
# SB 88 and the Emergency Regulation for Measuring and Reporting the Diversion of Water

**State Water Resources Control Board**
**Division of Water Rights**

# Section 1
# Introduction

## 1.1 Overview

The objective of public listening meetings is to engage stakeholders in the regulation drafting process. Meetings help State Water Resources Control Board (SWRCB) Division of Water Rights program staff gain a better understanding of the interests and concerns that stakeholders have on key concepts, and collect input on key concepts and staff recommendations.

Senate Bill 88 was signed by Governor Edmund G. Brown Jr. on June 24, 2015. Sections 15 through 18 of SB 88 add measurement and reporting requirements for a substantial number of diverters. The measurement requirements authorized under SB 88 could go into effect on or after January 1, 2016. The State Water Board is adopting a regulation to implement these new provisions.

The legislation authorizes the State Water Board to adopt a regulation requiring measurement for water right holders and claimants who divert 10 acre-feet of water or more per year. The measurement requirement would apply to approximately 12,000 water right holders and claimants. The legislation also authorizes the State Water Board to adopt a regulation requiring annual reporting from statement holders and persons authorized to appropriate under a permit, license, registration (small domestic, small irrigation, or livestock stockpond), or certificate for livestock stockpond use.

The legislation authorizes the State Water Board to adopt an initial regulation as an emergency regulation that shall remain in effect until revised by the State Water Board. The adoption of the initial regulation is exempt from the California Environmental Quality Act (CEQA).

## 1.2 Stakeholder Input Process

The State Water Board anticipates that the new measurement requirements could present challenges to some water users. The State Water Board is holding meetings and workshops in affected areas around the state to receive input on key issues to be addressed in the emergency regulation. The State Water Board will use the input from the meetings and workshops to shape a draft regulation which will be broadly circulated in early-December. The draft regulation is tentatively scheduled to be presented for discussion at a State Water Board Workshop in mid-December.

The emergency regulation is tentatively scheduled to be presented to the State Water Board for adoption at its second meeting in January, 2016. If the emergency regulation is adopted, it will be sent

to the Office of Administrative Law for approval.

Accordingly, SWRCB held public listening meetings, at the following locations, to receive comments:

- Los Angeles – November 2, 2015
- Redding – November 4, 2015
- Stockton – November 5, 2015
- Sacramento – November 9, 2015
- Santa Rosa – November 12, 2015

Comments from the public meetings were captured. This technical memorandum (TM) documents these meetings. Section 2 includes meeting summaries.

# Section 2
# Key Concepts and Listening Comments

## 2.0 Key Concepts

SWRCB staff presented key concepts and staff recommendations in four topic areas.

**LIST OF CONCEPTS AND RECOMMENDATIONS FOR THE EMERGENCY REGULATION**

**REPORTING**

**Concept 1:** What is a reasonable period of time for diverters to organize and electronically submit the information required on the annual reports, considering the need to maximize the use of the data for dry year management purposes?

**Recommendation:** For water diverted in 2016 and after, the annual water use reports for permits, licenses, stock ponds and registrations should be filed prior to April 1 of the year following the diversion. Annual use reports for statements shall be filed prior to July 1 of the year following the diversion, as specified by statute.

**Concept 2:** During the drought, some diverters have been required to report water use every month. Under what conditions should monthly or more frequent reporting be required?

**Recommendation:** When flows or projected flows in a watershed or subwatershed are sufficient to support some but not all diversions, water diverters located within the watershed or subwatershed may be required to electronically submit monthly diversion records.

**Concept 3:** How should the diversion threshold be determined for the measurement requirements

when:

- A diverter exercises multiple water rights at the same point of diversion, or

- A diverter has multiple points of diversion serving a specific place of use.

The combined water rights could include permits, licenses, registrations, certificates, pre-1914, riparian, or undocumented diversions.

**Recommendation:** The threshold for measurement should be based on the total amount of water diverted under all bases of right for each place of use.

**REQUIRED MEASUREMENT**

**Concept 4:** Should measurement be required for domestic registrations, livestock registrations, small irrigation registrations, or stock pond certificates?

**Recommendations:** Measurement should not be required for domestic registrations, small irrigation registrations, livestock registrations, or stock pond certificates provided that the maximum authorized diversion is 10 acre-feet per year or less. Measurement should be required when the total amount of water diverted under an individual right, or an individual right in combination with other bases of right for the place of use, exceeds 10 acre-feet per year.

**Concept 5:** Should measuring devices that are approved as meeting the existing requirements of other state and federal agencies be grandfathered in? If so, which ones, and under what conditions?

**Recommendation:** Measuring devices or methods meeting the existing requirements of other state and federal agencies should be grandfathered in as much as possible provided they approximate the accuracy standards set forth in the regulation. The State Water Board should review the measurement requirements of the following agencies:

- Department of Water Resources (agricultural water measurement)
- United States Bureau of Reclamation (Central Valley Project contractors)
- United States Geologic Survey (surface water gaging network)
- Federal Energy Regulatory Commission (for federally licensed power facilities)
- Public Utility Commission (for investor owned water utilities)
- State Water Board, Division of Drinking Water (for publicly owned water utilities)

**Concept 6:** Should the regulation specify areas or circumstances where the diversion threshold for required measurement may be greater than 10 acre-feet per year? If so, in what areas of the state, or under what circumstances, should a higher diversion threshold be established?

**Recommendations:** The regulation should not list specific areas or specific circumstances where a

diversion threshold greater than 10 acre-feet per year may be established. The regulation should include a framework that allows the State Water Board to establish a higher diversion threshold in specific watersheds or under specific circumstances. The cost of measurement and the relative size of the diversions compared to the natural flow, overall diversion demand, and instream uses in the watershed should be factors in determining if a higher threshold may be established.

**Concept 7:** Should the measurement requirements be based on accuracy standards, a specific list of approved devices, or another approach?

**Recommendations:** The regulation should not list specific measuring devices or specify methods. Measurement devices and methods should be required to meet reasonable accuracy standards.

**COMPLIANCE AND ALTERNATIVES**

**Concept 8:** Collaborative measurement may provide for greater efficiency. What should the process be for submitting, reviewing, approving, and evaluating a collaborative measurement plan?

**Recommendations:** Water diverters should be encouraged to establish collaborative measurement on a local or regional basis. The regulation should be flexible in the types of collaborative measurement plans water users may submit as long as the measurement meets the regulation's accuracy standards.

**Concept 9:** What reasonable alternatives should be considered for complying with the measurement requirements if strict compliance is considered infeasible, unreasonably expensive, to unreasonably affect public trust uses, or result in the waste or unreasonable use of water?

**Recommendations:** Determination of these circumstances is situation dependent. The regulation should establish a framework for considering alternative approaches to compliance for a specific measuring device or measurement method, or for a type of measuring device. When reviewing a request for an alternative, the State Water Board should consider the impact of the diversion(s) on the watershed based on watershed characteristics and the relative size of the diversion(s) to the overall amount of natural stream flow. A water user requesting an alternative approach should submit a reasonable plan for attaining compliance. A water user should be required to diligently implement the proposed plan.

**INSTALLATION OF MEASURING DEVICES**

**Concept 10:** Under the new legislation, the measurement requirements could go into effect as early as January 1, 2016. What is a reasonable amount of time for diverters to install measuring devices or methods?

**Recommendations:** The measurement requirements should be implemented on a staggered basis. Staggered implementation could lead to increased compliance. Timelines for compliance should consider the size of diversion and the characteristics of the watershed that the diversion is located in. Where appropriate, the regulation should allow for interim and multi-year plans to allow diverters to

achieve full compliance.

**Concept 11:** Who should be allowed to install or maintain a water measuring device or method? Should a certification process be required for measuring devices or methods to ensure they meet the regulation's accuracy standards?

**Recommendations:** The regulation should be flexible to allow qualified individuals to install and maintain water measurement devices that have been lab certified, provided the installation is made in accordance with the protocols specified by the manufacturer. Where lab certification is not applicable, field certification of a measurement device or method should require a licensed engineer or other qualified professional. The regulation should require periodic field inspections to verify the device or method continues to provide measurements meeting the regulation's accuracy standard. The inspection process could be prioritized based on the size of a diversion or other criteria.

**OTHER KEY ISSUES**

**Concept 12:** What other key issues you would like to see addressed in the regulations?

## 2.1 Listening Comments

The following is a summary of verbal comments received at each of the five public listening meetings.

### 2.1.1 Los Angeles Listening Meeting – November 2, 2015

SWRCB staff included: John O'Hagan, Kathy Mrowka, Paul Wells, Nathan Weaver, Andrew DiLuccia, Gita Kapahi, and Monique Wilber. Three members of the public attended.

#### *Concepts 1,2,3*

- Concept 1: Populating data is labor intensive. Is there a potential of auto-populating data from the year before?

#### *Concepts 4,5,6,7*

- Concept 6: Would the framework be in the form of a petition? For specific circumstances? Criteria could be remoteness, etc. What are options for types of measurement devices? Very remote, not easily accessible land.
- Concept 7: Certain situations require specific devices.

#### *Concepts 8,9*

- Concept 9: Viewing as an implementation plan, grouping similar types of permits/inventory. Will there be flexibility in implementation? What would people need to submit?
- Sometimes new standards are not feasible to replace measurement devices.

### *Concepts 10, 11*

- Concept 10: Will there be a clear way to demonstrate proof of compliance?
- Concept 11: Hydrographers do this kind of work
- It would be labor intensive to put hundreds of measurement stations on a certification schedule (Action: LADWP to provide info).

### *Concept 12*

- We have the same goals; we want to be in compliance. We are concerned with the January 2016 date.
- Interest in funding to be listed on website.

## 2.1.2 Redding Listening Meeting – November 4, 2015

SWRCB staff included: Barbara Evoy, Kathy Mrowka, Paul Wells, Nathan Weaver, Miryam Barajas, Esther Tracy, and Monique Wilber. Approximately 100 members of the public attended.

### *Concepts 1,2,3*

- Economically feasible diversions
- Do most people have the ability to electronically submit?
- Good to provide audience with standards to comment on
- Deeded rights – pre-1914 – how to measure. Is this take without compensation?
- Support of Concept 1 as a Rancher – need to keep track annually
- Late notice on these meetings. One size does not fit all. Not enough time to review
- Meters are expensive and people don't know how much it will cost
- Expensive meters will not be financially feasible
- Fining us is not effective
- Centralize data – have a good picture of total supply. State has access to gauges
- Isn't it the responsibility of watermasters to collect data and measure water?
- How do you measure unintended diversions like gopher holes?
- Is there a list of people who sell the measurement devices? Cost?
- Streamlined reporting. Date, time, amount diverted, and storage. It could be 300,000 plus points of data for several rights
- Paper mail and letters, please. Many do not use email.

### *Concepts 4,5,6,7*

- Does all diversion equal use? Report diversion; report use. No assumption if water is being returned to creek.
- Stockponds do not usually have a defined channel. What about evaporation? Groundwater recharge, wild animals benefit from stockpond use. Start at 25 acre feet for stockpond measurement
- Will the burden of inaccurate reporting in good faith land on the back of the consumer?
- Why is Waterboards not addressing unregulated non-taxpaying diverters?
- Who gets water not used by rights holders and why are we not being compensated? For

curtailments.

- Do you consider water that goes back to the stream or back to the groundwater aquifer?
- What is the definition of "reasonable accuracy standard?"
- Concept 5: Any consideration of how state and federal agencies will have funding other than taxes?
- Any workshops that will be offered because a lot of folks don't have electronic devices? (for reporting)
- Support for grandfathering in measurement. DDW requires water agencies to measure and report
- Senior people don't have feasibility due to cost issues; what is consideration to low-income people with water rights?
- Issues regarding power supply, especially in rural areas
- Why doesn't the state buy the devices? They want the information
- Don't you already do studies on dry years, watersheds, and ranch use?
- Pre-1914 holders should be able to pump all the water they want
- Concept 7: Too broad; not clear enough. Diversions are assumed to be consumption?
- How often is the website updated?
- Request for summary of meeting notes
- Why are we concerned with measurement? What are we trying to accomplish? Conservation? Or more taxes?
- Will Bureau of Reclamation devices be acceptable? Need clarity on standards for devices
- Diversion for power doesn't make sense as water returns to stream for downstream users
- This is about three things: water rights; diversion; and consumption. If I divert less than my water right, will state reduce the right? This affects property value. Has this been discussed? Will this measurement result in curtailment for non-use?

### *Concepts 8,9*

- One device only needed for collaborative measurement effort?
- In adjudication, single diversion, multiple users, would Boards be okay with each party reporting? Are you (Boards) becoming adjudication enforcement? Does each user have to measure individually on a ditch? Because then you are getting into adjudication/Watermaster territory
- Multiple diversion points on one stream via other properties is problematic. There is no power, no cell service, and we don't own the land to put up solar to power. It is not economically feasible.
- Will a canal company measure off the river and cite deliveries made, or will each rancher measure?

### *Concepts 10, 11*

- Law goes into effect on January 1, 2016; regulation does not go into effect until after that date. How to comply?

- Some people do not have an email or electronic device, to get regulations, and to comment on the regulations
- Permits from Army Corps of Engineers and California Department of Fish and Wildlife take a long time. Take that time into consideration
- Concept 11: What is the definition of "qualified?" What will the charges be to rights holders to use a "professional?"
- Mercury is used to clean meters
- Concerned that consumption is "steady." Consumption is taking priority over production. The value of some properties is water. Less consumption of water will be noted. Water rights holders could lose rights, and the region/state/nation could lose food security
- State mandates are hard
- State is trying to control all water. Cities should use desalination instead of taking farm water

### *Concept 12*

- Overlap with adjudicated water rights is an issue. Will data be public? Parties will watch others' rights and create a firestorm. Opens legal doors regarding adjudicated water rights. Measurement can have huge impact. Clear definitions needed.
- The difference between water right and use needs to be clearly written in the regulation
- Diversion and use/consumption and water rights are different things
- When will fully distributed cost be charged to users? Demand curve for urban users?
- Does Boards have estimate on people who have not proved up on their water right and haven't paid taxes? Boards is going after people paying taxes – not the ones who are not.
- Will the Watermaster have to put in a measuring device?
- Leaky ditches are not bad. They help habitat. Stockponds do too. One size doesn't fit all.
- We want the water master to comply.
- If you can prioritize people field certifying measuring devices, why can't the Boards make sure watermasters comply? Watermasters should help diverters.
- We appreciate staff coming here
- Regarding locations these meetings are being held at: How many diverters attended the Los Angeles meeting? Stockton, Santa Rosa, Sacramento make sense. You left out eastern California (east of the Sierras)
- Different requirements for small diverters versus large diverters for standards? More grades of requirements for over/under 10 acre-feet
- Look at tree growth; cutting; management of the forest. Look at the source of the problem. Tree cover increased exponentially due to the spotted owl. There is over density of trees, resulting in fires
- What makes a pressure transducer meet appropriate standards? Some have accuracy of 1/10%; reservoirs can make it off by a large amount
- How will the state monitor and inform? Lots of people, big bureaucracy to monitor. How can six staff people handle 12,000 water rights holders?

- Is there anyone in this county for us to talk to?
- Information is needed for people without electronic devices
- What are field certification specifics? Hard for us to give you feedback when we don't know what the burden will be. It is very vague. It doesn't help us assess the level of alarm. Specifics, and soon, will help
- Look at what the ongoing cost burden of compliance will be. Better compliance if people know, going in.
- The elephant in the room: How will people without means afford this? People are concerned. People don't all have access to computers. What are consequences of not complying?

### 2.1.3 Stockton Listening Meeting – November 5, 2015

SWRCB staff included: John O'Hagan, Kathy Mrowka, Paul Wells, Nathan Weaver, George Kostyrko, Esther Tracy, and Monique Wilber. SWRCB Board Member Dorene D'Adamo and Watermaster Michael George attended. Approximately 20 members of the public attended.

#### *Concepts 1,2,3*

- There is a reporting issue with the April 1 reporting and using the calendar year instead of the water year. Especially with SGMA. Need to get with the other programs
- Don't take away ag beneficial use. Stockponds can be like vernal pools
- Multitude of reporting for different uses like ag, environmental, etc. Would take care of reporting time issues
- Cattle may rub up on staff gauges and make gauge measurement incorrect
- Concept 2: Monthly should be never. It is a huge burden. After the fact reporting. Have a good reason to collect and use data
- How does the prior month affect real-time data? Let us give you the data all at the end of the year instead of monthly
- Are you using the information?
- I take water out, but I am putting the tail water back in the river. You aren't asking about tail water. Will I get credit for that?
- Some of us think that Boards shouldn't be doing detailed water rights enforcement
- Long term view is important – but variability from year to year is important
- Focus on problem areas
- Convert delta consumptive use to diversions. Consumptive use is a more meaningful number. Pay attention to consumptive use.
- If cows are drinking water in a stockpond, it affects the numbers
- Stockponds are not affiliated with irrigation and should be exempt
- Water in stockponds during summer is not moving. Monthly data for a stockpond doesn't make sense

#### *Concepts 4,5,6,7*

- Ten acre feet for stockponds, not in system for much flow. There is not a way to measure

outflow. It is meaningless. It is storage

- There are problems when gauges don't work, or cross section will change. Be liberal in attitude towards accuracy
- Some stockponds are isolated and only get rain run-off. There should not be monthly monitoring. How can models work on stock ponds when there is not movable water to another water body?
- Staff needs to be reasonable
- Surprised by 10% error. In ag you are planting the same crop, you know usage through history. Regulation to correct to 10%?
- Is replenishment understood as a beneficial use?

### *Concepts 8,9*

- Good ideas. Collaborative approach in Delta makes sense. Trying to divide up can be an issue.
- Consumptive use is a better measurement. CIMIS sites can be used with crop type to determine.
- New law directs you to collect data. But collection of data for data is not meaningful. Keep what is relevant for the law. Make that decision. No one analyzes data and it is meaningless. It is just a check-off box.
- People in the Delta are not stealing water. The Craig Wilson study showed that.
- Objective is to find out the projected uses under different permits. If level of river is not up to the projected use, it allows them to look at who is using water. They have to know expected projected use. This is a best case scenario of how the State can figure this out. Monthly data collection makes it closer to being correct and shows how much water goes south. Riparian users have not been required to report water diversions. It is for our benefit.
- Need to understand the relationship with groundwater.

### *Concepts 10, 11*

- Appreciate the value of 10%. Farmer can do that visually. Farmer needs to know crop needs.
- Wide variety. For example, velocity meter in different parts of the stream. There are more variables. Plenty of flexibility to be reasonable on this. Registered civil engineers are expensive.
- Stock ponds – can't measure "flow." Is self-reporting okay? Will we have to have registered engineers measure?
- I appreciate you wanting to do this on a case by case basis.
- Dam safety regulations – I'd like to see stockponds exempt.
- Cross-sections in stockponds change constantly. Flexibility is important
- Concept 10: January 1, 2016 is less than 60 days away. What is the effective date? Penalties?
- Set-up date depends on the measuring device.
- I have no idea what device to use. I'm dry most of the year. But I can't tell you a time frame because I don't have the information.
- What are the teeth of the regulation for non-compliance?
- What about diverted water being put back into the river? We just paid for a pump – now we

need something else?

- Our river pump is metered now – will we have to change it?
- Will we have to submit data on a certain day of the month?
- Look at what is consumed (instead of what is diverted). A lot of water is going back to the river.
- Is a water right consumptive use or diversion?
- Five days at the end of the month to report is really tight; ten days is better
- Two weeks is much better to report.
- We want something we can comply with.
- Appreciate that staff is trying to be flexible.

### 2.1.4 Sacramento Listening Meeting – November 9, 2015

SWRCB staff included: John O'Hagan, Kathy Mrowka, Paul Wells, Nathan Weaver, George Kostyrko, Gita Kapahi, and Esther Tracy. Approximately 30 members of the public attended.

#### *Concepts 1,2*

- Tier system for water rights, legal challenges for SB88.
- January 1 date for implementation
- Levee maintenance and cost passed on to water rights holders, now we need to report water use.
- Diversion in adjudicated basins, will records held by water master be enough?
- Water rights holders will do reporting, not people who lease land.
- Exemption for stock ponds that are water collections.
- Concept 1: Agency reporting earlier than July 1st to April 1st is impossible. Lack of data received by USGS. Not enough time
    - Alternative: provide data earlier and final data later in year. Support July 1st date.
- Reporting of water use or amount the pond holds.
- Use of water by fire department/forestry for firefighting reporting.
- Reporting of water use for truck loads.
- Electronic reporting for small farmers is a challenge: not all can use a computer.
- Monthly reporting problem. Not all watersheds monitored the same way. Low vs high flow diversion.
- Regulation discourages long term water storage.
- Previous cycle (5 year reporting) – will they have to report for prior years or will it start as of January?
- Reporting for all at the same time?
- Water year reporting instead of calendar year reporting.
- Reporting data will be publically available all will replace previous reporting system
- Spring with a reservoir is a unique case.
- Diverters that need to report with SB 88 – all water right holders who are already required to report to Board
- Covers subterranean streams but not percolating water

- Report and capture data on water used for firefighting/fire protection

### *Concepts 3,4,5*

- Concept 4: GSA formation and other regulations encourage smaller diverters to not participate.
- Registration is exempt is good.
- Measuring for stockpond is too much, if not consumptive use then should not require monitoring.

### *Concepts ,6,7,8,9*

- The water fix will remove water from farmer, should not have to comply if land will be taken.
- January 1st deadline is too soon, non-compliance if regulation has not been created yet.
- Propose in-lieu regulations/methods when appropriate. Alternatives may work instead of regulations dictated.
- Concept 9: A plan submitted to the division and approved by the director. Case by case analysis.
- Concept 6: Higher diverter use; wildlife habitat provided.
- Concept 9: Recirculated system of tidal water. Water fowl habitat, will they be regulated?
- Look at larger area diverters for example Delta rely on brackish water for habitat.
- Concept 7: List of devices that will meet regulations performance standards.
- Will proposal include an itemized list of case by case evaluation of projects by Boards?
- Will staff come out to the farm to evaluate cases?
- Power meters with pump standards (use as a measuring device).
- Ten acre feet, does this refer to water use or reservoir capacity?
- Limitation of checking device when checking the accuracy of measuring device.
- Concept 7: for large reservoirs no measuring device, all done by standard calculation. May not meet accuracy standards.

### *Concepts 10, 11*

- California water project causes the river to flow backward, accuracy will vary. Pumping is regulated by state and federal. Water rights holder has no control over pumping and reversal.
- Prov. that others' actions are not affected. Accuracy of individual's instruments.
- Accuracy of water being used
- Size of diversion is approximate. Need to include public use.
- Put up regulations and schedule of proposed dates for implementation
- Want target date.
- Emergency regulation, does it allow for Board to establish regulations and compliance time.
- Concept 10: Government agencies have three phases they need to comply with. May require new permits
- Concept 10: Measurements, Board has previously allowed for different measurement measures, will these still be acceptable?
- Pending application in pipeline for water rights, will application need to be restarted; will SB 88 apply to pending water rights application?

- When will “emergency” status stop?
- Request for all information in writing
- Cost
- Monthly vs annual reporting online
- Best way for public to communicate with staff
- How will public communicate with staff once regulation is in place?
- If junior water rights holder and haven’t gotten water due to drought, do they still need to report?
- Will reporting be done at same webpage with the Water Board?
- Watersheds in California vary; do these regulations apply to all watersheds even if they are not in drought conditions?
- Are Regional Boards involved with implementation?

### 2.1.5 Santa Rosa Listening Meeting – November 12, 2015

SWRCB staff included: John O’Hagan, Kathy Mrowka, Paul Wells, Nathan Weaver, Tim Moran, Gita Kapahi, and Monique Wilber. Approximately 40 members of the public attended.

#### *Concepts 1,2,3*

- How do you define “water issues”?
- What if someone is conservative in water use and someone else isn’t?
- Concept 1: Six months which is what is now, is reasonable. Otherwise concept 3 will conflict concept 1.
- You’re requiring people to put meters on; state should upgrade their reporting system.
- Reporting monthly is a problem in the drought.
- Diversion is different than use. If you are diverting surface run-off, if one year you collect less than another do you still have to report? Like if you collect seven acre feet?
- I have a well and I got a letter. Do I report?
- To clarify, if you have a pond that is sheet-fed, does this apply?
- Concept 3: Multiple points of diversion on one tributary, or multiple points of diversion on more than one stream?
- Define “sheet flow and “electronic.”
- We’re using less than our licenses; 20 acre feet water right but using 7 acre feet. How does SB 88 apply?
- Multiple points of diversion on several properties that are not contiguous. Do we add it all up? Each one of ours is being reported individually.
- Do you want to know when it’s going into the pond, and, when it goes out of the pond?
- Upper Basin some diverters using contract water. Such as 3 acre feet contract water and 7 acre feet diverted water. How do you count this?
- If Board reviews already reported use, why this new measurement requirement? You are punishing people already regulated, instead of those not complying.
- Why doesn’t Boards look at who is drying up the streams upstream? You are not enforcing.

- What is the current measurement requirement if you are less than 10 acre feet?
- Concept 3: place of use criteria – is that exact place of use? Some ranches have adjacent places of use. It is more complicated.
- What is the risk to our right if using/reporting less water? What is the reward? Will Boards reevaluate our rights based on the electronic database?

### *Concepts 4,5,6,7*

- We have a tree farm and divert about 7 acre feet into pond. Use 95% for recreation and wildlife, watering our road, and for fire use. All ponds leak. Overflows in winter. Pond goes down as there is inflow and outflow. How do you measure? I estimate. I keep records when water is used for road or fire. More than 10 acre-feet, and turtles and wildlife use too. How do we deal with that? How does public gain from my reporting? Expensive and uncertain to measure what I'm diverting.
- There needs to be some flexibility to spend money to measure ponds. What is the point; what is the goal?
- Do people have water holding permits (for ponds)?
- Diversions reporting versus use reporting? Natural succession. Ponds are destined to become meadows. Prevent silt from going into river. Ponds get silted up and would change over time. Take staff gauge and use for water usage?
- Concept 7: Appreciate flexibility on the device. Connect it to concept 11. What is the accuracy standard, and what about when it changes?
- Concept 7: Keep accuracy standards simple. Do you have a method or process to keep it simple and feasible? Have a performance standard.
- Middletown. Ephemeral streams run into ponds. Into ponds. We have staff gauges in all ponds calibrated with propeller flowmeter. Not sure how SB 88 will change that. Three ponds, one flows into others. Some gauges go up, some go down. But they use flowmeters. Have accurate capacity curve. Not clear if it's raining. Tighter interval than monthly?
- SB 88 language is diversion intervals every 1 hour. Concept 7 might not have capacity for that reporting, and just changed meters. What about exceptions for repairs and maintenance of gauges?
- Concept 7: you're asking for a lot. Why can't we have monthly reports, completed annually? No power source at meters. Rural meters can get stolen. What about the flood issue?
- Concept 4: is a lot of work for people with ponds. Why not exclude and only do agriculture. Higher measurement threshold for ponds is better.
- Regarding extraction rates over 30 day average – for daily, hourly regulations is stringent.

### *Concepts 8,9*

- Concept 9: January 1 timeframe?
- Measurement can be collaborative, but reporting is individual, correct?

### *Concepts 10, 11*

- Concept 10: Section 17, VI, July 2016…..not seeing January 2016 as target, but July 1 2016 as target.
- Section 18 of 54017: Supplemental statement filing. Clarify – is that retroactive?
- Concept 10: Staggered implementation. Basis of timeline should be on complexity of system. Difficulty, not size.
- Concept 11: Clarify – part of reporting process to describe system. Will there be a point where descriptions are required?
- You'll have to state the device is certified? Onerous to pay technician to come out and check/inspect device. If Board is providing advice, provide guidelines for devices.
- Simple system versus complex system. Hourly requirement is nebulous. Don't think people will comply, they will average it. Super simple installation of flow meter; maybe have people snap a photo of it.
- Concept 10: Has staff been thinking of currently existing installed meters are in compliance?
- When is proposed regulation going to be distributed?
- When is December Board workshop?
- For distribution of drinking water, muni is looking at water treatment operators who are already licensed. Also, waste water treatment plant operators who are licensed have experience testing, using, and monitoring these systems.
- Accuracy depends on importance of measurement. Seems like use basic criteria – there is a difference between diversion and use for example. Potential for impact is low is an example of criteria. Why are we doing it? That's where criteria should be.
- Have a checklist to determine criteria.
- Regarding certification. Have an alternate mechanism. Performance-based measurement like the gentleman suggested with his pond.
- How to provide safe harbor. Environmental groups will want tight measurements.
- What if you are applying for water rights now? How do we be compliant while we are applying?
- As a T-1 operator, all meters are required to be changed every 10 years.
- We report annually now. Monthly or hourly. Downstream ag wells put in. If stream dries up, I'm concerned with upstream vineyard pumping. I have to put a dam above my dam and divert upstream water. I have to deal with extra water flow. People like us have to report and others don't. I have to hire consultants and attorneys to keep my dam.
- How will Boards notify statement holders? What timeframe? When will notices go out?
- Are you keeping track of flows in the river and what is left over for environmental uses?
- Diversions measurement versus stream flow. To calculate for unregulated users, is important.
- I don't see how measurements of ponds are useful. Streams that used to flow don't, some wells are next to the creek. Transpiration rates are high by some flora. What are we gaining from complexity of specific data? Data may not mean much.
- Emergency regulation because of drought. What if we come out of drought?
- I can't find who has diversions on website.

- Caution you to get buy-in, and to provide more carrots and less sticks.  Alleviate cost, make dependent on usage, let diverter do own device maintain, have differences based on watershed.
- Are there stiffer measurement accuracy requirements for very big users?