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## State Water Resources Control Board

# SENATE BILL 88 AND THE EMERGENCY REGULATION FOR MEASURING AND REPORTING THE DIVERSION OF WATER

## LIST OF CONCEPTS AND RECOMMENDATIONS FOR THE EMERGENCY REGULATION

### **BACKGROUND**

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Senate Bill 88, signed by Governor Edmund G. Brown Jr. on June 24, 2015, adds measurement and reporting requirements for a substantial number of diverters. The measurement and reporting requirements go into effect as early as January 1, 2016. The State Water Board intends to adopt an emergency regulation to implement these new provisions.

The new measurement requirements affect all water right holders diverting 10 acre-feet of water or more per year (approximately 12,000 water right holders). The annual reporting requirement will affect all water users required to file statements of diversion and use (including those claiming a riparian or pre-1914 appropriative water right) and persons authorized to appropriate under a permit, license, registration (small domestic, small irrigation, or livestock stock pond), or certificate for livestock stock pond use.

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.

Additional information on the emergency regulation process may be found on the following website:

**[http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/measurement\\_regulation/](http://www.waterboards.ca.gov/waterrights/water_issues/programs/measurement_regulation/)**

The following pages list key issues to be addressed in the regulation along with recommendations from State Water Board staff. The State Water Board is looking for additional input from the regulated community.

You may also email your comments or questions to: **[dwr-measurement@waterboards.ca.gov](mailto:dwr-measurement@waterboards.ca.gov)**.

## LIST OF CONCEPTS AND RECOMMENDATIONS FOR THE EMERGENCY REGULATION

### REPORTING

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**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.

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**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.

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**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

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**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.

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### REQUIRED MEASUREMENT

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**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)

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**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.

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**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.

## LIST OF CONCEPTS AND RECOMMENDATIONS FOR THE EMERGENCY REGULATION

### COMPLIANCE AND ALTERNATIVES

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**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.

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**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

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**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.

## LIST OF CONCEPTS AND RECOMMENDATIONS FOR THE EMERGENCY REGULATION

### INSTALLATION OF MEASURING DEVICES

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**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

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