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**STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD**

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**FINAL STATEMENT OF REASONS  
FOR REGULATORY ACTION**

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**DIVISION 3, CHAPTERS 2, 2.7, AND 2.8  
Title 23, California Code of Regulations**

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## Abbreviations

The following is a list of abbreviations and their definitions as used in this document:

**Board** – State Water Resources Control Board

**CalWATRS** – California Water Accounting, Tracking, and Reporting System

**CEQA** – California Environmental Quality Act

**cfs** – Cubic Feet per Second

**Deputy Director** – Deputy Director for the Division of Water Rights

**Division** – Division of Water Rights

**EIA** – Economic Impact Assessment

**FSOR** – Final Statement of Reasons for Regulatory Action

**ISOR** – Initial Statement of Reasons for Regulatory Action

**NOPA** – Notice of Proposed Action

**OAL** – Office of Administrative Law

**SB 88** – Senate Bill 88; 2015-2016 Reg. Sess.

**State Water Board** – State Water Resources Control Board

**UPWARD** – Updating Water Rights Data for California

## Update to Initial Statement of Reasons

This Final Statement of Reasons for Regulatory Action (FSOR) updates the Initial Statement of Reasons for Regulatory Action (ISOR) with information reflecting updates to the proposed regulation text and the public comment process, including information that was included in the ISOR Addendum. The ISOR was made publicly available on February 28, 2025. The ISOR Addendum was made publicly available on May 22, 2025.

## Problem Statement

### Regulatory Background

On June 24, 2015, Governor Edmund G. Brown, Jr. signed Senate Bill (SB) 88 (2015-2016 Reg. Sess.). This bill enacted sections 1840 and 1841 and amended sections 5103 and 5104 of the Water Code. The legislation authorized the State Water Resources Control Board (State Water Board or Board) to adopt rules, by emergency regulation, requiring diverters who divert more than 10 acre-feet per year to measure and report their diversions.

The State Water Board held meetings and workshops across the state to receive input from diverters on the key issues to be addressed in the regulation. The draft regulation was

presented at a Board Workshop on December 17, 2015 to solicit feedback and comments on the regulation. On January 19, 2016, the regulation was adopted by the Board, and on March 10, 2016, it was submitted to the Office of Administrative Law (OAL) for review. OAL approved the emergency regulation on March 21, 2016, and the regulation was codified as chapter 2.8 (sections 931 through 938) of title 23 of the California Code of Regulations.<sup>1</sup>

## Drought Issues and the Need for Measurement Data

California's recent extended droughts have highlighted the need for timely and accurate information on how much water is diverted in different watersheds and subwatersheds throughout the state. Even in times of non-drought, rain and snowfall patterns vary widely statewide; some regions may have an adequate or even surplus water supply while others may face severe water shortages.

During the 2012 to 2016 drought, it became apparent that the historical standard of reporting monthly diversion volumes at the end of the year did not provide sufficiently timely or accurate data for efficiently managing water resources in times of drought. Under drought emergency regulations, the State Water Board called upon diverters to provide estimates of anticipated surface water diversions each month and then submit revised values of what they actually diverted.

As droughts become more common and the effects of climate change become more severe, high quality, accurate data that are collected and reported at a finer resolution are becoming increasingly important for managing water resources. The Board relies on diversion data for forecasting and planning for limited water supplies, administering the water rights priority system and protecting senior water rights holders, and facilitating collaborative solutions among the Board and local water managers.

SB 88 and the resulting regulations sought to address this need for reliable diversion data by requiring diverters to accurately and frequently measure their diversions. Regulatory changes are needed to successfully implement the original goals of the statute and accompanying regulations.

## Summary of Existing Regulations and Need for Revision

### Measuring and Reporting: Chapter 2.8

Under existing regulations, diverters with claimed water rights to divert more than 10 acre-feet per year are required to measure their diversions. This includes combinations of claimed water rights that share a point of diversion, reservoir or pond, or place of use if the total volume that can be diverted under such a combination of claimed water rights is greater than 10 acre-feet per year. This threshold impacts approximately 12,000 claimed water rights (including permits, licenses, registrations, and riparian and pre-1914 appropriative claims), held or claimed by approximately 7,000 individual diverters.

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<sup>1</sup> Unless otherwise specified, all regulation references are to title 23, division 3 of the California Code of Regulations.

Diversers subject to the regulations are required to measure the volume and rate of water directly diverted, diverted to or collected to storage, and withdrawn or released from storage. The frequency and accuracy at which diversers must collect measurements are tiered such that larger diversions must be measured more frequently and with methods capable of greater accuracy. For direct diversions, frequency and accuracy requirements are based on the volume of water authorized to be diverted under each claimed water right or combination of rights that share a point of diversion or place of use, while requirements for diversions to storage are based on the capacity of the reservoir or pond. Under the existing regulations, diversers can measure their diversions using any measuring device or measurement method capable of measuring their diversions at the required frequency and accuracy. Diversers must then compile their measurements into a datafile that they submit with their annual reports for each of their claimed water rights. The largest diversers—those who have reservoirs with a capacity of 10,000 acre-feet or more, or those who are authorized to divert more than 10,000 acre-feet per year or more than 30 cubic feet per second (cfs) at any time between June and September when flows are generally lowest—have an additional requirement to upload their data to a public website on a weekly basis.

Diversers who are unable to fully meet all requirements may file an alternative compliance plan detailing how they intend to meet as many requirements as possible and explaining why they cannot meet all requirements. The alternative compliance pathway is intended to provide additional flexibility in the requirements with the understanding that the requirements may not be feasible for all diversion scenarios, but that all available measurement data are still important for managing and accounting for water resources.

These requirements have been in effect since 2016. Under the existing regulations, approximately 12,000 water rights claims are subject to the requirement that diversions be measured and a datafile with measurement data be submitted to the Board at the end of each year.

Although the regulations have been in effect for over nine years, in any given year, fewer than 25 percent of annual reports for claimed water rights subject to the regulations include measurement data. Of those, fewer than 7 percent of subject water rights have datafiles submitted that both include parameters for date, time, and volume—three of the main required pieces of measurement data—and have column headings that are in the first row of the datafile—a characteristic that is essential for machine readability and systematic review of data submissions. That means that of the 12,000 claimed water rights for which a datafile is required to be submitted, only 185—or 1.5 percent—provide data that can be easily used for mass analysis. This does not even consider whether the measurements were collected at the required frequency or accuracy, so true compliance may actually be below 1 percent.

Because of the poor availability of high quality, comprehensive diversion data that can be used in mass, systematic analyses, the Board had to rely on informational orders during the 2020 to 2022 drought to collect high-resolution diversion data from diversers (State Water Board, 2021). Since then, staff with the Board's Division of Water Rights (Division) have conducted extensive outreach and issued clarifying guidance to address the low data submission rates and the overall poor usability of submitted data, and to better understand the issues diversers face in their efforts to comply. As part of this effort, staff scheduled one-on-one meetings with several large diversers, including state and federal agencies, water agencies, and utility companies, as well as with water rights consultants. During each of these meetings, diversers had the

opportunity to explain how they were interpreting the requirements and their various challenges in complying with them. Since every claimed water right and every diversion scenario is unique, the purpose of these meetings was to meet with the diverters who have some of the largest impacts in terms of diversion volumes and who have some of the most complicated water rights accounting issues.

Following these meetings, the Division held public listening sessions, both in person and virtually, to solicit feedback from a wider audience and to better understand the challenges that the broader community, including smaller diverters, face in their compliance efforts. Based on the feedback and concerns that were raised during these listening sessions, the Division issued guidance and compliance assistance tools to clarify the existing reporting requirements. The guidance and tools included:

- Making substantial changes to the Division's webpage for the reporting requirements to improve the structure and language of the information,
- Creating optional datafile templates with accompanying documentation and video tutorials on how to use them,
- Writing a detailed manual guiding diverters through each reporting provision and translating it into plainer language,
- Creating a Frequently Asked Questions document to answer common questions,
- Producing tracking tools for diverters to search whether they had submitted a required datafile, and
- Updating forms to improve clarity.

After publishing this guidance and taking the other identified actions, the Division hosted a workshop to explain and demonstrate the newly available tools. This workshop was accompanied by a series of one-on-one meeting opportunities that diverters could sign up for to discuss their individual diversions and measurement scenarios. Staff also presented at the World Ag Expo in Tulare, California to answer questions and provide guidance to diverters within the agricultural community.

Despite years of outreach and compliance assistance efforts, rates of datafile submission did not substantially improve, remaining below 25 percent for water year 2023, with only 47 claimed water rights reflected in data submitted using the templates the Division provided, accounting for only 71 of the 4,356 datafiles received. For water year 2023 alone, the State Water Board received datafiles in more than 1,400 unique formats, meaning that even after significant investment of staff time and resources spent on outreach, the data still lacked the standardization necessary for any efficient, systematic, or comprehensive analysis of water availability and use. Outreach has not improved compliance and enforcement is difficult without standardized requirements for reported data.

Meanwhile, the State Water Board has launched a new project called Updating Water Rights Data for California (UPWARD) to improve the way the State collects and manages its water rights data and information. The State's current water rights data system is outdated and lacks features that would make water rights reporting simpler and public access to information easier. UPWARD is intended to create a 21<sup>st</sup>-century, modern platform that is crucial for California's long-term water resilience in the face of ongoing climate change. As part of its UPWARD data

modernization project, the State Water Board began developing a new water rights reporting platform in 2023 called the California Water Accounting, Tracking, and Reporting System (CalWATRS). The platform will make the data reporting process more user-friendly and will allow the Board to more effectively administer the water rights priority system. This includes standardizing how data are formatted and submitted and improving the management of water rights measurement data, thereby enabling staff to better review and analyze water demand. CalWATRS became available to diverters in late October 2025, and the first reporting deadline under this new system is expected to be January 31, 2026.

The value of a modernized water rights reporting system depends on the ability of users to understand and correctly use it. If there are data gaps caused by user confusion and missed reporting deadlines, the State Water Board will not be well-positioned to effectively respond to water shortages. Transitioning to the CalWATRS reporting platform requires changes to the existing regulations to ensure that requirements align with how the new system works.

For these reasons, the Board is proposing to revise the existing regulations to better align with the upcoming CalWATRS water rights online reporting platform, to make the language clearer, to further reduce any barriers to compliance, and to improve the quality and usability of data submitted.

On November 13, 2024, the Board held an informal staff workshop to receive public input and questions about potential changes to the regulations. The associated written public comment period ran from November 4 until December 2, 2024. In response to public comments received during the workshop and comment period, the Board updated the proposed regulation text to make definitions and requirements more consistent throughout the regulations, alleviate reporting requirements for small storage water rights, simplify measurement and reporting requirements, and clarify how measurement methodologies and alternative compliance plans will be submitted.

#### Other Minor Changes: Chapters 2 and 2.7

Minor editorial changes to various code sections in chapters 2 and 2.7 will ensure consistent references to the electronic submittal of information using the online reporting platform, rather than referencing forms available on the Board's website.

In addition, existing regulations contained in chapter 2.7 do not require water rights holders to submit an email address to the Board, except as part of specific actions like reporting a change of ownership of a water right. The lack of a requirement for a means by which the Board can efficiently and reliably communicate with water right holders and claimants hampers the Board's efforts to modernize data collection and reporting processes, especially since most modern data collection platforms and websites use email addresses for secure authentication.

Separately, State Water Board regulations currently require annual notices of groundwater extraction and diversion to include the amount of groundwater extracted during the calendar year. However, Water Code section 5001 has been amended to require that annual notices report the amount of groundwater extracted during the water year. These conflicting requirements cause confusion to reporters and impact the ability of the State Water Board to efficiently administer the water rights system.

## Summary of Proposal

The proposed regulation implements, interprets, or makes specific Water Code sections 13, 183, 348, 1005.1, 1005.2, 1005.3, 1005.4, 1010, 1011, 1011.5, 1051, 1055, 1122, 1123, 1226.1, 1226.2, 1228.2, 1228.3, 1228.5, 1228.6, 1250, 1252, 1395, 1396, 1397, 1530, 1840, 1841.5, 1846, 4999, 5000, 5001, 5002, 5003, 5004, 5100, 5101, 5103, 5104, 5105, and 85230 under the authority granted by Water Code sections 183, 348, 1051, 1058, 1529, 1840, and 1841.

The State Water Board proposes to do the following as part of this rulemaking:

- Amend sections 831, 907, 910, 911, 915, 916, 920, 924, 925, 929, 930, 931.5, and 936 through 938;
- Renumber and amend sections 931 and 932 through 935 as section 939.2 through 939.6; and
- Add sections 913, 939, and 939.1.

## Anticipated Benefits

### Measuring and Reporting: Chapter 2.8

California's water rights data include information on water use, demand, and when and how water is diverted from streams and rivers. This type of information is critical for data-driven water management decisions, particularly when hydrology and droughts affect supply. The requirements for improved measurement and reporting of water rights in SB 88 and the existing regulations were an important step toward improving water rights administration and transparency of diversion records. The proposed improvements to the existing regulations will strengthen the ability to meet the underlying purpose of the statute, further improving water rights administration and increasing the quality and transparency of diversion data. Proposed revisions to the regulations are anticipated to create specific benefits regarding clarity, data quality, and alignment with the Board's new online reporting platform. The transition to modern water rights reporting and data management systems will benefit the health and welfare of California residents by improving the quality and usability of measurement data. This will improve the state's environment by providing more precise and timely information about water diversions. The proposed regulation is not expected to affect worker safety or issues of discrimination, fairness, or social equity. In addition, the proposed regulation will make the measurement and reporting requirements simpler and more efficient for staff and diverters alike.

Specifically, the proposed regulation is anticipated to provide the following benefits:

- Clarify Diverter Requirements: The proposed revisions are being made to better translate the existing regulations into plain language. Improvements to the clarity, simplicity, and organization of the text will make it easier for diverters to understand and follow the measurement requirements.
- Improve Measurement Data Quality and Usability: By standardizing the datafile format and requiring that datafiles be submitted to the Board's online reporting platform, the Board expects data quality and usability to increase. Improved data quality will increase

the Board's efficiency in compiling and reviewing the measurement data, which will better allow the Board to use these data to make informed decisions.

- Align with Modernized Water Rights Reporting System: The proposed revisions will align water rights measurement data with the Board's modernized water rights system, CalWATRS, by standardizing the formatting of data submissions and clarifying that measurement data must be submitted to the Board's online reporting platform.

## Other Minor Changes: Chapters 2 and 2.7

By mandating the submission of email addresses, the Board will improve electronic reporting systems and cyber security, and provide timely updates, notifications, and compliance reminders to water rights holders and staff through modern online reporting platforms.

Aligning groundwater extraction and diversion reporting requirements with the water year will align regulatory reporting requirements with the reporting period specified in statute.

## Purpose and Necessity of Proposed Changes

### Measuring and Reporting: Chapter 2.8

The text of the proposed regulation looks significantly different from the existing regulations in sections 931 through 938, though actual changes to requirements are much less substantial. Sections have been split, combined, renamed, and moved. The Board recognizes that the existing regulations are complex and can be confusing, so the revised text uses plain language where possible. Additionally, the proposed revisions attempt to restructure the regulations to have a more logical flow that more clearly describes the requirements. As a result, many of the proposed changes will ultimately not have a regulatory effect. In addition, the Board has tried to simplify the requirements where possible, relax some of the measurement frequency and accuracy requirements, and remove some of the previously required components of a measurement methodology or alternative compliance plan. The Board has also proposed exemption criteria, allowing flexibility and relief from requirements in certain circumstances.

The more substantive changes include specifying the datafile format and submission processes. Under the existing regulations, there is no specified format for how datafiles containing measurement data must be submitted. Without a standardized datafile format with consistent column headers, data cannot be systematically analyzed and instead must be individually reviewed by Board staff. The proposed regulation requires a standardized datafile format. This will ensure the submitted data can be more effectively and efficiently used for its intended purposes and will enable the Board to better manage California's surface water resources. This change would also provide consistent and clear direction to diverters, who often indicate they are unsure how to comply with the current regulations. While more prescriptive, the proposed changes should ultimately result in more efficient, cost-effective, and easier data submittals.

The proposed regulation clarifies requirements for points of rediversion. The existing regulations do not make any explicit distinction between points of initial diversion and points of rediversion of previously diverted or previously stored water. As a result, many diverters are measuring and reporting their rediversions, while others are not. The proposed regulation clarifies that rediversions must be clearly labeled to prevent double counting and also includes a provision

allowing the Deputy Director of the Division (Deputy Director) to require diverters to measure their rediversions (if not already doing so) upon determining that the data are necessary to understand water availability.

In addition, the proposed regulation requires identification of measurement location. The existing regulations do not explicitly require diverters to identify the location of their measuring devices. This information is necessary to determine where measured diversions occur, especially for diverters who have multiple points of diversion. The proposed regulation requires each measuring device to be linked to a physical location, to the extent possible.

The proposed regulation updates telemetry requirements and renames them as “large diversion requirements” to distinguish and disambiguate these requirements from true telemetry. The existing regulations make complex distinctions regarding which diverters are subject to telemetry requirements and what their reporting requirements are. The proposed regulation removes the stream flow percentage-based applicability criteria and the “June through September” qualifier for diverters with claimed water rights to divert more than 30 cfs. Instead, claimed water rights authorizing diversion of 30 cfs at any time of the year are subject to the large diversion requirements under the proposed regulation. This change will affect fewer than 200 additional claimed water rights, totaling about 0.3 percent of all claimed water rights in California. Additionally, the revisions propose to relax large diversion requirements so that provisional data may be submitted.

Finally, the proposed revisions would allow the State Water Board to adjust thresholds for measurement frequency and large diversion requirements after reviewing key information related to costs and need. Under the existing regulations, the Deputy Director can adjust which diverters are subject to telemetry requirements, but only through a complicated process of setting a threshold based on historic calculated mean monthly stream flow. The proposed regulation instead allows the Deputy Director to directly adjust the volumetric or flow thresholds as needed, to remove confusion about which diverters are subject to the large diversion requirements.

The proposed revisions will amend existing sections 931.5 and 936 through 938 in chapter 2.8, amend and renumber existing sections 931 and 932 through 935 as 939.2 through 939.6, add sections 939 and 939.1, and rename chapter 2.8 to be “Water Measurement” to better reflect the requirements of the chapter. The sections and subdivisions below describe the purpose and necessity of all proposed changes to the existing regulations. Requirements that have not substantively changed between the existing and proposed regulations are generally not discussed in this document because the requirements are unaffected by this rulemaking.

Additionally, this rulemaking does not include any scientific portions that require peer review in accordance with Health and Safety Code section 57004.

### Section 931: Definitions

The purpose of the Definitions section is to provide clarification of the terms used throughout chapter 2.8. Of the 24 terms included in this section, 15 are new additions and 9 are existing definitions that are proposed to be revised, as described below. The definition of “accuracy” in the existing regulations contained substantive regulatory content. For clarity, this has been moved from section 931 to section 933 of the proposed regulation. Further explanation of this change is included in the discussion of section 933. Five definitions—“diverter with multiple

claimed rights,” “executive director,” “measurement method,” “place of use,” and “type of measuring device”—were removed from the chapter because they were either not used at all in the chapter or they were not used in a way that varies from the commonly understood meaning.

**931(a)** The addition of the term “annual report” is necessary to describe the variety of documents that diverters submit to the Board each year. Datafiles submitted pursuant to chapter 2.8 are submitted in conjunction with an annual report.

**931(b)** This subdivision remains unchanged in the proposed regulation except for a corrected typo.

**931(c)** The addition of the term “claimed water right” is necessary because it encompasses all bases for water diversion by which a diverter may be subject to chapter 2.8. The definition addresses confusing distinctions between claims, permits, licenses, and registrations, and creates a general term that can be used for the purposes of this regulation to collectively describe all of these.

**931(d)** The modification of the term “Delta” to describe the Sacramento-San Joaquin Delta is necessary to be consistent with section 12220 of the Water Code.

**931(e)** To improve efficiency, the term “deputy director” has been modified to specifically express the Deputy Director’s ability to delegate authority as needed.

**931(f)** Recognizing that employees and agents often submit reports and measurement data on behalf of diverters, modification of the definition of “diverter” is necessary to include employees or agents for the purpose of submitting documents to the Board.

**931(g)** The addition of the term “division” is necessary to concisely refer to the Division of Water Rights.

**931(h)** The addition of the term “identification number” is necessary to clarify how diverters must identify each claimed water right. In the existing regulations, the term is used without definition, which has resulted in some confusion about how diverters identify each of their claimed water rights.

**931(i)** The addition of the term “maximum allowable diversion amount or rate” is necessary to concisely describe the various ways in which the authorized diversion amount (for permitted, licensed, and registered water rights) or historical or anticipated diversion amount (for pre-1914 and riparian claims) is referenced throughout the regulation. In the existing regulations, the definition is restated in multiple provisions throughout the text. For simplicity and clarity, the proposed revisions state the definition once and then use the new term in all other provisions.

**931(j)** The addition of the term “measurement data” is necessary to ensure consistent interpretation of the term and to draw a contrast between measurement data (which are submitted to the Board) and raw device output (which is generally not submitted to the Board). Additionally, the term includes clarifications of the various types of measurement data, including general measurement data, large diversion measurement data, and provisional measurement data.

**931(k)** The addition of the term “measurement methodology” is necessary to describe the equipment and procedures used to collect and convert data to account for the parameters required in the proposed regulation for each claimed water right.

**931(l)** The addition of the term “measuring” is necessary to indicate that measuring devices do not need to directly measure each required parameter. Any means of accounting for, calculating, determining, and subsequently recording the measured value is considered measuring.

**931(m)** The modification of the term “measuring device” is necessary to remove the distinction between “measuring device” (as defined in the existing regulations) and “measurement method” (which is proposed to be removed from the regulations). The distinction in terminology in the existing regulations has led to confusion and ambiguity over which equipment for collecting measurement data is considered a device versus a method. The proposed revisions address this confusion by removing the distinction and redefining the term “measuring device” to include any equipment used for measuring that provides a numerical output, including what previously would have been considered a measurement method. With the revised definition, anything diverters use to collect data is considered a measuring device, even if it does not directly measure volume or flow rate.

**931(n)** The addition of the term “online reporting platform” is necessary to describe the platform through which diverters will submit datafiles, measurement methodologies, alternative compliance plans, and other required submissions under the proposed regulation.

**931(o)** The modification of the term “point of diversion” is necessary because it clarifies that it includes points of redirection of previously diverted or previously stored water as well as points of direct diversion and points of diversion to storage.

**931(p)** The eligibility criteria for qualified individuals have been adjusted to include Board-certified water treatment operators and water distribution operators, hydrographers, water measurement technicians, and diverters who have completed an instructional course described in section 1841.5 of the Water Code or other instructional course approved by the Deputy Director. This expansion of eligibility recognizes that other professionals, in addition to those included in the existing regulations, are equipped with the skills and expertise needed to install and maintain measuring devices, implement measurement methodologies, and ensure accuracy. The expansion also aligns the definition with section 1841.5 of the Water Code, which allows diverters to complete a course on water measurement through the University of California Cooperative Extension as a means of becoming a qualified individual. Due to the limited course offerings through the University of California Cooperative Extension, it is necessary to also allow other institutions to offer similar courses for diverters to become qualified individuals. To ensure consistency and quality among these courses, it is necessary for the Deputy Director to affirmatively approve which instructional courses are suitable for providing diverters with sufficient knowledge to be qualified individuals. This approval will be based on course content that is substantially similar to the course offered by the University of California Cooperative Extension.

Under the existing regulations, the threshold of 100 acre-feet per year determines the criteria for who can be a qualified individual and corresponds to claimed water rights for direct diversion that must be measured daily. For consistency with other thresholds in the proposed regulation, the threshold for qualified individual eligibility has been adjusted to 200 acre-feet per year.

**931(q)** The addition of the term “quality assurance protocol” is necessary to indicate to diverters that raw device output from measuring devices may include errors that must be accounted for and corrected before the data are compiled into a datafile and submitted. The purpose of quality

assurance protocols is to ensure that submitted measurement data meet the accuracy requirements of the chapter.

**931(r)** The addition of the term “rate” or “flow rate” is necessary to standardize the parameters of data that must be submitted and to differentiate volumetric flow rates from other possible rate measurements.

**931(s)** The addition of the term “raw device output” is necessary to indicate to diverters that the unaltered data output by measuring devices may include errors that must be accounted for and corrected using quality assurance protocols before the data are compiled into a measurement datafile and submitted. This addition also differentiates between the raw data which are output by the measuring device and the processed measurement data which are submitted to the Board.

**931(t)** The addition of the term “rediversion” is necessary to specify that rediverted water is water that has been previously diverted or stored and is diverted again under the same claimed water right. This definition is consistent with other definitions available on the Board’s website.

**931(u)** The addition of the term “release” is necessary to clarify the distinction between releases and withdrawals from reservoirs. Whereas a withdrawal is water taken from a reservoir for beneficial use, a release is all water leaving the reservoir outlet, whether for beneficial use or not. The authorizing statute requires measurement of withdrawals or releases; therefore, it is necessary to define and differentiate between these terms.

**931(v)** Use of the term “threatened, endangered, or fully protected aquatic species” instead of “threatened, endangered, or fully protected fish” is necessary because it expands consideration of species that may be at risk of harm due to diversion of water to include other aquatic species beyond fish.

**931(w)** The modification of the term “twelve month reporting period” is necessary to improve clarity.

**931(x)** As described for subdivision (u), addition of the term “withdrawal” is necessary to clarify the distinction between releases and withdrawals from reservoirs.

*Deletions from the initially noticed draft regulation text*

**931(d)** The initially noticed draft regulation text included a proposed definition for the term “data standard.” The proposed definition did not provide clarity for understanding requirements under the regulation and therefore was not necessary. Subdivision labels were subsequently updated.

**Section 931.5: Authority of the Delta Watermaster**

The purpose of section 931.5 is to identify and distinguish the roles of the Delta Watermaster in comparison to the roles of the Deputy Director and the Division. This section was modified to improve clarity and to be more consistent with the authorities described elsewhere in the regulation, but otherwise remains unchanged from the existing regulations.

## Section 932: Applicability

The purpose of section 932 is to specify who is subject to the requirements of chapter 2.8 as well as which diverters must also adhere to specific additional requirements described in the chapter.

**932(a)** Changes made to subdivision (a) of this section include describing applicability in relation to terms described in the Definitions section and using plain language to clearly and concisely describe applicability criteria. Whereas the existing regulations separately define applicability in terms of permits, licenses, registrations, and diverters who are required to file a Statement of Water Diversion and Use, the proposed regulation uses the definitions of “claimed water right” and “maximum allowable diversion amount” to more concisely state applicability criteria.

Additionally, the proposed regulation exempts stockpond certificates, as well as registrations for small domestic use, livestock stockponds, and cannabis cultivation from all requirements. These certifications and registrations authorize diversions up to a maximum of 10 acre-feet per year. Under the existing regulations, these certifications and registrations are only subject to measurement requirements if they share a point of diversion or place of use with another claimed water right, and the sum of the authorized diversions at that point of diversion or serving that place of use is greater than 10 acre-feet per year. This scenario is uncommon and has led to confusion about who is subject to the regulation. For simplicity, clarity, and to alleviate requirements for small diversions, the proposed regulation explicitly excludes stockpond certificates and registrations for small domestic use, livestock stockponds, and cannabis cultivation from the requirements of the regulation. Registrations for small irrigation use are allowed to have maximum allowable diversion amounts greater than 10 acre-feet per year, and therefore they remain subject to the regulation. However, applicability for these registrations is based only on maximum allowable diversion amount in the proposed regulatory text, and no longer includes applicability based on the capacity of the storage facility. This change is necessary for consistency with the applicability criteria for other types of claimed water rights, none of which include criteria based on storage capacity.

For diverters with multiple claimed water rights, applicability was revised to remove reference to shared places of use. In general, the location where water is beneficially used has less impact on the availability of water under other claimed water rights compared to the location where water is diverted or stored. Therefore, the criterion identifying place of use as a consideration of applicability is unnecessary and can be removed.

**932(b)** Changes made to subdivision (b) of this section include moving the telemetry applicability criteria from section 933, subdivision (b)(4)(A) of the existing regulations to section 932, subdivision (b). In the existing regulations, the term “telemetry” is incorrectly used to describe frequent data reporting (whereas the true definition describes remote transmission of data), which caused confusion regarding what diverters are required to do. To address this confusion, the misleading term “telemetry requirements” has been replaced with “large diversion requirements” to indicate that these requirements only apply to large diversions. As with subdivision (a) of this section, this subdivision has been revised to use terms defined in the Definitions section and to use plain language to concisely describe applicability criteria. These changes are necessary to improve clarity within the regulations.

Another change to this subdivision is the removal of large diversion applicability criteria based on historic calculated mean monthly stream flow (existing section 933, subdivision (b)(4)(A)(iv)). This change improves clarity and makes it easier to determine who is subject to large diversion requirements. The existing regulations (section 933, subdivision (b)(4)(C)) stated that the historic calculated mean monthly stream flow applicability criteria would only take effect on a date to be determined by the Deputy Director, but such a date was never set and therefore the provision never became effective.

An additional change to this subdivision is the expansion of the 30 cfs criterion to apply to diversions occurring at any time instead of just those occurring from June 1 through September 30 (existing section 933, subdivision (b)(4)(A)(iii)). When the existing regulations were adopted, one stated purpose of the telemetry provisions was fishery protection. However, the spawning, egg, and larval stages of many native aquatic species occur outside of the June through September timeframe, and therefore this change is necessary to address concerns regarding availability of sufficient water to support populations of aquatic species (State Water Board, 2018). This change would also help eliminate confusion regarding the timing of diversions by removing the “June through September” qualifier, since claimed water rights to divert 30 cfs at any time of the year would be subject to the large diversion requirements in the proposed regulation. This change is expected to impact fewer than 200 claimed water rights, or 0.3 percent of all claimed water rights in California. Because claimed water rights to directly divert more than 30 cfs outside of the previously specified June to September timeframe will be subject to the large diversion requirements for the first time, subdivision (b)(2) was added to provide additional time for these diverters who were not previously subject to telemetry requirements to come into compliance. Instead of requiring these diverters to adhere to large diversion requirements by the start of water year 2027, they have until the start of water year 2028 to begin meeting these requirements.

The proposed regulation removes the large diversion applicability criterion based on the size of reservoirs. The intent of the large diversion requirements is to provide the Board with near real-time information about diversions, and therefore applicability criteria should be based on authorized diversions, not storage capacity. Additionally, this change adds consistency with the general applicability criteria, which are based on maximum allowable diversion amounts and not on storage capacity.

During the Division’s outreach, many diverters expressed concern regarding large diversion requirements as they relate to claimed water rights with multiple points of diversion. In some cases, a majority of the diversion may occur at a single point of diversion, and other points of diversion may divert a relatively insignificant amount of water. To address this concern that additional measurement requirements are inappropriate for these smaller points of diversion, subdivisions (b)(1)(B)(i) and (b)(1)(B)(ii) were added to indicate to diverters that these smaller points of diversion may be excluded from large diversion requirements. For points of diversion that operate solely for rediversion and divert a relatively insignificant amount of water, diverters do not need to measure such points of rediversion unless specifically required pursuant to subdivision (c) of section 933. For other points of diversion that divert a relatively insignificant amount of water but may be used for direct diversion or diversion to storage, diverters are encouraged to submit alternative compliance plans to exclude these smaller diversions from the large diversion requirements. Because each diversion scenario is case-specific, it is not appropriate to describe a specific threshold defining what is considered a “significant” amount of

water. In accordance with proposed subdivision (c) of section 933 or subdivision (g) of section 936, the Board may require diverters to measure rediversions or modify their alternative compliance plans if the Board determines that large diversion data from these points of diversion are necessary for understanding water availability. Unless such a determination is made, diverters are relieved from meeting large diversion requirements for smaller points of diversion.

**932(c)** Subdivision (c) is being added to section 932 to identify who is subject to measurement requirements as they relate to withdrawals and releases from reservoirs. Under the existing regulations, all diverters who are subject to chapter 2.8 and who divert to storage are required to measure their withdrawals and releases from storage. For any reservoirs that are operated in a cyclical manner, diverters are required to also measure the elevation and volume of impounded water. During the Division's outreach, many diverters who operate small ponds and reservoirs expressed concern that complying with these requirements is infeasible or cost prohibitive, and unlikely to result in meaningful or useful data that would allow the Board to make decisions. The Board generally agrees that most ponds and small reservoirs do not need to be required to measure withdrawals, releases, or the volume of impounded water. However, withdrawals and releases from larger reservoirs, especially those where water is released back to a stream, provide important information about water availability and demand. The threshold of 5,000 acre-feet was selected because it encompasses approximately 97 percent of California's total reservoir capacity while excluding small ponds and reservoirs from additional measurement requirements. By defining the applicability for qualifying reservoirs in this subdivision, measuring and reporting requirements described throughout the regulation can be clearly and concisely referenced.

**Removed Subdivisions:** Existing section 932, subdivision (c) describes effective dates by which diverters must have installed measuring devices or implemented a measurement method. Because the latest of these dates was January 1, 2018, this subdivision is no longer necessary. All requirements of the proposed revised regulation will become effective at the start of water year 2027, except for a subset of diverters with large diversions, for whom the effective date is described in proposed subdivision (b)(2) of this section.

### Section 933: Collecting Measurement Data

The purpose of section 933 is to clearly define what each diverter needs to measure. Unlike annual reporting requirements (described in chapter 2.7), which require diverters to provide monthly totals of the volume of water diverted, section 933 of the proposed regulation specifies that diverters must measure both the rate and volume of water directly diverted, diverted to storage, withdrawn from storage in qualifying reservoirs, and released from qualifying reservoirs. It also requires that the data meet accuracy standards needed by the Board to ensure the data are useable for systematic, mass analysis. Additionally, for larger diverters, the data must be collected at a higher frequency than the monthly frequency required for annual reporting. Since larger diverters have greater impact on water availability, they are held to higher measurement standards.

In the existing regulations, requirements of what to measure and how to measure are separated based on whether a measuring device or measurement method is used. Under the proposed regulation, section 933 describes the requirements for what to measure, regardless of the

equipment used. The proposed text of section 933 combines and simplifies the requirements of existing sections 933 and 934.

**933(a)** Under the existing regulations, diverters need to maintain a device capable of recording either the total volume of water diverted, flow rate, water velocity or water elevation. However, the authorizing statute (section 1840 of the Water Code) states that devices must be capable of monitoring *both* the rate and volume of water diverted. It also requires that devices and methods be able to account for direct diversions, collections to storage, and withdrawals or releases from storage. The changes included in the proposed regulation clearly define which parameters diverters must measure and are necessary to better align the requirements of the regulation with those of the authorizing statute.

Additionally, the proposed changes to subdivision (a) are necessary to standardize the data submitted to the Board. The existing regulations do not specify a definitive list of parameters that must be measured and, as a result, the submitted data cannot be easily compared between different claimed water rights or used for systematic, large scale analyses of water diversions across the state. The existing regulations also inconsistently describe measurement parameters in different sections, with various sections saying only the volume of water diverted needs to be measured, or diverters must measure the maximum and minimum elevations and volume of stored water, or diverters must measure the diverted water volume, flow rate, velocity, and elevation, or diverters only need to measure one of these parameters. This has led to confusion among diverters, despite guidance and workshops from the Division, and as a result, diverters are measuring and reporting inconsistent parameters. By specifying required measurement parameters, the proposed regulation removes ambiguity regarding what diverters are required to measure and will improve the quality and usability of the data submitted to the Board.

In the proposed regulation, the Board has clarified that “withdrawals” must reflect stored water that was removed from a qualifying reservoir for beneficial use. For example, for licensing purposes, sections 657 and 658 consider water that is impounded in a reservoir for more than 30 days to be “stored water,” whereas water that is impounded less than 30 days before being beneficially used is considered “regulated water,” which is treated as a direct diversion. This licensing rule does not, however, distinguish storage from regulation of water generally; the broadly applicable rule, specified in section 658, is that “Storage of water means the collection of water in a tank or reservoir during a time of higher stream flow which is held for use during a time of deficient stream flow.” The proposed regulation clarifies that “releases” do not need to distinguish between stored water and regulated water. Because releases include all water leaving the reservoir at the outlet, including water that will not be beneficially used by the diverter, determining which water was stored does not provide meaningful information about water availability or demand, and therefore does not need to be required of the diverter. Distinguishing stored water in terms of withdrawals, however, is necessary to avoid double counting of water as both a direct diversion and a withdrawal.

**933(b)** Under the existing regulations, diverters who are subject to the large diversion requirements (formerly called “telemetry requirements”) are required to measure and report the same parameters as are required for all diverters, the difference being that diverters with large diversions must report data on a weekly basis, instead of just once per year. However, in many cases, this is not practical or even possible. For example, it may be infeasible for diverters with large diversions to parse direct diversions from diversions to storage on a weekly basis. Therefore, in the proposed regulation, it is necessary to adjust the requirements for large

diversions to be more feasible while still providing useful data to the Board. For the purpose of weekly data reporting, diverters do not need to distinguish or apportion water between direct diversions, diversions to storage, rediversions, withdrawals, or releases. Rather, they just need to measure and report the total volume in the qualifying reservoir, the volume and rate of water leaving the stream, and the volume and rate of water leaving the qualifying reservoir.

The requirement to measure the total volume of water in the reservoir was previously described in section 933, subdivision (b)(2)(B) and it applied to all cyclically operated reservoirs. In general, maximum and minimum storage volumes do not provide the Board with much meaningful data, except for large reservoirs (i.e., those meeting the “qualifying reservoir” applicability described in section 932, subdivision (c)) that are subject to large diversion requirements. For these reservoirs, a record of the volume in the reservoir, together with the volume and rate of water leaving the reservoir, is necessary to complete the mass balance of water accounting that provides further insight into water availability and demand.

**933(c)** Subdivision (c) allows the Deputy Director to require diverters to measure rediversions of previously diverted or previously stored water, which may be necessary for more comprehensive water accounting. The existing regulations refer to and require measurement of “points of diversion” without explicitly stating what this includes. Rediversions are often measured at a point of diversion, but the lack of explicit use of the term “rediversion” has led to inconsistency in how diverters report (or do not report) rediversions of previously diverted or previously stored water. Although many diverters measure their rediversions, other diverters do not. Including this subdivision is necessary to indicate that those diverters who currently measure their rediversions should continue to do so, and for those who are not currently measuring rediversions, the Deputy Director may require them to measure upon determining that rediversion data are necessary for understanding water supply, demand, or availability. The State Water Board acknowledges that not all rediversions need to be measured in order to understand water supply, demand, or availability. Therefore, it is not necessary to require all diverters to measure their rediversions, and instead it is appropriate for the Deputy Director to evaluate diversions on a case-by-case basis to make these determinations.

**933(d)** Subdivision (d) is necessary to ensure that volume measurements are reported consistently. Whether diverters report incremental volumes of water diverted in each measurement interval or the cumulative total volume of water diverted can drastically affect how the data are interpreted. For consistency between datafiles, all volume data are required to reflect the discrete, incremental volume diverted or withdrawn or released in a measurement time interval, unless otherwise specified.

**933(e)** This provision is based on existing section 933, subdivision (a). Under the existing regulations, a diverter can measure their diversions using any device or combination of devices. In the proposed regulation, diverters may still use any device or combination of devices, but they will also need an accompanying methodology to account for the required parameters. This change is necessary because most devices do not automatically output both volume and rate of diversion or parse data per claimed water right. Therefore, diverters by necessity must apply a methodology to convert the raw device output into data that meet the requirements of proposed section 935.

**933(f)** Under the existing regulations, diverters are encouraged to collaborate to collectively measure their diversions through a measurement method, as described in existing section 934,

subdivision (a). Any data collected through such group measurement must be able to be apportioned to each claimed water right. In the proposed regulation, this concept of group measurement is extended to apply to all means of data collection, not just measurement through what was previously considered a measurement method. The proposed regulation removes references to “measurement methods,” but does not alter the substantive meaning or requirements of the provision. This change is necessary because the concept of a “measurement method” has been removed in the proposed revisions, in favor of an expanded definition of “measuring device” and the addition of the concept of a “measurement methodology.”

**933(g)** Under the existing regulations, section 933, subdivision (i) specifies that measuring devices must be located such that no water is delivered or used before being measured. This means that measuring devices, in most cases, must be located at each point of diversion. This understanding is further reinforced in existing section 934, subdivision (a), which states that a measurement method must be used if there is not a measuring device at each point of diversion. However, investigations have revealed that some diverters measure a significant distance from their point of diversion. Even if water is not used or delivered before being measured, water is lost to evaporation and percolation, and therefore the measured value is not representative of the actual diversion. The proposed regulation requires measuring devices to be located such that no water is delivered, used, or lost in significant amounts due to percolation and evaporation. This is necessary to address the existing issue, while still allowing flexibility for measurements to occur at locations other than the exact point of diversion, if measuring at the point of diversion is not feasible. The updated language also clarifies that because some diverters must measure withdrawals and releases from qualifying reservoirs, these measurement locations are subject to the same consideration as diversion measurements. The decision to describe acceptable measurement locations in terms of “significant” losses reflects the fact that each diversion is unique, so specifying an acceptable distance would not be appropriate, and specifying an acceptable amount of water loss could cause confusion regarding how those losses are measured and how accurate those measurements would be. The proposed language requires the diverter to ensure that water losses are not significant enough to affect the accuracy of the measurement.

**933(h)** The measurement frequency requirements determine how often diverters must measure their diversions. Under the existing regulations, measurement frequency requirements are tiered such that larger diversions must be measured more frequently than smaller diversions. The frequency tiers are also based on the type of diversion, with diversions to storage having different thresholds than direct diversions. This differentiation based on type of diversion has led to confusion among diverters with claimed water rights authorizing both direct diversion and diversion to storage.

Rather than having different values determining thresholds for direct diversions and diversions to storage, the values determining monthly, weekly, daily, and hourly measurement requirements in the proposed regulation are the same regardless of the type of diversion. Thresholds have been set to align with the existing values for diversions to storage, which generally require slightly less frequent measurement than those for direct diversion. A main objective of this overall update to chapter 2.8 is to improve clarity, simplify the regulation text, and alleviate requirements where possible. Therefore, the less frequent measurement requirements were selected for the proposed regulation.

Additionally, the proposed revisions clarify that frequency requirements for diversions to storage (which are based on storage capacity) only apply to diversions to reservoirs, and not diversions to underground storage—which would otherwise trigger the highest requirements since aquifer capacities are generally much larger than 1,000 acre-feet. The proposed revisions also specify that reservoirs with capacities of 10 acre-feet or less do not need to be measured.

The proposed revisions also clarify how to determine requirements for claimed water rights that authorize both direct diversion and diversion to storage. For claimed water rights that authorize diversion other than just diversion to storage in a reservoir—i.e., direct diversion, diversion to underground storage, or a combination of direct diversion and diversion to aboveground or underground storage—thresholds are based on the maximum allowable diversion amount of that claimed water right. Unless they share a point of diversion with another claimed water right held by the same diverter, claimed water rights that allow direct diversion or diversion to underground storage do not need to be measured if they have a maximum allowable diversion amount of 10 acre-feet or less. This change reduces some requirements for diverters who hold multiple claimed water rights, each with multiple points of diversion, that share some but not all points of diversion with another claimed water right.

For multiple claimed water rights that share a point of diversion, thresholds for shared points of diversion are based on the combined maximum allowable diversion amounts of the multiple claimed water rights (unless all of the claimed water rights are for diversion to storage in a reservoir, in which case thresholds are based on storage capacity). Thresholds for non-shared points of diversion are based on the maximum allowable diversion amount of the claimed water right or storage capacity accordingly. As in the existing regulations, if there are any conflicting requirements when determining measurement frequency, the more stringent requirement controls.

Lastly, the existing regulations state that frequency tiers are also based on a shared place of use between multiple claimed water rights, in addition to a shared point of diversion and shared reservoir. As discussed for general applicability under section 932, the location where water is beneficially used has significantly less impact on other claimed water rights compared to where water is diverted or stored. Therefore, this criterion is unnecessary and could be removed in the proposed update.

**933(i)** Under the existing regulations, the formula for calculating accuracy is defined in the Definitions section, accuracy requirements are listed in section 933, subdivision (d), and diverter responsibilities for notifying the Board and taking corrective action if accuracy requirements are not met are described in section 933, subdivision (l). In the proposed regulation, the accuracy formula, requirements, and diverter responsibilities are consolidated for clarity in section 933, subdivision (i).

Other changes to accuracy requirements are also intended to improve clarity. In the existing regulations, the formula for calculating accuracy is incorrect and instead calculates percent error. The proposed changes revise this formula to correct this issue and clarify that accuracy is based on the values reported to the Board, in case additional quality assurance protocols need to be applied to the raw device output. In the existing regulations, accuracy is defined only in terms of volume. However, flow rate is another required parameter and many measuring devices measure flow rate directly. Therefore, diverters have the option to calculate accuracy

based on either volume or flow rate, rather than only volume. This change is necessary to allow reasonable flexibility in determining accuracy without affecting the quality of measurement data.

Also, in the existing regulations, measuring devices that were installed or replaced after January 1, 2016 have different accuracy requirements depending on whether they are used to measure diversions of water or storage of water in a reservoir or a pond. Those accuracy requirements further depend on the size of the claimed water right, whether the device was laboratory certified, and the storage capacity of the reservoir or pond. The proposed regulation removes the distinction between direct diversions and diversions to storage for purposes of measurement accuracy, and the accuracy requirements are instead tied to measurement frequency requirements. This change is necessary to clarify and simplify the accuracy requirements and remove any ambiguity for diverters who may both directly divert and divert to storage.

The existing regulations require diverters to notify the Board with plans to take corrective action if they do not meet the required accuracy standards, but do not specify the timeframe for such notification. The proposed regulation specifies that diverters must do so within 30 days of detecting that their measurement methodology fails to meet the required accuracy or is likely to not meet the required accuracy. This change is necessary to allow an appropriate amount of time for diverters to understand the problem, identify the corrective action that must occur, and contact the Board. Because general measurement datafiles are only submitted to the Board on an annual basis and accuracy is based on the measurement data submitted to the Board (as opposed to the raw device output), it is necessary for diverters to also notify the Board and take corrective action if they suspect that the measurement data will not meet accuracy requirements.

#### Section 934: Measurement Methodology

The purpose of section 934 is to define requirements regarding how diverters measure their diversions. For each claimed water right, diverters must submit a measurement methodology in which they explain how they accurately measure and account for the volume and rate of water directly diverted, diverted to storage, withdrawn from storage in qualifying reservoirs, and released from qualifying reservoirs. Diverters must also register each of their measuring devices with the Board to provide information about the specific equipment used to collect measurements. The purpose of the measurement methodology and device registry is to help the Board better understand how each diverter is measuring their diversions and to identify and require corrections to any deficiencies in a methodology.

As described in reference to proposed section 933: Collecting Measurement Data, the existing regulations separate requirements of what to measure and how to measure based on whether diverters measure their diversion using a measuring device or measurement method. Under the proposed regulation, section 934 is intended to describe the requirements of how to measure, regardless of the equipment used. Components of existing sections 933 and 934 pertaining to requirements of how diverters must measure were combined and condensed to create proposed section 934.

**934(a)** This subdivision requires diverters to submit a measurement methodology containing information about how they are measuring and accounting for their diversions as well as how they are preparing their data submissions. The content of the measurement methodology

includes requirements from both the Measuring Device and Measurement Method sections of the existing regulations (sections 933 and 934, respectively). Although most of the measurement methodology contents are maintained from existing requirements for measuring devices and measurement methods, there are a few changes in the proposed regulation.

Whereas the existing regulations require a qualified individual to prepare the measurement method, the proposed regulation only requires a qualified individual to certify that the methodology meets the requirements of chapter 2.8. As long as a qualified individual approves the submitted measurement methodology as adequate and appropriate, it is not necessary for the qualified individual to also prepare the measurement methodology, and therefore this requirement could be removed to allow diverters greater flexibility. The proposed regulation also requires diverters to provide contact information for the qualified individual who certified that the measurement methodology meets the requirements. Currently, the report of water measuring device (existing section 937) requires contact information for the qualified individual who verified the accuracy of the measuring device; for consistency with the proposed regulation, this requirement has been moved to this subdivision and modified to reflect the updated role of the qualified individual.

In general, diverters are expected to only submit one measurement methodology per claimed water right, but diverters with complex diversion operations may choose to submit multiple measurement methodologies, in which case they must specify which points of diversion are associated with each measurement methodology. The proposed regulation also requires diverters to describe where they are measuring and which of their measuring devices are included in each measurement methodology. While diverters generally measure at each point of diversion, this provision is necessary for the Board to interpret measurement datafiles submitted under section 935 of the proposed regulation and to understand where, when, and how much water is being diverted. Additionally, the proposed regulation expands the existing requirements to describe any methods used to convert the raw output from measuring devices to the parameters that diverters are required to report in their datafiles to be more consistent with other requirements of the regulation and with the authorizing statute. Currently, the existing regulations require an explanation of how diverters convert flow rate, velocity, and elevation to volume (existing section 933, subdivision (c)), but since flow rate is also a required parameter and diverters are permitted to measure other parameters such as electricity consumption as a means of calculating volume and flow rate, the proposed regulation requires an explanation of how the diverter converted any directly measured value to both volume and flow rate. Whereas the existing regulations require diverters to use the formulas provided in the regulatory text, the proposed revisions are less prescriptive. Although diverters will generally use the provided formulas, there may be other acceptable means of determining the required measurement parameters.

Additionally, the proposed regulation clarifies the existing requirement for a “description of how the measurement method is implemented to meet the requirements of this chapter” (existing section 934, subdivision (b)(1)(C)). The proposed regulation identifies specific aspects of measurement methodologies that diverters must provide a description of, including how they aggregate hourly measurements to determine daily values and how they apportion or distinguish measurements by claimed water right and diversion type. This is necessary for understanding how diverters are accounting for their diversions and ensuring that general measurement datafile submissions do not double count water by reporting the same diversion

data for multiple claimed water rights. However, the Board recognizes that it may not be possible for apportioned data to meet the accuracy requirements described in the chapter, so proposed subdivision (a)(8) allows reasonable calculations and approximations for the purpose of apportioning, as long as the total measurement is accurate.

The existing regulations require diverters to provide maps showing the location of the lands and assessor's parcel numbers for each diverter participating in the measurement methodology, as well as information about their claimed water rights, including priority dates, places and purposes of use, and maximum allowable diversion amounts. The proposed regulation removes these requirements, as the Board has access to this information through other submittals and therefore it is not necessary for diverters to provide it again.

**934(b)** In the existing regulations, section 937 requires diverters to submit a report of water measuring device as a way of registering each measuring device with the Board. Device registry is likewise required in the proposed regulation, though the requirements have been relocated to be part of the Measurement Methodology section for clarity and conciseness. Diverters are still required to submit information about each of their measuring and data recording devices, the qualified individual who installed each device, and the claimed water rights associated with each device. However, the proposed regulation also requires diverters to provide the location of each measuring device and the parameter directly measured by the device. Identification of measurement location is necessary because it allows the Board to match each measuring device to a point of diversion, thereby providing critical information about where, when, and how much water is being diverted under each claimed water right. Identification of the parameter measured by the device is necessary because it better enables the Board to understand measurement methodologies and interpret data that are directly transmitted to the online reporting platform.

Unlike the existing regulations, the proposed revisions do not require specific information about the name of the diverter, serial numbers for measuring and data recording devices, device maintenance schedules, or calibration dates. The name and contact information of the diverter are already required as part of the measurement methodology, and do not need to be included again. Serial numbers are, by definition, unique to each device, and do not provide meaningful information about the type of device or its accuracy. Maintenance schedules depend on site- and device-specific factors, and maintenance requirements will vary between devices, diverters, and points of diversion. Calibration information does not provide meaningful information about the accuracy of the measuring device since calibration requirements can vary significantly between devices, with some devices needing to be recalibrated with each measurement, and others never needing to be recalibrated. Because information about serial numbers, maintenance schedules, and calibrations does not provide the Board with meaningful information about devices or diversions, it is not necessary for this information to be submitted when registering a device.

The proposed revisions also clarify the existing requirement to provide a "certification of accuracy" by instead requiring diverters to state the accuracy of the measuring device, as determined according to the equation provided in proposed subdivision (i) of section 933. The existing requirement is vague regarding what constitutes a "certification." Quantitative information relating to device accuracy, rather than non-standardized certifications, is necessary to improve the Board's ability to assess compliance with this chapter.

Similar to the existing regulations, newly installed devices must be registered by the submission deadline for the associated annual report or within 30 days of a request from the Deputy Director. Such a request may be asked of large diverters who are required to submit large diversion measurement data more frequently than annually. The proposed regulation further clarifies that currently installed and active measuring devices must be registered no later than the submission deadline for water year 2026 annual reports. In the transition from the previous online reporting platform to CalWATRS, existing device registries will be imported to the new online reporting platform. However, because the device registry under the proposed regulation differs slightly from the device registry under the existing regulations, diverters will need to update or re-register their measuring devices. Additionally, whereas the existing regulations require diverters to submit a new report of water measuring device within 30 days of installation, calibration, or request from the Board, and every five years thereafter, the proposed regulation changes this requirement to instead only require updated device registry by the submission deadline for the associated annual report or within 30 days of a request from the Deputy Director. Instead of re-submitting device registry information with every recalibration (which currently is required at least once every five years), the proposed regulation requires diverters to update the existing registry when the device is moved. This ensures that the Board has up-to-date information about the location of measurements without needing diverters to fully re-register their devices.

Other changes to the device registry requirements include updating language for consistency. All existing deadlines for submitting a report of water measuring device have passed, so it is necessary to update the dates. The existing regulations require information about “the person testing the performance of the device” (section 937, subdivision (b)(2)) and “the person who installed the measuring device” (section 937, subdivision (b)(11)). Because section 933, subdivision (g) of the existing regulations currently requires that installation of measuring devices be performed by a qualified individual, to improve clarity, the proposed regulation rephrases the requirements in the device registry to refer to the qualified individuals who installed and verified the accuracy of each device.

**934(c)** Subdivision (c) describes the deadlines and procedures for submitting and implementing measurement methodologies. The existing regulations require that all measuring devices be installed and measurement methods be implemented no later than January 1, 2018. Since that date has passed, it is necessary to update the date in the proposed regulation to allow diverters sufficient time to explain and document their measurement methodologies after the proposed regulation becomes effective. Because the previous deadline for filing and implementing a measurement method passed more than seven years ago, many diverters have already submitted a measurement method form containing much of the same information as is required in the proposed measurement methodology. Any required updates to existing measurement methods will generally be minimal and will reflect measuring and accounting practices that diverters are currently implementing. For diverters who are measuring their diversions using a measuring device (as defined in the existing regulations) at each point of diversion or otherwise not using a measurement method under the existing regulations, the proposed revisions require them to describe the practices they have already implemented but do not require them to add or implement additional measuring or accounting practices. Therefore, an updated filing deadline of January 31, 2027 is appropriate for allowing sufficient time for diverters to become accustomed to the new online reporting platform and to prepare a measurement methodology. With the expanded definition of “measuring device” under the proposed regulation, diverters

who previously measured under a measurement method will now be considered to be measuring using a measuring device. Therefore, the filing deadline of January 31, 2027 applies to any diverter who is subject to the proposed regulation and who uses a measuring device (as defined in the proposed regulation) before the start of water year 2027. For claimed water rights that do not currently measure using a measurement method or measuring device under the existing regulations, and for future claimed water rights, diverters must submit their measurement methodology by the relevant annual reporting deadline, or by January 31, 2027 (whichever is later), which allows sufficient time to become accustomed to the online reporting platform and to document their measurement methodology.

To ensure the measurement methodologies on file with the Board reflect the current measuring and accounting practices of diverters, some diverters may need to update their measurement methodologies after their initial filing. The proposed regulation requires that if diverters implement changes to their methodologies, they must update their measurement methodologies before the January 31 submission deadline for the relevant annual report. This allows diverters sufficient time to incorporate changes while also ensuring that filed methodologies are sufficiently up to date.

The existing regulations do not specify whether measurement methods must be approved before implementation, and instead only state that they can be rejected. Although this implies that measurement methods do not need to be approved prior to being implemented, the lack of an explicit statement to this effect led to confusion among diverters. It is therefore necessary to explicitly indicate that any measurement methodology submitted to the Board is automatically considered to be accepted unless the diverter is notified in writing that it has been rejected.

As in the existing regulations, the proposed regulation sets requirements for how measurement methodologies must be implemented but the updated regulation text reflects the revised definitions of measuring devices and measurement methodologies. Similar to the existing requirement for measurement methods (existing section 934, subdivision (j)), the proposed regulation requires measurement methodologies to be timely implemented. Additionally, the current requirement that a qualified individual must install and calibrate any measuring devices is maintained in the proposed regulation.

Under the existing regulations, measurement methods are valid for a maximum of five years, after which they must be renewed, with or without amendment. The intent of the existing requirement is to ensure that measurement methods are sufficiently up to date and that diverters review whether the specified method is still appropriate. However, the Board recognizes that most measurement methodologies will remain unchanged with each five-year renewal, and the requirement to prepare and submit a measurement methodology every five years is not necessary. Under the existing regulations, the expiration provision is overly burdensome in relation to its intent, and so the proposed regulation adjusts the requirement such that measurement methodologies do not expire but instead diverters will be required to update them as needed (as discussed in proposed paragraph (2) of this subdivision).

Section 934, subdivision (c)(6) in the proposed regulation requires that new measuring devices and associated infrastructure be installed such that they do not harm the environment or public trust resources. In the existing regulations, this requirement is implied through the alternative compliance criterion in section 935, subdivision (a), which allows diverters to use an alternative compliance approach if true compliance would “unreasonably affect public trust uses.” To

improve clarity and ensure that any new measuring devices are installed in a manner that avoids environmental impacts, the proposed regulation explicitly requires new devices and infrastructure to be installed in locations and manners that do not unreasonably affect public trust resources or the environment.

**934(d)** The existing regulations require qualified individuals to recalibrate measuring devices at least every five years (section 933, subdivision (h)). For diverters using a measurement method, qualified individuals must perform field testing every five years to ensure the method meets accuracy standards (existing section 934, subdivision (g)). However, Water Code section 1840, subdivision (a)(1)(A) requires diverters to provide evidence every five years that each device is functioning properly. During the Division's outreach efforts, diverters reported that the mandatory recalibration requirement is overly burdensome and, in some cases, goes against manufacturer recommendations or requires the dismantling of diversion infrastructure. The intent of the provision is to ensure that devices are functioning properly and are accurately measuring diversions, but the current language adds additional, unintended burdens on diverters. To better align requirements with the statute and allow flexibility in how diverters verify the accuracy of their devices, the proposed regulation changes the recalibration requirement to instead require that diverters submit evidence of proper functioning every five years that is certified by a qualified individual. Such evidence may include recalibration certification or field testing reports, but it could also include manufacturer guarantees of proper functioning or any other appropriate evidence. The proposed revisions meet the original intent of the existing requirements while allowing flexibility in how diverters meet the requirements. Additionally, rather than requiring submission of this evidence "upon installation" of the measuring device, as described in section 933, subdivision (h) of the existing regulations, the proposed revisions extend the initial deadline for evidence of proper functioning to the first annual report after the measuring device was installed.

**934(e)** Under the existing regulations, the Deputy Director can review, request additional information for, require changes to, and reject measurement methods (section 934, subdivisions (b) and (h)). For inadequate measurement methods, the Division can require diverters to instead install measuring devices at each point of diversion. For diversions measured with measuring devices, the Division can perform field inspections to verify if measuring devices are properly installed and meet accuracy requirements. These provisions ensure that all submitted and implemented measurement methodologies meet the requirements of chapter 2.8 and provide the Board with high quality measurement data. The proposed regulation uses the updated definitions of measuring devices and measurement methodologies, but otherwise maintains the same authority to inspect, review, request additional information for, require changes to, and reject measurement methodologies.

The updated language outlines the review process which begins with review of the measurement methodology form submitted to the Board, then includes the Board's ability to conduct audits of the methodology's implementation, as appropriate, before allowing the Board to meet informally with participants or sponsors of a measurement methodology to suggest modifications. The final stages of review allow the Board to formally require changes, approve the methodology, or reject the methodology. The updated text is necessary to align the review process for measurement methodologies and alternative compliance plans as well as to clarify the review process. Added text also clarifies that diverters will have reasonable time to correct deficiencies and that the rejection of a measurement methodology will not retroactively affect

compliance prior to its review. As discussed for subdivision (c) of this section, diverters are expected to implement measurement methodologies without waiting for written approval from the Board. However, commenters expressed concern that their methodologies may be found to be deficient after implementing them. Therefore, it is necessary to explicitly state that measurement methodologies will not be retroactively declared non-compliant for periods before the methodology was reviewed.

**934(f)** The content of this subdivision was previously included in existing section 934, subdivision (i)(3). The language has been updated for clarity and moved to its own subdivision as subdivision (f) of this section.

**Removed Subdivisions:** Subdivisions (e) and (f) of existing section 933 and subdivision (f) of existing section 934 discuss requirements for certifying that a measuring device or measurement method is accurate, including through periodic field testing and inspection. These subdivisions have been removed in the proposed regulation because they are not necessary to the Board's understanding of diversions and diversion measurements. In the proposed regulation, section 933 already specifies accuracy requirements that diverters are required to meet, and section 934 already requires diverters to submit evidence of proper functioning. Requiring diverters to also periodically send confirmation of accuracy and inspection does not improve the Board's ability to understand datafile submissions and therefore can be removed.

Subdivision (c) of existing section 934 includes additional measurement requirements for diverters who measure collectively at a shared point of measurement, with paragraph (1) requiring an explanation of how diversion measurements are apportioned by claimed water right. In the proposed regulation, this requirement is incorporated into section 934, subdivision (a), removing the existing requirement that the diverter(s) explain how apportionments will be done "during periods of insufficient supply while preventing injury to any other legal user of water or to public trust resources" (existing section 934, subdivision (c)(1)). By removing this clause, the proposed regulation is clearer and more concise without substantively changing the information submitted to the Board. Section 934, subdivision (c)(2) of the existing regulations is being removed in the proposed regulation because it requires diverters to provide detailed irrigation descriptions that do not relate to diversion measurements. Those requirements are not necessary for the Board's understanding of the volume and flow rate of water diverted so they are also proposed to be removed.

#### *Deletions from the initially noticed draft regulation text*

**934(a)** Rather than including a separate subdivision requiring submissions pursuant to chapter 2.8 to be electronically submitted to the Board's online reporting platform, this requirement has been restated for each submission requirement for clarity.

### **Section 935: Submitting Measurement Data**

The purpose of section 935 is to describe the required formats and procedures for submitting measurement data under chapter 2.8. Under the existing regulations, instructions have been criticized as being vague, with different diverters interpreting requirements differently and submitting non-standardized datafiles to the Board. During the 2020 to 2022 drought, data received through chapter 2.8 lacked sufficient standardization for the Board to most effectively use it for data-based decision-making, and the Board ultimately needed to rely on informational orders to supplement diversion data (State Water Board, 2021). In 2023 alone, diverters

submitted measurement data in over 1,400 unique formats, severely limiting the Board's ability to systematically analyze the measurement data as a collective dataset. Standardizing the data requirements submitted to the Board, including the formats, file types, and required parameters, will resolve this issue.

**935(a)** Recognizing that the updated measurement requirements of the proposed regulation are expected to become effective at the start of water year 2027, general measurement data collected during water year 2026 may either be submitted in accordance with the existing regulations, as reproduced in proposed sections 939.2 through 939.6, or in accordance with the updated requirements. Data collected beginning water year 2027 must be submitted in accordance with the proposed regulation.

The existing regulations do not clearly specify what submitted measurement data must include. As discussed regarding section 933 of the proposed regulation, required measurement parameters are inconsistently described in the existing regulations, with some sections requiring measurement of just the volume of water diverted, others allowing measurement of either volume, flow rate, velocity, or elevation, and other sections requiring the measurement of each of these parameters. As for what must be included in a datafile submission, the existing regulations simply state that diverters must "submit the data from each measuring device" (existing section 933, subdivision (b)(2)(A)). The requirements in proposed subdivision (a) specify which parameters must be reported, and require diverters to identify the applicable units, which is necessary for allowing the Board to aggregate the general measurement data into a comprehensive and robust database of diversion information. By requiring general measurement datafiles to be standardized in terms of structure and contents and submitted in a machine-readable format, the proposed regulation will result in data that can better be used for systematic, mass analysis.

The proposed regulation also clarifies that general measurement data must reflect diversions, withdrawals, and releases occurring at each measurement location, point of diversion, or location where water is withdrawn or released from a reservoir, as applicable, and for each claimed water right. Requiring that data reflect diversions occurring at each measurement location, point of diversion, or location where water is withdrawn or released from the reservoir is necessary for ensuring correct interpretation of measurement data and understanding where, when, and how much water is diverted, withdrawn, or released. Recognizing that data for some measurement parameters may rely on raw device output collected from multiple measuring devices located in different locations (for example, diversions to storage may be calculated using a mass balance based on changes in storage and withdrawals and releases from reservoirs), it is necessary to allow diverters to provide data associated with points of diversion or places of withdrawal or release, instead of strictly requiring reporting by measurement location. Requirements for measurement data to reflect each claimed water right were included in the existing regulations for how diverters need to measure (section 934, subdivision (a)), but were not specified in the "Data Submittal" subdivisions for either measuring devices or measurement methods (existing section 933, subdivision (b)(2) and section 934, subdivision (d)(2), respectively). As a result, many diverters do not parse out diversions by claimed water right, which in turn has led to datafiles seemingly overstating the amount of water diverted per claimed water right. If multiple claimed water rights jointly measure diversions but do not apportion measurement data, then the same water ends up being counted multiple times. This leads to exaggerated representations of water demand which can then lead to inaccurate

calculations of water availability. To avoid double counting water diversions, it is necessary to specify that general measurement datafiles must only include data for the claimed water right being reported.

The proposed regulatory text allows diverters to aggregate hourly measurements into daily values. While measurements must be collected hourly to ensure adequate monitoring of the largest diversions and reservoirs and to ensure accurate measurements, the industry standard, as evidenced by published data from the U.S. Geological Survey, is to aggregate data into daily values for reporting and publication (U.S. Geological Survey, 2024). While diverters are not required to aggregate sub-daily data into daily values, diverters have mentioned a desire for this flexibility during past outreach efforts. Inclusion of this provision is necessary to indicate to diverters that it is acceptable to report daily values of hourly measurements.

Under the existing regulations, measurement data must be submitted “in a format retrievable and viewable using Microsoft Excel, Microsoft Access, or other software program authorized by the Deputy Director” (existing section 933, subdivision (b)(1)). There is no mention of how the measurement datafiles should be formatted, what columns to include, which parameters are required, or how the data should be submitted. This has led to inconsistency among diverters in each of these aspects. To improve data standardization and to make datafiles machine-readable for systematic, mass analysis of statewide water availability and demand, it is necessary to specify how data are to be formatted. Therefore, the proposed regulation requires that general measurement data be submitted either by uploading data through a specified template or by transmitting data directly to the Board’s online reporting platform. Reporting templates will be provided by the Board and will include fields for each of the required measurement values specified in the regulation, thereby allowing consistent formatting for all data submissions. This revision is consistent with the Board’s existing requirements for its other programs, including programs regulating drinking water, water quality, and groundwater remediation, which require standardized data submission (Division of Drinking Water, 2021; State Water Board, 2024; State Water Board, 2005). The proposed requirements in this subdivision are intended to align diversion measurement data submissions with data standards already in use by other programs.

Consistent with the existing regulations, under the proposed revisions, diverters must submit their general measurement datafiles with their annual reports in accordance with chapter 2.7 and within 30 days of a request or order by the Board. The proposed revisions also require raw device output be made available upon request. Commenters noted confusion about whether datafiles were supposed to include raw device output or not. This update provides the necessary context to clarify that raw device output may be requested by the Board, but otherwise does not need to be submitted.

**935(b)** To clarify submission requirements for the time period when the proposed regulation first becomes effective, it is necessary to state that large diversion measurement data collected under the existing regulations must be submitted either in accordance with the existing regulations, as reproduced in proposed sections 939.2 through 939.6, or in accordance with the updated requirements. Beginning October 1, 2026, large diversion measurement data must be submitted in accordance with the updated requirements of the proposed regulation.

The existing regulations do not explicitly specify what data must be reported in accordance with the large diversion requirements (formerly called “telemetry requirements”). The existing

requirements simply state that diverters “shall provide telemetered diversion data via a public website” on a weekly or more frequent basis (section 934, subdivision (b)(4)(C)). The proposed revisions clarify that the data reported under large diversion submissions must reflect the values that must be measured pursuant to the large diversion requirements of section 933, subdivisions (b) and (c) and must include the applicable units. This is necessary to standardize the measured parameters and data submitted to the Board. In general, diverters subject to the large diversion requirements will be required to measure on an hourly basis and submit data on a weekly basis. As is currently allowed by the existing regulations, the data submitted under the large diversion requirements may be aggregated from hourly measurements into daily values.

This subdivision explicitly clarifies that large diversion requirements are an additional requirement for a subset of diverters, and that diverters who are subject to the large diversion requirements are still subject to the general requirement for submitting a general measurement datafile at the end of the year. Under the existing regulations, this is implied but not explicitly stated, and as a result, some large diverters do not submit an annual datafile. Because of the allowance for provisional and non-apportioned data for the large diversion submissions, diverters who are subject to large diversion requirements must submit a final general measurement datafile at the end of the year correcting any errors and ensuring that the measurement data meet all data standards and accuracy requirements pursuant to chapter 2.8.

The proposed regulation also allows for the submittal of provisional data, provided the provisional data are clearly labeled. Under the existing regulations, large diversion data are held to the same accuracy requirements as data submitted in a datafile at the end of the year. However, this presents a substantial burden on large diverters to review and quality assure their data on a weekly basis. Allowing diverters to submit provisional data to satisfy large diversion requirements satisfies the Board’s need for more frequent reporting from larger diverters (which is especially critical during times of water scarcity), while also allowing greater flexibility for the diverter in circumstances where the data require additional quality assurance and review. Data submitted as part of a general measurement datafile at the end of the year, however, must be finalized and nonprovisional.

Similarly, the weekly data submission schedule required for diverters with large diversions may preclude the ability of diverters to fully apportion measurement data to individual claimed water rights. Paragraph (1)(B) of this subdivision in the proposed regulation requires diverters to identify all claimed water rights that are represented by the weekly data submission in order to prevent double counting of diversions, but does not require parsing out large diversion submissions per claimed water right. Data submitted as a datafile at the end of the year, however, must be apportioned.

Large diversion measurement data also do not need to be apportioned according to type of diversion. As discussed for section 933, subdivision (b), it is generally not feasible to distinguish direct diversions from diversions to storage on a weekly basis. Commenters expressed concern that parsing large diversion submissions according to type of diversion would require extensive post-processing. Therefore, it is necessary to explicitly state that this distinction is not required or expected on a weekly basis.

As with general measurement datafiles, requiring that large diversion submissions reflect diversions occurring at each measurement location, point of diversion, or location where water leaves a qualifying reservoir is necessary for ensuring correct interpretation of measurement

data and understanding where, when, and how much water is diverted or removed from a reservoir.

Under the existing regulations, telemetry data must be posted to a “public website [...] in a format retrievable and viewable using Microsoft Excel, Microsoft Access, or other software program authorized by the Deputy Director” (existing section 933, subdivision (b)(4)). However, the existing regulations do not specify which website the data must be posted to. Consequently, large diversion measurement data are posted to a wide range of unique websites that the Board must navigate to access the data, and often diverters do not provide the exact web address of the posted data. To increase efficient access to and use of near-real-time data in large-scale analyses, it is necessary that diverters post their data in a consistent location. Beginning October 1, 2027, diverters subject to large diversion requirements must post their data to the Board’s online reporting platform, either through a template provided by the Board or through direct transmission from their measuring device. Until then, diverters may continue posting to their individual websites if they choose, but they must provide the exact internet location of the large diversion measurement data for the Board to easily find and access. The proposed regulation allows the Deputy Director to approve other websites, in addition to the Board’s online reporting platform, where diverters can post their data (both before and after October 1, 2027) to allow additional flexibility in how and where diverters submit their large diversion measurement data. The State Water Board acknowledges that many diverters currently post to a small number of commonly-used public websites to satisfy existing telemetry requirements. The Deputy Director’s ability to approve websites for large diversion submissions is intended to allow these diverters to continue posting to these websites, as long as the data can be retrieved by the Board’s online reporting platform and identified with the appropriate measuring device or measurement location. The intent of this provision is not to allow for numerous websites that each only provide data for a limited number of diverters or claimed water rights, but rather to provide flexibility while recognizing that a small set of websites are already being used by a large number of diverters.

The delayed implementation of large diversion submission requirements allows diverters sufficient time to adjust to the new reporting platform and, if desired, connect measuring devices for direct data transmission, while still ensuring the Board is able to access the large diversion measurement data. By allowing the use of data templates and direct transmission to the Board’s online reporting platform, the large diversion submission requirements have the added benefits of alleviating the regulatory requirement for diverters to maintain websites dedicated to hosting large diversion measurement data and of simplifying data submission requirements such that both general measurement datafiles and large diversion submissions are submitted through the same online reporting platform.

The existing regulations also require diverters subject to the large diversion requirements to post data on a weekly basis. In response to comments received during the rulemaking process, the proposed regulation maintains this same submission schedule for large diversion submissions but clarifies that there can be up to a 7-day lag between the most recent measurement and the date when large diversion measurement data are posted. This is necessary to provide diverters sufficient time to process data or convert it into the required format and parameters, as necessary, while still providing the Board with sufficiently current data.

**935(c)** The existing regulations require diverters to keep records of data from each measuring device for a minimum of 10 years (section 933, subdivision (b)(3)). This requirement is maintained in the proposed regulation, with the clarification that the “data from each measuring device” includes only the raw, unaltered output from measuring devices. This clarification is necessary because the existing language of the regulations does not make any distinction between raw device output, which may include parameters like water elevation or velocity, and the submitted measurement data, which must include the volume and rate of water diverted. Under the proposed regulation, only records of raw device output must be retained by the diverter; the Board will retain records of submitted measurement data through its online reporting platform. This change should simplify procedures for reporters, who previously may have been confused by the need to submit both raw device output as well as final datafiles. Raw device output may have errors, or time periods when a measuring device was not functioning (non-functioning reporting devices are common; debris or sediment can block transducers, electrical issues can occur, animals may destroy equipment, etc.). The proposed regulation requires that the raw device output be kept by the diverter, but the Board will only require the submission of final or cleaned-up versions of the measurement data at the end of each year (the provisional reporting described above is complimentary to this revision).

*Deletions from the initially noticed draft regulation text*

**935(a)** In the initially noticed draft regulation, subdivision (a) provided an overview of what materials were required to be submitted under this section. In later updates, this subdivision was removed as being unnecessary since the required submissions were described in subsequent subdivisions.

**935(c)** In the initially noticed draft regulation, diverters who used a measurement methodology that was different than what they had previously submitted to the Board would need to submit supplementary materials with their general measurement datafiles explaining what measurement methodology was used instead. This requirement was removed in subsequent updates because requirements in section 934 require diverters to update their measurement methodologies as necessary. Therefore, it is not necessary for diverters to also submit supplementary materials with duplicative information.

**Section 936: Alternative Compliance with Water Measurement Requirements**

The existing regulations set measuring, accounting, and reporting requirements that ensure diversion data are collected at sufficient frequency and accuracy to allow the Board to effectively manage water resources and administer the water rights priority system. However, the Board recognizes that the requirements may not be universally appropriate for all diversion scenarios. The alternative compliance pathway is intended to allow flexibility for diverters who are unable to adhere to all requirements set forth in the regulations or who have more effective or efficient ways of measuring. By allowing for the development and implementation of alternative compliance plans, section 936 of the proposed regulation provides diverters with an opportunity for relief from infeasible requirements, or from scenarios where the data would not be useful, while still ensuring they provide useful data and information to the Board.

**936(a)** On August 5, 2025, the State Water Board adopted Resolution No. 2025-0021, which included a finding that alternative compliance plans that provide a more effective or efficient way of measuring while ensuring accurate data on water diversion and use meet the criteria of Water Code section 1840, subdivision (b)(1), which allows for modification of measurement

requirements. As with the existing regulations, under the proposed revisions, diverters may propose alternative compliance plans to more effectively or efficiently measure their diversions than would be possible through strict compliance. In addition, the proposed revisions clarify that the list of acceptable scenarios where alternative compliance would be appropriate—as described in section 935, subdivision (a) of the existing regulations—is non-exhaustive. The intent of the proposed regulation is for diverters to provide the Board with accurate and timely diversion information that is of sufficient quality for the Board to manage water resources and administer the water rights priority system. If diverters can meet that intent through means other than what is described in proposed sections 933 through 935, and they can demonstrate that their proposed approach is more effective or efficient for their unique diversion scenario, then the Board is open to accepting alternative compliance plans from these diverters. Diverters must attempt to meet as many requirements of sections 933 through 935 as possible, but the alternative compliance pathway allows for flexibility and possible relief from some requirements as necessary. However, any alternative compliance plan is subject to the Division’s review and rejection if it is determined to be insufficient or inadequate for meeting the Board’s data needs. Because every diversion scenario is unique, it is not appropriate to define what is “sufficiently accurate and timely” in reference to alternative compliance, but rather it is necessary to specify that diverters must fulfill the requirements of chapter 2.8 to the extent practicable.

**936(b)** As with measurement methodologies, measurement under an alternative compliance plan can cover a single claimed water right or multiple claimed water rights, including a combination of claimed water rights held by multiple diverters. This is allowed under the existing regulations, and for clarity has been put in its own subdivision in the proposed regulation.

**936(c)** The existing regulations describe the content that must be included in an alternative compliance plan. In general, most required plan components remain the same or similar between the existing regulations and the proposed regulation. The proposed changes are intended to improve the Board’s understanding of the rate and volume of water diverted under each claimed water right without necessarily asking the diverter to provide information that may not be needed.

Under the existing regulations, diverters pursuing alternative compliance need to list each of the beneficial uses for which water is diverted. The Board already has access to this information through other requirements and regulations, and therefore it is unnecessary to include it as a requirement for alternative compliance plans. Additionally, diverters must currently include an implementation budget and a list of all permits needed to implement their alternative compliance plans. Diverters claiming an unreasonable financial burden are also required to submit a cost analysis. This information does not improve the Board’s ability to accept or understand measurement data and its removal will not affect the availability or quality of measurement data received under alternative compliance plans. The existing regulations also require topographic maps or aerial photos of the area covered by the alternative compliance plan, whereas the proposed revisions require a clearly labeled map, without being so prescriptive as to require a topographic map. As new digital mapping technology has emerged, it will be easier for diverters to accurately identify and label the locations of their points of diversion, measuring devices, and places of use. The updated language is more streamlined to align with this development.

Other changes to the contents of alternative compliance plans are intended to clarify diversion measurement requirements that are not sufficiently explicit in the alternative compliance section of the existing regulations. As with regular compliance under sections 933 through 935 of the

proposed regulation, diverters pursuing alternative compliance will need to describe how they are measuring their diversions, including identifying the measurement location, describing any calculations, conversions, formulas, and quality assurance protocols, and describing how measurements will be apportioned to each claimed water right. This information is necessary to ensure that diversions are being measured appropriately and meet the requirements of chapter 2.8 to the extent possible. Because alternative compliance with the requirements of the chapter allows for flexibility and relief from some requirements, diverters must describe which requirements they are seeking relief from and what they propose to do instead. This could include relief from requirements for measurement frequency, measurement accuracy, or, for large diversions, submission frequency. Additionally, the proposed regulation specifies that diverters must include a description of how their alternative measurement methodology accounts for any water losses that may occur between the point of diversion (or location where water is withdrawn or released from a qualifying reservoir) and the point of measurement. Because alternative compliance plans could contain nonconventional measurement approaches, including use of remote sensing technologies, this provision is necessary to ensure that the data collected under such methods are representative of the actual diversions and do not over- or under-count the amount of water diverted, withdrawn, or released.

**936(d)** The existing regulations require alternative compliance plans to generally meet the requirements of sections 933 and 934. To clarify this requirement, the proposed regulation specifies that diverters pursuing alternative compliance must also register each of their devices in accordance with proposed section 934, subdivision (b). If the alternative compliance plan describes a measurement methodology that does not use any measuring devices, diverters will need to explicitly indicate that no devices are used. This information is important for allowing the Board to correctly interpret measurement data provided in accordance with alternative compliance plans and to understand where, when, and how much water is being diverted.

**936(e)** The existing regulations do not describe data submission procedures or schedules for diverters who measure their diversions under an alternative compliance plan. Instead, existing section 935, subdivision (b)(2) states that diverters pursuing alternative compliance need to meet the requirements of chapter 2.8 and achieve alternative compliance “for each of the requirements of sections 933 and 934.” In the existing regulations, sections 933 and 934 describe the data submission requirements and procedures for diverters who measure using measuring devices and measurement methods, respectively. During the Division’s outreach efforts, many diverters reported that they were unaware that they needed to submit measurement data if they measure under an alternative compliance plan, despite datafiles being required under both sections 933 and 934. To clarify submission obligations and ensure that the Board receives data that are consistently formatted, it is necessary to explicitly state that general measurement datafiles and large diversion submissions must still be submitted by diverters pursuing alternative compliance. However, the Board understands that it may not be feasible for all applicable diverters to strictly adhere to the large diversion requirement to provide data on a weekly basis. Therefore, diverters may propose and submit large diversion measurement data according to an alternative schedule.

**936(f)** Subdivision (f) describes the deadlines and procedures for submitting and implementing alternative compliance plans. The existing regulations require that all alternative compliance plans be filed no later than January 1, 2018. Since that date has passed, it is necessary to update the deadline in the proposed regulation to allow diverters sufficient time to prepare and

submit their alternative compliance plans after the proposed regulation becomes effective. Because the previous filing deadline for alternative compliance plans passed more than seven years ago, most diverters intending to pursue alternative compliance have already submitted an alternative compliance plan. As discussed with respect to subdivision (c) of this section, the content of the alternative compliance plans is largely the same under the proposed regulation as under the existing regulations. Any required updates to existing alternate compliance plans will generally be minimal and will reflect measuring and accounting practices that diverters are currently implementing. Therefore, an updated filing deadline of January 31, 2027 is appropriate for allowing sufficient time for diverters to become accustomed to the new online reporting platform and to prepare alternative compliance plans. For any future alternative compliance plans, diverters must submit their alternative compliance plan before they begin implementing it or by January 31, 2027, whichever is later.

To ensure the alternative compliance plans on file with the Board reflect the current measuring and accounting practices of diverters, it is necessary for diverters to update their alternative compliance plans as needed, including if they make any changes to the methodology, area, measurement location, or participants included in a previously submitted plan. The proposed regulation requires that if diverters implement changes to how they measure and report data, they must update their alternative compliance plan before the January 31 submission deadline for annual reports, which allows diverters enough time to incorporate changes while also ensuring that filed plans are sufficiently up to date.

Through the Division's outreach efforts, diverters commented that they were unsure when alternative compliance plans became effective because they did not receive any notice that their proposed plans had been approved. The existing regulations do not state that plans need to be approved and instead only state that they can be rejected. Because commenters raised concerns that the lack of an explicit statement to this effect has caused confusion and may have delayed implementing alternative compliance plans, it is necessary to explicitly describe in section 936, subdivision (f)(3) of the proposed regulation that any alternative compliance plan submitted to the Board is automatically considered accepted unless the diverter is notified in writing that the plan has been rejected.

Under the existing regulations, alternative compliance plans are valid for a maximum of five years, after which they must be renewed, with or without amendment (existing section 935, subdivision (k)). The intent of the existing requirement is to ensure that alternative compliance plans are sufficiently up to date and that diverters review whether the specified alternative compliance approach is still appropriate. However, the Board recognizes that most alternative compliance plans will remain unchanged with each five-year renewal, and the requirement to prepare and submit a plan every five years may not be necessary. Because this requirement may be overly burdensome in relation to its intent, it is appropriate to remove the expiration provisions for alternative compliance plans and instead require diverters to review their existing alternative compliance plans every five years, but only update them as necessary; they need not re-prepare and re-submit the same alternative compliance plan.

The paragraph describing the public posting of alternative compliance plans was moved from section 935, subdivision (g) in the existing regulations to section 936, subdivision (f)(5) in the proposed regulation to improve the flow and structure of the regulation.

**936(g)** Under the existing regulations, the Deputy Director can review, audit, request additional information for, require evidence of implementation of, require changes to, and reject alternative compliance plans (section 935, subdivision (h)). This ensures that all submitted and implemented plans meet the requirements of chapter 2.8 and provide the Board with high quality measurement data. The proposed regulation clarifies that “evidence of plan implementation” may include the Division conducting field inspections and requesting information as needed to confirm that plans have been properly implemented and meet all requirements.

The updated language outlines the review process and aligns it with the review process for measurement methodologies. Review begins with the alternative compliance plan form submitted to the Board, then includes the Board’s ability to make findings of whether alternative compliance is appropriate, before allowing the Board to conduct audits of the plan’s implementation. As in the existing regulations, the Board may also meet informally with participants or sponsors of an alternative compliance plan to suggest modifications. The final stages of review allow the Board to formally require changes, approve the alternative compliance plan, or reject the alternative compliance plan. Because of the inherent flexibility of alternative compliance plans as a pathway for meeting the requirements of chapter 2.8, it may be necessary for the Division to impose conditions on plan approval to ensure that diverters provide sufficiently accurate and timely diversion measurement data. Added language also clarifies that diverters will have reasonable time to correct deficiencies and that rejection of an alternative compliance plan will not retroactively affect compliance prior to the review of the plan. The updated language is necessary to align the review process for alternative compliance plans and measurement methodologies as well as to clarify the review process.

Previous language also allowed the Deputy Director to reject an alternative compliance plan renewal for failure to implement a previously submitted plan (section 935, subdivision (k)(3)). Since the proposed revisions no longer require alternative compliance plans to be renewed, this provision is unnecessary and can be removed.

**936(h)** The content of this subdivision was previously included in existing section 935, subdivision (k)(3). The language has been updated for clarity and moved to its own subdivision as subdivision (h) of this section.

**Removed Subdivisions:** Section 935, subdivision (d) of the existing regulations requires that diverters report on implementation progress for their alternative compliance plans. This provision is proposed to be removed. If plans are implemented according to their included schedules, then the Board does not need additional confirmation of the implementation status. If there are schedule delays, then diverters must update their alternative compliance plans to reflect the updated schedule—according to section 936, subdivision (f) of the proposed regulation. Accordingly, the requirement in section 935, subdivision (d) is unnecessary and can be removed. Section 935, subdivision (j) of the existing regulations expressly allows for reconsideration of any decision or order issued under existing section 935. This subdivision has been moved to section 939, such that it expressly applies to the entirety of Chapter 2.8.

### Section 937: Temporary Exemption from Measurement Requirements

The purpose of section 937 is to describe when diverters may be temporarily exempt from measurement requirements. There are four primary exemption categories: requests for

additional time; exemption from submitting data for diverters who do not divert and do not withdraw or release water from qualifying reservoirs; exemption from submitting data if diversion infrastructure or withdrawal or release infrastructure is destroyed or rendered inoperable; and exemption from measurement if measuring devices or associated infrastructure are destroyed or rendered inoperable. The latter three categories are entirely new in the proposed regulation and provide increased flexibility to diverters.

**937(a)** Although diverters may be subject to or exempted from specific measurement requirements, other parts of the Water Code and other existing regulations remain in effect, including the requirement that all diverters complete and submit annual reports in accordance with chapter 2.7. This subdivision is necessary to clarify that temporary measurement exemptions do not affect the diverter's annual reporting requirements.

**937(b)** The ability to request additional time to comply with the requirements of this chapter has been moved from section 936 of the existing regulations to section 937, subdivision (b) of the proposed regulation. The text has been updated for clarity and consistency, but all requirements under this provision remain the same.

**937(c)** The existing regulations imply, but do not state explicitly, that diverters are required to submit datafiles even if they did not divert, withdraw, or release any water during the twelve-month reporting period. Since the regulations became effective, approximately 85 percent of diverters who did not divert in a given year also failed to submit a datafile, which can be attributed to confusion about submission requirements in cases of no diversions. Requiring submissions where no diversions occurred also results in unnecessary costs to the State, as the Board must save, curate, and manage datafiles with no data in them. In the proposed regulation, if no diversions and no withdrawals or releases from qualifying reservoirs are made under their claimed water right during the entire twelve-month reporting period, the diverter is not required to submit a general measurement datafile. Diverters who use this temporary exemption must correspondingly indicate in their associated annual report for the claimed water right that no diversions or withdrawals or releases were made. Should any diversion or any withdrawal or release from a qualifying reservoir occur during a twelve-month reporting period, the submission requirements described in section 935 apply for that reporting period. Paragraph (2) of this proposed subdivision describes how this exemption applies to diverters subject to large diversion requirements where no diversions and no withdrawals or releases from qualifying reservoirs are made during the corresponding large diversion reporting period. This subdivision is necessary to provide clarity to diverters and make reporting requirements more efficient and simpler to implement.

**937(d)** Under the existing regulations, there are no temporary exemptions for diverters whose diversion infrastructure or withdrawal or release infrastructure has been destroyed. During the Division's outreach, diverters raised concerns about how they are expected to comply if a fire or flood destroys their pumps or other equipment. The proposed regulation adds a provision that if a natural disaster, emergency, or other unforeseen circumstance destroys the diversion infrastructure or withdrawal or release infrastructure or otherwise prevents diversions or withdrawals or releases from qualifying reservoirs, then the diverter is not required to submit diversion data or withdrawal or release data, respectively, for the portion of the reporting period during which they are unable to divert or withdraw or release from a qualifying reservoir. The diverter must still indicate in the annual report for the affected claimed water right that the diversion was inoperable for a specified period. Once diversions or withdrawals or releases from

qualifying reservoirs resume, the diverter is responsible for all measuring and reporting requirements of the chapter. This exemption is necessary to make reporting more efficient and easier to implement for diverters and to provide some relief in extenuating circumstances.

**937(e)** Under the existing regulations, there are no temporary exemptions for diverters whose measuring devices are destroyed. The proposed regulation adds a provision that if a natural disaster or other catastrophic event destroys measuring devices or the associated infrastructure, then the diverter may request a temporary exemption from measuring the affected measurement parameters for up to 180 days. Whereas the other temporary exemptions described in this section just require notification of exemption eligibility during the reporting period, exemptions for nonoperational measuring devices require diverters to submit requests. This is necessary to ensure that diverters take appropriate steps to promptly repair measuring devices and restore them to operational condition as quickly as is reasonable so that diversions can continue to be accurately measured. Requests must be submitted within 30 days of the measuring device becoming inoperable, which allows the diverter sufficient time to assess the damage and submit the request. The 180-day temporary exemption is intended to allow sufficient time to repair or replace the measuring device. If the Deputy Director does not issue an approval or rejection within 30 days of receipt of the temporary exemption request, the temporary exemption request is considered provisionally approved up to 180 days from the date the request was submitted or until the Deputy Director issues a written approval or rejection. This is intended to provide extra flexibility for both the diverter and the Board, in the event that the request cannot be reviewed within 30 days. Depending on the diversion and the location, 180 days may not provide adequate time for measuring devices to be repaired or replaced. The proposed provision allows diverters to submit a request to extend the temporary exemption as appropriate. This subdivision is necessary to make reporting more efficient and easier to implement for diverters and to provide some relief in extenuating circumstances.

### Section 938: Threshold and Submission Schedule Adjustment

Water availability and demand vary greatly between watersheds and subwatersheds across California. A diversion occurring in one area may have a more substantial impact on water supplies than a diversion of the same size occurring in a different area. Similarly, other conditions affecting the ability to measure diversions, including access to electricity or internet, may vary significantly across the state. Therefore, the need for measurement data and the value of the data in relation to the cost and effort of data collection will likewise vary between regions and watersheds. The purpose of the proposed Threshold and Submission Schedule Adjustment section is to allow the Deputy Director to adjust requirements such that the benefits of diversion measurement data better align with the technical and financial costs of measuring. The section is intended to avoid a “one-size-fits-all” approach for the entirety of California and instead tailor requirements to suit specific watersheds, as needed. The proposed regulation updates existing processes and expands their applicability from what is already provided in the existing regulations.

**938(a)** The definition of “threshold” is necessary to concisely describe how different requirements apply to different diverters depending on their claimed water rights. To improve the readability of the text and reduce repetition, “threshold” is used as a general umbrella term to collectively refer to thresholds for general applicability, large diversion applicability, qualifying reservoirs, and measurement frequencies.

**938(b)** The definition of “submission schedule” is necessary to concisely describe when data must be submitted. To improve the readability of the text and reduce repetition, “submission schedule” is used as a general umbrella term to collectively refer to general measurement datafile submission schedules and large diversion submission schedules.

**938(c)** The intent of this provision is to tailor reporting requirements in watersheds or portions thereof to focus on those diversions that have the greatest effect on stream flow and water availability. However, the existing regulations only allow adjustments to the 10-acre-foot general applicability threshold that determines who is subject to chapter 2.8 and to the threshold percentage of historical mean monthly stream flow that determines who is subject to large diversion requirements, and do not allow for other adjustments such as adjustments to measurement frequencies or submission schedules.

*General Applicability Thresholds:* Under the existing regulations and in Water Code section 1840, subdivision (b)(2), the Deputy Director can raise the general applicability threshold above 10 acre-feet per year. This provision is maintained in the proposed regulation but is reworded to clarify that the general applicability threshold cannot be lowered below 10 acre-feet per year.

The existing regulations refer to “watersheds or subwatersheds,” but the latter term is not clearly defined. For clarity, the term “subwatershed” has been replaced with “portion thereof” to be more inclusive of any areas that share hydrologic conditions and would therefore be appropriate to base a threshold or schedule adjustment upon.

*Large Diversion Applicability Thresholds:* Under section 933, subdivision (b)(4)(A)(iv) in the existing regulations, the Deputy Director can adjust who is subject to large diversion requirements by adjusting the threshold percentage of historical mean monthly stream flow. As previously discussed, the proposed regulation removes all reference to requirements based on historical mean monthly stream flow. Instead, section 938 simplifies the process of adjusting the large diversion applicability thresholds, which has the added benefit of improving clarity and reducing confusion among diverters.

*Frequency Thresholds:* Under the existing regulations, there is no way to change the measurement frequency requirements without exempting an entire size class of diverters. For example, to adjust the requirements for diverters who are required to measure their diversions daily, the Deputy Director only has the option of either requiring them to measure on a daily basis or not requiring these diverters to measure at all. Under the proposed regulation, measurement frequency thresholds can be adjusted to instead require monthly or weekly measurement, which may better balance the needs and burdens associated with diversion measurement. Added flexibility is needed to ensure the Board captures useful information without creating an inefficient or infeasible workload for the diverter. However, the Board recognizes that many already-installed measuring devices may be limited in how frequently they can measure. Therefore, this subdivision sets a maximum measurement frequency such that diverters, excluding those subject to large diversion requirements, will not be required to measure more frequently than the specified limit. The maximum measurement frequency values were selected to align with the existing frequency requirements for direct diversions (existing section 933, subdivision (b)(1)(A)).

*Submission Schedules:* The existing regulations include a provision that the Board can require more frequent data submissions, upon request. This provision is important for managing water resources during droughts or other times of shortage. This provision is retained in the proposed

regulation, but modified so that the process is clearer and more straightforward. Section 933, subdivision (b)(2)(A) of the existing regulations requires that in addition to end-of-year datafile submissions, diverters must submit data within 30 days of any request from the Board. In the proposed regulation, the ability to require more frequent data submission is incorporated via the submission schedule adjustment provision, allowing the Deputy Director to set a different submission schedule as needed for a watershed or portion thereof.

Per feedback received during the Division's outreach efforts, most diverters tend to review their measurement data only once per year, when preparing their general measurement datafile for submission with their annual reports. Many diverters mentioned that more frequent quality assurance or accounting is either infeasible or an inefficient use of time and resources. Especially in cases of diversions to storage and withdrawals, diverters often cannot accurately characterize their diversions and withdrawals immediately after the diversion takes place. Based on the time required to prepare datafiles and the burden it may place on diverters if the datafile submission schedule is increased to require more frequent submission, it is necessary for the Deputy Director to have discretion to allow diverters to submit provisional data. However, because of the Board's need for accurate and reliable end-of-year data, datafiles submitted alongside annual reports must not be provisional.

**938(d)** Section 932, subdivision (d)(1) of the existing regulations describes the various factors that the Deputy Director must consider before adjusting the general applicability threshold. These considerations ensure that any threshold adjustment is appropriate, that the measurement requirements do not place an undue burden on diverters, and that the reduced amount of data received will not adversely impact the Board's ability to manage and protect public trust resources. For consistency and to balance the Board's need for timely and accurate measurement data with the cost of measuring borne by the diverter, the proposed regulation requires that the Deputy Director consider most of the same factors as originally described in existing section 932, subdivision (d)(1) before adjusting any of the other thresholds or submission schedules.

Compared to the existing section 932, subdivision (d)(1), the proposed revisions remove the provision allowing the Deputy Director to require the submission of documentation on the nature and scope of diversions in the watershed (or portion thereof) before adjusting a threshold or schedule. This change was in response to public comments that expressed uncertainty about what documentation diverters may be required to submit and concern that such documentation may present an added regulatory burden. Since the intent of the proposed subdivision (d) is to ensure that the Deputy Director adjusts thresholds and submission schedules only after careful consideration and is not intended to add regulatory burden to diverters, this language could be removed. Additionally, similar to the proposed section 936, the paragraph explicitly allowing for reconsideration of a decision or order issued to adjust a threshold or schedule has been moved to proposed section 939, such that it expressly applies to the entirety of chapter 2.8.

**938(e)** Under the existing regulations, the Deputy Director can adjust the requirement to submit large diversion measurement data based on stream flow and the size of a diversion only after giving notice and the opportunity for public comment. In the proposed regulation, requirements for public notice and opportunity for comment are retained, clarified, and applied to any adjustment to the large diversion applicability, qualifying reservoir, or frequency thresholds, or the submission schedules.

**938(f)** Under the existing regulations, any adjustment to the general applicability threshold may remain in effect for up to five years, after which the authorization may be renewed. Because the proposed regulation includes the ability for the Deputy Director to adjust other thresholds and submission schedules, this provision has been updated to reflect that any adjustment to any threshold or submission schedule must be reevaluated at least once every five years, commencing the date the order is issued (unless the order specifies a different date). This is necessary to ensure that any adjusted threshold or submission schedule continues to be appropriate for providing the Board with accurate and timely measurement data without creating an unnecessary cost or burden for diverters.

**938(g)** In the existing regulations, the Deputy Director is required to maintain a list on the Board's website of watersheds and subwatersheds where the applicability threshold is different from the default value of 10 acre-feet per year. Because the proposed regulation includes the ability for the Deputy Director to adjust other thresholds and submission schedules, it is appropriate that any threshold or submission schedule that has been adjusted in accordance with proposed section 938 be listed on the Board's website as well, to improve transparency and allow diverters to review requirements that are specific to their watershed or subwatershed.

**Removed Subdivisions:** Section 932, subdivision (d)(6) of the existing regulations expressly allows for reconsideration of any decision or order issued under section 932 regarding general applicability threshold adjustment. This paragraph has been moved to section 939, such that it explicitly applies to the entirety of chapter 2.8.

### Section 939: Compliance

The purpose of section 939 is to identify what constitute violations and to identify the consequences associated with not meeting the requirements of the chapter. Under the existing regulations, descriptions of violations and their consequences are in section 932, subdivisions (e) and (f), section 933, subdivisions (k) through (m), section 934, subdivision (h), and section 938. In the proposed regulation, these descriptions have been consolidated and relocated to section 939 to improve the structure and logical flow of the regulation.

**939(a)** This subdivision appears in existing sections 932 and 935 to explicitly allow reconsideration of decisions or orders made regarding threshold adjustments and alternative compliance plans. Commenters expressed concern that other decisions under the existing regulations, including rejection of measurement methods, did not specifically mention reconsideration. For clarity and consistency, this provision has been moved to section 939 and reworded so that it expressly applies to all decisions or orders made by the Deputy Director under this chapter. Additionally, in an effort to use plainer language throughout the regulation, the word "commencing," as used in the existing regulations, is replaced with "beginning" in the proposed regulation.

**939(b)** The existing regulations describe violations and their consequences for failing to accurately measure diversions or otherwise meet the requirements chapter 2.8. These descriptions are located in sections 932, 933, 934, and 938 of the existing text and describe the penalty as "civil liability of up to \$500 per day pursuant to Water Code section 1846." In the proposed regulation, these various descriptions have been consolidated for clarity and conciseness and relocated to section 939. Additionally, with the passage of Assembly Bill 460 in 2024, which updates section 1846 of the Water Code, the maximum civil liability amount will be

increased from \$500 per day to \$1,000 per day and the amount will be annually adjusted for inflation beginning in 2026. Therefore, it is necessary to update the stated penalties in the revised regulation to align with the updated statutory penalties.

Under the existing regulations, descriptions of violations for failing to repair and replace inaccurate measuring devices or correct deficiencies in a measurement method are in various provisions of sections 933 and 934. Because the proposed regulation refines the concept of “measuring devices,” removes the term “measurement method,” and introduces the term “measurement methodology,” it is necessary to re-describe violations using the terms in the proposed regulation.

Additionally, there are no explicit references to violations regarding alternative compliance plans in the existing regulations. Existing section 935, subdivision (k)(3) states that inadequate alternative compliance plans may be rejected, resulting in an obligation to fully comply with sections 933 and 934, without the flexibility afforded through alternative compliance. Provisions to this effect are maintained in the proposed regulation, with added language in section 939, subdivision (b) making it clear that deficient alternative compliance plans not meeting the requirements of the chapter violate the regulation. This change is necessary to clarify that deficiencies in alternative compliance plans must be corrected for the plan to be effective and for the claimed water right not to be in violation of the regulation.

**939(c)** Under the existing regulations, section 932, subdivisions (e)(1) and (e)(2) describe how diverters must measure their diversions in circumstances where other legal requirements, including terms and conditions of the claimed water right, statutes, orders, policies, regulations, decisions, or judgements, may conflict with requirements of chapter 2.8. In the proposed regulation, the two paragraphs of the original subdivision are combined and moved to section 939. This change is necessary to reduce repetitive language from two similar provisions, make the regulation clearer, and consolidate all compliance-related provisions into a single Compliance section.

**939(d)** The language included in this subdivision is currently in section 933, subdivision (m) of the existing regulations. The relocation to section 939 in the proposed regulation is necessary to improve the structure and logical flow of the regulation.

### Section 939.1: Water Year 2026 Reporting

The purpose of section 939.1 is to provide an overview of sections 939.2 through 939.6. Under the existing regulations, diversions are measured from October 1 through the following September 30, and reported before the following February 1. Based on this timeline, the proposed revisions to chapter 2.8 must allow for a phased implementation, such that measurements can continue to be collected according to the existing regulations for the remainder of water year 2026 and these measurements can be submitted in accordance with the submission requirements of the existing regulations (though diverters may choose to begin earlier implementation of the updated measurement and/or submission requirements if desired). Measurements collected on or after October 1, 2026 must be submitted in accordance with the submission requirements described in sections 931 through 939 of the proposed regulation.

**939.1(a)** This subdivision is necessary to clearly describe that the provisions included in sections 939.1 through 939.6 are temporary. Their purpose is to clarify how diverters must

measure and report their diversions for water year 2026, during which the amended regulation takes effect.

**939.1(b)** The proposed regulation is expected to become effective partway through water year 2026. To avoid mid-year changes in requirements, it is necessary to state that data collection and submission may continue according to the existing regulations for water year 2026. Diverters may begin earlier implementation of the updated requirements if they would like to, but they will not be held to the updated requirements for data collected during water year 2026

**939.1(c)** Beginning in water year 2027, data must be submitted in accordance with sections 931 through 939 of the revised regulation. This subdivision is necessary to clearly describe that measurement data collected in accordance with the revised regulation must be submitted in accordance with the revised regulation.

### Section 939.2: Water Year 2026 Definitions

The purpose of this section is to restate definitions that appear in the existing regulations. This is necessary to ensure consistent interpretation between the existing regulations and the existing regulations as reproduced in sections 939.2 through 939.6 of the proposed revisions, since some definitions have been modified in section 931 of the proposed regulation.

**939.2(a)** Compared to the definition of “diverter” in proposed section 931, this definition does not include reference to employees or agents submitting required documents on the diverter’s behalf. Because this expansion of the definition was not part of the existing regulations, it is necessary to remove this addition from the definition as it applies to proposed sections 939.2 through 939.6.

**939.2(b)** This definition was removed from proposed section 931 because it was redundant to the definition of “diverter.” Under proposed sections 931 through 939, measurement requirements do not apply to stockpond certificate holders under any circumstance, whereas under the existing regulations (and proposed sections 939.2 through 939.6), measurement requirements apply to stockpond certificate holders if they also divert water under an additional claimed water right that shares either a point of diversion or place of use. Therefore, it is necessary to reinsert the definition of the term “diverter with multiple claimed rights” for temporary use in proposed sections 939.2 through 939.6. For clarity and consistency, the term was reinserted as “diverter with multiple claimed water rights;” this does not change the meaning as applicable under the existing regulations.

**939.2(c)** The concept of measurement methods was removed from the proposed revisions and replaced with measurement methodologies that are required for all subject diverters. The existing regulations have distinct requirements for diverters who measure using a measurement method instead of measuring devices at each point of diversion. Therefore, it is necessary to reinsert the existing definition of “measurement method” for temporary use in proposed sections 939.2 through 939.6.

**939.2(d)** The existing definition of “measuring device” was more narrowly defined than is proposed in the revised section 931. Therefore, it is necessary to reinsert the term “measuring device” for temporary use in proposed sections 939.2 through 939.6, to be consistent with the existing regulations.

**939.2(e)** “Place of use” is not used in proposed sections 931 through 939, except in proposed section 936 when describing what to include in alternative compliance plans. In contrast, the existing regulations use place of use as an applicability condition for certain requirements. The existing regulations also modify the definition of “place of use” from the commonly understood meaning by including ponds and reservoirs as places of use for the purpose of this chapter. Therefore, it is necessary to reinsert the term “place of use” for temporary use in proposed sections 939.2 through 939.6.

**939.2(f)** Whereas the proposed revisions clarify the definition of “point of diversion” as including points of direct diversion, points of diversion to storage, and points of redirection to avoid misinterpretation, the existing regulations do not include this level of specificity. Therefore, it is necessary to reinsert the existing definition for temporary use in proposed sections 939.2 through 939.6, so as to avoid changing how the existing regulations are interpreted.

**Removed Subdivisions:** Subdivision (a) of the existing regulations was moved to section 939.4 of the proposed revisions. Subdivisions (b), (c), (d), (m), and (n) of the existing regulations were removed because the definitions did not substantively change between the existing regulations and those included in the proposed section 931. Subdivision (g) was removed because the term is not used in either the existing or proposed regulations. Similarly, existing subdivision (o) was removed because it is not used in proposed sections 939.2 through 939.6. Lastly, existing subdivision (l) was removed because proposed sections 931 through 939 use a more flexible definition of “qualified individual”; this expanded definition may be used for water year 2026 reporting without affecting the quality of the measurement data submitted, and therefore the previous definition is not necessary.

### Section 939.3: Water Year 2026 Applicability

The purpose of this section is to restate applicability criteria that appear in the existing regulations. This is necessary to ensure consistent interpretation between the existing regulations and how they are reproduced in sections 939.2 through 939.6 of the proposed revisions, since some applicability criteria have been modified in section 932 of the proposed revisions.

**939.3(a)** Subdivision (a) restates the content of existing section 932, subdivision (a). Because proposed sections 939.2 through 939.6 are included to describe measuring and reporting requirements for water year 2026, it is not necessary to specify that diverters must install a measuring device as defined in the existing regulations. Therefore, the provision has been reworded to remove this language.

**939.3(b)** Subdivision (b) restates the content of existing section 932, subdivision (b). As described for proposed subdivision (a), the language has been updated to remove reference to measuring device installation. Additionally, any potential threshold adjustments would not affect water year 2026 reporting, so consideration of general measurement thresholds that differ from the default value of 10 acre-feet does not need to be included in this subdivision.

**Removed Subdivision:** Existing section 932, subdivision (c) was removed from proposed section 939.3 because all of the dates described have passed, and therefore they can be removed from the regulation without having an impact. Existing subdivision (d) was removed from proposed section 939.3 because any potential threshold adjustment would not affect water year 2026 reporting. Future threshold adjustments would occur under proposed section 938.

Existing subdivisions (e) and (f) were removed from proposed section 939.3 because they do not describe requirements that need to be considered for water year 2026. Rather, they describe compliance considerations which are discussed in proposed section 939.

#### Section 939.4: Water Year 2026 Measuring and Reporting Using a Measuring Device

The purpose of this section is to restate measurement criteria that appear in the existing regulations for diverters using a measuring device at each point of diversion. This is necessary to ensure consistent interpretation between the existing regulations and how they are reproduced in sections 939.2 through 939.6 of the proposed revisions, since measuring and reporting requirements have been modified in the proposed regulation.

**939.4(a)** This subdivision corrects a typo in existing section 933, subdivision (a) but otherwise was reproduced exactly from the existing regulations.

**939.4(b)** Subdivision (b) restates the content of existing section 933, subdivision (b) with minor changes. Among these is the use of the term “claimed water right” in place of “right or claimed right.” This is necessary for conciseness within the regulation but does not change the meaning as applicable under the existing regulations. Additionally, proposed paragraph (4) discusses telemetry requirements of the existing regulations. Telemetry requirements based on historic calculated mean monthly stream flow were removed from proposed section 939.4 because these provisions were never enacted and therefore it is not necessary for them to be reproduced.

**939.4(c)** This subdivision corrects a typo in existing section 933, subdivision (c) but otherwise was reproduced exactly from the existing regulations.

**939.4(d)** Subdivision (d) restates the content of existing section 933, subdivision (d) with minor changes. Among these is the use of the term “claimed water right” in place of “right or claimed right.” This is necessary for conciseness within the regulation but does not change the meaning as applicable under the existing regulations. Additionally, the definition of “accuracy” was moved from the existing Definitions section to this subdivision for added clarity and consistency with proposed section 933. Lastly, the definition of accuracy was corrected to distinguish between error and accuracy, but the requirements are unchanged from the existing regulations.

**939.4(e)** This subdivision was modified from existing section 933, subdivision (g) to clarify that any new measuring devices, including those installed during water year 2026, must be installed in accordance with the proposed regulation, not the existing regulation.

**939.4(f)** This subdivision was reproduced exactly from existing section 933, subdivision (l).

**Removed Subdivisions:** Existing subdivisions (e), (f), (h) through (k), and (m) of existing section 933 were removed from proposed section 939.4 because they do not affect how data will be measured or reported for water year 2026 and therefore are not necessary to include in the proposed revisions.

#### Section 939.5: Water Year 2026 Measuring and Reporting Using a Measurement Method

The purpose of this section is to restate measurement criteria that appear in the existing regulations for diverters using a measurement method. This is necessary to ensure consistent

interpretation between the existing regulations and how they are reproduced in sections 939.2 through 939.6 of the proposed revisions, since the otherwise applicable measuring and reporting requirements have been modified in the proposed revisions.

**939.5(a)** This subdivision was reproduced from existing section 934, subdivision (a). Changes include using the term “claimed water right” in place of “priority of right” and updating section and subdivision references for consistency. These changes do not affect any requirements under the existing regulations.

**939.5(b)** This subdivision was reproduced exactly from existing section 934, subdivision (c).

**939.5(c)** Section references have been updated for consistency. This subdivision was otherwise reproduced exactly from existing section 934, subdivision (d).

**939.5(d)** Section references have been updated for consistency. This subdivision was otherwise reproduced exactly from existing section 934, subdivision (e).

**939.5(e)** This subdivision was reproduced from existing section 934, subdivision (g), excluding the last sentence. Section references have been updated for consistency. Requirements for quinquennial field testing and re-analysis of measurement methods will not significantly affect how data will be collected after the effective date of this regulation. Therefore, the last sentence of existing section 934, subdivision (g) is not necessary and could be removed.

**939.5(f)** This subdivision was reproduced from existing section 934, subdivision (h), excluding paragraph (3). Section references have been updated for consistency. Existing section 934, subdivision (h)(3) discusses requirements to install measuring devices at each point of diversion, if defects in a measurement method are not timely corrected. Once the amended regulation becomes effective, existing measurement methods will only be valid for the remainder of water year 2026. Before February 1, 2027, diverters must document and submit their measurement methodologies in accordance with proposed section 934. Additionally, proposed section 934 includes similar language stating that measuring devices may be required at each point of diversion if deficient measurement methodologies are not timely corrected. Therefore, this provision is not necessary in section 939.5 and can be removed.

**939.5(g)** Beginning in water year 2027, measurement methods submitted pursuant to the existing regulations will no longer be valid because diverters will need to measure according to updated requirements, including submitting a measurement methodology. Therefore, it is necessary to describe that diverters must measure their diversions and submit the resulting data in accordance with sections 931 through 939 of the proposed regulation after October 1, 2026. Explanations regarding the durations, renewals, and review of existing measurement methods, as specified in existing section 934, subdivision (i), are not necessary because these provisions do not relate to how data are submitted and therefore are not relevant to the proposed regulation.

**939.5(h)** This subdivision was reproduced exactly from existing section 934, subdivision (j).

**Removed Subdivisions:** Existing subdivisions (b) and (f) of existing section 934 were removed from proposed section 939.5 because they do not affect how data will be reported for water year 2026 and therefore are not necessary to include in the proposed revisions. Existing subdivision (b) discusses the content of measurement methods; however, once the proposed regulation becomes effective, diverters will no longer be able to submit or renew measurement methods

and the Board will no longer review measurement methods. Similarly, once the proposed revisions become effective, diverters will no longer be required to determine or certify the accuracy of measurement methods (since they will have already determined and certified the accuracy of existing measurement methods upon initially filing). Therefore, existing subdivision (f) is unnecessary to include in proposed section 939.5.

#### Section 939.6: Water Year 2026 Alternative Compliance

The purpose of this section is to restate criteria that appear in the existing regulations for diverters using an alternative compliance plan. This is necessary to ensure consistent interpretation between the existing regulations and how they are reproduced in sections 939.2 through 939.6 of the proposed revisions, since measuring and reporting requirements have been modified in the proposed revisions.

**939.6(a)** Section references have been updated for consistency. Otherwise, this subdivision was reproduced exactly from existing section 935, subdivision (a).

**939.6(b)** This subdivision was previously included as paragraph (2) of existing section 935, subdivision (b), with updated section references for consistency. Existing section 935, subdivision (b) discusses the required content of alternative compliance plans. In general, most of this content does not need to be reproduced in section 939.6 because existing alternative compliance plans will become invalid beginning October 1, 2026 and no new alternative compliance plans will be accepted according to the existing requirements beginning on the effective date of the proposed revisions. However, existing paragraph (2) explains that alternative compliance plans must be able to address each of the requirements that the diverter would be subject to if they measured using a measuring device or measurement method. Since this paragraph explains that diverters pursuing alternative compliance must achieve compliance or alternative compliance with existing sections 933 and 934 (proposed sections 939.4 and 939.5, respectively), and those referenced sections include requirements regarding data submissions which are relevant for water year 2026, this paragraph is necessary to be reproduced in section 939.6. The other paragraphs of existing section 935, subdivision (b) describe the content of alternative compliance plans, primarily information regarding how to collect measurement data and not how to submit the resulting data. Therefore, the other paragraphs are not necessary for the proposed revisions and can be removed.

**939.6(c)** Existing section 935, subdivision (d) requires diverters to report on the implementation progress of their alternative compliance plans and to provide documentation that they are complying with their proposed implementation schedule “and other elements of the alternative compliance plan.” Because existing alternative compliance plans will no longer be valid after October 1, 2026 and no new alternative compliance plans will be accepted according to the existing regulations after the effective date of the proposed revisions, information about the implementation schedule is not useful for helping the Board interpret water year 2026 measurement data. However, compliance with “other elements of the alternative compliance plan” may be necessary for understanding measurement data collected during water year 2026. Therefore, this information demonstrating that the diverter is compliant with their alternative compliance plan is necessary for water year 2026.

**939.6(d)** This subdivision was reproduced exactly from existing section 935, subdivision (e).

**939.6(e)** Beginning in water year 2027, alternative compliance plans submitted pursuant to the existing regulations will no longer be valid because diverters will need to adhere to updated requirements, including submitting updated alternative compliance plans. Therefore, it is necessary to describe that diverters must measure their diversions and submit the resulting data in accordance with sections 931 through 939 of the proposed regulation beginning October 1, 2026. Explanations regarding the durations, renewals, and review of existing alternative compliance plans, as described in existing section 935, subdivision (k), are not necessary because these provisions do not relate to how data are submitted and therefore are not relevant to the proposed regulation.

**Removed Subdivisions:** Subdivisions (f) through (j) of existing section 935 have been removed from this section. Existing subdivisions (f) through (h) discuss the Deputy Director's role in posting and reviewing alternative compliance plans. Since alternative compliance plans will no longer be accepted under the existing regulations beginning the effective date of the proposed revisions and existing alternative compliance plans will be invalid beginning October 1, 2026, the Deputy Director will no longer post or review alternative compliance plans under the existing regulations and instead will do so in accordance with proposed section 936. Therefore, these subdivisions are unnecessary and can be removed. An apparent typo, subdivision (i) was not included in existing section 935. Existing subdivision (j) expressly describes that diverters may petition for reconsideration of any decision issued under existing subdivision (h) of section 935. In the proposed revisions, this provision has been moved to section 939 and applies to all decisions made under the proposed regulation. Therefore, it is unnecessary to be duplicated in this section.

#### Non-Substantial and/or Grammatical Changes:

No modifications were approved at either the State Water Board's August 5, 2025 or December 2, 2025 adoption meetings, and no additional changes, including non-substantial changes, were made to proposed chapter 2.8.

#### **Other Minor Changes: Chapters 2 and 2.7**

The primary objectives of the proposed regulation changes to chapters 2 and 2.7 are to:

- Facilitate Secure Online Reporting: Ensure all water rights holders log in to the online data reporting platform using an email address.
- Streamline Existing Language: Consolidate and streamline existing regulatory language to be clearer (including non-substantive changes).

**Section 907(d)** The proposed regulation adds a definition of "online reporting platform." This change is needed in order to describe and clarify the new procedures for submitting reports on the State Water Board's new online reporting platform.

**Section 910** The existing regulations state that the regulations contained in chapter 2.7 are adopted for the purposes of chapter 2.7 of division 1 of the Water Code and parts 2, 5, and 5.1 of division 2 of the Water Code. The proposed regulation adds part 5.2 of division 2 of the Water Code, which provides requirements for groundwater extraction reporting for probationary basins and basins without a groundwater sustainability agency. This change is needed to include all types of reporting required by the Water Code.

**Section 911** The proposed regulation clarifies that to the extent authorized by law, the regulations apply to an “Indian tribe” and “any reports filed by the Indian tribe.” The current regulations state that to the extent authorized by federal law, this chapter applies to the federal government and any reports filed by the federal government. The change is necessary to clarify the applicability of the regulations to other sovereign entities such as tribes.

**Section 913(a)** Proposed section 913, subdivision (a) will require reports to be electronically submitted through the Board’s online reporting platform. This new section is needed to transition the Board’s reporting process from forms on the Board’s website to the Board’s new online reporting platform. The proposed regulation is needed in order to modernize the Board’s data reporting system.

**Section 913(b)** Proposed section 913, subdivision (b) will require reporters to use an email address to log in to the online reporting platform. An email address is required for secure access to the online reporting platform and allows additional security measures, such as two-factor authentication. The proposed regulation is necessary to modernize the Board’s data reporting and communication systems while meeting cybersecurity requirements. By requiring water right holders to use an email address to access the online reporting platform, the Board will enhance reporting efficiency and improve data quality, which will better support management of California’s water resources.

**Removed Section 920(b)** The existing regulations include a section describing the process for electronic submission of supplemental statements of water diversion and use, which includes the Board providing a username and password to the reporter using an electronic form. The proposed regulation removes this section in order to simplify and align the regulatory text with the process for electronic reporting on the Board’s new online reporting platform.

**Section 924(d)** The existing regulations and Water Code section 1228.5 are ambiguous as to whether registrants must affirmatively submit a separate request or report for renewal of their registration, or whether compliance with the applicable reporting requirements is sufficient. The proposed regulation clarifies that the Board will treat registrants who are current with their annual reporting as though they had affirmatively requested renewal of their registration prior to the applicable deadline.

**Section 925(c)** The existing regulations incorrectly refer to section 933 as part of “this chapter,” i.e., chapter 2.7. However, section 933 is part of chapter 2.8. This change is necessary for clarity and consistency.

**Section 929(c)** The existing regulations incorrectly refer to section 933 as part of “this chapter,” i.e., chapter 2.7. However, section 933 is part of chapter 2.8. This change is necessary for clarity and consistency.

**Section 930** Consistent with Water Code sections 1058, 1840, 1841, and 5001, the State Water Board proposes the changes to section 930 to align with the statutory reporting period being the water year. The existing regulations state that the report must include the amount of groundwater extracted during the calendar year. The proposed regulation changes “calendar year” to “twelve month reporting period” to be consistent with Water Code section 5001, which requires annual reporting of the amount of groundwater extracted during the water year. The proposed change is necessary to improve clarity and to carry out the Board’s primary goal of efficiently administering the State’s water rights system.

**Other Minor Changes:** Additional minor editorial changes to sections 831, 907, 915, 916, 920, 924, 925, 929, and 930 will ensure consistent references to the electronic submission of information via the online reporting platform, rather than using forms available on the Board's website.

#### Non-Substantial and/or Grammatical Changes:

No modifications were approved at the State Water Board's August 5, 2025 adoption meeting, and no changes were proposed that required an additional 15-day or 45-day comment period. Subsequent to the close of the comment periods and prior to adoption on August 5, 2025, however, the following non-substantial changes were made to the regulation text:

**Section 913(b)** The word "login" was changed to "log in" to correct a grammatical typo.

**Section 924(d)** The word "section" was uncapitalized for formatting consistency.

## Rulemaking Process

The State Water Board adopted Resolution No. 2025-0021 on August 5, 2025, which directed staff to submit the rulemaking package to OAL. The rulemaking package was submitted to OAL on August 14, 2025. On September 25, 2025, the Board temporarily withdrew the revisions to chapter 2.8 from OAL review in order to make additional changes. The additional changes to chapter 2.8 did not result in any additional fiscal impacts compared to what was described in the Economic Impact Assessment (EIA), dated July 2025 and included in Appendix B, or in Form 399. The revisions to chapters 2 and 2.7 were approved by OAL and became effective on September 26, 2026. On December 2, 2025, the State Water Board adopted Resolution No. 2025-0037, which directed staff to submit proposed chapter 2.8 to OAL. The revisions to chapter 2.8 and the associated rulemaking documents were submitted to OAL on December 9, 2025.

## Local Mandate

The proposed regulation will not impose a mandate on local agencies or school districts, or a mandate that requires State reimbursement pursuant to part 7 (commencing with section 17500) of division 4 of the Government Code. The proposed regulation is not unique to local governments as it applies to both public and private entities, and therefore costs for local governments are not state-reimbursable. Additionally, Attachment A to Form 399 includes a Fiscal Impact Statement discussing the effect on local government.

## Alternatives Information

The Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be either more effective in carrying out the purpose for which the action is proposed, as effective and less burdensome to affected private persons than the proposed action, or more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The State Water Board considered two reasonable alternatives to the proposed regulation.

## Description of Alternatives

Similar to the proposed update, the two alternatives improve clarity and organization of the existing regulatory text.

The first alternative (“Alternative 1”) considers only two of the requirements proposed in the rulemaking:

- (a) Water right holders would be required to provide an email for their CalWATRS account, and
- (b) Diversifiers would be required to use a State Water Board template to report measurement data or transmit data directly to CalWATRS.

Alternative 1 is, therefore, less stringent than the proposed regulation.

The second alternative (“Alternative 2”) considers all the requirements proposed in the rulemaking and makes one of them relatively more stringent: all rediversions (and not only those requested by the State Water Board) would be required to be measured and reported. Alternative 2 is, therefore, more stringent than the proposed regulation.

## Discussion of Alternatives: Costs and Benefits, and Reason for Rejection

The analysis of cost impacts of the two alternatives can be found in Section 8 of the EIA and the analysis is based on the same assumptions and calculations described in Section 4 of the EIA.

Under the proposed regulation, water right holders would incur one-time costs of approximately \$4.7 million, plus annual costs of approximately \$470,000.

Under Alternative 1, water right holders, including small businesses, would incur one-time costs of approximately \$630,000, plus annual costs of approximately \$27,000, that reflect the time needed to comply with the email and data template requirements. Water right holders under this alternative would not incur any costs related to equipment installation and maintenance.

Under Alternative 2, water right holders would incur one-time costs of approximately \$6.1 million, plus annual costs of approximately \$700,000. Compared to the proposed regulation, diversifiers under this alternative would have to report a greater number of rediversions and install more measuring devices, and would therefore incur higher reporting, installation, and maintenance costs in aggregate.

Alternative 1 would incur a lower cost to water right holders, including small businesses, in terms of one-time and annual costs, but it would not be equally effective in achieving the purposes of the regulation because it would not address all of the needs for revision of the existing regulations as described in the “Summary of Existing Regulations and Need for Revision” section of this document, nor would it provide all of the benefits discussed in the “Anticipated Benefits” section of this document. Critically, Alternative 1 would result in measurement data being submitted to the Board that are less able to be used for effective water management than data submitted under the proposed regulation.

Although Alternative 2 would potentially yield greater benefits in the form of data submissions for rediversions, the one-time and annual costs to water right holders would be substantially

greater than the costs incurred under the proposed regulation, so Alternative 2 represents a greater burden on water right holders.

For the reasons described in the ISOR (pp. 34 – 35), and updated in this FSOR, as well as those described in the Notice of Proposed Action (NOPA) (p.12), the State Water Board has determined that no alternatives considered would be (1) more effective in carrying out the purposes of the proposed regulation, (2) as effective and less burdensome to affected private persons, or (3) more cost-effective to affected private persons and equally effective in implementing the statutory policy. For these reasons, to the extent that the proposed regulation impacts small businesses, alternatives that might reduce such impact were rejected because they neither sufficiently address the needs for revision of the existing regulations nor provide the anticipated benefits of the proposed regulation.

## Specific Technologies and Equipment

The regulation does not mandate the use of any specific technologies and equipment. As discussed in the “Purpose and Necessity of Proposed Changes” section of this document regarding the data submission templates described for proposed section 935, the proposed regulation prescribes specific format requirements for submitting measurement data. Under the existing regulations, no such requirements are prescribed, in favor of a “performance standard” that simply required “data from each measuring device” “in a format retrievable and viewable using Microsoft Excel, Microsoft Access, or other software program authorized by the deputy director.” As discussed previously in this document, the lack of a prescriptive standard for data formatting has resulted in diverters submitting measurement data in over 1,400 unique formats. This has severely inhibited the Board’s ability to systematically review and analyze measurement data to efficiently and effectively make decisions about California’s water resources. By revising the regulations to instead require a standardized, prescriptive format using a template provided by the Board and containing only the information described in the proposed regulation, the Board is expected to receive higher quality and more usable measurement data. Such data will improve the Board’s ability to manage water resources to ensure the state is prepared for times of water shortage, which in turn will benefit the health and welfare of California residents. Because the format requirements of the proposed regulation affect how diverters prepare measurement data for submission and not how diverters collect the required measurement data, most existing equipment is expected to be able to accommodate the changes included in the proposed regulation.

## Summary and Response to Comments

Notices, announcements, and other documents related to the proposed regulation were posted to the State Water Board’s Water Measurement and Reporting Regulation Rulemaking webpage at [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/diversion\\_use/rulemaking.html](https://www.waterboards.ca.gov/waterrights/water_issues/programs/diversion_use/rulemaking.html). A summary of written and oral comments received is included in Appendix A.

## Initial Written Public Comment Period and Public Hearing

The initial written public comment period for the proposed regulation began February 28, 2025 and ended at 5:00 p.m. on April 23, 2025. A virtual public hearing was held on April 16, 2025.

Email announcements (available in English and Spanish) for the NOPA were sent to subscribers of the following State Water Board email lists:

- “Regulations - General”
- “Updating Water Rights Data for California (UPWARD California)”
- “Water Measurement”
- “Water Rights Reporting Notification.”

Responses to oral and written comments received before the April 23, 2025 comment period deadline are available in Appendix A.

## First 15-Day Written Public Comment Period

The first 15-day written public comment period for the proposed regulation began May 22, 2025 and ended at 5:00 p.m. on June 6, 2025 for changes to the proposed regulation text and an added reference to the EIA. Email announcements (in English and Spanish) notified the public of the availability of the Notice of Publicly Available Changes to the Proposed Water Measurement and Reporting Revisions and were sent to people who had previously provided comments during the initial written public comment period or at the public hearing, as well as to subscribers of the following State Water Board email lists:

- “Regulations - General”
- “Updating Water Rights Data for California (UPWARD California)”
- “Water Measurement”
- “Water Rights Reporting Notification.”

Responses to written comments received before the June 6, 2025 comment period deadline are available in Appendix A.

## Second 15-Day Written Public Comment Period

The second 15-day written public comment period for the proposed regulation began June 16, 2025 and ended at 5:00 p.m. on July 1, 2025 for changes to the proposed regulation text. Email announcements (in English and Spanish) notified the public of the availability of the Notice of Publicly Available Changes to the Proposed Water Measurement and Reporting Revisions and were sent to people who had previously provided comments during the initial written public comment period, first 15-day written public comment period, or at the public hearing, as well as to subscribers of the following State Water Board email lists:

- “Regulations - General”
- “Updating Water Rights Data for California (UPWARD California)”
- “Water Measurement”
- “Water Rights Reporting Notification.”

Responses to written comments received before the July 1, 2025 comment period deadline are available in Appendix A.

## Third 15-Day Written Public Comment Period

The third 15-day written public comment period for the proposed regulation began October 30, 2025 and ended at 5:00 p.m. on November 14, 2025 for changes to the proposed regulation text. Email announcements (in English and Spanish) containing the Notice of Publicly Available Changes to the Proposed Water Measurement and Reporting Revisions were sent to people who had previously provided comments during the initial written public comment period, first or second 15-day written public comment periods, or at the public hearing, as well as to subscribers of the following State Water Board email lists:

- “Regulations - General”
- “Updating Water Rights Data for California (UPWARD California)”
- “Water Measurement”
- “Water Rights Reporting Notification.”

Responses to written comments received before the November 14, 2025 comment period deadline are available in Appendix A.

## Summary of Comments and Responses to Comments

Summaries of and responses to comments received during the initial written public comment period, public hearing, and first, second, and third 15-day written public comment periods are included in Appendix A.

## Other Statutory Requirements

### Avoidance of Unnecessary Duplication (Gov. Code, §§ 11346.2(b)(6) and 11346.5(1)(3)(D))

The State Water Board evaluated whether the proposed regulation is duplicative of existing federal regulations and concluded that they are not. The proposed regulation only affects California water rights holders and claimants. There are no federal regulations governing the measuring or reporting obligations of water right holders or claimants in California, nor are there any federal regulations governing the administration of California’s water rights program. Therefore, there is no duplication or conflict between the proposed regulation and the Code of Federal Regulations.

As stated in the NOPA (p. 6), which was published and made publicly available February 28, 2025, the Board has reviewed its existing regulations to evaluate whether the proposed regulation is inconsistent or incompatible with existing State regulations. The Board has determined that no other State regulation addresses the same subject matter and that this proposal is not inconsistent or incompatible with other existing regulations.

### California Environmental Quality Act (CEQA)

CEQA requires that State agencies consider the potentially significant environmental impacts of their discretionary actions, including the development of regulations. As stated in the NOPA

(pp. 6 – 7), the proposed regulation is eligible for categorical exemption under the following sections of California Code of Regulations, title 14:

- Section 15306: Information Collection
- Section 15301: Existing Facilities
- Section 15302: Replacement or Reconstruction
- Section 15303: New Construction or Conversion of Small Structures
- Section 15304: Minor Alterations to Land.

The Board filed two Notices of Exemption with the State Clearinghouse which were published on August 5, 2025 and December 3, 2025.

## External Scientific Peer Review

Health and Safety Code section 57004 requires external scientific peer review of the scientific foundation of a proposed environmental rule or proposed changes to existing rules. As stated in the NOPA (p. 7) and the “Purpose and Necessity of Proposed Changes” section of this document, the proposed regulation does not require a scientific peer review because there are no scientific elements underlying the proposed regulation.

## Safe, Clean, Affordable Water (Wat. Code, § 106.3)

As discussed in the NOPA (p. 7), the Board has determined that the proposed regulation is consistent with the statewide policy that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.

## Documents Relied Upon: Technical, Theoretical, and/or Empirical Studies, Reports, or Documents

Division of Drinking Water (2021) *California Laboratory Intake Portal Technical Documentation for EDP/EDD*. State Water Resources Control Board. [https://download.earthsoft.com/CA\\_SWRCB/CASWRCB\\_DDW\\_Technical\\_Documentation.pdf](https://download.earthsoft.com/CA_SWRCB/CASWRCB_DDW_Technical_Documentation.pdf) (Accessed: February 5, 2025).

Division of Water Rights (2013) *Considerations for Reservoir Licensing*. State Water Resources Control Board. [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/applications/docs/licensing.pdf](https://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/docs/licensing.pdf) (Accessed: February 5, 2025).

Division of Water Rights (2024a) *Draft Proposed Changes to the Water Measurement and Reporting Regulation: Staff Workshop*. [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/diversion\\_use/docs/2024/staff-workshop-presentation\\_deadline-extended.pdf](https://www.waterboards.ca.gov/waterrights/water_issues/programs/diversion_use/docs/2024/staff-workshop-presentation_deadline-extended.pdf) (Accessed: February 5, 2025).

Division of Water Rights (2024b) *Water Measurement and Reporting Regulation (SB-88): Feedback Summary, Water Measurement and Reporting Regulation*. State Water Resources Control Board. [https://www.waterboards.ca.gov/waterrights/water\\_issues/pro](https://www.waterboards.ca.gov/waterrights/water_issues/pro)

grams/diversion\_use/docs/2024/listening-sessions-feedback-summary.pdf (Accessed: February 5, 2025).

Regulation of Water, 23 California Code of Regulations §657 (1987).

State Water Resources Control Board (2005) *GeoTracker GEO\_BORE, GEO\_REPORT, and FIELD POINT/WELL CONSTRUCTION Guidelines & Restrictions: Electronic Deliverable Format, Version 2*. [https://www.waterboards.ca.gov/ust/electronic\\_submittal/docs/geo\\_bore\\_geo\\_report\\_guidelines.pdf](https://www.waterboards.ca.gov/ust/electronic_submittal/docs/geo_bore_geo_report_guidelines.pdf) (Accessed: February 5, 2025).

State Water Resources Control Board (2016) *Measurement and Reporting of Water Diversion Emergency Regulations Digest*. [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/measurement\\_regulation/docs/oal\\_review/measure\\_reg\\_oal\\_digest.pdf](https://www.waterboards.ca.gov/waterrights/water_issues/programs/measurement_regulation/docs/oal_review/measure_reg_oal_digest.pdf) (Accessed: February 5, 2025).

State Water Resources Control Board (2018) *Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary*. [https://www.waterboards.ca.gov/plans\\_policies/docs/2018wqcp.pdf](https://www.waterboards.ca.gov/plans_policies/docs/2018wqcp.pdf) (Accessed: February 5, 2025).

State Water Resources Control Board (2021) *Initial Order Imposing Water Right Curtailment and Reporting Requirements in the Sacramento-San Joaquin Delta Watershed*. [https://www.waterboards.ca.gov/drought/delta/docs/082021\\_order\\_lg.pdf](https://www.waterboards.ca.gov/drought/delta/docs/082021_order_lg.pdf) (Accessed: February 5, 2025).

State Water Resources Control Board (2024) *Instructions for Submitting CEDEN Compatible Data*. [https://www.waterboards.ca.gov/water\\_issues/programs/water\\_quality\\_assessment/data-submission.html#instructions-ceden](https://www.waterboards.ca.gov/water_issues/programs/water_quality_assessment/data-submission.html#instructions-ceden) (Accessed: February 5, 2025).

Storage of Water, 23 California Code of Regulations §658 (1987).

U.S. Geological Survey (2024) *Water Quality Daily Data*. <https://help.waterdata.usgs.gov/faq/water-quality/water-quality-daily-data> (Accessed: February 14, 2025).

## Documents Incorporated by Reference

There are no forms or documents incorporated by reference into the proposed regulation.

## Economic Impact Assessment

A complete economic impact assessment is provided in Appendix B.

# Appendix A

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## **Summary and Response to Comments**

# Appendix B

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## **Economic Impact Assessment**