

Diversion Reporting and Measurement Regulation: Focus on the Delta

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August 22, 2016



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: $\pm 10\%$
- 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

Type of Diversion (af = acre-feet)	Installation Deadline	Required accuracy	Required Monitoring Frequency	Qualifications for Installation And Certification
Direct Diversion \geq 1,000 af/year Storage \geq 1000 af	January 1, 2017	10%	Hourly	Engineer/Contractor/Professional
Direct Diversion \geq 100 af/year Storage \geq 200 af	July 1, 2017	10%	Daily	Engineer/Contractor/Professional
Direct Diversion $>$ 10 af/year Storage \geq 50 af	January 1, 2018	15%	Weekly	Individual experienced with measurement and monitoring
Storage $>$ 10 af	January 1, 2018	15%	Monthly	Individual experienced with measurement and monitoring

Measurement Methods

- A diverter may employ a measurement method
 - Must meet the same performance standard: $\pm 10\%$
 - 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 siphons
- 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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