only agency other than the SWRCB that is involved in registering a new or existing pond is the California Department of Fish and Wildlife (CDFW). For Small Irrigation Use ponds, the registration application must be submitted to CDFW before it goes to the SWRCB. CDFW makes a site visit, writes a letter of its findings including any necessary mitigation measures, and then the registration application and CDFW letter are submitted to the SWRCB. For livestock stockponds, you first submit your registration application to SWRCB, and the board will send your application to CDFW for review as a first step in the approval process. CDFW has wide latitude to add or change any conditions of a registration, and such changes most often become effective either with the initial registration certificate or on the five-year renewal anniversary.

Applying for a Pond Registration

Registration applications are submitted directly to the State Water Board for Small Domestic Use and Livestock Stockpond Use registration applications. As described above, applications for Small Irrigation Use pond registrations are first submitted to CDFW by the applicant. As of March, 2016, initial pond registration fees are \$250 with an additional \$100 charged every 5 years at the time of renewal. As of March, 2016, initial pond registration fees are \$250 with an additional \$100 charged every 5 years at the time of renewal. Following are links to the SWRCB's application flowcharts and application forms for each type of pond.

1. Small Irrigation Use Registration

Application Flowchart: www.waterboards.ca.gov/waterrights/board_info/docs/regprocess_siu_overview.pdf

Application Form: www.swrcb.ca.gov/waterrights/publications_forms/forms/docs/siu_registration.pdf

2. Small Domestic Use Registration

Application Flowchart: www.waterboards.ca.gov/waterrights/board_info/docs/regprocess_sdulsu_overview.pdf

Application Form: www.swrcb.ca.gov/waterrights/publications_forms/forms/docs/sdu_registration.pdf

3. Livestock Stockpond Use Registration

Application Flowchart: same as Small Domestic Use Registration Application Flowchart

Application Form: www.swrcb.ca.gov/waterrights/publications_forms/forms/docs/lsu_registration.pdf

SWRCB's Instream Flows Policy

The SWRCB's Instream Flows Policy prevents registration of new (post 2006) onstream reservoirs and ponds on Class I or Class II streams. Onstream ponds on Class III streams built prior to 2012 may be registered and are required to provide minimum bypass flows² and provide mitigation for non-native species.

- **Class I streams** are perennial streams that contain fish or are domestic water supplies
- **Class II streams** are perennial streams that do not contain fish but do contain aquatic life or are within 1,000 feet of a Class I stream
- **Class III streams** are watercourses that do not support aquatic life but have the potential to deliver sediment to a Class I or Class II stream

Watershed-Specific Conditions

Ponds in some Marin County watersheds whose streams support special-status aquatic species, like steelhead trout or coho salmon, are subject to special conditions. For example, ponds in the Walker Creek watershed cannot impound water between the months of June and October. Water that flows into ponds outside of this period is available for use in registered ponds, but water that flows into spring-fed ponds that continue filling after the rainy season cannot be used. Special arrangements with the SWRCB to only utilize water that is impounded from November to June must be made when such ponds are registered.

Diversion Reporting

In 2015, Senate Bill 88 was passed, establishing emergency measures which require all water rights holders to file annual reports on their usage by April 1st for the previous calendar year, beginning on April 1, 2017. For owners of a registered pond for livestock, domestic or irrigation use, this reporting requirement replaces the previous requirement to report on usage at the time of their registration renewal every 5 years. The annual report must be completed using the SWRCB's online system, available at www.waterboards.ca.gov/rms.

² *Minimum bypass flow is the minimum instantaneous flow rate of water that must be moving past the point of diversion before water may be diverted under a permit. On the North Coast this is the rate adequate for fish spawning, rearing, and passage.*

These annual reports must include the following information:

- Signed statement of compliance with the original terms of the registration
- Purpose for which water was used
- Quantity of water diverted each month (or shorter interval if required)

More frequent usage reporting may be required (monthly or more) during times of low supply/high demand.

Diversion Measurement

For anyone who diverts 10 or more acre-feet per year (including stacked registrations that meet or exceed a total of 10-acre feet per year), SB 88 and the attendant Resolution 20016-0005 require that diverters install equipment or employ a method of measurement that meet certain levels of accuracy. For those who divert water to a pond that holds between 10-50 acre-feet, the device or method used must achieve a level of accuracy $\pm 15\%$ and be installed/certified by a qualified individual experienced with measurement and monitoring.

Such measurement devices or methods must be capable of recording the date, time, and at least one of the following on a monthly basis: total volume of water diverted, flow rate, water velocity, or water elevation. The data must be recorded in a format retrievable and viewable using Microsoft Excel, Microsoft Access, or other software program authorized by the SWRCB³.

Resolution 2016-0005 has given water right-holders with diversions of 10-100 acre-feet until January 1, 2018 to install or adopt the appropriate devices or methods.

Contacts and Further Information

The SWRCB staff member in charge of pond registration for Marin County is Matt McCarthy (916) 341-5310, mmccarthy@waterboards.ca.gov.

The CDFW staff member in charge of pond registration for Marin County is Corrine Gray, Water Rights Coordinator at (707) 944-5526, or Corinne.Gray@wildlife.ca.gov.

POND REGISTRATION CHEAT SHEET

If you are registering an existing pond:

1. Check the pond's current status on SWRCB's [eWRIMS online database](#).
2. (If not already registered) Complete the appropriate Registration application and submit to either SWRCB or CDFW (see "Applying for a Pond Registration" on Page 3).

If you want to construct a new pond:

1. Assess appropriate location and size for pond and acquire engineering plans from a licensed professional.
2. Complete the appropriate Registration application and submit to either SWRCB or CDFW (see "Applying for a Pond Registration" on Page 3).
3. Consult with Marin County Planning Department re: any county permits that may be required
 - Ponds in the Coastal Zone may require a Coastal Permit
 - Most agricultural ponds less than 20 acre feet can be exempted from a Grading Permit from the Marin County Department of Public Works and are not subject to the [jurisdiction of the Department of Water Resources' Division of Safety of Dams](#)

³ Examples of devices used to measure and report water diversions and their approximate cost are available at: www.waterboards.ca.gov/waterrights/water_issues/programs/measurement_regulation/docs/measure_cost_tables.pdf. Additionally, SWRCB lists potential options for financial assistance with measurement of diversions at: www.waterboards.ca.gov/waterrights/water_issues/programs/measurement_regulation/docs/measure_grant_summary.pdf

Prepared by Lisa Bush, Lynette Niebrugge, Vince Trotter and David Lewis, November 2016. More information about diversifying your operation is available at the Grown in Marin website under Resources for Farmers at growninmarin.org, or by calling the UCCE Farm Advisor's office at (415) 473-4204.