



Mendocino County Farm Bureau

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Affiliated with the California Farm Bureau Federation and the American Farm Bureau Federation

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State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Via Email: commentletters@waterboards.ca.gov
paul.wells@waterboards.ca.gov

RE: SB 88 and the Draft Emergency Regulation for Measuring and Reporting on the Diversion of Water

Dear Board Members and Staff,

The Mendocino County Farm Bureau (MCFB) is a non-governmental, non-profit, voluntary membership, advocacy group whose purpose is to protect and promote agricultural interests throughout the county and to find solutions to the problems facing agricultural businesses and the rural community. MCFB currently represents approximately 1200 members.

After reviewing the language within the proposed emergency regulation for measuring and reporting December 7, 2015 agency draft for public comment, MCFB would like to provide the following comments, questions and suggestions.

General Comments:

- Since reporting deadlines will potentially be changing for a number of diverters, it is requested that the SWRCB promptly notice all diverters of the required changes to reporting deadlines. It is also important that the eWRIMS online reporting system be altered in a timely manner in order for diversions to be reported prior to the deadline. Directions for how to properly report under the requirements of SB 88 and the related regulation should also be clearly described to diverters in future correspondence.
- If changes to reporting frequency are to be implemented, sufficient evidence of a benefit to the watershed or subwatershed needs to be considered for the additional reporting and data processing requirements. Sufficient notice should be provided to diverters if any change in reporting frequency is anticipated.
- This regulation will create additional monitoring standards for a number of diverters and will add layers of complexity to the reporting process. The complexities of individual diversion systems and fiscal impacts to the diverter need to be considered. Will there be an economic impact report affiliated with this regulation?
- The SWRCB needs to be prepared to provide workshops throughout California to discuss the new compliance standards, timeframes for compliance, etc. and address diverter questions once the regulation is adopted.

§917. Reporting – Insufficient Flows to Support All Diversions

When flows or projected available supplies in a watershed or subwatershed are sufficient to support some but not all projected diversion demand, the Deputy Director for the Division of Water Rights may require water diverters located within the watershed or subwatershed to electronically submit monthly or more frequent reports of water diversion.

(a) Reports of water diversion shall be submitted in accordance with a schedule approved by the Deputy Director for the Division of Water Rights. The schedule may require monthly, daily, or more frequent reporting. In determining the frequency of reporting, the Deputy Director for the Division of Water Rights shall not exceed the frequency of recording required under section 933, subdivision (b)(1), of this title.

What is the process that the SWRCB will use to determine if, "flows or projected available supplies in a watershed or subwatershed are sufficient to support some but not all projected diversion demand"? Over the past few years the water rights curtailment process (both initiation and completion of curtailments) as well as the required flow standards for curtailed water sheds has not been clear and has lead to confusion amongst diverters. SB 88 provides mandates for changes to water use/diversion measurement requirements, so regulation development as related to possible curtailments or instream flows does not seem to be necessary as related to SB 88.

If the SWRCB is planning on varying the amount of water made available to a diverter or the frequency requirements for the data submittal process for water rights diversion and use reporting, there needs to be a clear standard for how this will be accomplished as well as sufficient notification time to affected diverters. This is especially critical for those involved with agriculture as short notices for water rights curtailments can provide little time to alter management strategies or secure additional sources of water when available. Crop and animal health can be impacted by lack of water supply as well as create financial hardship for the agricultural operation. Changes to reporting frequency will also require changes to management strategies or the need for additional staff to monitor/collect the additional water rights information, so there should be ample time provided by the SWRCB to account for any expected changes to reporting timing requirements.

§ 920. Supplemental Statements of Water Diversion and Use.

(a) Supplemental statements of water diversion and use shall be filed on forms available at the board's website. A supplemental statement shall be filed ~~annually~~ annually within six months of the close of the twelve month reporting period ~~annually~~, or promptly if there is a change in the name or address of the person diverting water, or more frequently as directed under section 917. Notice to the board of changes in name, address or ownership must also be reported electronically on the ~~change of name, address or ownership~~ supplemental statement of change form on the board's website. Filing the change of name, address or ownership supplemental statement of change form does not eliminate the requirement to file a supplemental statement of water diversion and use.

Since reporting deadlines will potentially be changing for a number of diverters, it is requested that the SWRCB promptly notice all diverters of the required changes to reporting deadlines. It is also important that the eWRIMS online reporting system be altered in a timely manner in order for diversions to be reported prior to the deadline. Directions for how to properly report under the requirements of SB 88 and the related regulation should also be clearly described to diverters in future correspondence.

See comments under §917 on water use/diversion reporting frequency.

§ 920. (d) If a substitute or alternative water supply, such as groundwater, contract water, or recycled water, is being used in lieu of surface water to be reported under a statement, the report should indicate the source and amount of substitute or alternative water used and the amount of surface water offset on a monthly basis.

~~(e) If the use of an alternative supply of water or any water conservation efforts have resulted in a cessation or reduction in use, the report should include a description of the conservation efforts employed and indicate the extent and monthly amount of the reduction in water use due to these water conservation efforts.~~

The term contract water needs to be clarified. Does this apply to any water contracted through any water district or is this intended to be limited to the state and federal water project contracts?

There is a concern that with the additional measurement requirements, coupled with water conservation efforts, that there could be attempts to potentially reduce water rights assignments. It is critically important that more accurate measurement requirements do not discourage conservation efforts or lead to forfeiture of water rights.

§ 924. Water Use Reports of Registration and Certificate Holders.

(a) Reports of registration and certificate holders shall be filed annually within three months of the close of the twelve month reporting period. Provisional streamflow data may be used in preparing the water use report if final streamflow data is not available by the reporting deadline. If provisional streamflow data is used in the water use report, an amended report based on final streamflow data should be filed within six months of the close of the of the twelve month reporting period. Any report not timely amended shall be deemed final. The report shall be filed electronically on a form available at the board's website. Compliance with the requirement to file a water use report is a condition of every registration or certificate. A failure to file a report under this section is a violation of registration and certificate terms, as applicable.

Is provisional streamflow and final streamflow referring to USGS streamflow gauges that are in proximity to the diversion in question? What if no USGS gauges are able to be referenced or are not applicable for comparing watershed flow information for a specific diversion?

This section should be clarified so that the timeline for reporting, the streamflow requirements and the amendment process for reporting are easily understood by diverters. A timeline for reporting and compliance requirements needs to be distributed to registration and certificate holders in a judicious manner so that diverters have sufficient time to report water diversion and use information.

§ 925. Progress Reports by Permittee.

(b) Annual progress reports by permittee shall be filed within three months of the close of the twelve month reporting period no later than July of the next year succeeding the year of diversion on forms available at the board's website. Provisional data and information may be used in the progress report if final data is not available by the reporting deadline. If provisional streamflow data are used in preparing the progress report, an amended report based on final data shall be filed within six months of the close of the twelve month reporting period. Any reports not timely amended shall be deemed final. A failure to file a progress report is a violation of permit terms.

This section should be clarified so that the timeline for reporting, the streamflow requirements and the amendment process for reporting are easily understood by diverters. A timeline for reporting and compliance requirements needs to be distributed to permit holders in a judicious manner so that diverters have sufficient time to report water diversion and use information.

§ 925 (d) If a substitute or alternative water supply, such as groundwater, contract water, or recycled water, is being used in lieu of surface water that is required to be reported under this section~~report~~, the report should indicate the source and amount of substitute or alternative water used and the amount of surface water offset on a monthly basis.

~~(e) If the use of an alternative supply of water or any water conservation efforts have resulted in a cessation or reduction in use, the report should include a description of the conservation efforts employed and indicate the extent and monthly amount of the reduction in water use due to these water conservation efforts.~~

There is a concern that with the additional measurement requirements, coupled with water conservation efforts, that there could be attempts to potentially reduce water rights assignments. It is critically important that more accurate measurement requirements do not discourage conservation efforts or lead to forfeiture of water rights.

§ 929. Reports of Licensee.

(b) Reports of licensee shall be filed annually within three months of the close of the twelve month reporting period and not later than July of the next year succeeding the year of diversion on forms available at the board's website. Provisional data and information may be used in the report of licensee if final data is not available by the reporting deadline. If provisional streamflow data is used in preparing the report of licensee, an amended report based on final streamflow data shall be filed within six months of the

This section should be clarified so that the timeline for reporting, the streamflow requirements and the amendment process for reporting are easily understood by diverters. A timeline for reporting and compliance requirements needs to be distributed to right holders in a judicious manner so that diverters have sufficient time to report water diversion and use information.

§ 929 (d) If a substitute or alternative water supply, such as groundwater, contract water, or recycled water, is being used in lieu of surface water that is required to be reported under this section report, the report should indicate the source and amount of substitute or alternative water used and the amount of surface water offset on a monthly basis.

(e) If ~~the use of an alternative supply of water or any~~ water conservation efforts have resulted in a cessation or reduction in use, the report should include a description of the conservation efforts employed and indicate the extent and monthly amount of the reduction in water use due to these water conservation efforts.

There is a concern that with the additional measurement requirements, coupled with water conservation efforts, that there could be attempts to potentially reduce water rights assignments. It is critically important that more accurate measurement requirements do not discourage conservation efforts or lead to forfeiture of water rights.

CH 2.8 MEASURING AND MONITORING

§931 Definitions

(i) “Type of measuring device”: SB 88 also mentions that electricity records dedicated to a pump and a recent pump test; Calibrated staff gauges and pressure transducers as accurate measurement devices that the SWRCB should consider. These should also be included as examples of acceptable measuring devices in the definition.

(j) “Water right holder”: If there is no diversion of water, as in most stock ponds or licensed sheet flow ponds, is there a requirement to comply with the new SB 88 standards?

§932 Applicability.

(b) Determination of Diversion Threshold for Requiring Measurement – the determination of whether a diversion meets the threshold for required measurement (stated in subsection (a) of this section or as adopted in accordance with subsection (d) of this section) shall be made by the deputy director. When making such a determination, the deputy director shall consider:

- (1) Multiple points of diversion for a water right used by the same person or serving the same place and purpose of use.
- (2) Multiple water rights with shared point or points of diversion.

At the November public meeting in Santa Rosa, SWRCB staff stated that any use of contract water would not be included in calculating the threshold for compliance with measurement requirements under SB 88. This needs to be included in the section above.

(d) Increasing the Measurement Threshold

SB 88 [Article 3, 1840 (b) (2)] specifically mentions that the SWRCB may increase the 10 acre foot reporting threshold to 25 acre feet if: “it finds that the benefits of the additional information within the watershed or subwatershed are substantially outweighed by the cost of installing measuring devices or employing methods for measurement for diversions at the 10 acre foot threshold.”

The cost impacts for implementing the additional measurement requirements and related cost/benefit needs to be fully considered as there could be significant financial hardship created for compliance with the requirements of SB 88. Determination of the benefit to cost ratio is subjective, so there needs to be a clear process for how this change in measurement threshold will be applied.

§933 Measuring Device Requirements.

It is appreciated that the recommendation is to not overly limit the measuring devices or methods that can be used to meet compliance with the requirements of SB 88. Since “best available technology” is constantly changing, there needs to be consideration for what will best meet water reporting needs without forcing diverters to upgrade measurement devices every time improved technology becomes available. Consideration also needs to be given for diversions that may be restricted from using “best available technology” due to location, topography, lack of electrical connection, etc. Diverters have invested a significant amount of money in recent years on metering devices for compliance with water use reporting. This regulation may make that investment obsolete.

There also needs to be consideration of impacts to senior water rights holders that have older rights that may have the inability to easily comply with new metering standards because of the nature of the age of their diversions and related facilities.

Diverters that are required to install new metering devices may also be limited in how and when installations are performed based on additional regulatory requirements such as 1600 permits from the California Department of Fish and Wildlife.

Any real time telemetered monitoring will create an excessive amount of data that may never prove to provide any benefit for watershed management. This is especially true if the SWRCB does not have an adequate data tool to handle the huge quantities of input data as well as the additional staff to analyze the provisional data (with consistent protocols) in real time in order to implement immediate actions for watershed management.

§933 is not easy to follow and will create significant confusion for diverters to fully understand. There are multiple compliance dates, timelines, requirements, etc. The SWRCB is encouraged to provide an easier means of understanding the requirements of this section (similar to the charts/tables included in the fact sheet summary) in future correspondence to impacted diverters.

§933(b)(2)(C) For a reservoir subject to drawdown and refill during the collection to storage season, or that is otherwise operated in a cyclical manner, the maximum and minimum water surface elevations, the corresponding reservoir volume, and the monitoring dates shall be measured and the maintained.

Are there separate considerations for on-stream or off-stream reservoirs? For reservoirs that are operated in a cyclical manner, will each pond “recharge” be required to be recorded? This requirement needs to be clearly explained to diverters with storage rights.

§933(b)(2) (D) For each reservoir, if water is diverted or flows into the reservoir under more than one basis of right, including groundwater or water purchased under a contract, the amounts reported to the board shall be limited to the amounts covered by the water right being reported. A record of the alternative supplies entering the reservoir throughout the year shall be maintained to demonstrate that water stored is under a separate basis of right or contract.

This section seems to be conflicting with the language that is listed under the requirements for reporting substitute/alternate water supply sources described earlier in the regulation. “*If a substitute or alternative water supply, such as groundwater, contract water, or recycled water, is being used in lieu of surface water that is required to be reported under this section, the report should indicate the source and amount of substitute or alternative water used and the amount of surface water offset on a monthly basis.*”

The reporting of alternative water supplies needs to be clarified.

§933 (e)(I) – This section unfairly burdens diverters that have already installed measuring devices (before January 1, 2016). It is stated that these diverters must submit certification of accuracy with the next "water use report" which would be by June 30, 2016. If there are existing devices that do not meet the newly adopted accuracy standards, then these diverters will have a short time frame to install compliant measurement devices or potentially submit a request for additional time to comply. As mentioned earlier, diverters who have taken the incentive to install measurement devices prior to the SB 88 standards being implemented should not be punished. This time frame needs to be extended so that diverters have a full understanding of what is required in the new regulation.

§933 (j) Accessibility. The measuring device shall be installed in a manner such that it is readily accessible for reading, inspection, testing, repair or replacement. The water right holder shall make the measurement device available for inspection by an authorized representative of the board upon request. The water right holder shall provide the board's representative with reasonable access to inspect the measuring device. Failure to provide such access is a violation of this regulation

Not all diversion points are easily accessible with some being in areas of rough terrain with limited access routes. How is readily accessible defined? What is considered reasonable access? What is the time frame for SWRCB representatives to require access?

§934 Measurement Method

It is appreciated that an option for measuring diversions, other than through a measuring device, has been provided in this section. However, the ability for diverters to request a cooperative alternate measuring method is overly constricted by the related list of requirements and will therefore discourage the use of this option.

It is stated in §934 (a)(1) that a request for the approval of a measurement method shall be prepared by a California registered professional engineer. The information requested to be submitted in (A)-(H) seems to go beyond the capabilities of an engineer to determine on behalf of the diverters. This is especially true for (G) where the engineer would

be asked to evaluate the public trust needs, instream flow and bypass requirements of the watershed in question. This alone would most likely limit the number of registered engineers that would be willing to take on the task of requesting an approval for a measurement method.

§935 Alternative Compliance for a Measuring Device or Measurement Method Requirement.

For both §934 and §935, there is no clear timeframe provided for when a request should be submitted to the SWRCB for an alternative compliance option. There is also no discussion of how a determination made by the deputy director on an alternative method may be appealed by the diverter(s). The SWRCB should include an explanation of the timeframe and appeal process for alternative compliance options in the regulation.

§936 Request for Additional Time

Depending on the number of metering devices that a diverter needs to install, the financial investment may require a multiyear plan and the need for additional time for compliance.

Also if the demand for new installations within a watershed is excessive, there may be limitations on available equipment or the ability to have qualified individuals install the devices.

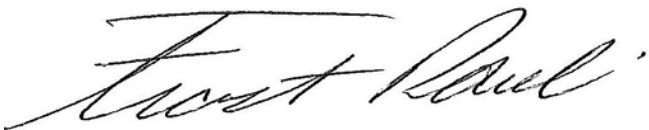
It is important to have a process in place for requesting additional time for compliance. If a request of additional time is denied, what is the appeal process?

§937 Report of Water Measuring Device.

A clear explanation of report filing requirements needs to be provided to the diverters along with instructions on how to access all of the various forms that are required as part of this regulation.

MCFB appreciates the opportunity to provide comment on the proposed emergency regulation for measuring and reporting the diversion of water as related to SB 88 requirements. MCFB encourages the SWRCB and staff to consider the comments and suggestions above as well as address the questions presented to you in this comment letter during the process of finalizing the regulation language.

Sincerely,



Frost Pauli
President