

Measurement and Reporting of Water Diversion Emergency Regulations Digest

Appendix 17 - Summary of Additional Public Comments

Following is a brief summary of additional comments and questions received during the regulation development process.

- **Cost of Measurement**
 - Many wanted to know how much the devices might cost, and if funding and grant sources were available.
 - Is there a list of people who sell the measurement devices?
 - Has the Water Board considered how people with low incomes will afford water measurement devices?
 - What will be the on-going cost burden of compliance?
 - Theft and vandalism are significant issues in remote locations.

The State Water Board developed a public handout of possible funding sources (appendix 9) to provide diverters with information on possible sources of financial assistance. The State Water Board was concerned about the cost of compliance with the measurement and monitoring requirements of the regulation, and therefore the Water Board made requirements in the regulation less stringent for people with smaller diversions. People who divert or store smaller amounts of water have more time to meet the measurement and monitoring requirements and they also have less stringent requirements related to measurement accuracy, monitoring frequency, and installation, operation, and maintenance.

- **Water Right Concerns**
 - The Water Board should look at diversion and consumptive use.
 - Many commenters were concerned about losing a portion of their water right if the reported diversion was lower than the face value of the permit or license.
 - How will the Water Board address the diversion of contract water?

Water rights are typically based on the amount of water diverted from an authorized point of diversion. Therefore, the diversion amount should be measured or determined in a manner that meets the accuracy standards of the regulation. There are diverters whose water use is better reflected by the amount of water they consume, and the analysis of consumptive use may be included as part of a measurement method or alternative compliance plan. Measurement of diverted water will allow the Water Board and the diverters themselves to gain a better understanding of how much water is being placed to beneficial use under each water right.

- **Compliance**
 - How will the state monitor compliance with the new requirements?

- The Water Board needs to do a better job of enforcing against people who are not complying.

The State Water Board will monitor compliance with the new requirements on a case-by-case basis. Compliance efforts may be prioritized based on a variety of factors which may include size of diversion, potential effects on public trust resources, history of compliance or non-compliance, and whether a diverter has shown due diligence and made a good faith effort to comply.

- Assisting the Public

- Have a checklist for the water users so they know what criteria they need to meet.
- The Water Board should hold water measurement workshops. The Water Board needs to provide some guidance on measurement devices.
- How will the Water Board inform all of the water users of the new requirements?
- How will the public communicate with staff once the regulation is in place?

The Water Board will work with the diverters to assist them in complying with the regulation.

The Water Board will update its website to include additional information on measurement and monitoring equipment to assist diverters as they choose which measuring devices or measurement methods best suit their specific situation. This additional information will include a discussion of the various measurement devices and measurement methods typically employed by diverters. The Water Board will also develop and post a list of vendors selling the measuring and monitoring devices.

The Water Board also maintains an email distribution list to inform interested parties of important changes or updates to the measurement and reporting requirements. Any persons desiring to receive future notices concerning the regulation may subscribe to the State Water Board's email distribution list. The subscription form is located at:

http://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.shtml.

To subscribe, a person would select the "Water Rights" category, check the box for either "Water Measurement" or "Water Rights Regulations," and then provide the required information.

- Stock Ponds/Reservoirs

- Staff gages will be difficult for stock ponds, as livestock will rub against the gage when the pond is empty.
- Significant concern about requiring hourly monitoring of water level in a reservoir.
- Stock ponds with a storage capacity less than 50 acre-feet should be exempt from the measurement requirements.

There were numerous public comments received on stock ponds during the public outreach process. The regulation has relaxed measurement and reporting standards for smaller reservoirs. For livestock reservoirs that store less than 50 acre-feet of water, the diverter is required to install a staff gauge and read the staff gauge once a month.

- Watermaster Concerns

- The Delta Watermaster should be solely responsible for monitoring water use in the Delta.
- When will water users in a Watermaster District be required to install and maintain water measurement devices?
- Will Watermasters have to install measurement devices in accordance with the emergency regulation? Some people wanted the Watermasters to be subject to the same measurement requirements.
- Will the records submitted by a Watermaster be sufficient or will individuals have to measure?
- There was also concern that Watermaster data would not have to meet the measurement and reporting requirements established in the regulation.

The State Water Board will develop a list of watermaster service areas and review how each watermaster reports on the diversions of water. Some diverters will be required to measure and monitor within a watermaster service area.

- Measurement

- Will the Water Board accept a method that uses pump efficiency and readings from an electrical meter to estimate the diversion of water?
- The regulation should provide for alternative methods like water diverted through a managed wetland.
- Is there much use in measuring the diversion of brackish water? Why is measuring brackish water in a marsh necessary?
- Brackish water is corrosive to measurement devices.
- Remote locations of some points of diversion will make measurement and monitoring difficult.
- Some gages are inaccessible parts of the year.
- How should the measurement of water be handled for a place of use where the water flows in during high tide and out during low tide?
- Hourly monitoring is not useful in most cases.
- Can be difficult to maintain accurate measurement across a wide range of flows (for example, inflow into a reservoir)

The State Water Board added the section on alternative compliance plans to the regulation as a way to provide for circumstances where strict compliance with the requirements in the regulation for a measuring device or measurement method are not feasible, would be unreasonably expensive, would unreasonably affect public trust uses,

or would result in the waste or unreasonable use of water. The State Water Board determined that it would be best to review these requests for alternative compliance on a case-by-case basis, and not try to include specific exemptions in the regulation itself.

- General

- Many concerns were raised about the taking of property rights. This concern was primarily associated with the possible loss or reduction of the face value of a water right if actual reported diversions are lower than the face value of the water right.
- A number of letters commented negatively on the adoption of SB88.
- Did not receive sufficient notice of the public meetings.
- The Water Board needs to do a better job of measuring available supply.
- When will the “emergency” status of the regulation end?
- Will these regulations apply to watersheds that are not in drought conditions?
- Is the Water Board keeping track of flows in the rivers and determining what is available for environmental use?

The State Water Board understands the concerns about determining the amount of water available for diversion. The State Water Board is working with other governmental agencies to improve the determination and estimation of available water supplies.