



CALAVERAS COUNTY WATER DISTRICT

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December 17, 2015

Paul Wells, WRCE
State Water Resources Control Board
P.O. 2000
Sacramento, CA 95812
Via e-mail: paul.wells@waterboards.ca.gov



Re: CCWD Comments Draft Emergency Regulation for Measuring and Reporting on the Diversion of Water

Dear Mr. Wells:

The Calaveras County Water District (CCWD) appreciates the opportunity to comment on the "Proposed Emergency Regulation for Measuring and Reporting on the Diversion of Water, December 7, 2015 Agency Draft for Public Comment," pursuant to Senate Bill 88 (2015) (SB 88). CCWD is a special district responsible for administering water, wastewater, and hydroelectric power throughout Calaveras County. The district has fragmented water service areas spread out across Calaveras County in three watersheds. The District has six distinct and separate water service areas with approximately 13,000 connections, many of which are within economically disadvantaged communities, and six different points of diversion that we maintain measurement devices on for reporting on a suite of complex consumptive water rights. Additionally, the District is a project owner/licensee on two separate hydroelectric generation projects, the North Fork Stanislaus River Hydroelectric Project and Hogan Dam Hydroelectric Project. The District partners with the Northern California Power Agency (NCPA) and Modesto Irrigation District respectively on the projects, and they are responsible for the hydroelectric development, management, and operation of the various facilities, including the maintenance of appropriate water measurement devices.

CCWD is mostly supportive of the draft regulations. SB 88 was well-intentioned in protecting California's water resources through improved accuracy of reporting for water diversions. However, CCWD has significant concerns regarding the costs and outcomes stemming from the bill's draft regulations. As written, the draft regulations will be financially burdensome on the District and our partner hydroelectric project operators, with no commensurate benefit. The District asks that the State Board consider that any additional costs related to the measurement of water use on a more rigorous basis be linked to a desirable benefit to the public, rather than an arbitrary length of time or quantity. Based on the information that was presented at the draft regulation workshops, the State Board's analysis has failed to provide this vital connection with the regulatory costs CCWD will incur.

As a result of the outlined concerns, CCWD requests a categorical exclusion from some of the enhanced reporting requirements for hydropower projects that divert water for non-consumptive uses and return full flows back to the stream. Monthly, weekly, or daily measurement provides little if any useful data for the purpose of determining flow availability in these cases.

Additionally, CCWD respectfully offers the comments as "Attachment A" to this letter on the "Draft Emergency Regulation for Measuring and Reporting on the Diversion of Water". We fully support the State Water Board's efforts to implement this important legislation but are concerned that agencies such as ours who largely serve disadvantaged communities realize some meaningful benefit for the additional costs to be incurred in meeting the new requirements.

If you have any questions, please feel free to contact me at (209) 754-3094 or peterm@ccwd.org.

CALAVERAS COUNTY WATER DISTRICT



Peter Martin
Water Resources Program Manager

Cc:

Chris Tuggle, Generation Supervisor, Modesto Irrigation District
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Attachment A - Calaveras County Water District Comments on “Draft Emergency Regulation for Measuring and Reporting on the Diversion of Water”

- 1) **The regulations include the potential for more routine measurement of hydropower projects that divert water for non-consumptive uses and return full flows back to the stream in dry years, which provides negligible benefit to determining the water balance for a watershed.**

CCWD requests an exclusion from hydropower projects that divert and return all flows back the watercourse. The data would not provide useful to the SWRCB as outlined in SB 88 because, ultimately, water is still fully intact for preservation of downstream flows.

Additionally, many of the FERC regulated hydropower projects in California are already cooperating with the United State Geological Survey (USGS) in fulfillment of the requirements of their licensing. The USGS has contracts with us for the collection of reservoir and streamflow data, and to assist our partner agency NCPA's operational and management needs. This also provides data that is available to the public. This should satisfy the needs of the SWRCB for this exercise. Any unnecessary burden of additional data aggregation should not fall on hydropower projects that don't consume water or impact the greater water balance. CCWD reports on these hydropower rights on an annual basis to the SWRCB; additional monthly, weekly, or daily data would be unessential to determining water availability.

Suggested Language: We request the following change to part (b) of “Section §933 Measuring Device Requirements”:

Add the following subsection (1) Data Recording, (B) as follows:

(B) For the purposes of this requirement, water right holders that divert water for non-consumptive uses, including but not limited to hydropower generation, and return full flows back to the stream shall be excluded from data recording and data submittal requirements. Diverters subject to this exclusion must continue to comply with any water rights reporting requirements including but not limited to filing Progress Report by Permittee, Report of Licensee, Supplemental Statement of Water Diversion and Use, and Water Use Reports of Registration and Certificate Holders.

- 2) **The regulations include the potential for reporting to the State Board on a monthly, daily, or more frequent reporting. This would be potentially extremely time consuming for CCWD.** CCWD requests that the SWRCB limit the regulations to no more than monthly reporting. If not, very limited circumstances should be prescribed in this regulation to justify this level of reporting. CCWD has a limited technical staff of one working on water rights reporting with the assistance of consultants, and about 25-30 field staff working at 20 different facilities, across a 1000 square mile county, that possibly could be available to physically pull information to report measurements. *Recording* measurement on this basis is feasible, but It would be infeasible for a small water District like CCWD to track and *report* on all of our six different diversions on anything less than a monthly basis. CCWD requests changes to the draft regulations to require reporting on frequency not to exceed a monthly basis. If not, the SWRCB should delineate what specific situations would require reporting on this frequency, and how this data would provide beneficial to the preservation of water supplies.

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Suggested Language: We request the following change to “§917. Reporting – Insufficient Flows to Support All Diversions”:

§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.

- 3) **The requirement for a “qualified individual” to install, test, and maintain measuring devices as defined in the regulation is unreasonable and does not consider site-specific circumstances. It is also not at the SWRCB’s discretion according to Porter-Cologne.** Furthermore, this requirement would preclude many of the hydrographers that are utilized by USGS, which has numerous contracts to provide water measurement for statewide projects. A high profile example would be the State Water Project and Central Valley Project.

Suggested Language: We request the changes to “§931. Definitions (2)(g) as follows:

(g) “Qualified individual” means: an individual of suitable discipline that is competent in the field of water measurement

(1) For diversions greater than or equal to 100 acre-feet per year:

(A) A California-licensed contractor authorized by the State License Board for C-57 well drilling or C-61 Limited Specialty/D-21 Machinery and Pumps; or

(B) a California-registered Professional Engineer.

(C) a professional subject to oversight by a California-registered Professional Engineer and employed to install, operate, and maintain water measurement and reporting devices or methods.

(2) For diversions less than 100 acre-feet per year, a person trained and experienced in water measurement and reporting. This may include the water right holder or the water right holder’s agent.

- 4) **The regulations would require a three month turnaround on the “calendar year” water use, which will probably result in unattainable or unusable data for mountainous regions due to weather and inaccessibility of measuring devices.** Section 929(b) requires water usage reporting within three months of the close of the twelve month reporting period. This means that December data could be due by March. This is sometimes infeasible, as some High Sierra reservoirs and stream flow data collection sites may not even be accessible during winter and spring runoff conditions. The regulations should consider that data collection in mountainous regions is difficult due to topography (radio communication and telemetry devices don’t always work, especially in snow), and many access roads are impassable or closed. The regulations allow for provisional data to

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be submitted, but this would be equivalent to zeroes for extended periods. A better timeframe would be July 1 to ensure complete data with proper quality control is submitted. In the workshop, State Board Staff suggested an April 1 submission date so that everything doesn't come in July and inundate the servers, but there is a more gainful technical reason why the July submission date should remain.

Suggested Language: We request that Sections §924, 925, and 929 be changed back to the original July submission date.

- 5) **The regulations should allow considerations for reporting on the "water year" which is the preferred industry hydrologic measurement utilized for annual water measurement.** The "water year" also more closely aligns with California's weather patterns, where precipitation and snowpack picks up in late fall and winter, and dwindles in spring and summer. Our project partner agency, NCPA utilizes measurements from gauges monitored by the United State Geological Survey (USGS) and they utilize "water year" measurements from October 1 to September 30. This data is also available in the public domain. Assuming, the SWRCB intends to release this data to the general public, allowing for two types of measurement to be out in the public for consumption could be confusing.

The "water year", not calendar year could be useful to align with the rest of the industry (USGS) as well as California's normal weather patterns and provide useful information to the public. The regulations should allow for this option.

Requested Change: We request the following change in section "§ 907. Definitions. (5)(c)" as follows:

(c) "Twelve month reporting period" when used in this chapter means a calendar year beginning January 1 and ending December 31, or a "water year" beginning in October 1 and ending on September 30.

We request that all other references to calendar year be changed to include this alternative measurement, and include language that states this alternative is subject to approval by the Deputy Director.

- 6) **The requirement in Section §934 to provide quantification for separate priorities in measurement is infeasible.** CCWD and other diverters typically have a "suite" of water rights that have multiple priorities. Quantifying the amount of water diverted under all separate priorities of rights being exercised at an "exact" moment in time, through one singular point, is impossible, as diversions fluctuate considerably and multiple priority rights are being passed through. Truing this up on a monthly or yearly basis is possible based on models, analysis, or best available technology, but anything more finite would be guesswork. Additionally, this goes above and beyond the intended scope of the regulation and would lead to watershed-wide conflicts (potentially legal) between users in a watershed due to differing opinions on what "portion" of water is passing through each point. Leaving the reporting at basic water measurement would be prudent.

Requested Change: We request the State Board strike out the following sentence in section "§ 934: ... "Any measurement method must be able to quantify the amount of water diverted under all separate priorities of rights being exercised."

- 7) **A regionalized approach, which was discussed in the concepts released prior to the draft regulations, is not clearly outlined in the language.** The ability to report collectively on a "basket of rights" rather than each individual right, especially in situations where there

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is a common destination such as a large reservoir, and no intermediate points of diversion or diverters, would be beneficial. However, the regulations do not clearly articulate the terms for which this could apply. We have several partnerships with other diverters in the Stanislaus River watershed that could benefit from basic measurement at the lowest common reservoir collection point, Melones Reservoir. CCWD requests that the State Board provide more guidance within the regulations or as a follow up to the finalized regulations on how regional reporting approach could be realized.