

CALIFORNIA CATTLEMEN'S ASSOCIATION

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Submitted via email to commentletters@waterboards.ca.gov

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



Re: Emergency Regulation for Measuring and Reporting the Diversion of Water

The California Cattlemen's Association (CCA) appreciates the opportunity to provide feedback to the State Water Resources Control Board (SWRCB) regarding draft emergency regulations implementing SB 88 to regulate the measuring and reporting of water diversions within the state. CCA is a statewide trade organization representing more than 1,700 cattle ranchers and beef producers throughout California whose ranching operations rely in part on water diversions directly impacted by the proposed emergency regulations. To ensure that the emergency regulations achieve the purpose of SB 88 without unduly burdening California's beef producers, we propose the following clarifications and amendments to the draft emergency regulations, which we urge the SWRCB to incorporate before adopting emergency regulations.

Section 924 should clarify that the annual reporting requirement does not alter the five-year renewal for registrations

While § 924 changes existing regulations by requiring registration holders to report annually rather than every fifth year, it does not appear to alter the registration or five-year renewal process. To clarify that the annual reporting requirement is divorced from the renewal process (and registration fee), however, CCA suggests that the SWRCB add to § 924 clarifying language to the effect that "such annual reporting does not have any impact upon the renewal process for registrations, which remains unchanged at a five-year period."

The SWRCB should clarify how it arrived at the accuracy requirements of the emergency regulations, and ensure that such requirements are feasible in practice

It is unclear from the fact sheet and other materials which have been made available regarding the draft emergency regulations how or why the SWRCB arrived at the various measurement device accuracy requirements included in the regulations. CCA lacks expertise in measurement devices, and consequently lacks knowledge of what would constitute "normal" ranges of accuracy for such devices upon a variety of diversions. Such information is vital in determining whether the 10% and 15% accuracy requirements of the emergency regulations are feasible. Thus, CCA requests that, prior to adoption of emergency regulations, the SWRCB release its process for arriving at the accuracy standards required within the draft emergency regulations.

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There are a number of reasons why the measured value (i.e. the value indicated upon the device) might vary from the “actual value” diverted, such as percolation and evaporation from stock ponds. In order to determine whether 10% or 15% are acceptable accuracy values, it is necessary to understand how much measured value and actual value tend to vary in practice across a variety of diversions and types of storage, considering these and other factors. CCA requests that the SWRCB provide such information to stakeholders, and carefully examine whether the 10% and 15% accuracy requirements are feasible across the wide range of diversion types throughout the state prior to moving forward to formalize the proposed accuracy requirements.

Section 935 of the emergency regulations should provide for “alternative compliance” via limited categorical exemptions

A rancher with one or more stock ponds may comply with the draft emergency regulations by installing a staff gauge on his or her stock ponds, so long as the rancher (1) records the date, time, and water elevation of the stock pond at the required frequency, (2) is capable of calculating the volume of the pond based on this water elevation, and (3) inputs that data into an electronic document submitted to the SWRCB.

This requirement becomes significantly onerous for stock ponds and other points of diversion which are inaccessible for a portion of the year, and the draft emergency regulations provide insufficient relief for a rancher who cannot access these diversions during part of the year.

For instance, ranchers who pasture their cattle at high elevations during the summer may maintain stock ponds on that summer pasture. When the cattle are moved to lower elevations in the winter months, those stock ponds will divert water during the rainy season. However, winter weather (icy roads, significant snowfall, etc.) can make those often-remote stock ponds impossible for ranchers to safely access in the winter months. As a result, a manually-read standard staff gauge would not satisfy the emergency regulations’ requirements, as the rancher would not be able to obtain the required data on a daily, weekly, or monthly basis. In order to comply with the emergency regulation, then, the rancher would need to invest in an electronic measuring device capable of auto-recording the pond’s elevation (or comparable metric) at the required intervals. This investment would be *significantly* more costly for the rancher than a standard staff gauge, and this cost would multiply with the total number of stock ponds on the summer pasture. If a more advanced electronic measuring device is required, under the same circumstances it would be unfeasible to also verify the accuracy of the device during the winter months.

While § 935 of the draft emergency regulations makes it clear that a rancher in such a circumstance could *request* alternative compliance with the deputy director, it is not certain that such alternative compliance would be *granted*. CCA urges the SWRCB to enumerate within § 935 of the emergency regulations certain common circumstances under which alternative compliance will be granted, such as for reservoirs or points of diversion which are inaccessible for a significant portion of the year as a result of their remoteness and/or inclement weather. Such categorical exemptions should be available upon notice to the deputy director, but without the requirement for case-by-case approval.

Including clear exemptions under § 935 would have the added benefit of reducing the work burden upon SWRCB staff, and reducing the turnover time between a request and a decision for remaining requests for alternative compliance.

Section 921 watermaster reports ought to be explicitly recognized as fulfilling the requirements of the emergency regulations for all diverters served by the watermaster

It is not clear from the proposed emergency regulations whether reports of watermasters would satisfy the measurement and reporting requirements of the proposed emergency regulations for those diverters served by the watermaster. It may be that such reports qualify as an appropriate “measurement method” under § 934 of the proposed emergency regulations, which “encourages water rights holders on a local or regional basis to cooperate and establish a measurement method or methods to measure direct diversion, diversion to storage, and withdrawal or release from storage in an efficient and cost effective manner,” or § 934(e) which allows for a “shared measurement point upstream of the delivery point or farm headgate.” However, watermaster reports are not explicitly referenced in § 934, and § 934 also stipulates that such cooperative methods must be approved by the deputy director in response to a formal Request for Measurement Method filed with the Board pursuant to § 934(a).

CCA urges the Board to accept watermaster reports filed with the Board pursuant to the requirements of 23 CCR § 921 as fulfilling the requirements of proposed emergency regulation §§ 933(b)(2) and 934, and to clarify that watermaster reports satisfy the proposed emergency regulations via an amendment to either § 921 or § 934.

Much of the information required by the § 934(a) Request for Measurement Method is duplicative of the requirements of § 921, and thus watermaster reports complying with § 921 would substantially fulfill the reporting obligations of the proposed emergency regulations.

Additionally, CCA requests that those water rights holders served by such watermasters be explicitly exempted within the emergency regulations from the individual monitoring and reporting requirements of §§ 932 and 933, and from the “additional requirements” imposed upon water rights holders using a shared measuring device enumerated in § 934(e)(1)-(3) of the proposed emergency regulations.

CCA appreciates the opportunity to provide the above feedback to the SWRCB as it considers adoption of emergency monitoring and reporting regulations, and urges SWRCB to incorporate the above suggestions into the emergency regulations prior to adoption.

Sincerely,



Kirk Wilbur
Director of Government Affairs
California Cattlemen’s Association