Diversion Reporting and Measurement Regulation: Focus on the Delta

Michael Patrick George, Delta Watermaster
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Reporting Requirements

• Includes all diverters since Delta Reform Act of 2009

• Every diversion must report actual use
  ➢ Due annually, by month (currently, by June 30)
  ➢ Due more frequently during drought conditions

• Statement of Diversion and Use
  ➢ STILL due, independent of new measurement requirement
  ➢ Non-filers risk loss of legal protection for the water right claim
New Measurement Overview

• New regulation (Jan. 19) implements SB 88
• Applies to every claim to use >10 acre-feet/year
• Sets measurement accuracy performance standard: ±10%
• Comply with:
  ➢ Measuring device or
  ➢ Measurement method
• In circumstances where standard compliance is infeasible
  ➢ Alternative compliance plan
  ➢ Specified minimum content
• No regulatory approval
  ➢ Develop and implement, subject to compliance audit
Measuring Devices

- No “Approved Devices”
- Performance standards for both accuracy and monitoring frequency

<table>
<thead>
<tr>
<th>Type of Diversion (af = acre-feet)</th>
<th>Installation Deadline</th>
<th>Required accuracy</th>
<th>Required Monitoring Frequency</th>
<th>Qualifications for Installation And Certification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Direct Diversion ≥ 1,000 af/year Storage ≥ 1000 af</td>
<td>January 1, 2017</td>
<td>10%</td>
<td>Hourly</td>
<td>Engineer/Contractor/Professional</td>
</tr>
<tr>
<td>Direct Diversion ≥ 100 af/year Storage ≥ 200 af</td>
<td>July 1, 2017</td>
<td>10%</td>
<td>Daily</td>
<td>Engineer/Contractor/Professional</td>
</tr>
<tr>
<td>Direct Diversion &gt; 10 af/year Storage ≥ 50 af</td>
<td>January 1, 2018</td>
<td>15%</td>
<td>Weekly</td>
<td>Individual experienced with measurement and monitoring</td>
</tr>
<tr>
<td>Storage &gt; 10 af</td>
<td>January 1, 2018</td>
<td>15%</td>
<td>Monthly</td>
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</tbody>
</table>
Measurement Methods

• A diverter may employ a measurement method
  ➢ Must meet the same performance standard: ±10%
  ➢ Provides flexibility to adapt to individual circumstances
  ➢ Encourages cooperation among diverters on a common system
  ➢ May be simpler and more economical than meters

• Examples:
  ➢ Meter at point of diversion with allocation formula to each claim
  ➢ Tidal gate with measurement algorithm tied to published tide table
  ➢ Staff gauge coupled with floodable acreage, monitoring and recording

• Methods for larger diversions must be certified by a professional
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Alternative Compliance Plan

- Available only where conventional compliance is not possible for a reason enumerated in the law
- Requires coming as near to compliance as circumstances reasonably allow; cost is not a controlling factor
- Should follow regulation check-list
- To be filed and implemented; no “approval” available
- Consultation, creativity and diligence are encouraged
- Compliance burden remains with diverter
- Plans (and progress of implementation) subject to audit, correction and, if necessary, enforcement action
Specific Challenges in the Delta

- Tidal influence
- Use of syphons
- Shared points of diversion
- Fouling
- Vandalism
- Experimentation
- Cost
Extensions of Time

• For good cause shown, there is authority to grant extension of time for compliance

• What constitutes “good cause”?

  ➢ Demonstration of diligence, before and after
  ➢ Serious investigation of available models
  ➢ Explanation of challenges encountered
  ➢ Proposed solution strategy, with milestones
  ➢ Description of anticipated benefits/outcomes
Enforcement

- Outside the Delta: Water Board Division of Water Rights
- Inside the Delta/Marsh: Delta Watermaster
- Significant civil fines for unlawful diversion
- Failure to comply jeopardizes value of water right
- Objective: compliance leading to improved administration of scarce/precious resource
Questions?

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