

commentletters

From: T. Connick <tdhc@sonic.net>
Sent: Wednesday, December 16, 2015 7:10 PM
To: commentletters
Subject: "Comment Letter – Emergency Regulation for Measuring and Reporting the Diversion of Water."

Jeanine Townsend, Clerk to the Board

State Water Resources Control Board

1001 I Street, 24th Floor

Sacramento, CA 95814



RE: “Comment Letter – Emergency Regulation for Measuring and Reporting the Diversion of Water.”

I disagree with this proposed emergency regulation in concept and as drafted in total.

1. The Drought Emergency Regulation adopted December 1, 2015 by the Board states to be authorized by Executive Order’s: B-28-14, B-26-14, B-29-15 and B-36-15 and under the Senate Bill 104’s expansion of Water Code section 1058.5. The Board asserts, “[T]he State Water Board is unable to address the situation through non-emergency regulations because the need for this regulation has arisen due to the current drought emergency and would not be timely addressed by non-emergency regulations.” That is not true. The Proclamation of April 25, 2014 directs the Board to address diversions. Executive Order B-21-13 (5/20/13) should have put the board on notice that it had a water delivery management problem. The “Proposed Emergency Regulation and Measuring and Reporting December 7, 2015 Agency Draft for Public Comment” is drafted as if permanently modifying CH 2.7 Water Diversions and Use Reports beyond the declared Drought Emergence. Is this correct? Why not just issue the order or regulation? Government Code Section 8627.5 (b) “The orders and regulations shall be in writing and take effect immediately on issuance. The temporary suspension of any statute, ordinance, regulation, or rule shall remain in effect until the order or regulation is rescinded by the Governor, the Governor proclaims the termination of the state on emergency, or for a period of 60 days, whichever occurs first.
2. Resolution No. 2015-0075 authorized December 1, 2015 and the Emergency Regulation for Measuring and Reporting December 7 are implemented under various Executive Orders and

Proclamations ending with Executive Order B-36-15 and Senate Bill 104 (Statutes 2014; Chapter 3; Committee on Budget and Fiscal Review). Because the Governor has declared a Drought Emergency under the California Emergency Services Act, which takes precedence over any emergency regulation, adopted by the Board. Then Government Code section 8570 (i) “Plan for the use of any private facilities, services, and property and when necessary, and when in fact used, provide for payment for that use under the terms and conditions as may be agreed upon.” would apply. Has the Director of the Office of Emergency Services made funds available to mitigate the extraordinary drought emergency the monitoring and reporting measure regulation is proposing? Has the State prepared in advance any commitment for the expenditure of funds to mitigate the effects of drought emergency from private facilities, services or property of the water right holders of others to protect the public trust?

3. Executive Order B-29-15 #17 “Invest In New Technologies” This must be where the State is implementing its Water Energy Technology (WET) program for water right holders. Where the “irrigation system timing and precision technology” is coupled to “water-us monitoring software” as described in the “proposed emergency regulation for measuring and reporting December 7, 2015 agency draft for public comment”. It is not surprising that out of The Water Quality, Supply, and Infrastructure Act’s \$7,545,000,000 funding, no funds were allocated for diversion mitigation monitoring. Funds have not even provided by the legislature for the suspended WET program. And even Senate Bill 104 is to provide funds for extraordinary mitigation measures. Even Senate Bill 88 has \$810,000,000 earmarked for a respond to climate change and regional water security. So where is the funding! The lack of funding over 3-4 years raises serious questions about how much of a drought emergency diversion monitoring is.
4. The Water Quality, Supply, and Infrastructure Act of 214, approved by the voters as Proposition 1 at the November 4 2014, statewide general election, authorized the issuance of general obligation bonds in the amount of \$7,545,000,000 to finance water quality, supply, and infrastructure improvements. Of this amount \$2,700,000,000 has been allocated for Statewide Water Systems Operational Improvements and Drought Preparedness. Another \$395,000,000 is allocated for Flood Management. As the State’s de facto water utility entrusted to ensue the state’s regional water security and to effectively administer the Water’s of the State, encompasses not only delivering water to each entitled water right holder but accounting for those deliveries at each diversion point, to monitor watershed and sub watershed flows, to predict and project water availability, and to ensure that water is used appropriately by persons holding valid rights are without waste or unreasonable use or unreasonable method of diversion. This is why the state needs to provide, control, install and maintain “Smart-Meters” just like every other utility, be it water, gas or electric. This is what the bond funds were authorized for, to mitigate the effects of the drought. If they have not been allocated for this purpose it shows again there is in fact no measuring and reporting emergency requiring the December 1, 2015 proposed emergency regulations.
5. The state’s assumption is that the diversion point(s) are on the same property as those to whom the state has granted water rights. This is not the case. Many cannot give you a right they do not have. This being a new use, which would requires “reasonable access” along with additional infrastructure for the installation, operation, inspections, testing, readings, maintenance, and repair or replacement might be something property owner’s who are not

obligated in any way, are willing to provide on their property. Government Code Title 2 Division 1 Chapter 7 Article 13 Section 8627 provides the Governor with police powers to enforce Diversion monitoring. Is this how the Board plans to gain access and install these devices?

6. With Senate Bills 104 and 88 appear to have bestowed on the unelected Board “emergency regulatory” powers without defining what constitutes a regulatory emergency, how long it lasts, when regulations would be lifted, what justifies a threat, or if the board chose to perpetually invoke renewals in perpetuity. Does the Board have the same police powers as the Governor? If the Board had a comprehensive water management plan to manage the waters of the state which fulfill its public trust obligation by providing and installing ‘smart-meters’ like other “utilities” there would be no need for “Emergency Regulations” except during a real emergency declared by the Governor.

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