Summary and Response to Comments

Contents

List of Commenters and Index of Comments

Initial Written Public Comment Period

The following commenters provided written comments to the State Water Resources Control Board (State Water Board or Board) during the initial public comment period ending April 23, 2025:

Commenter Name	Date Received	Document No.	Page(s) of Responses
Adina Klaus	3/8/2025	1	19
Allison Febbo / Westlands Water District	4/23/2025	2	6, 7, 9, 11, 27, 35, 38
Andree Lee / San Joaquin Tributaries Authority	4/23/2025	3	16, 29, 32, 35, 36, 38
Austin Verissimo / Farm Systems Consulting	4/23/2025	4	6, 16, 17, 18
Billy Gatlin / California Cattlemen's Foundation	4/23/2025	5	6, 7, 9, 10, 19, 33
Brent Barton / Barton Ranch, Inc.	3/14/2025	6	19

Commenter Name	Date Received	Document No.	Page(s) of Responses
Brian Rasnow	2/28/2025	7	19
Coale Johnson / De La Cour Ranch	4/16/2025	8	7, 19
Darren Cordova, Kyle Knutson, and Anne Williams / MBK Engineers	4/23/2025	9	6, 8, 13, 29, 32
David Webb / Friends of the Shasta River	4/23/2025	10	42
Debbie	4/16/2025	11	28, 30
Erin Oba	4/19/2025	12	15
Greg Stratmann	2/28/2025	13	15, 19
Janice Wu / Department of Water Resources	4/17/2025	14	32
Jean-Paul Mugrditchian / Setton Farms	4/23/2025	15	6, 16, 17, 18, 30, 43
Jennifer Pierre and Federico Barajas / State Water Contractors and San Luis & Delta Mendota Water Authority	4/23/2025	16	6, 9, 10, 12
Jesse Gebauer and Nicholas Bonsignore / Wagner & Bonsignore Consulting Civil Engineers	4/23/2025	17	6, 9, 15, 16, 22, 23, 24, 27, 32, 37
John B Goodrich	3/2/2025	18	19, 21
John Dolcini	4/22/2025	19	15, 19, 25
Justin Fredrickson / California Farm Bureau Federation	4/18/2025	20	40, 41
Kaitlyn Chow / Yuba Water Agency	4/23/2025	21	28, 31, 38, 39
Keith Yamamoto / Bobby Yamamoto Farms, Inc.	4/23/2025	22	6, 16, 17, 18, 30
Leah Grassman / Scott Valley and Shasta Valley Watermaster District	3/6/2025	23	14
Lilliana K. Selke / Herum Crabtree Suntag Attorneys on behalf of Banta-Carbona Irrigation District, West Stanislaus Irrigation District, and Patterson Irrigation District	4/16/2025	24	20, 22, 25, 29, 38
Linda Arluck / Santa Clara Valley Water District	4/23/2025	25	7, 14, 17, 18, 25, 31, 38
Lisa Holm / United States Bureau of Reclamation	4/23/2025	26	23, 28, 31, 32
Maryann Agyres	2/28/2025	27	15, 19
Maureen Martin / The Metropolitan Water District of Southern California	4/23/2025	28	10, 12, 35
Megan Murphy / California Municipal Utilities Association	4/23/2025	29	9, 10, 12, 18, 29, 30, 31, 32, 33, 34, 35, 38
Michael Vergara / Somach Simmons & Dunn on behalf of Byron-Bethany Irrigation District	4/23/2025	30	8, 9, 16, 29, 35, 36
Mike Matlock	4/6/2025	31	42

Commenter Name	Date Received	Document No.	Page(s) of Responses
Nicholas Bonsignore / Wagner & Bonsignore Consulting Civil Engineers	4/16/2025	32	23
Peter Fels and Phoebe Palmer	3/9/2025	33	6, 19
Randall James Reed / Cucamonga Valley Water District	4/22/2025	34	6, 7, 8, 9, 11, 16, 18, 21, 29, 30, 36
Ryan Bezerra / BKS Law Firm	4/23/2025	35	6, 25, 31, 36, 38
Samantha Mueller / Yellow Clay Farm Co.	3/5/2025	36	6, 19, 21
Stephen Pang / Association of California Water Agencies	4/23/2025	37	9, 10, 16, 18, 21, 30, 31, 32, 35, 36
Steve Haugen / Kings River Water Association	4/16/2025	38	30
Steve Simons	4/18/2025	39	19
Stuart Styles / Cal Poly SLO	4/10/2025	40	24
Todd J. Schram / Sonoma Water	4/23/2025	41	11, 26, 29, 39
Tracy Axton	4/23/2025	42	6
Tyler Covich / Pacific Gas and Electric Company	4/23/2025	43	6, 8, 16, 29, 31, 32, 33, 35, 38, 40
Vince Trotter	4/23/2025	44	7, 8, 16, 19, 22, 25, 43
Zeke Bean / City of Santa Cruz Water Department	4/23/2025	45	6, 31, 32

Public Hearing

The following commenters provided oral comments to the State Water Board during the public hearing held on April 16, 2025:

Commenter Name (in order of appearance in hearing transcript)	Document No. (within hearing transcript)	Page(s) of Responses
Bruce Russell / Russell Vineyards	46	13
Coale Johnson / De La Cour Ranch	47	7
Noah Lopez / Western Resource Strategies, LLC	48	7
Mike Matlock	49	42
Stephanie Rodden / Rodden Ranches, LLC	50	24
Stephen Pang / Association of California Water Agencies	51	8, 9, 18, 21, 31, 32, 36
Kyle Knutson / MBK Engineers	52	13, 29, 32
Nicholas Bonsignore / Wagner & Bonsignore Consulting Civil Engineers	53	6, 16, 18
Manny Bahia / State Water Contractors	54	6, 9, 10, 26, 27
Jean-Paul Mugrditchian / Setton Farms	55	6, 17, 18, 30, 34

Commenter Name (in order of appearance in hearing transcript)	Document No. (within hearing transcript)	Page(s) of Responses
David Webb / Friends of the Shasta River	56	42
Megan Murphy / California Municipal Utilities Association	57	9, 10, 16, 30, 31
Dante Nomellini Jr. / Central Delta Water Agency	58	11, 13
Austin Verissimo / Hydra Logic, Inc.	59	17
Ryan Bezerra / BKS Law Firm	60	25, 28, 31, 32, 39
Patrick Neu / Pacific Gas and Electric Company	61	16, 31, 32, 33, 35
Justin Fredrickson / California Farm Bureau Federation	62	40, 41

First 15-Day Written Public Comment Period

The following commenters provided written comments to the State Water Board during the first 15-day public comment period ending June 6, 2025:

Commenter Name	Date Received	Document No.	Page(s) of Responses
Allison Febbo / Westlands Water District	6/6/2025	63	43, 44, 45, 54
Andree Lee / San Joaquin Tributaries Authority	6/6/2025	64	43, 48, 57
Andy Johnston	5/22/2025	65	44, 47, 48
Chester M	5/22/2025	66	47
Coale Johnson / De La Cour Ranch	5/24/2025	67	44, 45, 48
Dante Nomellini Jr. / Nomellini, Grilli & McDaniel Law Office on behalf of Central Delta Water Agency	6/6/2025	68	51, 53
Darren Cordova, Kyle Knutson, and Anne Williams / MBK Engineers	6/6/2025	69	44, 48, 49, 50, 51, 52, 53, 55, 56
Ed Anderson	5/22/2025	70	47
Jennifer Pierre and Federico Barajas / State Water Contractors and San Luis & Delta Mendota Water Authority	6/6/2025	71	45
Jesse Gebauer, Vince Maples, and Nicholas Bonsignore / Wagner & Bonsignore Consulting Civil Engineers	6/5/2025	72	44, 47, 49, 51, 52, 55
Joseph Gallegos / Capta Hydro	6/6/2025	73	57
Kaitlyn Chow / Yuba Water Agency	6/5/2025	74	43, 52, 56
Linda Arluck / Santa Clara Valley Water District	6/6/2025	75	44, 45, 50, 51, 54, 55
Martin Miller	6/3/2025	76	47
Maureen Martin / The Metropolitan Water District of Southern California	6/6/2025	77	43, 45
Megan Murphy / California Municipal Utilities Association	6/6/2025	78	43, 45, 48, 52, 55

Commenter Name	Date Received	Document No.	Page(s) of Responses
Ryan Bezerra / BKS Law Firm	6/6/2025	79	51, 52, 56
Stephen Pang / Association of California Water Agencies	6/6/2025	80	45, 48, 52, 53, 56

Second 15-Day Written Public Comment Period

The following commenters provided written comments to the State Water Board during the second 15-day public comment period ending July 1, 2025:

Commenter Name	Date Received	Document No.	Page(s) of Responses
Andy Johnston	6/16/2025	81	58
Bryan Marty	6/17/2025	82	58
Chris Correa	6/17/2025	83	58
Dan Morrow	6/16/2025	84	58, 60
John Diffenbaugh	6/16/2025	85	58
Nathan Stoll	6/16/2025	86	58
Ryan Bezerra / BKS Law Firm	7/1/2025	87	59
Stephanie Moreda-Arend / Moreda Valley Dairy	6/16/2025	88	58

Third 15-Day Written Public Comment Period

The following commenters provided written comments to the State Water Board during the third 15-day public comment period ending November 14, 2025:

Commenter Name	Date Received	Document No.	Page(s) of Responses
Adina Klaus	11/11/2025	89	61
Darren Cordova, Kyle Knutson, and Anne Williams / MBK Engineers	11/14/2025	90	60, 63
Graeme Scott / Madrone Farms	11/1/2025	91	61
Linda Arluck / Santa Clara Valley Water District	11/14/2025	92	61, 62, 63
Mike Matlock	11/14/2025	93	65
Patrick Neu / Pacific Gas and Electric Company	11/10/2025	94	64
Ryan Bezerra / BKS Law Firm	11/14/2025	95	60, 61, 62, 64

Summarized Responses to Comments

All comments received during the four written comment periods and the public hearing were summarized, grouped, and responded to in the following summary responses.

The “Comment IDs” represent the individual arguments raised within each comment letter or oral comment. The number before the decimal identifies the document number (“Document No.”) of the letter or oral comment, consistent with those included in the Lists of Commenters above; the number after the decimal refers to the discrete argument within the document or oral comment.

Initial Public Comment Period (including written comments and oral comments received during public hearing)

During the initial public comment period, which extended from February 28, 2025, through April 23, 2025, the State Water Board received 45 written comment letters. Additionally, at the public hearing on April 16, 2025, 17 commenters provided oral comments. The comments included in these letters and oral statements are summarized, grouped, and responded to as follows:

General - Support for Revisions

Comment ID(s): 2.6, 4.1, 4.2, 4.3, 4.4, 4.5, 5.1, 5.2, 5.3, 9.1, 15.1, 15.2, 15.8, 16.1, 17.13, 22.1, 22.2, 22.8, 34.7, 35.3, 43.1, 45.1, 53.1, 54.1, 55.1, 55.2, 55.3, 55.4, 55.7

Summarized Comment: Several commenters expressed support for the proposed regulation in general, or for specific provisions. Elements that drew support include temporary exemptions for natural events that prevent measurement and reporting, improved data and digital infrastructure, universal data standards, incorporation of public feedback, alignment of reporting periods for reports of groundwater extraction and diversion, expanded options for qualified individuals, exclusion of stockpond certificates and most registrations from the water measurement regulations, simplification of requirements, and the improved clarity and flexibility of the new regulation text.

Response: The State Water Board acknowledges and thanks these commenters for their support. The State Water Board did not make any changes to the proposed regulation in response to this comment.

General - Opposition to Regulation and/or Proposed Revisions

Comment ID(s): 33.1, 36.1, 36.4, 42.1

Summarized Comment: Several commenters voiced general opposition to the water measurement regulation but did not provide specific recommendations or reference specific requirements. Commenters expressed a lack of clarity as to why the existing regulations need to be revised.

Response: The State Water Board believes these revisions are necessary to effectively implement its water measurement regulation as required by statute and to ensure the Board

receives more usable, higher quality measurement data. A full list of reasons for the revisions can be found in the Final Statement of Reasons for Regulatory Action (FSOR). The State Water Board did not make any changes to the proposed regulation in response to this comment.

General - Guidance and Outreach

Comment ID(s): 5.8, 8.1, 25.8, 34.11, 44.2, 44.3, 47.1

Summarized Comment: Several commenters stressed the importance of public outreach and guidance. Commenters recommended that Board staff visit diverters, especially in the agricultural sector, to answer questions and provide site-specific guidance. Commenters also recommended the Board produce easily accessible and digestible guidance materials, such as tutorial videos or "deficiency lists" to alert diverters of compliance issues. One commenter recommended coordination with industry groups such as the California Cattlemen's Association to better reach their members regarding compliance. Another commenter stressed the need for qualified staff members to answer public questions. Commenters also indicated that they would appreciate being able to review responses to questions and comments raised during the rulemaking process.

Response: The State Water Board will update its guidance materials and conduct outreach events to assist the public in adapting to the regulation revisions. The kinds of outreach and guidance offered will be informed by public feedback and may include videos, workshops, and plain-language explanations. The new California Water Accounting, Tracking, and Reporting System (CalWATRS) will also improve direct communication with diverters and will be capable of alerting diverters to potential compliance issues. All rulemaking documents, including the FSOR containing this Summary and Response to Comments will be posted to the Board's website at https://www.waterboards.ca.gov/waterrights/water_issues/programs/diversion_use/rulemaking.html.

The State Water Board has previously met with industry groups to discuss members' issues and will continue to do so in implementing the proposed regulation. Diverters and industry groups seeking additional communication can contact the Division of Water Rights' (Division) dedicated email address for this rulemaking at DWR-Measurement@Waterboards.ca.gov. Division staff are responsive to questions regarding measurement regulations and can arrange to call or meet with diverters when necessary.

The State Water Board did not make any changes to the proposed regulation in response to this comment.

General - Enforcement

Comment ID(s): 2.7, 5.4, 5.5, 5.6, 5.7, 48.1

Summarized Comment: Several commenters stressed the importance of flexible enforcement, mentioning that the proposed regulation can be difficult to follow, with one commenter expressing frustration that the water measurement regulations have been amended multiple times since their initial adoption in 2016, which they argued has led to confusion among diverters. Regarding enforcement, commenters expressed concerns about potential threshold

adjustments, which they feared could come as a surprise to diverters; automatic penalties or fees for non-compliance, which they argued would be inappropriate for initial implementation of the updated regulation; and civil liabilities for diverters out of compliance, for which they recommended a process by which diverters would be informed of any deficiencies and offered an opportunity to correct them before any fees or penalties are administered.

Response: This is the first time the water measurement regulations have been revised since their initial adoption in 2016. During the implementation of the proposed updates to the regulation, the Board will produce guidance materials and work with diverters to increase awareness of updated requirements.

In addition, the State Water Board has updated the proposed regulation text to postpone most new measuring requirements until October 2026 and most new reporting requirements until January 2028, which will allow diverters time to come into compliance. Similarly, the new large diversion submission requirements requiring that large diverters submit large diversion measurement data to the Board's online reporting platform or other approved website have been postponed until October 1, 2027. Proposed section 938 limits the ability of the Deputy Director of the Division of Water Rights (Deputy Director) to change thresholds and reporting schedules by requiring a thorough analysis and opportunity for public comment before making the adjustment. Notice of any adjustment will also be posted to the Board's website to keep diverters updated.

The State Water Board does not have any late fees associated with diversion measurement requirements. There are late fees for annual water use reporting, which is beyond the scope of this rulemaking. The proposed revisions do not change any civil liabilities already associated with the existing regulations. The administrative process for failure to meet the requirements of the proposed regulation has not changed from that of the existing regulations. This process includes written notice of violations and typically provides an opportunity for correction.

General - Improve Language and Correct Errors with Text

Comment ID(s): 9.2, 30.6, 34.1, 43.5, 43.6, 44.1, 51.2

Summarized Comment: Several commenters expressed concern that the proposed regulation text is not clear enough and requested that the text be revised to improve clarity and reduce ambiguity. One commenter identified an error with section 913, subdivision (a) in which a reference was included to a subdivision that no longer existed.

Response: The State Water Board has updated the regulation to more precisely describe definitions and data reporting requirements and to use plain language as much as possible. The State Water Board will update written guidance and hold a series of outreach events to assist the public with compliance. The State Water Board has also removed the erroneous reference in section 913, subdivision (a).

General - Confidentiality

Comment ID(s): 17.7, 17.12

Summarized Comment: One commenter raised concerns about the confidentiality of proprietary information regarding diverters, operations, or water use practices that may be included in measurement methodologies or alternative compliance plans (ACPs). They recommended that these documents be kept confidential and secure, and that the Board not post ACPs publicly.

Response: The existing regulations require that submitted ACPs be made publicly available. The proposed revisions do not change this. The State Water Board will remove or censor personally identifiable information in accordance with law and to the extent practicable prior to posting ACPs publicly. Diverters do not need to provide sensitive information in their measurement methodology, provided the methodology meets the requirements of proposed section 934. The measurement methodology is simply an explanation of the process by which a diverter measures and accounts for required parameters. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Alternative Compliance Plans - Review Timeline for ACPs

Comment ID(s): 2.4, 5.3, 16.6, 29.4, 30.3, 34.4, 37.5, 51.5, 54.4, 57.3

Summarized Comment: Several commenters recommended that the regulation include a clear timeline for the State Water Board to review, approve, and reject ACPs. One commenter also expressed a similar desire for an explicit review timeline for measurement methodologies. They were concerned that the proposed text—which allows diverters to implement an ACP immediately and does not specify a deadline by which the Board must complete its review and issue an approval or rejection of the ACP—creates uncertainty for diverters whose ACP may eventually be rejected. While some commenters expressed support for the ability to implement ACPs immediately upon submittal, others believed the proposed language could allow certain diverters to use unproven or inaccurate approaches to measurement that would otherwise have been rejected. Additionally, some commenters noted concern that they may invest money and resources into implementing their ACP, only for it to be rejected in the future.

Response: The proposed regulation allows ACPs to be implemented unless rejected. This is how the existing regulations were interpreted; the proposed revisions explicitly state this to provide clarity for the diverter. Diverters are expected to start implementing their ACP right away without waiting for explicit approval from the State Water Board. Specifying a timeframe for the Board to review and issue a response to each ACP (or measurement methodology) would place significant administrative burdens on the State Water Board and may result in a rushed and inadequate review.

The proposed regulation was revised to clarify the review process which includes reviewing the submitted ACP form and auditing its implementation, and—upon identifying deficiencies—conferring informally with diverters to suggest changes, requiring modifications to meet specified requirements, and issuing a rejection or approval of the ACP. Additionally, the proposed regulation was revised to state that rejection of an ACP will not retroactively affect the

compliance status of a submitted and implemented ACP. A similar review process was also added for measurement methodologies.

Alternative Compliance Plans - Eligibility for ACPs

Comment ID(s): 5.3, 16.2, 16.3, 16.6, 28.1, 28.3, 29.8, 37.10, 54.4, 57.3

Summarized Comment: While some commenters expressed support for the expanded eligibility criteria for alternative compliance, several commenters commented that since the authorizing statute requires a finding that "strict compliance is infeasible, is unreasonably expensive, would unreasonably affect public trust resources, or would result in the waste or unreasonable use of water" (Water Code section 1840, subdivision (b)(1)) before modifying measurement requirements, this finding would have to be made for each ACP before approval. They argued the proposed regulation changes the intent of alternative compliance under the existing regulations and allows too much freedom regarding who can pursue alternative compliance, which could lead to inadequate data and reporting, and subsequently could impact water availability and water rights enforcement. Therefore, they argued that the Board should only be able to approve ACPs that meet the criteria described in the Water Code.

Response: Water Code section 1840, subdivision (b)(1) allows modification of the requirements in Water Code section 1840, subdivision (a) upon a finding that either (A) strict compliance is infeasible, is unreasonably expensive, would unreasonably affect public trust uses, or would result in the waste or unreasonable use of water, or (B) the need for monitoring and reporting is adequately addressed. Rather than make such a finding on a case-by-case basis, in Resolution 2025-0021 the State Water Board has made a broad finding that ACPs that provide a more effective or efficient way of measuring while still ensuring accurate data on water diversion and use meet the criteria of Water Code section 1840, subdivision (b)(1). The State Water Board did not make any changes to the proposed regulation to require case-by-case findings that strict compliance meets the criteria described in Water Code section 1840, subdivision (b)(1)(A). The Board updated the proposed regulation to better reflect the intent of alternative compliance and to require diverters to fulfill the requirements of the chapter to the extent practicable in order to provide sufficiently accurate and timely measurement data to the Board. Diverters pursuing alternative compliance are also required to explain how their proposed ACP functionally meets the requirements of the regulation and how they meet the eligibility requirements for ACPs.

The State Water Board believes that ACPs should be implemented upon submittal to fulfill the purpose of chapter 2.8. This is consistent between the existing and proposed regulations. If the Board finds that an ACP is insufficient and does not satisfy the intent of the regulation by providing accurate and timely measurement data, the Board may meet informally with the diverter or otherwise require modifications to the ACP to correct identified deficiencies. If appropriate modifications are not made, the State Water Board may reject the ACP. For an acceptable ACP, the State Water Board may approve the ACP but impose conditions to ensure the ACP remains adequate in the future. Section 936 of the proposed regulation has been updated to clarify the ACP review process and explicitly state that ACPs must provide sufficiently accurate and timely measurement data.

Alternative Compliance Plans - Opportunity to Comment on ACPs

Comment ID(s): 2.5

Summarized Comment: One commenter requested additional parameters regarding the timeframe for which the public is able to comment on ACPs and how the State Water Board will reply to these comments.

Response: Under the existing regulations, there is no stated time period or time constraint for public comment on ACPs. This is not changing with the proposed updates and therefore is outside the scope of the rulemaking. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Alternative Compliance Plans - Delta ACP

Comment ID(s): 34.8, 58.1

Summarized Comment: Commenters had contrasting opinions regarding the Delta Alternative Compliance Plan (Delta ACP), which was developed in partnership with the Office of the Delta Watermaster to provide a measurement option using consumptive use data from OpenET instead of diversion measurements. One commenter recommended greater scrutiny of ACPs in the Legal Delta to ensure they are held to the strict measurement accuracy standards of proposed section 933. Another commenter recommended the State Water Board be flexible in allowing alternative compliance methods—including those described in the Delta ACP—in the Delta due to its unique hydrology.

Response: ACPs are intended to allow flexibility when not all measurement and accuracy standards can be fully met by directly metering diversions. The Delta Watermaster has the same authorities granted to the Deputy Director with respect to Legal Delta water rights, including the discretion to review ACPs within the Legal Delta and evaluate whether the proposed measurement approach meets the requirements of the regulation. The proposed regulation still allows for the Delta ACP to be implemented. The State Water Board encourages diverters within the Legal Delta to work with the Office of the Delta Watermaster regarding ACP implementation and other water rights matters in the Legal Delta.

Alternative Compliance Plans - Area and Parcels

Comment ID(s): 41.5

Summarized Comment: One commenter sought clarity on the meaning of “area covered” as required in an ACP. They also questioned the purpose of requiring identification of individual parcels, as that could be a burden on diverters whose place of use covers many parcels.

Response: The State Water Board has updated the proposed regulation to clarify that maps must show places of use, points of diversion, and measurement locations. Identification of parcels within the area covered by the ACP provides a necessary level of granularity to understand how water is being used and where it is being applied, especially for ACPs that cover a large area. However, the State Water Board intends to investigate reporting tools that will allow automatic identification of parcels based on the mapped place of use.

Alternative Compliance Plans - Intent of ACPs

Comment ID(s): 16.3, 16.4, 28.1, 29.8

Summarized Comment: Commenters expressed concern that proposed revisions to the alternative compliance section (proposed section 936) undermine the intent of the water measurement regulation. For example, commenters expressed concern that diverters may pursue alternative compliance as a means of avoiding diversion measurement altogether, which could jeopardize other lawful water rights. Commenters provided suggested revisions to clarify the intent of the water measurement regulation, including a revision to delete the provision permitting the certification by a qualified individual to be based on "the best of their knowledge."

Response: The State Water Board has updated the proposed regulation to better reflect the intent of alternative compliance and require diverters to fulfill the requirements of the chapter to the extent practicable in order to provide sufficiently accurate and timely measurement data to the State Water Board. Diverters pursuing alternative compliance are also required to explain how their proposed ACP functionally meets the requirements of the regulation and how they meet the eligibility requirements for ACPs. The State Water Board removed the language of "to the best of their knowledge" from the qualified individual's certification. Additionally, please refer to the responses to comments related to "Alternative Compliance Plans - Review Timeline for ACPs" and "Alternative Compliance Plans - Eligibility for ACPs."

Alternative Compliance Plans - Data Reporting

Comment ID(s): 16.5, 28.2, 29.8

Summarized Comment: Commenters expressed opposition to diverters being able to propose alternative reporting processes and schedules for submitting data that were collected pursuant to an ACP. Arguments to this effect included citing that Water Code section 1840 only allows modification of measurement requirements.

Response: The word "reporting" has been removed from the title of proposed section 936 and the proposed regulation text has been updated to clarify that diverters pursuing alternative compliance must still submit a measurement datafile annually with their annual reports. However, the State Water Board recognizes that not all diverters who are subject to the large diversion requirements are able to submit large diversion measurement data on a weekly basis. Therefore, diverters may propose alternative submission frequencies for large diversion submissions.

Alternative Compliance Plans - Remote Sensing

Comment ID(s): 16.4, 28.1, 29.8

Summarized Comment: Commenters suggested adding a requirement for diverters who measure using remote sensing to provide a description of the methodology used to accurately determine the rate, time, and volume of diversions.

Response: The State Water Board updated the proposed regulation text to clarify that diverters who measure using remote sensing must describe how they determined the required

measurement parameters from the remote sensing data. However, because diverters may pursue alternative compliance on the basis of being unable to meet the specified accuracy requirements, the updated text in proposed section 936, subdivision (c)(4)(C) need not specifically incorporate the accuracy reference suggested by the commenters.

Alternative Compliance Plans - Submission Deadlines

Comment ID(s): 9.5, 52.1

Summarized Comment: Commenters requested an extension for submitting ACPs, such that diverters pursuing alternative compliance do not need to submit an ACP until 2027, citing concerns about the time needed to prepare the required documentation.

Response: The State Water Board agrees that diverters will need time to ensure their ACPs meet the requirements of the proposed regulation and to submit their ACPs using the new CalWATRS platform. The proposed regulation text has been revised to require ACPs to be submitted on or before January 31, 2027.

Alternative Compliance Plans - Submission Process

Comment ID(s): 46.1

Summarized Comment: One commenter asked how and where they would be able to submit an ACP. The commenter did not express either opposition or support, but rather sought clarity.

Response: ACPs will be available as a form (which will include the information described in section 936 of the proposed regulation) in the CalWATRS online reporting platform. Diverters pursuing alternative compliance will need to submit the form through CalWATRS.

Applicability - Applicability Threshold (Above 10 Acre-feet Vs. Equal to or above 10 Acre-feet)

Comment ID(s): 58.2

Summarized Comment: One commenter expressed concern that the regulation's applicability threshold of greater than 10-acre-feet does not match the authorizing statute, which requires diverters of 10 acre-feet or greater to measure. They asked for clarity on why the regulation does not seem to apply to diverters of exactly 10 acre-feet.

Response: The authorizing statue (Water Code sections 1840, 1841, and 1841.5, often referred to as "SB 88") allows the State Water Board to adjust the applicability threshold to values above 10 acre-feet per year when determining which water rights are subject to measurement requirements. When drafting the initial regulations, the State Water Board made an intentional decision to have the regulation apply specifically to diversions greater than 10 acre-feet per year, rather than those greater than or equal to 10 acre-feet per year. In the Informative Digest for the emergency regulation implementing SB 88 (dated March 1, 2016), the State Water Board noted "There were many comments recommending that the [State] Water Board exempt registrations from the measurement requirement. The [State] Water Board generally agreed with

this recommendation because registrations and stockpond certificates are small diversions. Since most registration types have a maximum authorized diversion of 10 acre-feet per year (small irrigation registrations can divert up to 20 acre-feet per year), the Board set the diversion threshold for required measurement at greater than 10 acre-feet per year." The proposed regulation does not introduce a change from the originally-adopted regulation text in this regard, and no change was made to the proposed regulation in response to this comment.

Applicability - Watermastered Rights

Comment ID(s): 23.1

Summarized Comment: One commenter asked for clarification on whether the proposed regulation applies to water rights in a Watermaster service area. This comment indicated a potential lack of clarity in the regulation text.

Response: The proposed regulation only applies to licenses, permits, registrations for irrigation, and diverters who are required to file a Statement of Water Diversion and Use. For clarity, the State Water Board has updated the language in proposed section 932 to more closely resemble the existing regulations, which phrase applicability in terms of diverters of claimed water rights rather than in terms of the claimed water rights themselves. Diversions pursuant to claimed water rights in areas covered by a Watermaster are not required to file Statements of Water Diversion and Use and therefore do not meet the definition of "diverter" and are not subject to the regulation.

Applicability - Applicability Based on Shared Place of Use

Comment ID(s): 25.1

Summarized Comment: One commenter sought clarification on whether the proposed regulation would apply based on the combined diversions of claimed water rights sharing the same place of use, if the combined maximum allowable diversion amounts of all claimed water rights sharing the same place of use exceeds 10 acre-feet per year. They believed the Initial Statement of Reasons for Regulatory Action (ISOR) indicated that this provision was removed.

Response: The ISOR for this regulation indicated removal of combined water rights serving the same place of use as a criterion for determining required measurement frequencies, but neither the ISOR nor the initially proposed regulation indicated removal of shared places of use as a criterion determining general applicability of the regulation. However, the State Water Board acknowledges the potential confusion caused by the inclusion of shared places of use as a criterion in some sections of the proposed regulation and not in others. Therefore, the Board has updated the regulation to remove combined water rights serving the same place of use from the general applicability criteria of the proposed regulation. This change reduces any potential confusion and only removes requirements for the smallest diverters.

Applicability - Qualifying Reservoirs

Comment ID(s): 17.3

Summarized Comment: One commenter recommended that the term “qualifying reservoir” be defined in the Definitions section (proposed section 931), instead of in the Applicability section (proposed section 932) to specify the threshold of 5,000 acre-feet for which additional measurement requirements apply to water withdrawn or released from reservoirs.

Response: Since—as described in proposed section 938—the Deputy Director can adjust the applicability threshold for qualifying reservoirs in the future (pending an analysis), it is more appropriate to include a description of qualifying reservoirs in the Applicability section and not in the Definitions section. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Applicability - Exempt Smaller Diverters

Comment ID(s): 12.1, 13.2, 19.2, 27.1

Summarized Comment: Commenters argued that the 10-acre-foot general applicability threshold for the measurement regulations is too low and that smaller diverters, including those who divert less than 20 acre-feet per year or who manage small farms, should be exempt from the measurement requirements of the proposed regulation.

Response: The 10 acre-feet per year general applicability threshold is consistent with the existing regulations and the implementing legislation (SB 88). As stated in both the ISOR and FSOR, California has diverse hydrogeography; 10 acre-feet may seem insignificant in some regions of the state, but may represent a significant portion of available water in other regions. Therefore, the State Water Board has not changed the general applicability threshold of 10 acre-feet from the existing regulations. However, as in the existing regulations, under the proposed regulation the Deputy Director has the ability to raise the general applicability threshold above 10 acre-feet in certain watersheds depending on the need for measurement data. Diverters are encouraged to contact the Board to request that the Deputy Director raise the threshold for a specific watershed. In circumstances where the requirements of the proposed regulation remain financially infeasible, diverters may pursue alternative compliance in accordance with proposed section 936.

Additionally, the proposed regulation explicitly exempts the following claimed water rights from its water measurement requirements: stockpond certificates, registrations for domestic use, registrations for livestock stockponds, and registrations for cannabis irrigation. Diversions under these water rights do not represent a significant amount of water statewide, and the cost of measurement for these water rights generally outweighs the benefit of measurement data. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Applicability - Combinations of Claimed Water Rights

Comment ID(s): 44.6

Summarized Comment: This commenter requested clarity regarding proposed section 932, subdivision (a)(2) which specifies that general applicability of the water measurement regulation may be determined based on the combined maximum allowable diversion amounts of multiple claimed water rights held by the same diverter that divert from the same point of diversion or to the same reservoir. Specifically, the commenter expressed confusion as to how this provision would apply to a diverter with multiple stockponds or reservoirs, each with a capacity less than 10 acre-feet.

Response: Stockpond certificates and registrations for livestock stockponds are exempt from the proposed regulation. For diverters with licenses, permits, registrations for small irrigation use, and Statements of Water Diversion and Use, the applicability is based on whether any claimed water right (or combination of claimed water rights sharing a point of diversion or reservoir) has a maximum allowable diversion amount (or total combined maximum allowable diversion amount) greater than 10 acre-feet per year. In cases where all claimed water rights allow diversion to storage, i.e., without direct diversion, only reservoirs with a capacity greater than 10 acre-feet need to be measured. The scenario described in this comment would not be subject to the proposed regulation. The State Water Board did not make any changes to the proposed regulation in response to this comment.

CalWATRS - Extend Public Comment Period until CalWATRS and Forms Are Available

Comment ID(s): 3.2, 3.5, 4.7, 15.13, 17.7, 22.13, 30.1, 30.2, 34.6, 37.6, 43.3, 43.5, 43.7, 53.3, 57.5, 61.2

Summarized Comment: Several commenters expressed concern that the CalWATRS platform was not available for public review during the comment period and argued that the public comment period should be extended until the State Water Board could provide access to the platform and all forms and data standards used therein, including datafile templates, measuring device registries, measurement methodologies, and ACPs.

Response: All required information for measurement methodologies, device registries, ACPs, measurement datafile templates, and other measurement-related forms is identified in the proposed regulation. The public has the information they need to meaningfully comment on the proposed regulation. While the format of these forms in the new CalWATRS online reporting platform is not relevant to the rulemaking, the State Water Board intends to make these forms available to diverters after the system goes live and well in advance of the reporting deadlines. Upon release of CalWATRS, the core technical tools will be in place to support collaboration with diverters and the public while working toward improved data standards and reporting processes.

In addition, the State Water Board updated the proposed regulation to postpone the updated reporting requirements until January 2027 (for submitting measurement methodologies and

ACPs), October 2027 (for submitting large diversion measurement data to CalWATRS or other approved websites), and January 2028 (for submitting general measurement data). The updated implementation schedule allows diverters sufficient time to adjust to the new CalWATRS platform before being required to submit data under the proposed regulation.

CalWATRS - CalWATRS Abilities, Functionality, and APIs

Comment ID(s): 4.3, 15.2, 15.3, 15.4, 15.6, 22.3, 22.4, 22.6, 22.7, 25.5, 25.10, 55.3, 55.5, 55.6, 59.1

Summarized Comment: Commenters were generally supportive of the development of CalWATRS and its ability to use application programming interfaces (APIs) to easily transmit measurement data to the platform. Several commenters provided recommendations on how the new CalWATRS system should function, especially with regard to API specifications, reporting of geospatial place of use, and search and export tools. Some commenters also expressed interest in requiring direct data transmission, as opposed to also allowing diverters the option to manually update datafile templates. Other commenters questioned whether historically reported information, including past annual reports, measurement methods, and ACPs, would be available in CalWATRS.

Response: CalWATRS will have improved capabilities over the previous reporting platform to ingest, store, and process data. The new platform will modernize the way water rights data are submitted, stored, analyzed, and made available to the public. CalWATRS will have minimal API functionality at the initial release. However, the core technical tools will be in place to support collaboration with the public while working toward better data standards and reporting processes. While the State Water Board expects many diverters will opt to directly transmit their measurement data to CalWATRS, to allow additional flexibility the proposed regulation also allows diverters the option of manually uploading measurement data to the platform.

The early versions of CalWATRS will also have limited tools for searching and downloading reported data since new water rights data will not be entered into the system until the new water year. The search and download tools will be enhanced during this time to ensure ease of data access and improved transparency. Historical annual reports, measuring devices, measurement methods, and ACPs will be transferred into CalWATRS, but diverters will need to update them in accordance with the proposed updates to the water measurement regulation's requirements. CalWATRS will also introduce digital mapping of places of use, an improvement over the previous eWRIMS system.

Technical workgroups are planned to discuss enhancements to CalWATRS following the initial release. Water rights holders are also encouraged to contact the Updating Water Rights Data for California (UPWARD) project team at UPWARD@Waterboards.ca.gov to discuss technical specifications relating to CalWATRS. To ensure the State Water Board has the flexibility to continue to develop its system in partnership with staff and public users, the technical specifications of CalWATRS are not being incorporated into the proposed regulation.

CalWATRS - Recommended Coordination with UPWARD UAG

Comment ID(s): 4.6, 15.9, 15.10, 22.9, 22.10, 22.12, 25.9, 29.6, 34.10, 37.11, 51.7, 55.8

Summarized Comment: Commenters expressed interest in providing input on the new CalWATRS platform, beta testing its functionality, and participating in technical workgroups and the UPWARD Advisory Group (UAG). Commenters recommended that the UAG be involved in the rulemaking process to ensure that public feedback gathered through the UAG is considered in the proposed regulation.

Response: The UAG was formed to engage with experts and interested parties in modernizing the State Water Board's data and reporting systems. Board staff have been closely coordinating with CalWATRS and the UAG during this rulemaking to ensure that CalWATRS and proposed regulation revisions are in sync. Input from the UAG has been critical for informing the development of the CalWATRS online reporting platform. Technical workgroups are also planned to discuss enhancements to CalWATRS following its initial release. The Board will continue to incorporate public feedback regarding CalWATRS through such workgroups. Diverters are also encouraged to contact the UPWARD project team at UPWARD@Waterboards.ca.gov to provide feedback, ask questions, and discuss concerns relating to CalWATRS and the UPWARD project. This comment did not recommend any changes to the proposed regulation, and therefore the State Water Board did not make any changes to the proposed regulation in response to this comment.

CalWATRS - Timeline and Availability

Comment ID(s): 15.10, 15.11, 15.12, 22.10, 22.11, 25.6, 25.7, 25.9, 29.6, 53.2, 55.8

Summarized Comment: Commenters requested additional information regarding the availability of the CalWATRS platform, including the timeline on which technical specifications for APIs and other data transmission standards will be available for public review, the schedule for beta testing of the platform, when the platform, forms, and datafile templates will be available to the public, and how the forms and templates will look. Commenters expressed concern that they would be required to report using the new platform without having sufficient time to become familiar with it.

Response: The first version of CalWATRS was released in late 2025. Technical workgroups are planned to discuss enhancements following the initial release. The State Water Board will also publish instructional materials and tutorials guiding users through how to use the new system. Diverters are also encouraged to contact the UPWARD project team at UPWARD@Waterboards.ca.gov to provide feedback, ask questions, and discuss concerns relating to CalWATRS and the UPWARD project.

All datafile templates and forms, including those for measurement methodologies, device registries, and ACPs, will be accessible through CalWATRS and will only include the information specified in the proposed regulation. The State Water Board has updated the proposed regulation to postpone certain reporting requirements, including submitting measurement methodologies and ACPs (postponed until January 2027), submitting large diversion

measurement data via CalWATRS (postponed until October 2027), and submitting general measurement datafiles (postponed until January 2028). These updated reporting timelines will allow diverters sufficient time to get accustomed to the new system before needing to submit measurement data or forms in compliance with new requirements. Annual reporting requirements outside of the water measurement regulation are not included in this rulemaking—except for the statutorily required change to the groundwater recordation reporting period—and therefore a request to postpone annual reporting requirements is beyond the scope of this rulemaking.

Changes to Reporting (Chapters 2 and 2.7) - Email Requirement

Comment ID(s): 5.6

Summarized Comment: One commenter expressed concern with requiring email addresses from reporters, claiming that some diverters find online platforms difficult. They urged flexibility in implementation and enforcement of this requirement.

Response: An email is necessary for users to securely register, login, and report with the State Water Board's CalWATRS data platform. Obtaining an email address is free and available through many different vendors. Valid email addresses will allow faster, more efficient communication between Board staff and diverters. Board staff are available to assist any individuals who have questions about complying with the email requirement. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Cost Vs. Benefit - Burden for Small Diverters

Comment ID(s): 1.1, 6.1, 7.1, 8.1, 13.1, 13.2, 18.1, 19.2, 27.1, 33.2, 36.2, 39.1, 44.8

Summarized Comment: Several commenters voiced general opposition to the water measurement regulation, citing the cost to small diverters, including small farmers, and the asserted limited benefit of measurement data from those diverters. One commenter suggested exempting small diverters that meet certain criteria, such as exclusively using water on their own property. Other commenters suggested that small diverters only be required to provide estimates of diversion amounts as opposed to accurately measuring. Some commenters also expressed concern about potential fees, additional device installation requirements, and administrative requirements that may be burdensome to small diverters.

Response: The proposed regulation does not introduce additional fees, require diverters to produce scientific studies, require installation of specific types of measurement equipment, or introduce other such burdens cited by commenters. The proposed revisions are intended to clarify existing requirements and improve the quality of data submitted to the Board. The existing measurement and reporting regulations were adopted in 2016, with most provisions becoming effective in 2018. Water rights or claims to divert over 10 acre-feet per year already require accurate measurement of diversions for both direct diversions and diversions to storage. There are no changes in the proposed regulation that will create significant additional costs for small diverters who have already been in compliance. For diverters who have already been measuring their diversions in accordance with the existing regulations, their existing equipment

is generally sufficient for meeting the updated requirements, and it is unlikely that they will need to install additional equipment or devices.

Some small diverters—including those who divert under stockpond certificates, registrations for livestock stockponds, registrations for domestic use, and registrations for cannabis irrigation, those who have reservoirs with capacities under 5,000 acre-feet, and those who divert less than 200 acre-feet per year—are expected to have reduced requirements under the proposed regulation. As in the existing regulations, the smallest water rights in the state—those diverting 10 acre-feet per year or less—are not subject to measurement requirements.

The State Water Board understands there is a cost associated with complying with the regulation, both in its existing state and as proposed, but water diversion and storage data are necessary for the State Water Board to effectively manage water resources for people and the public trust. Individual diversions may feel insignificant, but cumulatively have an impact on the streams, rivers, and watershed. Reporting accurate diversion data is crucial to managing water resources during droughts and implementing the water rights priority system in California. In circumstances where meeting the requirements of chapter 2.8 is financially infeasible, diverters may propose an alternative means of compliance. Additionally, proposed section 938 includes a process by which the Deputy Director can raise the general applicability threshold of the water measurement regulation after considering water availability, environmental factors, cost to diverters, and the value of the data. This provision allows the State Water Board to lessen the burden on small diverters while remaining flexible in administering the regulation.

The State Water Board did not make any changes to the proposed regulation in response to this comment.

Cost Vs. Benefit - Effects on Measurement Vendors

Comment ID(s): 24.2

Summarized Comment: One commenter expressed concern that the prescriptive data formatting and transmission requirements in the proposed regulation would result in only a small number of measuring device vendors being able to offer products and services that meet the requirements of the regulation. They believe this will result in increased costs due to demand outweighing supply.

Response: The measurement requirements in the proposed regulation are substantially similar to those in the existing regulations. The proposed regulation intentionally allows flexibility regarding the methods by which diverters can measure their diversions. This allows the diverter to choose any measuring device and implement any methodology that works best for their diversions. Additionally, diverters are not required to directly transmit measurement data to the Board. If preferred, diverters have the option to use Board-provided datafile templates to submit their measurement data. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Cost Vs. Benefit - Stockponds

Comment ID(s): 18.1

Summarized Comment: One commenter argued that measurement data collected for small stockponds serve little purpose for the State Water Board and should not be required.

Response: The State Water Board agrees that small livestock stockponds held under stockpond certificates or registrations should be exempt from the requirements of chapter 2.8. The proposed regulations have been updated to clarify that stockpond certificates and registrations for livestock stockponds are exempted from the requirements of chapter 2.8. Additionally, any reservoir with a capacity of 10 acre-feet or less does not need to be measured.

Cost Vs. Benefit - Cost of Revisions and Enforcement

Comment ID(s): 36.3, 36.5

Summarized Comment: One commenter questioned the purpose of the regulation, asking whether the cost and resources required to revise the existing regulations and to promulgate and enforce the proposed regulation would be better utilized by properly enforcing the existing regulations.

Response: The proposed revisions clarify the requirements of the existing regulations, which will improve clarity and certainty for diverters and ultimately increase the rate of compliance. These proposed revisions are also expected to result in more standardized and usable data. Data currently submitted are difficult to aggregate and use to make management decisions. Additional information about the purpose of this rulemaking is included in the FSOR.

These revisions are not significant enough to cause an increased financial burden for the State. The regulation update and CalWATRS will save the State money by reducing staff time required to communicate with diverters, address data inconsistencies, and request minor revisions. Please refer to the Economic Impact Assessment (EIA) for information relating to expected costs of the regulation.

The State Water Board did not make any changes to the proposed regulation in response to this comment.

Data Submissions - Clarify Data Requirements

Comment ID(s): 34.2, 37.1, 51.1

Summarized Comment: Some commenters noted that the proposed regulation lacked clarity regarding the type of data that needs to be submitted. They recommended more specific data requirements, such as whether uploads should represent raw, unprocessed data or data that have undergone processing and quality assurance protocols.

Response: The State Water Board has updated the proposed regulation to clarify that diverters must submit the processed, interpreted measurement data to the State Water Board with their annual reports and not the raw device output, and to clarify that quality assurance protocols are only required to the extent that the submitted measurement data satisfy the accuracy

requirements of the regulation. Additional updates have been made to address concerns regarding data submission, including distinguishing between “general measurement data” (submitted annually) and “large diversion measurement data” (submitted weekly). Datafile templates will be provided in the CalWATRS system that incorporate all requirements of the regulation such that diverters will only need to populate the template with their measurement data and submit it through CalWATRS. The regulation revisions were informed by significant outreach with diverters.

Data Submissions - Maintenance of Raw Data

Comment ID(s): 24.7, 44.7

Summarized Comment: One commenter recommended that small diverters be exempt from submitting raw data along with their reports. Another commenter argued that maintaining their raw data for 10 years, which can require large amounts of storage, is burdensome and recommended a more manageable interval for data storage.

Response: The State Water Board updated the proposed regulations to clarify that raw device output does not need to be submitted to the State Water Board. However, it must be maintained for at least 10 years. This is not a change in requirements from the existing regulations. If there is ever a question of accuracy of reported data, the raw device output can be used to support the diverters’ reported values. If it is infeasible for diverters to meet all measurement requirements, or if diverters have a more effective or efficient means of measuring diversions, they may submit an ACP.

Data Submissions - Supplementary Materials Are Unnecessary

Comment ID(s): 17.11

Summarized Comment: This comment concerns section 935, subdivision (c) of the initially proposed regulation, which required diverters to submit supplementary materials to the Board if their methodology for deriving diversion amounts from their raw device output varies from the measurement methodology they had previously filed with the Board. The commenter argued that since the regulation already requires diverters to submit updated measurement methodologies with the next annual report (if necessary), the requirement for these supplementary materials is unnecessary, though they conceded that there could be some utility in requiring supplementary materials for diverters subject to large diversion requirements who are required to submit measurement data weekly.

Response: The State Water Board agrees that supplementary materials are not necessary and diverters, even those subject to large diversion requirements, should instead update their measurement methodologies as needed. The State Water Board has removed all references to supplementary materials from the proposed regulation.

Data Submissions - Multiple Representatives

Comment ID(s): 26.1

Summarized Comment: One commenter stressed the complexity of operations for large diversion operations, mentioning that many staff members and offices can be involved in the measurement, accounting, and submission of diversion data. They recommended allowing regulated entities to identify multiple representatives to “respond to measurement requirements.”

Response: CalWATRS will allow larger organizations to arrange how their water rights are associated with branch/regional offices and which staff are assigned to a given record. Because measurement data support annual reports and ensure the diversion volumes reported in annual reports are accurate, separating measurement data submission from annual reporting could lead to data quality concerns, and therefore measurement data must be submitted with annual reports. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Definitions - Maximum Allowable Diversion Amount or Rate

Comment ID(s): 17.1, 32.1

Summarized Comment: This comment pertains to the “maximum allowable diversion amount or rate” as defined in proposed section 931 and which is used to determine applicability and required measurement frequency of the proposed regulation. Commenters argued that the use of the word “or” in that definition, as applied to Statements of Water Diversion and Use, created confusion by seemingly allowing a discretionary choice between maximum historical and maximum anticipated diversion for riparian claims. They noted that this differed from the intent stated by staff during the public hearing.

Response: The proposed regulation is not intended to expand applicability or requirements—compared to the existing regulations—for those who divert under a Statement of Water Diversion and Use for riparian claims. The State Water Board has updated the regulation to clarify that the requirements and applicability for riparian claims are determined by the larger between the maximum historical and maximum anticipated diversion, consistent with how the existing regulations have been interpreted.

Definitions - Maximum Allowable Diversion for Riparian Rights

Comment ID(s): 17.2

Summarized Comment: One commenter raised concerns with the definition of “maximum allowable diversion amount or rate” in the context of riparian claims of right. They argued that since unadjudicated riparian claims do not have a legally defined maximum diversion amount, the actual diversion amount may change significantly over time. They also argued that the current water right claimant should not be held to requirements based on the diversion history of a previous owner.

Response: As in the existing regulations, the proposed regulation does not distinguish between adjudicated and unadjudicated riparian claims. Such distinction is also absent in the authorizing statute and is therefore beyond the scope of this rulemaking.

The State Water Board has revised the text of the proposed regulation to clarify that requirements for water right claimants apply to the maximum between past and anticipated diversions under the Statements of Water Diversion and Use for their specific claim. The Board has also updated the language in proposed section 932 to more closely resemble the existing regulations which phrase applicability in terms of diverters rather than claimed water rights. If past use is incorrect or is not representative of current use, please contact the State Water Board at DWR-Measurement@waterboards.ca.gov.

Definitions - Qualified Individual

Comment ID(s): 40.1, 50.1

Summarized Comment: Commenters expressed interest in expanding who could be considered a "qualified individual" (for installing and calibrating measuring devices and certifying measurement methodologies and ACPs) under the proposed regulation. One commenter expressed concern that their only option was to hire a contractor to install measuring devices, which would be expensive for small diverters. Another commenter recommended that the proposed regulation allow for diverters to become qualified individuals by attending a course other than the one administered by the University of California Cooperative Extension, which is currently the only approved course administrator.

Response: Diverters are not required to hire contractors to act as qualified individuals under the proposed regulation. For smaller diverters—those with claimed water rights authorizing a maximum diversion of 200 acre-feet per year—any person who is trained and experienced in water measurement and reporting can act as a qualified individual. This may also include diverters who have completed the instructional course described in Water Code section 1841.5. Diverters with claimed water rights authorizing a maximum diversion of 10 acre-feet per year—as this commenter stated they were—are not subject to the water measurement regulation and do not need to install measuring devices.

The State Water Board has incorporated changes to expand applicable instructional courses to include any course that is substantially similar to the one described in Water Code section 1841.5 and that is approved by the Deputy Director or their designee.

Definitions - Rediversions

Comment ID(s): 17.4

Summarized Comment: One commenter expressed concern regarding the definition of "rediversion" as defined in the initially proposed regulation. They recommended that the definition be in line with the traditional use of the term "rediversion" as used by the State Water Board in other contexts. They also recommended relocating the definition of "rediversion" to the Definitions section.

Response: The State Water Board has updated the proposed regulation to incorporate this suggestion, aligning the definition of “rediversion” with other Board publications and moving the definition to proposed section 931.

Definitions - Point of Diversion

Comment ID(s): 35.3, 60.2

Summarized Comment: Commenters were concerned that the definition of “point of diversion” in the proposed regulation includes “points of rediversion,” arguing that this could require all requirements of initial points of diversion to also apply to points of rediversion. Commenters suggested that rediversions should be treated differently under the proposed regulation.

Response: Points of rediversion fall within the same umbrella of “point of diversion.” Many points of diversion operate as points of rediversion. The existing regulations did not specify whether points of rediversion were included in references to points of diversion, which led to confusion among diverters. It is the responsibility of the diverter to report any water diverted for use or storage. Rediversions already being measured must be identified as rediversions to avoid double counting diversion of water. Rediversions that are not already being measured may be required to be measured if necessary to understand water availability, with diverters having an opportunity to comment on and discuss feasibility issues. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Diversion Measurement - Measuring Rate and Volume

Comment ID(s): 19.1, 24.3, 25.3, 44.5

Summarized Comment: Several diverters expressed concern that the proposed regulation requires measurement of both the rate and volume of diversions—instead of one or the other—and that volume measurements must be discrete and noncumulative. One commenter mentioned reservoir collection from rainfall and how flow cannot be measured because the diverter is unable to delineate the specific time and duration of the diversion. Another commenter expressed confusion as to whether rate measurements should reflect instantaneous or average values.

Response: Existing section 932, subdivision (a) requires measurement of both volume and rate of diversion. This is not a new requirement in the proposed regulation. Measurement of diversion volume and rate is also mandated by statute in Water Code section 1840. Additionally, “measuring” has been defined in the proposed regulation to allow for calculations or other means of determining the required parameters, rather than requiring diverters to directly measure both rate and volume. For example, if the diverter knows when the diversion occurred, then volume measurements captured at regular intervals of time can be used to calculate diversion rate and vice versa. Additionally, measurements of water elevation can be converted into measurements of volume and rate, and diverters are also able to use mass balance equations to determine the required measurement parameters. Because rate may be a calculated value, the proposed regulation also allows flexibility as to whether rate measurements must reflect instantaneous or average values. Proposed section 934, subdivision

(a)(5) specifically addresses volume and rate conversions. For situations where diverters are unable to delineate the time and duration of the diversion, diverters may pursue alternative compliance in accordance with proposed section 936. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Diversion Measurement - OpenET

Comment ID(s): 54.2

Summarized Comment: One commenter recommended against using data from OpenET—a provider of evapotranspiration estimates using satellite-based data—as a means of compliance with measurement requirements.

Response: Under the existing regulations, the application of OpenET for compliance with measurement regulations is generally limited to ACPs as proposed by the diverter, since it often does not meet strict measurement frequency and location requirements, and it measures consumptive use of water instead of diversions. This remains true in the proposed regulation. Use of OpenET as a means of compliance with the regulation will continue to be reviewed by the State Water Board for appropriateness. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Diversion Measurement - Monthly Measurement Insufficient

Comment ID(s): 41.1

Summarized Comment: One commenter opposed the requirement that diversions between 10 and 50 acre-feet per year be measured at a monthly frequency, rather than at a weekly frequency as is currently required under the existing regulations. They argued that in drought years, measurements at a weekly or greater frequency are necessary for water managers to protect the public trust, particularly when many small diversions have a big impact on water availability. They recommended that weekly measurements be the minimum required frequency for collecting measurement data.

Response: In the existing regulations, diverters with water rights between 10 and 50 acre-feet are held to different measurement frequency requirements based on whether they directly divert or divert to storage. This has led to confusion among diverters. The proposed regulation revises the frequency requirements to instead have consistent threshold tiers for monthly, weekly, daily, and hourly measurement requirements regardless of the type of diversion. The intent of this update is to improve clarity, simplify the regulation text, and reduce regulatory burden where possible, especially for smaller diverters. In cases where more frequent measurement is needed, the Deputy Director may adjust frequency thresholds in appropriate watersheds in accordance with proposed section 938. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Diversion Measurement - Flexibility in Allowing New Technology

Comment ID(s): 2.8

Summarized Comment: One commenter recommended adding language to the proposed regulation to allow diverters the flexibility to change their measurement methodologies to use new measurement technologies as they become available.

Response: The proposed regulation already addressed this commenter's concern by intentionally allowing diverters the ability to use any measuring device, equipment, or technology that can be used to determine the required measurement parameters at the required frequency and accuracy. This includes the ability to replace existing equipment with newer devices as new technologies become available. Diverters must update their measurement methodologies for new devices added or replaced. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Diversion Measurement - Deadline for Notifying Board of Data Quality Issues

Comment ID(s): 17.6

Summarized Comment: This comment concerns section 933, subdivision (i)(2) of the proposed regulation, which requires diverters to notify the State Water Board within 30 days of detecting that measurement data do not meet the required accuracy. The commenter recommended changing this deadline from within 30 days to the next annual reporting deadline to "reduce the number of reporting dates."

Response: One of the primary goals of chapter 2.8 is to provide the State Water Board with accurate and timely data. Therefore, it is critical that any known inaccuracies in the measurement data are made known and addressed as quickly as is reasonable. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Diversion Measurement - Change in Required Accuracy from Existing Regulations

Comment ID(s): 2.1, 54.3

Summarized Comment: This comment concerns proposed section 933, subdivision (i), which describes accuracy requirements under the proposed regulation. Commenters expressed a desire for all diverters to be subject to higher accuracy requirements than what is proposed in the regulation revisions in order to guarantee high quality diversion data. One commenter expressed concern that some diverters may have reduced accuracy requirements compared to the existing regulations. Namely, under the existing regulations, measuring devices are required to be at least 95 percent accurate if the accuracy was laboratory-certified. Under the proposed regulation, measurements are only required to be up to 90 percent accurate. A commenter also sought clarity on what evidence is required for certification of accuracy.

Response: By clarifying regulatory requirements and simplifying requirements where possible, the proposed regulation is expected to reduce measurement burdens and improve the statewide

dataset of diversion information. The proposed regulation removes the 95 percent accuracy criteria because this requirement was imposed based only on the type of device used to collect measurement data and where the device was calibrated, rather than on the size of the diversion. Such a requirement, as included in the existing regulations, was overly prescriptive and burdensome and could impose a disproportionate burden on small diverters, as would the imposition of higher accuracy requirements across-the-board for all diverters. As stated in proposed section 934, subdivision (d), diverters must submit evidence of proper functioning of their measuring devices, which may include calibration reports, laboratory certification, or other documentation to support whether a measuring device meets the accuracy requirements of chapter 2.8. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Diversion Measurement - Measurement Location

Comment ID(s): 11.2

Summarized Comment: One commenter expressed confusion regarding where they are required to install their measuring devices to collect measurement data.

Response: As in the existing regulations, the proposed regulation does not specify a required distance from the point of diversion where diverters are required to measure. Rather, diversion measurements must meet the specified accuracy requirements. In general, most diverters measure at or near their point of diversion, but the State Water Board understands this is not always feasible. Measurements should accurately represent diversions. So for instance, if a diverter diverts into an unlined canal, they should measure as close to their point of diversion as possible to minimize losses from evaporation or percolation; but if they divert into an enclosed pipe, they could measure at the outlet of that pipe if there are no significant water losses in the pipe. Because each diversion scenario is unique, it is not appropriate for the Board to dictate the exact measurement location. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Diversion Measurement - Measurement of Stored Water

Comment ID(s): 21.1, 21.2, 26.2, 60.1, 60.3

Summarized Comment: Commenters expressed concern that the proposed regulation would require certain parameters to be directly measured, when the only feasible way to derive those parameters is through indirect calculation. They elaborate that their methodology for distinguishing direct diversions from diversions to storage requires calculations that can only be conducted on a 30-day time step, and therefore diversions to storage can neither be directly measured nor measured in real time. One commenter illustrated the complexity of storage calculations for large reservoirs that store water under many different claimed water rights.

Response: The definition of “measure,” as it is used in chapter 2.8, includes calculating the required parameters based on other measured parameters; the required parameters do not need to be directly measured by a measuring device. Additionally, the State Water Board has updated the required large diversion parameters to more clearly describe measurement

requirements in terms of water leaving the stream and water leaving the reservoir, as opposed to being in terms of direct diversions, diversions to storage, withdrawals, or releases. Therefore, calculations distinguishing diversions to storage from direct diversions do not need to be completed in real time and can instead be completed at the end of the year when preparing a general measurement datafile. Additionally, the State Water Board recommends that diverters submit an ACP when the complexity and scope of the diversion scenario make strict compliance infeasible. Diverters are encouraged to meet with the State Water Board to ensure there is a measurement and reporting solution that meets the goals and requirements of the regulation to the extent practicable.

Diversion Measurement - Clarity Regarding Collection to Storage

Comment ID(s): 3.3

Summarized Comment: The commenter requested clarification in the regulation as to whether water held for less than 30 days is considered “collected to storage,” and whether regulated water should be reported as “withdrawn, released, or not reported at all.”

Response: The definition of “collection to storage” as used in chapter 2.8 is consistent with other definitions used by the State Water Board. Additionally, the State Water Board has updated the measurement parameters described in proposed section 933, subdivisions (a) and (b) to clarify how measurement applies to stored water.

Implementation Schedule - Grace Period / Delayed Implementation

Comment ID(s): 9.3, 24.1, 24.5, 24.6, 29.6, 30.5, 34.11, 41.6, 43.5, 43.11, 52.1

Summarized Comment: Commenters mentioned the administrative burden of adapting to new regulation requirements regarding data formatting and submission, and of preparing measurement methodologies, alternative compliance plans, and other documents. Commenters therefore recommended a delayed implementation for diverters to come into compliance. Commenters generally proposed that this grace period extend the implementation dates in the initially proposed regulation by one to three calendar years. One commenter mentioned that such a delay in implementation would allow water providers to adjust their budget and rates to account for any new costs of compliance with updated requirements. Several other commenters urged that this grace period begin once reporting tools become publicly available such that diverters have sufficient time to familiarize themselves with the CalWATRS and adapt to the reporting process in the new platform.

Response: The existing measurement and reporting regulations were adopted in 2016, with most provisions becoming effective in 2018. The proposed regulation revisions do not significantly change how diverters collect measurement data about their diversions. Measurement methodologies currently implemented in accordance with existing requirements will generally remain unchanged under the proposed regulation. Once the proposed regulation becomes effective, the Board will provide guidance materials and other tools to help diverters adjust to the new CalWATRS platform. However, the State Water Board agrees that many diverters may need additional time to adapt their individual data formats to the Board’s

templates and to document existing measurement practices. Therefore, the proposed regulation has been updated to extend implementation dates for collecting measurement data until October 1, 2026, submitting measurement methodologies or ACPs in CalWATRS until January 31, 2027, and submitting general measurement datafiles using templates until January 31, 2028. The State Water Board has also extended the start date for submitting large diversion measurement data in CalWATRS to October 1, 2027. The effective date for diverters who will be subject to large diversion requirements under the proposed regulation but who are not subject to telemetry requirements under the existing regulations has also been postponed until October 1, 2027. In the interim between the proposed regulation becoming effective and the stated implementation dates, diverters must collect and report measurement data in accordance with the existing regulations (unless they choose to adopt the new requirements early), which have been reproduced in proposed sections 939.1 through 939.6.

Implementation Schedule - Implementation Schedule Clarity

Comment ID(s): 11.1, 29.7, 34.5, 37.6, 38.1, 57.4

Summarized Comment: Commenters requested more clarity in the proposed regulation regarding the implementation schedule of new requirements, including data formatting standards, submitting measurement methodologies and ACPs, registering using an email address, and reporting in CalWATRS generally.

Response: The State Water Board has updated the proposed regulation to clarify effective dates and postpone reporting requirements for submitting measurement methodologies and ACPs in CalWATRS until January 2027, submitting measurement data using structured templates until January 2028, and submitting large diversion measurement data via CalWATRS until October 2027. October 1, 2027, is also the start date for diverters who are subject to large diversion requirements, but who were not previously subject to telemetry requirements, to begin adhering to the large diversion requirements of the proposed regulation. In the meantime, all diverters must follow the data submission requirements of the existing regulations (reproduced in proposed sections 939.1 through 939.6). Data collection requirements of the proposed regulation are required beginning October 1, 2026. The requirements to provide an email address for water rights reporting and to align the groundwater reporting period with the water year both became effective on September 26, 2025. The State Water Board will conduct public outreach to assist the public with their reporting requirements.

Large Diversion Requirements - Recommended Extension of Applicability Based on Diverter Type

Comment ID(s): 15.5, 22.5, 55.7

Summarized Comment: Commenters recommended extending large diversion requirements—which apply to claimed water rights that are authorized to divert more than 10,000 acre-feet per year or more than 30 cubic feet per second—to all commercial diverters regardless of size, citing concerns that commercial diverters have significant cumulative impacts on water resources.

Response: Under the proposed regulation, the Deputy Director has the authority to adjust the applicability of weekly submissions, but only based on the rate and volume of diversion, not the type of diverter or the type of beneficial use. This limitation is in place because the volume and rate of diversion are important criteria for evaluating a diversion's impact on water availability. In contrast, the type of beneficial use or type of diverter plays less of a role in assessing water availability, and imposing more requirements on these diverters may negatively impact small businesses. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Large Diversion Requirements - Timing of Large Diversion Data

Comment ID(s): 29.3, 37.3, 51.3, 57.2

Summarized Comment: Commenters noted that the regulation, both in its existing state and as proposed, is unclear about whether weekly-submitted data for large diversion requirements must include measurements taken within a specific timeframe, i.e., whether the large diversion measurement data contained in each submission should represent the week leading up to and ending on the submission date, the week ending a certain number of days prior to the submission date, or another timeframe. Commenters raised concerns about data security for real-time data, and recommended introducing a time lag such that the most recent data point could be taken several days or weeks prior to posting on a public website.

Response: The State Water Board has revised the proposed regulation language to clarify large diversion requirements. Large diversion measurement data are required to be submitted to the State Water Board weekly and must be submitted with a lag time of no more than seven days between the date of the most recent measurement and the submission date.

Large Diversion Requirements - Real-Time Accounting of Diversions to Storage

Comment ID(s): 21.1, 21.2, 25.4, 26.2, 26.3, 29.2, 35.1, 35.2, 37.4, 37.7, 43.4, 45.2, 51.2, 51.6, 57.1, 60.1, 60.3, 61.4

Summarized Comment: Several commenters raised concerns with the requirement that large diversion submissions—which are submitted weekly—contain measurement data on "diversions to storage" and "withdrawal or releases from storage." They argued that significant accounting is required to determine how much water is diverted to storage, and that this cannot be done on a near-real-time or weekly basis. Several commenters stated that much of the accounting for diversions to storage cannot be done until at least 30 days after the diversion, due to a typical practice of distinguishing diversion to storage and regulation of water. They suggested alternatives, including only requiring inflow and outflow in a reservoir to be measured, modifying the requirement to instead say "diversions to a storage facility" or "withdrawals from a storage facility" to avoid parsing stored and directly diverted water, only requiring data to be submitted monthly, or only requiring changes in total reservoir volume along with information on the reservoir cycle (whether it is in a filling, withdrawal, or flood control stage).

Response: The State Water Board recognizes the challenges of performing water balance calculations in real time. Although the initially proposed regulation did not require that large

diversion measurement data distinguish direct diversions, diversions to storage, or rediversions, the State Water Board has updated the proposed regulation to clarify that, for the purpose of large diversion requirements, diverters are only required to measure and report the total volume in the reservoir, the volume and rate of water leaving the stream, and the volume and rate of water leaving the reservoir, regardless of whether the water is considered “stored.” Large diversion measurements do not need to be parsed according to diversions to storage and direct diversions. Additionally, the proposed regulation allows diverters to submit provisional data to satisfy large diversion requirements, recognizing that diverters may be unable to fully process or quality assure their measurement data on a weekly basis.

The State Water Board has also updated the proposed regulation to better distinguish “large diversion data” and “general measurement data,” to avoid confusion between end-of-year requirements and what is required to be reported weekly. This change specifically addresses clarity issues surrounding required parameters for storage rights. For end-of-year submissions in the form of a general measurement datafile, diverters will need to apportion their measurement data according to type of diversion, but they do not need to perform this apportionment on a weekly basis.

Regarding recommendations to change weekly reporting requirements to instead be monthly, the requirement for large diverters to submit data on a weekly basis already exists in the existing regulations. This requirement is not proposed to be adjusted in the proposed regulation, though the Deputy Director may adjust the weekly schedule to be less frequent in certain watersheds in accordance with proposed section 938.

Large Diversion Requirements - Real-Time Apportionment of Data by Claimed Water Right

Comment ID(s): 26.2, 26.3, 29.5, 37.4, 43.4, 43.5, 43.6, 51.2, 60.1, 60.3, 61.3

Summarized Comment: Several commenters emphasized the challenge of apportioning large diversion measurement data between multiple water rights that share a point of diversion or share a reservoir, and argued that this cannot be done on the near-real-time basis required for weekly large diversion submissions.

Response: Large diversion measurement data do not need to be apportioned to individual water rights. Only measurement data that are submitted on an annual basis in a general measurement datafile must be apportioned to each claimed right. The State Water Board has updated the regulation to clearly distinguish between “general measurement data,” which are submitted with each annual report and must be apportioned, and “large diversion measurement data,” which are submitted weekly, can be provisional, and do not need to be apportioned by water right.

Large Diversion Requirements - Posting Data to Public Website

Comment ID(s): 3.9, 9.4, 14.1, 17.5, 45.3, 52.2

Summarized Comment: This comment pertains to the large diversion submission provision in proposed section 935 that allows large diversion measurement data to be submitted by posting

the data to “a publicly accessible website approved by the deputy director.” Commenters expressed a desire to continue posting measurement data to their individual, diverter-maintained websites that they currently use to satisfy existing telemetry requirements, and requested information on the procedure and timeline for Deputy Director approval of these websites. Commenters indicated that they interpreted the language of “publicly accessible website approved by the deputy director” to mean that the individual diverter-maintained websites are subject to approval by the Deputy Director. One commenter argued that the State Water Board must include “clear, objective criteria and a defined process” for reviewing and approving requests for website approval, and that a lack thereof would lead to “inconsistent and arbitrary decision-making.”

Response: The State Water Board acknowledges the confusion caused by the “publicly accessible website” language in the existing regulations, and has updated the proposed regulation to clarify the requirement. The intent of this provision is to allow the Deputy Director to identify and approve alternate websites that are compatible with CalWATRS’s data standards and are available to many diverters, while still meeting the regulation’s requirements. This may include, but is not limited to, open-source websites such as the California Data Exchange Center (CDEC). The State Water Board also updated the proposed language to describe various factors the Deputy Director may consider in approving websites. Since this provision is not intended as a way to accept or review individual diverter requests for approval of their own individually-maintained websites, there is no opportunity for “inconsistent” or “arbitrary” decisions in the approval of alternate websites. The FSOR describes how the existing requirement to post data to individual websites has resulted in a patchwork of data repositories that has hindered the Board’s ability to create a comprehensive database.

The State Water Board has also updated proposed section 935, subdivision (b)(2) to allow diverters to continue posting large diversion measurement data to individual, publicly accessible websites until October 2027, but they must also provide the exact web address where the data are located. After that date, diverters will need to submit large diversion measurement data by either using a template provided by the Board, transmitting the data directly to the Board’s online reporting platform, or posting the data to an approved website, i.e., generally not an individually-maintained website, to ensure all data meet a consistent standard for accessibility and data quality.

Large Diversion Requirements - Opposition and Concerns of Practicality

Comment ID(s): 5.5, 29.1, 29.2, 43.4, 43.5, 43.10, 61.4

Summarized Comment: Several commenters opposed the large diversion requirement for submittal of weekly data, considering it overly burdensome and questioning the utility of the data for water management decisions, especially if diverters are allowed to submit provisional data to satisfy large diversion requirements. One commenter mentioned run-of-the-river hydropower projects as examples of nonconsumptive claimed water rights that may be subject to large diversion requirements, but for which weekly measurement data do not provide meaningful information to the Board. Concerns about practicality also included opposition to requirements

for “hourly reporting,” with one commenter citing concerns that detailed accounting cannot be done in real time, and they proposed monthly reporting as an alternative.

Response: The requirement for the largest diverters to provide measurement data on a weekly basis is not a new requirement under the proposed regulation; it is already contained in the telemetry requirements of the existing regulations. Hourly reporting or submission of measurement data is not required under either the existing regulations or the proposed regulations, though large diverters are generally required to collect measurements on an hourly basis. As discussed in the FSOR, the State Water Board needs frequent data about large diversions to effectively manage public trust resources, especially in times of shortage. The proposed regulation allows diverters to aggregate measurements into daily values and use provisional data to satisfy weekly reporting requirements in order to reduce the burden on diverters, but these data must still include the required measurement parameters. The Board acknowledges that reporting on diversions by water right and diversion type is complex, and therefore this type of apportionment is not required for the purposes of large diversion submissions. Additionally, the State Water Board has revised the proposed regulation to clarify and simplify large diversion measurement parameters.

The State Water Board encourages operators of run-of-the-river hydropower operations and diverters for whom large diversion requirements are infeasible to pursue alternative compliance as needed.

Large Diversion Requirements - Recommendations for Submittal Options

Comment ID(s): 29.1, 55.6

Summarized Comment: Commenters expressed concern regarding the various options through which diverters may submit their large diversion measurement data, including through manual uploads using a Board-provided template, direct transmittal to the Board’s online reporting platform, and posting to a publicly accessible website approved by the Deputy Director. One commenter argued that submittal through an API (a method of direct transmittal) should be mandatory to eliminate the burdensome and error-prone process which they argued is inherent when manually uploading data submissions. Another commenter raised concerns about data security if a direct connection is established between the Board’s platform and the diverter’s supervisory control and data acquisition (SCADA) system.

Response: Direct data transmittals are included as an option for large diversion submissions to reduce the potential burden associated with weekly manual uploads. While the Board expects many large diverters will prefer to submit their large diversion measurement data by direct transmittal, the State Water Board has also included the option for submission using templates to allow flexibility for diverters. The State Water Board did not make any changes to the proposed regulation in response to this comment. Board staff will address data security concerns in external messaging to increase awareness of the risks associated with unsecured SCADA systems.

Large Diversion Requirements - Data Submission in Response to Deputy Director Requests

Comment ID(s): 30.6

Summarized Comment: One commenter expressed confusion with language in proposed section 935 requiring that “diverters must submit the required materials described in this section to the board within 30 days of a request by the deputy director,” specifically requesting clarity on how this language applies to large diversion submissions.

Response: The State Water Board acknowledges the potential for confusion in the cited language of the initially proposed regulation, and has revised the language to be clearer about requirements. Large diversion measurement data are required to be submitted to the State Water Board weekly, with a lag time of no more than seven days between the date of the most recent measurement and the submission date.

Large Diversion Requirements - Measurement of Total Outflow and Withdrawals

Comment ID(s): 43.2, 61.1

Summarized Comment: This comment concerns proposed section 933, subdivision (b)(3)(B), which requires large diverters to measure the volume and rate of water withdrawn or released from qualifying reservoirs. Commenters questioned the utility of withdrawal and release data, citing that weekly large diversion submissions of these data are not useful for assessing compliance with permit or license terms because storage water rights generally include a seasonal volume restriction and outflow measurements may include bypass flows. As an alternative, commenters recommended that reservoir level—which corresponds to the volume of water in the reservoir—be the only required parameter for weekly large diversion submissions.

Response: Outflow measurements from the largest reservoirs in the state are valuable and help the State Water Board better manage water resources and administer the water rights priority system throughout the year. The State Water Board has updated the large diversion parameters described in the proposed regulation to specify that, for large diversion requirements, these volume and rate measurements can encompass all water leaving the reservoir, without distinguishing stored water, or withdrawals or releases, or between individual claimed water rights.

Measurement Methodology - Reporting by Priority of Right

Comment ID(s): 2.2, 3.1, 3.6, 28.4, 29.8, 37.8

Summarized Comment: Several commenters opposed the language in proposed section 934, subdivision (b)(3)(F)(ii) of the initially proposed regulation, which required that diversion amounts must be allocated in order of priority of each water right, stating the State Water Board is not authorized to require this and that it is outside the scope of the regulation as authorized by sections 1840, 1841, and 1841.5 of the Water Code.

Response: Measurement data received from this proposed regulation will be used by the State Water Board to manage water resources and administer the water rights priority system. The State Water Board needs highly accurate data to administer the water rights system, and encourages diverters to report in order of priority. However, the State Water Board agrees that the language specifying allocation "according to the priority date" of each claimed water right is unnecessary for purposes of the proposed regulation, and has removed that text from proposed section 934.

Measurement Methodology - Rejection Based on Violation of a Contract, Policy, etc.

Comment ID(s): 3.1, 3.6, 3.7, 3.8, 34.9, 37.9

Summarized Comment: Commenters opposed language in section 934, subdivision (h)(6), as initially proposed, that says a measurement methodology "shall be rejected if it violates any requirement of any contract, policy, order, decision, judgement, determination, or other regulatory requirement of the board, a Regional Water Quality Control Board, other state or federal agency, or a court." They argued it is an excessive expansion of authority, allowing the State Water Board to litigate existing orders and decisions. One commenter's opposition extended to the State Water Board's overall ability to review, verify, compel changes to, or reject measurement methodologies as included in the proposed regulation, stating that the Board does not have the authority to dictate operating procedures or how diverters apportion measurement data according to different claimed water rights. They argued that the entirety of section 934, subdivision (h) must be repealed from the proposed regulation.

Response: This language in the referenced section was not intended to expand State Water Board authority, nor to litigate orders and decisions made through other processes. The State Water Board agrees this provision is unnecessary for effective implementation of the proposed regulation, and has removed the relevant paragraph from the proposed regulation text.

Regarding the Board's ability to review measurement methodologies, the proposed regulation is not prescriptive in terms of how diverters measure their diversions, and the State Water Board is not proposing any changes directly affecting operating procedures. Review of measurement methodologies is limited to identifying and requiring correction of deficiencies that fail to meet the requirements of the proposed regulation, approving—with or without conditions—any measurement methodology that meets the requirements, and rejecting any measurement methodology that fails to meet the requirements.

Measurement Methodology - Due Process

Comment ID(s): 3.7, 30.4, 34.3, 35.4, 37.2, 51.4

Summarized Comment: Commenters expressed concerns regarding due process under the proposed regulation. One commenter was concerned that that the Board's ability to review measurement methodologies under proposed section 934 would allow the Board to change requirements for measurement methodologies without due process under the Administrative Procedure Act. Other commenters stated that there needs to be a procedure through which a

diverter can contest a decision rejecting or requiring changes to their measurement methodology upon identification of deficiencies. One commenter argued that a hearing is necessary for the diverter to challenge a finding that the methodology is deficient.

Response: The proposed regulation does not grant the Deputy Director the authority to change any of the requirements for measurement methodologies described in the proposed regulation. Review of measurement methodologies is limited to identifying and requiring correction of deficiencies in measurement methodologies that fail to meet the requirements of the proposed regulation, approving—with or without conditions—any measurement methodology that meets the requirements, and rejecting any measurement methodology that fails to meet the requirements. It does not permit the Deputy Director to change any requirements described in the proposed regulation.

The State Water Board has revised proposed section 939 of the regulation to include the following language: “a decision or order issued under this chapter by the deputy director is subject to reconsideration.” In the existing regulations, the ability to petition for reconsideration was only explicitly stated with respect to the Deputy Director’s ability to adjust measurement thresholds and reject or require changes to an ACP. This revision expressly extends the ability to petition for reconsideration to any decision issued under chapter 2.8, including decisions regarding measurement methodologies. Additionally, the CalWATRS reporting system will enable easier communication between diverters and the State Water Board about potential deficiencies regarding submitted forms.

Measurement Methodology - Submission Deadlines

Comment ID(s): 17.8, 17.9, 17.10

Summarized Comment: One commenter requested removal of the requirement in proposed section 934 that diverters implementing a new measurement methodology submit the measurement methodology form within 180 days of implementation. They recommended that this be revised to instead require submittal of a measurement methodology form by the annual reporting deadline for which the methodology would first apply. Similarly, they suggested that the deadline for registering new measuring devices and updating registries for existing devices be the next annual report, instead of within 30 days of installation or replacement, as required in the initially proposed regulation. They also recommended that the deadline for submitting evidence of proper functioning for a new measuring device be revised to also be at the first annual report. They argued that reducing the number of deadlines by which various documents are required to be submitted and instead using a common annual submittal deadline would aid compliance and reduce confusion.

Response: The State Water Board agrees with and has made changes in response to this comment. The 180-day condition has been removed such that new measurement methodologies are due on or before the submission deadline of the annual report for which the measurement methodology first applies. Additionally, the State Water Board has updated the proposed regulation such that measuring devices must be registered and evidence of proper

functioning be submitted on or before the submission deadline of the first annual report for which the measuring device is used.

Measurement Methodology - Hourly Data

Comment ID(s): 2.3, 21.2, 25.2, 29.1, 35.2, 43.5, 43.8

Summarized Comment: Commenters expressed confusion regarding measurement frequency requirements and data submission requirements, especially as they relate to measurements that are collected on an hourly (or more frequent) basis. Several commenters opposed submitting measurement datafiles on an annual basis that include values of the required measurement parameters at an hourly timestep, arguing that it would mean performing their measurement methodology on at least 8,760 data points. They argued that this would be a significant administrative burden. Other commenters requested clarity regarding whether they are required to aggregate hourly measurements of diversion data into daily values, or if they are permitted to submit non-aggregated measurement data. Other commenters opposed reporting hourly data in real time.

Response: The proposed regulation allows reported measurement data to be submitted with values aggregated to reflect a daily timestep, reducing the administrative burden on diverters. The text has been updated to clarify this. However, such aggregation of hourly (or more frequent) measurements into daily values is not required. If desired, the measurement data submitted to the Board may reflect timesteps that are more frequent than daily values. The requirements listed for measurement methodologies only need to be described if they apply to the diverter; if a diverter chooses not to aggregate data into daily values, they do not need to describe how such aggregation may be done.

Concerns about hourly reporting appear to have resulted from confusion regarding the collection of diversion measurements (which can be required to be collected as frequently as hourly), the timesteps reflected in measurement data submissions (which allow hourly measurements to be aggregated into daily values), and submission schedules (which require large diversion measurement data to be submitted to the Board on a weekly basis and general measurement data to be submitted on an annual basis). The proposed regulation has been updated to better distinguish between these different requirements.

Rediversions - Process for Requiring Measurement of Rediversions

Comment ID(s): 3.4, 24.4, 35.4

Summarized Comment: This comment concerns proposed section 933, subdivision (c), which allows the Deputy Director to require diverters to measure rediversions of previously diverted or previously stored water. Commenters had concerns that the Deputy Director could require burdensome measurement of rediversions at any time, without procedural safeguards. They recommended providing a clear process by which measurement of rediversions would be required, including how diverters could challenge such a requirement.

Response: The State Water Board has updated the proposed regulation to require the Deputy Director to make a determination that rediversion data are necessary for understanding the

supply, demand, or availability of water before requiring diverters to measure rediversions. Additionally, the State Water Board has updated proposed section 939 such that any decision or order made pursuant to chapter 2.8 is expressly subject to reconsideration.

Rediversions - Measurement of Water Transfers

Comment ID(s): 21.3, 60.2

Summarized Comment: This comment concerns the measurement of rediversions as it relates to water transfer agreements. Several commenters mentioned that transferors (i.e., the water right holders/claimants) typically do not have control over their transferees' points of rediversion, and that requiring the water right holder/claimant to be responsible for measuring rediversions is infeasible. They stated that such rediversion measurements are unnecessary and infeasible because the transferee owns and operates the points of rediversion, and transferors' claimed water rights do not always list these points of rediversion within their own claimed water rights. The commenters recommended language that would require transferees to measure rediversions pursuant to transfers of water.

Response: The State Water Board may require measurement data related to points of rediversion if such data are necessary to perform a sufficiently high quality analysis of water availability and demand. Such an analysis may be required to properly manage future drought conditions and subsequent low water supplies. If measurement of rediversions is infeasible, diverters may petition for reconsideration or submit an ACP.

The State Water Board is not proposing any new regulations regarding the responsibilities of a transferee or transferor under a water transfer contract or agreement. If the Deputy Director requires measurement of specific rediversions, it is the responsibility of the water right holder or claimant to ensure that rediversions under that claimed water right are properly measured and reported, whether or not that means having the transferee measure as part of a contract or agreement.

The State Water Board did not make any changes to the proposed regulation in response to this comment.

Rediversions - Universal Measurement of Rediversions

Comment ID(s): 41.2, 41.3, 41.4

Summarized Comment: One commenter recommended that the proposed regulation require all rediversions to be measured—not just those required by the Deputy Director upon determining the rediversion measurement data are necessary for understanding water availability and demand—and that these measurements be made at the same frequency as required for the initial diversion. They argued that points of rediversion within a qualifying reservoir are always required to be measured, as such rediversion represents a withdrawal, but a rediversion downstream of the reservoir would only need to be measured at the discretion of the Deputy Director, even though both diversions would have the same impact on water supply and demand.

Response: The existing regulations are unclear whether rediversions must be measured. As a result, many diverters are measuring their rediversions, but many are not. The State Water Board recognizes that including rediversions as a mandatory measurement parameter may result in higher reporting costs and costs for device installation and maintenance. To balance the need for rediversion measurement data with the cost associated with this data, the proposed regulation requires identification of rediversions already being measured, and measurement of rediversions if these data are necessary for understanding water supply, demand, or availability. Please refer to the FSOR and EIA for additional discussion of why the proposed regulation does not universally require measurement of all rediversions. The measurement frequency requirements for rediversions are no more lenient than the frequency requirements for other diversions.

Withdrawals from storage in qualifying reservoirs must always be measured and reported, whether the withdrawal occurs at the reservoir outlet or elsewhere in the reservoir. Rediversions downstream of the reservoir may be required to be measured if those measurement data are necessary for understanding water supply, demand, and availability, but the water withdrawn from the reservoir—some or all of which may be intended for downstream rediversion—would still be measured as a withdrawal. For additional clarity, the State Water Board has added definitions of “release” and “withdrawal” to proposed section 931.

Rediversions - Clarification on How Rediversions Should Be Reported

Comment ID(s): 43.5, 43.9

Summarized Comment: One commenter requested clarification on how rediversions of previously diverted or previously stored water should be reported using the State Water Board’s templates. They also argued that rediversion data are duplicative and should not be required.

Response: The State Water Board has updated proposed section 935, subdivision (a)(1) to clarify that diverters must distinguish measurements of rediversions from measurements of direct diversions, diversions to storage, withdrawals from qualifying reservoirs, and releases from qualifying reservoirs. The general measurement datafile templates provided by the State Water Board will allow reporting rediversions. Measurement of rediversions will not be duplicative because it will be identified and distinguished from initial diversions. Without properly identifying which measurements relate to rediverted water, measurements collected at points of diversion that simultaneously directly divert water and redivert water could double count the total amount of water being diverted, with the rediverted water already having been measured at the initial point of diversion.

Threshold Adjustments - Information Order Authority under Water Code Section 1051

Comment ID(s): 20.3, 20.4, 62.2

Summarized Comment: Commenters expressed concern with one of the cited authorities: section 1051 of the Water Code. They mentioned the information order authority added to the statute by SB 389, and were concerned that the State Water Board will use this authority to

unnecessarily expand the scope of information requested by the proposed regulation. They drew a connection between that authority and proposed section 938, which—in the initially released version—included a provision that the Deputy Director may require submission of documentation on "the nature and scope of diversions" when considering a threshold or schedule adjustment.

Response: Data submitted in relation to Water Code section 1051 are not directly relevant to the measurement data required by the water measurement regulation. Measurement regulations are authorized under Water Code sections 1840 and 1841, and are independent of any information order requirements of Water Code section 1051. Section 1051 was included in the authority for the initial chapter 2.8 measurement regulations several years before SB 389 introduced new requirements related to information orders. Changes to measurement thresholds or submission schedules would be supported by available evidence and subject to a public process, but the requirements of Water Code section 1051 are not directly applicable to this rulemaking.

The State Water Board may rely on other sources of information as necessary to better manage water resources and effectively implement the water rights priority system. However, the sentence stating that the Deputy Director may require submission of documentation on the nature and scope of diversions, withdrawals, and releases has been removed from proposed section 938. The intent was not to impose an additional requirement, and therefore it could be removed.

Threshold Adjustments - Requesting Information on Nature and Scope of Diversions Is an Overreach

Comment ID(s): 20.1, 20.2, 62.1

Summarized Comment: Commenters were concerned that proposed regulation text in section 938 regarding threshold and schedule adjustments was a significant expansion from the authorities granted to the Deputy Director under the existing regulations. They argued that, under the proposed regulation, the Deputy Director could adjust many thresholds up or down and could cause requirements to be significantly more onerous for diverters, whereas under the existing regulations the Deputy Director only had the authority to adjust the applicability of telemetry requirements (by adjusting the percentage of streamflow diverted from a stream). These commenters also expressed concern that when considering a threshold or schedule adjustment, the Deputy Director may consider factors beyond the water rights and diversion amounts, which may constitute an overreach. They recommended introducing additional limitations to prevent overreach.

Response: The existing regulations grant authority beyond telemetry requirements to adjust measurement thresholds, particularly in existing section 932, subdivision (d), which allows for the adjustment of the 10-acre-foot general applicability threshold, and in existing section 933, subdivisions (b)(2) and (b)(4) and existing section 934, subdivision (d)(2), which require measurement data to be submitted upon request by the Board in addition to the reporting schedules specified in the regulations. The proposed regulation refines and streamlines the

language and process for adjusting measurement thresholds and schedules. Furthermore, the proposed revisions include restrictions that prevent lowering thresholds for measurement frequency below reasonable diversion sizes (proposed section 938, subdivision (e)). Finally, the proposed revisions require that the Deputy Director consider several factors and do a thorough analysis before making any adjustments, including evaluating the costs and benefits of additional data and the availability of water within a stream system, and allowing public comment. The sentence stating that the Deputy Director may require submission of documentation on the nature and scope of diversions has been removed as unnecessary.

Outside of Rulemaking Scope - Watermaster Reports

Comment ID(s): 10.1, 10.2, 10.3, 10.4, 10.5, 10.6, 56.1, 56.2

Summarized Comment: Commenters wanted the State Water Board to enact more stringent regulations for annual reports submitted by a Watermaster. Diverters whose reporting requirements are fulfilled by a Watermaster are not currently required to submit individual annual reports or measure their diversions, and the commenters believe the Watermasters' reports should be equally informative as those submitted by any other diverter. Commenters also proposed recommendations for annual reporting requirements, which are also not the subject of this regulation.

Response: The Water Code authorizes the State Water Board to adopt and administer water measurement regulations for those who divert under licenses, permits, or registrations, or those who are required to submit Statements of Water Diversion and Use. However, Water Code section 5101 states that diversions regulated and reported by a Watermaster are not required to file Statements of Water Diversion and Use. Therefore, the chapter 2.8 measurement regulations do not apply to diversions reported by Watermasters that are not also covered by a license, permit, or registration. While chapters 2 and 2.7 of the California Code of Regulations contain requirements for Watermaster reports and other annual reports, the State Water Board is not proposing any changes related to any of these requirements in this rulemaking because this comment is outside the scope of this rulemaking.

Outside of Rulemaking Scope - Enforcement Case

Comment ID(s): 31.1, 49.1

Summarized Comment: Commenters raised issues regarding a specific enforcement case and requested general information about water rights.

Response: The State Water Board is only accepting comments related to the current rulemaking. This comment is outside the scope of this rulemaking. Therefore, the State Water Board did not make any changes to the proposed regulation in response to this comment.

Outside of Rulemaking Scope - Requirements for Device and Telemetry Manufacturers

Comment ID(s): 15.7

Summarized Comment: One commenter recommended that manufacturers of measurement and data transmission equipment be held to a unified data standard.

Response: The State Water Board does not have the authority to regulate device manufacturers as part of the water measurement regulations. This comment is outside the scope of this rulemaking. Therefore, the State Water Board did not make any changes to the proposed regulation in response to this comment.

Outside of Rulemaking Scope - Reservoir Curves

Comment ID(s): 44.4

Summarized Comment: One commenter expressed interest in State funding to develop depth capacity curves to aid in reservoir measurement. They also mentioned that the State Water Board should publicize that such curves may already be publicly available.

Response: Guidance for creating reservoir capacity curves is available on the State Water Board's website. This comment is unrelated to and outside the scope of this rulemaking. Therefore, the State Water Board did not make any changes to the proposed regulation in response to this comment.

First 15-Day Written Public Comment Period

During the first 15-day written comment period, which extended from May 22, 2025, through June 6, 2025, the State Water Board received 18 written comment letters. The comments included in these letters are summarized, grouped, and responded to as follows:

General - Support for Revisions

Comment ID(s): 63.3, 64.1, 64.2, 74.1, 77.1, 78.1, 78.6

Summarized Comment: Several commenters expressed appreciation and support for the changes made to the proposed regulation text. They specifically appreciated the removal of the language "according to the priority date" from proposed section 934, subdivision (a)(8)(B) (formerly section 934, subdivision (b)(3)(F)(ii) of the initially proposed regulation), removal of language stating that measurement methodologies can be rejected based on inconsistencies with policies/contracts/orders, added clarity between "withdrawal," "release," "direct diversion," and "diversion to storage," added grace periods for compliance with new requirements, the permitted lag time for weekly reported data, and revisions to improve clarity in the proposed regulation.

Response: The State Water Board appreciates the feedback received during its public comment periods and support for proposed changes. The State Water Board did not make any changes to the proposed regulation in response to this comment.

General - Opposition to Regulation and/or Proposed Revisions

Comment ID(s): 65.2, 65.4, 67.1, 67.2, 67.3, 67.4

Summarized Comment: Several commentors expressed general opposition to the proposed regulation but did not provide specific recommendations or reference specific requirements. Commenters expressed frustration regarding poor compliance with the existing regulations and lack of sufficient enforcement.

Response: These comments are not relevant to the May 22, 2025, changes to the proposed regulation released for public comment. Please see "General - Opposition to Regulation and/or Proposed Revisions" in the Initial Public Comment Period section above. The State Water Board encourages the public to submit complaints and report illegal diversions through the California Environmental Protection Agency's Environmental Complaint System at https://calepa.my.salesforce-sites.com/complaints. For additional information about compliance rates with the existing regulations and which diverters have previously submitted annual reports and/or measurement datafiles for the most recent water year, please refer to the submission tracking tool, available at https://www.waterboards.ca.gov/waterrights/water_issues/programs/measurement_regulation/tracking.html. The State Water Board did not make any changes to the proposed regulation in response to this comment.

General - Formatting Errors

Comment ID(s): 69.1, 75.2

Summarized Comment: Commenters identified formatting errors within chapters 2 and 2.7 of the proposed regulation text released on May 22, 2025.

Response: The State Water Board has updated the text to correct formatting errors. These changes did not affect the text of the proposed regulation.

General - Use Correct Terminology for Statements of Water Diversion and Use

Comment ID(s): 72.1

Summarized Comment: One commenter requested that "Statement of Diversions and Use" be replaced with "Statement of Diversion and Use," which is more appropriate for the records the proposed regulation is referencing.

Response: The State Water Board has updated the text to replace "Statement of Water Diversions and Use" with "statement of water diversion and use" to align with the correct usage of the term and typical formatting practices.

General - Removal of "Reporting" in Chapter Title and Section Titles

Comment ID(s): 63.1, 63.4

Summarized Comment: One commenter raised concerns with the removal of the word "reporting" from both the chapter title and the title of proposed section 936, arguing that this

could cause confusion since diverters are required to report their measurement data under the proposed regulation.

Response: The deletion of the word “reporting” is intended to prevent conflation of requirements in chapter 2.8 with those in chapter 2.7. Submission of measurement data is required under chapter 2.8, regardless of the title. The State Water Board did not make any changes to the proposed regulation in response to this comment.

General - Guidance and Outreach

Comment ID(s): 67.1, 75.1

Summarized Comment: Commenters expressed concern that the proposed regulation is too complicated and diverters are likely to be confused as to what they are required to do. One commenter recommended the State Water Board provide a fact sheet explaining various new requirements and examples of how to report.

Response: Please see “General - Guidance and Outreach” in the Initial Public Comment Period section above. The State Water Board plans to release guidance materials to assist diverters on how to comply with the revised water measurement regulation. This includes the information and details that have been mentioned in this comment. These guidance materials will be released after the Board has adopted the revised regulation. The State Water Board is interested in helping diverters and industry groups stay informed and plans to conduct outreach to spread awareness of the regulation revisions. Diverters or groups seeking additional communication may contact the Board at DWR-Measurement@Waterboards.ca.gov. The State Water Board did not make any changes to the proposed regulation in response to this comment.

General - Avoid a One-Size-Fits-All Approach

Comment ID(s): 67.2

Summarized Comment: One commenter expressed concern that the proposed regulation is too rigid and does not include enough flexibility or adaptability, criticizing the regulation as attempting a “one size fits all approach.”

Response: As with the existing regulations, the proposed revisions allow the State Water Board to adjust key thresholds in order to avoid a one-size-fits-all approach. By considering conditions, concerns, and characteristics of each watershed, the regulation is designed to be able to adapt to different watersheds. Additionally, by expanding the eligibility for diverters pursuing alternative compliance, the proposed regulation allows greater flexibility in measuring diversions. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Alternative Compliance Plans - Updated Language Allows for Insufficient ACPs

Comment ID(s): 63.5, 63.6, 63.7, 71.1, 71.2, 71.3, 71.4, 71.5, 71.6, 71.7, 71.8, 71.9, 77.2, 77.3, 77.4, 77.5, 77.6, 77.7, 77.8, 78.3, 78.6, 80.3, 80.4

Summarized Comment: This comment concerns the updated proposed section 936 requirements for ACPs. Commenters expressed concern that, under the proposed regulation,

diverters may be able to propose and implement alternative methods of measuring their diversions that do not result in measurement data that are sufficiently accurate or timely for enabling the State Water Board to effectively manage water resources. Specifically, commenters opposed the provision that ACPs will not be considered retroactively out of compliance upon review by the Board; the ability for diverters to use remote sensing technologies to measure diversions; and the added language requiring diverters to "fulfill the requirements of [chapter 2.8] to the extent practicable and provide sufficiently accurate and timely data." They were concerned that, combined with the extended submission deadline of January 2027, diverters may be able to use insufficient ACPs for more than a year after the regulation becomes effective, which would reduce the data quality needed for water rights enforcement.

Several commenters reiterated comments from the initial public comment period advocating for a review timeline for ACPs and a finding of infeasibility of strict compliance for each diverter before an ACP can be implemented.

Response: Alternative compliance is intended to provide diverters with flexibility in measurement when strict adherence to requirements is not feasible, or if they have an alternate means of collecting measurement data that is more effective or efficient than installing a measuring device at each point of diversion. This flexibility is not intended as a means of evading the requirements of chapter 2.8 altogether, but rather to allow leeway as needed and as appropriate. Diverters pursuing alternative compliance must still submit measurement data for each of the required parameters described in the regulation, and fulfill the requirements of the proposed regulation to extent practicable. Failure to do so is a violation of the proposed regulation. Since each diversion scenario is unique, what is "practicable" or "sufficiently accurate and timely" necessarily varies according to site and situational constraints. However, if during its review, the State Water Board finds insufficient descriptions and explanations in an ACP, the Board may request additional information to support the ACP, and/or may reject the ACP. The Board has determined it is not necessary to hold diverters completely responsible for the time it takes for Board staff to review ACPs for deficiencies, and determined it is appropriate that deficiencies identified in Board staff's review not cause retroactive violations, but instead only affect compliance if they are not subsequently corrected.

The State Water Board may review ACPs and require changes in accordance with the procedures described in proposed section 936, subdivision (g) and not by any other process. The Board recognizes that the first year after the existing regulations are amended will be a year of transition between the existing and proposed versions of the regulation. Therefore, it is appropriate to allow additional time for diverters to prepare ACPs according to the updated requirements. The date of January 31, 2027, was selected to allow such time while also aligning with existing reporting timelines.

Regarding remote sensing, depending on the location, hydrogeology, and type of remote sensing, such technology may be an appropriate means of measuring diversions, provided diverters can meet the requirements of chapter 2.8. If, during the Board's review, it becomes apparent that remote sensing technology is being used inappropriately or in a way that is

inconsistent with the requirements of the proposed regulation, the Board may require modifications to the ACP to correct these deficiencies.

Please see the summary responses in the Initial Public Comment Period section above for the State Water Board's response to previous comments regarding ACPs. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Applicability - Stockponds

Comment ID(s): 66.1, 76.1

Summarized Comment: Commenters suggested eliminating measurement requirements for small stockponds, with one commenter suggesting an exemption below 50 acre-feet.

Response: Applicability—as it relates to stockpond certificates, registrations for livestock stockponds, and reservoirs that do not meet the threshold of "qualifying reservoirs"—has not been revised compared to what was initially proposed during this rulemaking. Please see "Cost Vs. Benefit - Stockponds" in the Initial Public Comment Period section above. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Applicability - Exempt Smaller Diverters

Comment ID(s): 65.2, 65.3, 70.1

Summarized Comment: Commenters expressed concern that the proposed regulation needs to establish a minimum diversion volume, below which diverters (including those with riparian claims) do not need to measure or hire a professional.

Response: Please see "Applicability - Exempt Smaller Diverters" and "Definitions - Qualified Individual" in the Initial Public Comment Period section above. The applicability threshold of the proposed regulation did not change since the initially proposed regulation; it remains at 10 acre-feet per year. Similarly, consistent with the initially proposed regulation, small diverters are not required to hire professionals to install measuring devices or certify measurement methodologies. This comment is outside the scope of the changes made to the initially proposed regulation. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Applicability - Exemptions

Comment ID(s): 72.4

Summarized Comment: One commenter identified a clarity issue within proposed section 932, subdivision (a), which lists the types of diverters to whom the proposed regulation applies. One of the paragraphs within proposed section 932, subdivision (a) identifies several types of diverters that are exempt from the regulation, which the commenter argues is confusing and does not fit the logical order of the subdivision.

Response: The State Water Board has reworded the subdivision to clarify that proposed section 932, subdivision (a)(3) contains an exemption to the applicability criteria.

CalWATRS - Extend Public Comment Period Until CalWATRS and Forms Are Available

Comment ID(s): 64.4, 69.8, 78.5, 80.6

Summarized Comment: Several commenters reiterated comments from the initial public comment period recommending that all reporting tools and forms be released for the public to comment on.

Response: Please see “CalWATRS - Extend Public Comment Period Until CalWATRS and Forms are Available” in the Initial Public Comment Period section above. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Data Submission - Exemptions for Natural Disasters and No Diversions

Comment ID(s): 65.1, 67.3

Summarized Comment: Commenters expressed frustration with requirements to submit measurement datafiles in circumstances when diverters did not divert during the entirety of the water year or when natural disasters affect either the measurement or diversion infrastructure. One commenter recommended that instead of submitting a datafile containing all zeros, diverters be exempt from submitting data when no diversion occurred that year.

Response: Under proposed section 937, subdivisions (c) through (e), the scenarios presented by commenters meet the temporary exemption criteria, allowing diverters relief from measurement and data submission requirements under the proposed regulation. If no water is diverted in a water year, diverters are able to report that on their annual report and do not need to submit a measurement datafile of zeros. If natural disasters prevent operation of measurement or diversion equipment, diverters may avoid measuring diversions until such equipment becomes operational. This comment is outside the scope of the changes made to the initially proposed regulation. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Data Submission - Submitting a Datafile When Data Are Directly Transmitted

Comment ID(s): 69.9

Summarized Comment: One commenter noted that proposed section 935, subdivision (a)(2) appears to state that diverters must submit their datafiles via the online reporting platform with their annual water right reports or by directly transmitting the data to the online reporting platform. Therefore, it appears that if diverters directly transmit their data, they are not required to include datafiles with their annual water right report.

Response: The State Water Board has updated the proposed regulation text to consistently refer to the submittal for general measurement data as a “general measurement datafile.” The content of such a datafile must meet the requirements of proposed section 935, subdivision (a)(1), but diverters may choose whether to directly transmit the datafile or manually upload the datafile using a template. If a diverter directly transmits the general measurement datafile, they

do not also need to manually upload a template containing the same information. Regardless of whether general measurement data are submitted by uploading a template or by direct transmission, the data must still be submitted annually, with an associated annual report.

Definitions - Remove “Agent” from Definition of Diverter

Comment ID(s): 72.2

Summarized Comment: One commenter argued that since an agent usually is not involved in the diversion of water, “agent” should be removed from the definition of “diverter” in proposed section 931. They argued that this would lead to greater clarity regarding the role of diverter.

Response: Use of the term “agent” within the definition of the term “diverter” is limited to instances where agents fulfill requirements on the diverter’s behalf regarding submitting measurement data, registering measuring devices, or submitting measurement methodologies or ACPs. Measurement and data submission under chapter 2.8 may be done by the diverter, their employee, or their agent. Inclusion of “agent” within the definition of “diverter” allows for more concise language within the proposed regulation. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Definitions - Maximum Allowable Diversion for Riparian Rights

Comment ID(s): 72.3

Summarized Comment: This commenter reiterated concerns with the application of “maximum allowable diversion amount or rate,” as defined in proposed section 931, to unadjudicated riparian claims. They recommended distinguishing between adjudicated and unadjudicated riparian claims and not applying historical diversions to unadjudicated riparian claimants.

Response: Please see “Definitions - Maximum Allowable Diversion for Riparian Rights” in the Initial Public Comment Period section above. The proposed regulation remains consistent compared to the initially proposed regulation in terms of its treatment of adjudicated versus unadjudicated riparian claims. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Definitions - “Measuring” Should Also Apply to Term “Measured”

Comment ID(s): 69.3

Summarized Comment: One commenter recommended that the definition of “measuring” in proposed section 931 instead be applied as the definition of “measuring or measured,” to better align with other regulation text.

Response: The State Water Board has incorporated the suggested text in the definition of “measuring.”

Definitions - Initial Vs. Maximum Diversion for pre-1914 Appropriative Rights

Comment ID(s): 69.2

Summarized Comment: This comment pertains to the definition of “maximum allowable diversion amount or rate” in proposed section 931, subdivision (i). One commenter requested clarification as to why “initial or maximum volume” was changed to “the larger between the initial and maximum volume” for pre-1914 appropriative rights. They interpreted the previous language as meaning the initial and maximum amounts were interchangeable, and the new text implies they are different criteria.

Response: The initial volume diverted refers to the amount of water identified as diverted on the initial statement of use submitted by a water right claimant and may be used to determine applicability of the water measurement regulation when the State Water Board does not have adequate or accurate information on reported annual diversions. The language was changed from “or” in the initially proposed regulation text to “the larger between...and” to clarify that the maximum allowable diversion amount is based on the larger between the initial and maximum value, rather than inadvertently allowing diverters an option between the two. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Definitions - Direct Diversion and Diversion to Storage

Comment ID(s): 75.4

Summarized Comment: One commenter recommended including definitions of “direct diversion” and “diversion to storage” as they relate to reservoirs.

Response: Use of the terms “direct diversion” and “diversion to storage” are consistent with how those terms are defined elsewhere in the Board’s regulations and in permit and license terms; therefore, it is unnecessary to duplicate definitions in chapter 2.8. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Definitions - Releases vs Withdrawals

Comment ID(s): 75.4, 75.6

Summarized Comment: One commenter requested clarification on the difference between water withdrawn from storage in a reservoir and water released from a reservoir, as defined in proposed section 931, subdivisions (u) and (x) and referenced in proposed section 933, subdivision (a).

Response: Water Code section 1840 and the existing version of chapter 2.8 require diverters to measure withdrawals and releases. These terms are not defined in the existing regulations, which has led to confusion among diverters. In the proposed regulation, withdrawals are defined as water that is removed from the reservoir for either beneficial use or downstream diversion, whereas releases are defined as all water leaving the reservoir at its outlet. This could include water released for instream flow requirements or as bypass flow, and it may include water withdrawn from the reservoir at the outlet. Releases do not take beneficial use into account, whereas withdrawals generally occur for beneficial use. In the context of the general

measurement parameters in proposed section 933, subdivision (a), releases also do not need to consider whether the water was previously considered stored, whereas withdrawals from storage need to be parsed to determine what was stored water; water not stored for later beneficial use is generally considered a direct diversion. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Definitions - Point of Diversion

Comment ID(s): 79.2

Summarized Comment: One commenter reiterated concerns from the initial public comment period regarding “points of rediversions” being included in the definition of “points of diversion,” specifically that there may be instances where “point of diversion” may be used in the proposed regulation when it is not intended to refer to “points of rediversion.” They suggested that rediversions should be treated differently under the proposed regulation.

Response: Please see “Definitions - Point of Diversion” in the Initial Public Comment Period section above. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Definitions - Rediversions

Comment ID(s): 75.3

Summarized Comment: This commenter requested clarity as to whether water that is diverted after being stored under the same claimed water right versus under a different claimed water right is considered to be “rediverted,” specifically in the case of onstream reservoirs. They describe an example of a reservoir releasing water (that was stored under one claimed water right) into a downstream underground storage facility (where it is stored under a second claimed water right).

Response: As described in proposed section 931, subdivision (t), rediverted water is water that has been previously diverted or stored under the same claimed water right. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Diversion Measurement - Correct Error in Measurement Frequency Requirements

Comment ID(s): 68.1, 69.4, 72.7

Summarized Comment: Several commenters identified an error in the measurement frequency tiers described in proposed section 933, subdivision (h)(2). The proposed regulation text released on May 22, 2025, provides that no measurement is required for maximum allowable diversion amounts that are “less than 10 acre-feet per year.” For consistency with proposed section 933, subdivision (h)(1), this should be “less than or equal to 10 acre-feet per year.” Diversions of exactly 10 acre-feet per year are not subject to the water measurement regulation.

Response: The State Water Board has incorporated the suggested correction.

Diversion Measurement - Measurement Location

Comment ID(s): 72.6

Summarized Comment: One commenter identified potentially vague language in proposed section 933, subdivision (g) regarding where diverters are required to collect measurement data. They argued that the use of the word “significant” is too vague when referring to losses of water due to percolation or evaporation.

Response: As described in the FSOR, the term “significant” in proposed section 933, subdivision (g) reflects that each diversion is unique, so specifying an acceptable amount of water loss could cause confusion regarding how those losses are measured and how accurate those measurements would be. This comment is outside the scope of the changes made to the initially proposed regulation. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Diversion Measurement - Measurement of Stored Water

Comment ID(s): 74.1, 78.4, 79.1, 80.2

Summarized Comment: Commenters reiterated arguments from the initial public comment period that water diverted to storage is a calculated value and not directly measured. They raised concerns over their interpretation that the regulation requires real-time measurement of diversions to storage. Commenters also suggested revisions to require measurements of diversions to and withdrawals from storage facilities, rather than diversions to and withdrawals from storage.

Response: Please see “Diversion Measurement - Measurement of Stored Water” in the Initial Public Comment Period section above.

Proposed section 933, subdivision (a) describes the required parameters for general measurement data, which are submitted annually in end-of-year general measurement datafiles. These data are not submitted in real-time and diverters may use calculations to determine water diverted to or withdrawn from storage. Additionally, both the existing regulations and Water Code section 1840 specify that diverters must measure diversions to and withdrawals from storage. In the proposed regulation, the definition of “measure or measuring” clarifies that the required measurement parameters do not need to be directly measured, but instead can be calculated using a measurement methodology. For large diversion submissions, diverters do not need to consider whether water was stored. The State Water Board does not believe that additional edits are necessary to clarify that required measurement parameters may include values derived from calculations.

Diversion Measurement - Use of "Actual Value" in Accuracy Definition

Comment ID(s): 69.5

Summarized Comment: One commenter opposed the use of the term “actual value” in proposed section 933, subdivision (i) when referring to what a measured value must be compared to in

order to determine accuracy of a device. They argued that “actual value” is not a term used in water management operations.

Response: The definition of “actual value” is unchanged from its definition in the existing regulations. The common engineering definition of accuracy compares a measured or observed value (in this case, the reported value that is included in submitted measurement data) with an actual or theoretical value. The definition included in the proposed regulation is in line with this common usage. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Diversion Measurement - Qualified Individual Role in Device Installation

Comment ID(s): 69.7

Summarized Comment: This comment concerns references in proposed section 934 to the qualified individual who “installed and verified the accuracy of the measuring device.” The commenter recommended instead referring to the qualified individual who “verified the installation” of the device, to account for cases in which the qualified individual did not install the device.

Response: Consistent with the existing regulations, measuring devices must be installed by a qualified individual. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Implementation Schedule - Inclusion of Existing Requirements for Interim Reporting

Comment ID(s): 68.2, 80.5

Summarized Comment: This comment concerns the newly added sections 939.1 through 939.6, which restate the data submission requirements of the existing regulations that will apply until the updated data submission requirements take effect. One commenter requested that instead of presenting a slightly revised version of the existing language to fit within the proposed regulation, the State Water Board should present a fully red-lined version to demonstrate any necessary revisions. Another commenter believed the implementation schedule to be unclear and proposed their own language.

Response: Proposed sections 939.1 through 939.6 describe interim implementation for data collected during water year 2026. Only the requirements that are relevant to data measurement and submission for water year 2026 are reproduced in proposed sections 939.1 through 939.6. Other provisions that will not affect data collection or submission for water year 2026, including requests for additional time, reports of water measuring device, etc. are not reproduced. To ensure consistent interpretation between the requirements under the existing regulations and those reproduced in proposed sections 939.1 through 939.6, the text is generally verbatim, with minor revisions. The minor revisions to the reproduced text are typically fixing typos and phrasings that do not affect the meaning. The Board will provide guidance materials and reference documents including simplified timelines of all implementation dates described in the

regulation. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Large Diversion Requirements - Clarity Regarding Small Points of Diversion

Comment ID(s): 63.2

Summarized Comment: This comment concerns proposed section 932, subdivision (b)(1)(B)(ii), which encourages diverters to submit ACPs to seek relief from large diversion requirements at "small points of diversion" which divert significantly less than the typical threshold of 10,000 acre-feet per year or 30 cubic feet per second. The commenter sought clarity on the purpose of this language and called it unnecessary when alternative compliance was already a broadly available option that could cover this scenario.

Response: The purpose of the referenced paragraph is to indicate to diverters that they have flexibility in cases where certain points of diversion do not divert a meaningful portion of their overall demand. For example, a claimed water right with a maximum allowable diversion amount exceeding 10,000 acre-feet per year may have a listed point of diversion that only has the capacity to divert 20 acre-feet per year; it may not be reasonable or cost-effective for this point of diversion to meet large diversion requirements. Other points of diversion associated with that claimed water right would still need to submit large diversion measurement data on a weekly basis because they constitute a majority of the maximum allowable diversion amount. While the commenter is correct that such a scenario is already an acceptable reason for alternative compliance according to proposed section 936, subdivision (a), the inclusion of this paragraph provides additional and explicit clarity for diverters who encounter this scenario. During the Board's outreach efforts in advance of this rulemaking, diverters indicated a desire for this level of flexibility regarding large diversion requirements. The proposed regulation uses the phrase "significantly less" rather than stating a specific threshold, with the understanding that "significant" diversions can vary in different watersheds, so the chosen language maximizes flexibility for the diverter. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Large Diversion Requirements - Delayed Effective Date

Comment ID(s): 75.5

Summarized Comment: This comment concerns proposed section 932, subdivision (b)(2), which establishes a delayed effective date for large diversion requirements for diverters who were not previously subject to telemetry requirements under the existing regulations. One commenter found this paragraph confusing and recommended revising the language so that the delayed effective date applies to anyone subject to large diversion requirements.

Response: The State Water Board has updated the text of the referenced paragraph to better clarify that the delayed effective date of October 1, 2027, only applies to large diverters who were not previously subject to telemetry requirements under the existing regulations. Large diverters who are subject to existing telemetry requirements will be subject to large diversion measurement requirements beginning October 1, 2026.

Large Diversion Requirements - Posting Data to Public Website

Comment ID(s): 69.10, 69.11, 72.8

Summarized Comment: Commenters reiterated comments from the initial public comment period related to the provision that diverters may post weekly submissions to a publicly accessible website approved by the Deputy Director. They sought clarity on how the Deputy Director would approve websites and requested that previously-developed, diverter-maintained websites that diverters already use to satisfy telemetry requirements of the existing regulations be automatically approved.

Response: Please see “Large Diversion Requirements - Posting Data to Public Website” in the Initial Public Comment Period section above. For the reasons stated in the FSOR, the intent of the proposed regulation is not for the Deputy Director to approve individual diverter-maintained websites, but rather to allow the Deputy Director to consider approval of other websites that can serve many different diverters while meeting the Board’s data needs. The proposed regulation has been updated to describe criteria the Deputy Director will consider in their approval of alternate websites, but does not explicitly limit which websites could be considered for approval because developments in technology could eventually improve the Board’s ability to interface with additional data repositories. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Large Diversion Requirements - Opposition and Concerns of Practicality

Comment ID(s): 78.2

Summarized Comment: One commenter reiterated concerns from the initial public comment period regarding large diversion submissions. Specifically, they opposed weekly submissions, questioning the practicality of “hourly reporting” and issues with data security if a direct connection is established between the Board’s online reporting platform and the diverter’s SCADA system.

Response: Please see “Large Diversion Requirements - Opposition and Concerns of Practicality” and “Large Diversion Requirements - Recommendations for Submittal Options” in the Initial Public Comment Period section above. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Large Diversion Requirements - Parameters

Comment ID(s): 72.5, 75.7

Summarized Comment: This comment pertains to the required large diversion parameters described in proposed section 933, subdivision (b)(2). Commenters expressed confusion regarding the updated large diversion parameters. Specifically, they questioned why “water diverted from the stream” excludes water entering or leaving onstream reservoirs, as provided in the proposed regulation text. They argued that water entering a reservoir could be construed as a diversion, and—especially in cases where water remains in the reservoir long-term—is unavailable for downstream diversion.

Response: The intent of the revised large diversion parameters is to provide the State Water Board with data about where, when, and how much water is being diverted. These weekly reporting data create a broad understanding of water availability, while also balancing the realities of what is feasible and reasonable to report on a weekly basis. While some water that flows into onstream reservoirs is considered to be diverted to storage (for the purpose of the general measurement datafile that is submitted at the end of the year), it is not considered to be water that is leaving the stream (for the purpose of large diversion parameters that are submitted weekly). The Board recognizes that many reservoir operators do not directly measure water entering a reservoir and instead calculate this value via a mass balance which is not always feasible to perform on a weekly basis. Therefore, large diversion parameters (reported weekly) only include water in the qualifying reservoir, water leaving the qualifying reservoir, and water leaving the stream. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Measurement Methodology - Import Existing Device Reports into New System

Comment ID(s): 69.6

Summarized Comment: This comment pertains to the requirement to register measuring devices pursuant to proposed section 934, subdivision (b). One commenter requested that the CalWATRS system import devices previously registered in accordance with the existing regulations, and that these imported device reports be used to fulfill the requirements of the proposed regulation.

Response: The proposed device registry form described in proposed section 934, subdivision (b) is largely similar to the one described in existing section 937, and while CalWATRS will import all previously submitted device information, diverters will still need to review and update their device registries to ensure they satisfy the updated requirements. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Rediversions - Measurement of Water Transfers

Comment ID(s): 74.2, 79.3, 80.1

Summarized Comment: Several commenters reiterated comments from the initial public comment period regarding how rediversions must be measured when diverters act as a transferor, citing concerns that transferors (i.e., the water right holders/claimants) do not have control over their transferees' points of rediversion and that it is infeasible for transferors to measure and report on transferees' rediversions. They requested greater clarity for these situations and recommended requiring the transferee to be responsible for the measurement of transferred water.

Response: Please see "Rediversions - Measurement of Water Transfers" in the Initial Public Comment Period section above. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Rediversions - Process for Requiring Measurement of Rediversions

Comment ID(s): 64.3

Summarized Comment: One commenter reiterated comments from the initial public comment period requesting a clearer process and criteria by which the Deputy Director would require certain diverters to measure rediversions under their claimed water rights.

Response: Please see “Rediversions - Process for Requiring Measurement of Rediversions” in the Initial Public Comment Period section above. The proposed regulation requires the Deputy Director to make a determination that rediversion measurement data are necessary for understanding supply, demand, and availability of water prior to requiring that diverters measure their rediversions. The Deputy Director would make this determination after considering the availability and accessibility of existing data and the water rights management needs of the State Water Board. If rediversions are significant enough to impact water availability and the timing and quantity of such rediversions cannot be easily inferred from other measurement data, the Deputy Director may conclude that rediversion measurements are necessary. By their nature, these determinations are based on water right-specific and watershed-specific criteria that can only be addressed on a case-by-case basis. Therefore, it is inappropriate to describe any set of criteria in the regulation text. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Outside of Rulemaking Scope - Total Storage and Withdrawal Capacity for Wet Water Years

Comment ID(s): 73.1

Summarized Comment: One commenter argued that the proposed regulation only provides useful data for drought periods and neglects information that may assist in wet periods. They recommended requiring diverters to report their total withdrawal capacity and storage capacity.

Response: The goal of the regulation is to collect usable water diversion data that can be used to forecast water supply, especially during times of drought. Determining diverters’ water rights’ total withdrawal capacity would require additional reporting requirements which do not necessarily accomplish the goal of this regulation. This is beyond the scope of this rulemaking. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Second 15-Day Written Public Comment Period

During the second 15-day written comment period, which extended from June 16, 2025, through July 1, 2025, the State Water Board received 8 written comment letters. The comments included in these letters are summarized, grouped, and responded to as follows:

General - Opposition to Regulation and/or Proposed Revisions

Comment ID(s): 81.1, 82.1, 83.1, 83.2, 84.2, 85.1, 86.1, 88.1

Summarized Comment: Several commentors expressed general opposition to the proposed regulation but did not provide specific recommendations or reference specific requirements. Commenters expressed frustration regarding what they see burdensome requirements and paperwork that they argued will not improve data quality or better enable the State Water Board to make informed water management decisions. One commenter suggested that the Board instead prioritize developing new sources of usable water.

Response: Please see “General - Opposition to Regulation and/or Proposed Revisions” in the Initial Public Comment Period and First 15-Day Written Public Comment Period sections above. These comments are outside the scope of the changes made to the proposed regulation since the close of the first 15-day written public comment period. Additionally, the development of new usable water supplies is beyond the scope of this rulemaking. The State Water Board did not make any changes to the proposed regulation in response to this comment.

General - Guidance and Outreach

Comment ID(s): 83.2

Summarized Comment: One commenter expressed concern that the proposed regulation is too complicated and diverters are likely to be confused as to what they are required to do.

Response: Please see “General - Guidance and Outreach” in the Initial Public Comment Period and First 15-Day Written Public Comment Period sections above. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Applicability - Exempt Smaller Diverters

Comment ID(s): 85.1

Summarized Comment: One commenter recommended that the general applicability threshold of the proposed regulation be increased to from 10 to 20 acre-feet to exempt smaller diverters.

Response: Please see “Applicability - Exempt Smaller Diverters” in the Initial Public Comment Period and First 15-Day Written Public Comment Period sections above. This comment is outside the scope of the changes made to the proposed regulation since the close of the first 15-day written public comment period. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Cost Vs. Benefit - Burden for Small Diverters

Comment ID(s): 81.1, 83.1, 83.2, 85.1, 86.1, 88.1

Summarized Comment: Commenters voiced general opposition to the water measurement regulation, citing the regulatory burden that is disproportionately borne by small diverters.

Response: Please see “Cost Vs. Benefit - Burden for Small Diverters” in the Initial Public Comment Period section above. There are not any significant changes in the proposed revisions that will create significant additional costs for diverters who have already been in compliance with the existing water measurement regulations. Reporting accurate diversion data is crucial to the State Water Board’s ability to effectively manage water resources, especially during times of water shortage, and implementing the water rights priority system. In circumstances where meeting the requirements of the proposed regulation is infeasible or cost-prohibitive, diverters may pursue alternative compliance. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Definitions - Point of Diversion

Comment ID(s): 87.2

Summarized Comment: One commenter reiterated concerns from the initial and first 15-day public comment periods regarding “points of rediversion” being included in the definition of “points of diversion.”

Response: Please see “Definitions - Point of Diversion” in the Initial Public Comment Period and First 15-Day Written Public Comment Period sections above. This comment is outside the scope of the changes made to the proposed regulation since the close of the first 15-day written public comment period. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Diversion Measurement - Measurement of Stored Water

Comment ID(s): 87.1

Summarized Comment: One commenter reiterated arguments from the initial and first 15-day comment periods that the proposed regulation appears to require real-time measurement of diversions to storage, and recommended that proposed section 933, subdivision (a) be revised to require measurements of diversions to and withdrawals from storage facilities, rather than diversions to and withdrawals from storage.

Response: Please see “Diversion Measurement - Measurement of Stored Water” in the Initial Public Comment Period and First 15-Day Written Public Comment Period sections above. This comment is outside the scope of the changes made to the proposed regulation since the close of the first 15-day written public comment period. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Rediversions - Measurement of Water Transfers

Comment ID(s): 87.3

Summarized Comment: One commenter reiterated comments from the initial and first 15-day comment periods suggesting that transferees be held responsible for the measurement of transferred water.

Response: See "Rediversions - Measurement of Water Transfers" in the Initial Public Comment Period and First 15-Day Written Public Comment Period sections above. This comment is outside the scope of the changes made to the proposed regulation since the close of the first 15-day written public comment period. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Outside of Rulemaking Scope - Property Ownership

Comment ID(s): 84.1

Summarized Comment: One commenter expressed opposition to reporting requirements that would place "the burden and cost of maintaining the accuracy of the waterboards owner database on the property owner," arguing that this information is already available at county offices, and therefore property owners should not be responsible for ownership information.

Response: References to changes in ownership in chapters 2 and 2.7 relate to ownership of a claimed water right, not necessarily ownership of real property. This comment is outside the scope of this rulemaking and outside the scope of the changes made to the proposed regulation since the close of the first 15-day written public comment period. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Third 15-Day Written Public Comment Period

General - Guidance and Outreach

Comment ID(s): 95.13

Summarized Comment: One commenter requested a checklist for water year 2026 to help diverters comply with the proposed regulation.

Response: Please see "General - Guidance and Outreach" in the Initial Public Comment Period and First 15-Day Written Public Comment Period sections above. The State Water Board did not make any changes to the proposed regulation in response to this comment.

General - Support for Revisions

Comment ID(s): 90.1, 95.1, 95.5, 95.8, 95.11

Summarized Comment: Several commenters expressed support for the changes made to the proposed regulation text, including the revised regulation effective dates and the increased flexibility for large diversion submissions.

Response: The State Water Board acknowledges and thanks these commenters for their support. The State Water Board did not make any changes to the proposed regulation in response to this comment.

CalWATRS - Notification of Inadequate Measuring Devices

Comment ID(s): 92.2

Summarized Comment: One commenter asked how diverters could notify the State Water Board of an inadequate measuring device (as required by subdivision 939.4, subdivision (f)(1)) using CalWATRS.

Response: Diverters will be able to manage measuring device registries outside of the annual reporting process in CalWATRS, including inactivating devices and registering new measuring devices. They will also be able to submit a temporary exemption form in the case of damaged or destroyed measuring devices. The State Water Board will release guidance on how to use CalWATRS to fulfill measurement requirements, including such notifications. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Cost Vs. Benefit - Burden for Small Diverters

Comment ID(s): 89.1, 91.1

Summarized Comment: Commenters raised concerns regarding the cost of compliance with reporting requirements and the lack of financial assistance. Commenters also objected to needing to pay fees associated with water rights.

Response: Please see “Cost Vs. Benefit - Burden for Small Diverters” in the Initial Public Comment Period and Second 15-Day Written Public Comment Period sections above. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Implementation Schedule - Device Installation and Maintenance

Comment ID(s): 95.3, 95.7, 95.9, 95.12

Summarized Comment: One commenter suggested removing proposed section 939.4, subdivision (e) (“Installation, Maintenance and Performance Requirements”), which concerns measuring device requirements that will be in effect through the end of water year 2026. This section requires that the installation and maintenance of newly installed measuring devices adhere to the requirements of proposed sections 933 and 934. The commenter acknowledged their understanding that sections 939.1 through 939.6 allow diverters to continue following the requirements of the existing regulation throughout water year 2026, but argued that requiring new measuring device installations to be done in accordance with proposed sections 933 and 934 before the start of water year 2027 would create confusion and unnecessarily accelerate the compliance timeline for new requirements.

Response: Proposed section 939.4, subdivision (e) only refers to proposed sections 933 and 934 when describing requirements for installing measuring devices after the effective date of the regulation and before October 1, 2026. Diverters that have been complying with the existing regulations are unlikely to need to install new measuring devices during this time frame. Additionally, proposed sections 933 and 934 generally do not impose new requirements on the installation or maintenance of measuring devices, but rather restate and clarify existing

requirements. Therefore, requiring that new device installations adhere to the requirements of proposed sections 933 and 934 does not create an acceleration of new requirements, but rather explicitly states what was implied in existing requirements.

The main differences between the proposed and existing regulations with regard to measuring devices are (1) that the proposed regulation explicitly specifies that no significant water losses should occur between the point of diversion and the location of the measuring device unless those losses are otherwise measured, and (2) that the installation of the measuring device shall not cause environmental harm. Although not explicitly specified, these two provisions are sufficiently implied in the existing regulations. Regarding the device location, the existing regulations require that measuring devices meet strict accuracy standards. If significant water losses occur between the point of diversion and the device location, the resulting measurement would no longer accurately represent the volume or rate of the diversion. Regarding the requirement that device installation not cause environmental harm, the existing regulations allow diverters to pursue alternative compliance if strict compliance would unreasonably affect public trust uses. Therefore, if installing a device would negatively impact the environment, diverters would be able to measure using alternative means. All other requirements regarding device installation under proposed sections 933 and 934 are substantially similar to existing requirements.

The State Water Board did not make any changes to the proposed regulation in response to this comment.

Implementation Schedule - Inadequate Device Enforcement

Comment ID(s): 95.7, 95.10, 95.12

Summarized Comment: One commenter suggested removing proposed section 939.4, subdivision (f) (“Inadequate Measuring Device”), which concerns enforcement of measuring device requirements that will be in effect through the end of water year 2026. The commenter expressed concern that proposed section 939.4, subdivision (f) introduces a new enforcement mechanism and proposed removing it from the regulation.

Response: This subdivision does not create a new enforcement mechanism. Rather, it is reproduced verbatim from existing section 933, subdivision (f). The State Water Board did not make any changes to the proposed regulation in response to this comment.

Implementation Schedule - Measurement Methodology and ACP implementation

Comment ID(s): 92.3, 92.4

Summarized Comment: One commenter requested more clarity in the proposed regulation regarding the implementation schedule of new requirements for measurement methodologies and ACPs. They identify potential confusion with the provision in sections 939.5 and 939.6 stating that existing measurement methods and ACPs are in effect until September 30, 2026, despite new methodologies and ACPs being due on January 31, 2027. The commenter recommended keeping existing methods and ACPs in effect through January 30, 2027.

Response: Measurement methods and ACPs that were submitted to the State Water Board before the effective date of the proposed regulation will remain in effect through September 30, 2026. Beginning October 1, 2026, the new measurement requirements of the proposed regulation will take effect. Therefore, previous measurement methods and ACPs that describe measurement protocols according to the previous requirements will no longer be consistent with the updated requirements of the proposed regulation. While diverters must begin implementing their updated measurement methodologies and ACPs starting October 1, 2026, they will not need to submit documentation about the measurement methodology or ACP until January 31, 2027. This schedule allows several additional months for diverters to complete new forms in CalWATRS, although they must implement their measurement methodologies and ACPs throughout the entirety of water year 2027. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Implementation Schedule - Water Year 2026

Comment ID(s): 92.1

Summarized Comment: One commenter requested clarification about how measurement data collected before October 1, 2026, must be collected and reported, specifically whether data should be collected and reported in accordance with the existing regulations, the proposed regulation, or both.

Response: For measurement data collected before October 1, 2026, diverters have the choice to continue collecting and/or reporting measurement data in accordance with the requirements of the existing regulations (as reproduced in sections 939.2 through 939.6) or if desired, in accordance with the updated requirements of the proposed regulation (sections 931 through 939). Furthermore, diverters may choose to collect measurement data under one set of requirements but report the data under the other set of requirements (e.g., for water year 2026, diverters may opt to use the provided datafile templates when submitting data, even if they collect data according to sections 939.2 through 939.6). Diverters do not need to satisfy both the existing and the proposed requirements for water year 2026, but rather have the flexibility to choose whether to adhere to sections 939.2 through 939.6 or 931 through 939 when collecting and/or reporting measurement data. Beginning October 1, 2026, measurement data must be collected and reported in accordance with sections 931 through 939 only. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Large Diversion Requirements - Approval of Individual Diverter Websites

Comment ID(s): 90.2, 92.5

Summarized Comment: This comment pertains to the large diversion submission provision in proposed section 935, subdivision (b)(2) that allows diverters to submit large diversion measurement data by posting the data to a website (other than CalWATRS) that is approved by the Deputy Director. One commenter reiterated a comment from a past comment period requesting that previously-developed, diverter-maintained websites that are currently used by diverters for satisfying the telemetry requirements of the existing regulations be automatically approved unless otherwise notified by the Deputy Director. Commenters sought clarity on how

and when the Deputy Director would approve websites, with one commenter asking if there was a form or process to request approval.

Response: The updated text provides more information on what criteria the Deputy Director will consider when deciding whether to approve a website for large diversion submissions, but does not grant provisional approval to diverters' individually-maintained websites developed before this rulemaking. However, diverters may continue to post data to their existing websites through September 30, 2027, as described in section 935, subdivision (b)(2)(D). Beginning October 1, 2027, they must begin uploading or transmitting large diversion data directly to CalWATRS or a website explicitly approved by the Deputy Director. The purpose of the provision allowing websites approved by the Deputy Director is to allow greater flexibility and expand the number of data submission options available to large diverters, not to review and approve individual websites upon request. Please see the FSOR for more information on the purpose of approval of alternative websites. The State Water Board will produce guidance materials to assist diverters in submitting data through CalWATRS. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Large Diversion Requirements - CDEC and USGS

Comment ID(s): 94.1

Summarized Comment: One commenter asked whether CDEC and the United States Geological Survey (USGS) website meet the qualifications and requirements of a website approved by the Deputy Director to which large diversion measurement data may be submitted, in accordance with section 935, subdivision (b)(2)(C).

Response: The State Water Board has not pre-approved any alternate websites for submitting large diversion measurement data. The Deputy Director will evaluate commonly used websites, including CDEC and USGS, for compatibility with regulation requirements and the qualities listed in section 935, subdivision (b)(2)(C) before deciding whether to approve or deny them. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Large Diversion Requirements - Location Where Water Leaves a Qualifying Reservoir

Comment ID(s): 95.2, 95.4, 95.6

Summarized Comment: One commenter expressed concern regarding the language in proposed section 935, subdivision (b)(1)(D) that requires large diversion submissions to reflect data associated with the "location where water leaves a qualifying reservoir." They argued that the term "leaves" is ambiguous and does not properly describe operational processes such as release and withdrawal. They referenced floodwater flows that are not associated with water rights administered by the State Water Board. The commenter suggested changing the language to refer to a location "where water is withdrawn or released from a qualifying reservoir, as applicable, pursuant to claimed water rights of the diverter."

Response: The list of required large diversion parameters, as introduced in proposed subdivision 933, subdivision (b)(3)(B), includes measurement of the volume and rate of water “leaving the qualifying reservoir, including water that is withdrawn or released from the qualifying reservoir with or without having been stored.” Large diversion requirements do not require diverters to determine water diverted to storage from water directly diverted, nor do they require diverters to parse withdrawals from releases, nor do they require diverters to apportion measurements to individual claimed water rights. Rather, diverters are required to measure the volume rate of water diverted from the stream and the volume and rate of water leaving the reservoir. In their measurement methodologies, diverters can provide additional information about how they are collecting the measurement data. Thus, the requirement to measure water "leaving the qualifying reservoir” is intended to simplify requirements for weekly reporting in order to provide a broad sense of where water is at any given time and whether or not it is impounded. In complicated circumstances where measuring withdrawals and releases is more effective or efficient than measuring “water leaving the qualifying reservoir,” diverters may submit an alternative compliance plan to submit data for withdrawals and releases instead of water leaving a qualifying reservoir. The State Water Board did not make any changes to the proposed regulation in response to this comment.

Outside of Rulemaking Scope - General Water Rights Concerns

Comment ID(s): 93.1

Summarized Comment: One commenter requested general information about water rights, diversions, annual reporting, enforcement, and State Water Board processes.

Response: The State Water Board is only accepting comments related to the current rulemaking. This comment is outside the scope of this rulemaking and outside the scope of the changes made to the proposed regulation since the close of the second 15-day written public comment period. Therefore, the State Water Board did not make any changes to the proposed regulation in response to this comment.