

**STATE WATER RESOURCES CONTROL BOARD  
RESOLUTION NO. 2016-**

**TO ADOPT A DROUGHT EMERGENCY REGULATION FOR  
MEASURING AND REPORTING WATER DIVERSIONS**

**WHEREAS:**

1. Senate Bill 88 (SB 88) was signed by Governor Brown on June 24, 2015. Sections 15 through 18 of SB 88 add measurement and reporting requirements for a substantial number of California's water diverters. The measurement requirements authorized under SB 88 could go into effect as early as January 1, 2016. The State Water Board is adopting a regulation to implement these new provisions.
2. The legislation authorizes the State Water Board to adopt a regulation requiring measurement for water right holders and claimants who divert 10 acre-feet of water or more per year. The measurement requirement would apply to approximately 12,000 water right holders and claimants. The legislation also requires annual reporting from statement holders claiming riparian and pre-1914 appropriative rights and persons authorized to appropriate water under a permit, license, registration (small domestic, small irrigation, or livestock stockpond), or certificate for stockpond use.
3. The legislation authorizes the State Water Board to adopt an initial regulation as an emergency regulation that shall remain in effect until revised by the State Water Board. The Board's adoption of the initial emergency regulation is exempt from the California Environmental Quality Act (CEQA).
4. On October 6, 2015, the State Water Board held an initial stakeholder meeting. The meeting brought together a small group of over 20 experts in water rights and water resources management to discuss key concepts that should be considered in the emergency regulation. On October 8, 2015, the State Water Board held a stakeholder meeting in Stockton to discuss how Delta specific issues may be affected by additional measurement and reporting requirements. On October 16, 2015, the State Water Board held a technical workshop with technical experts primarily from federal and state agencies to discuss issues related to regulating, installing, operating, and maintaining water measurement devices or methods. Five additional public outreach meetings were conducted throughout California during the first two weeks of November. The draft regulation reflects stakeholder input.
5. On December 17, 2015, the State Water Board held a workshop on the draft regulation. The proposed regulation was revised based on the workshop presentations and comment letters.
6. Better information quantifying the size and timing of diversions is essential to effectively manage California's water rights system in the 21st century.

7. Information on the largest diverters is the most essential information needed for purposes of effectively managing the water rights system. Moreover, data collection is needed on a more frequent basis for larger diverters in order to accurately model and assess the water supply and water demand situation for purposes of managing the water right priority system. To reflect the varying needs for information based on diversion size, the regulation implements a tiered system, with larger diverters implementing measurement in 2016, mid-size diverters in 2017 and small-size diverters in 2018. The regulation also requires measurement accuracy that is tiered, with accuracy requirements of  $\pm 10$  percent for larger diversions, and  $\pm 15$  percent for smaller diversions. Similarly, the frequency of measurement varies from hourly to monthly based upon diversion size.
8. The tiered system reflects that it is appropriate to simplify compliance with the new regulation for the smallest size class of diverters.
9. The regulation has been structured to eliminate the burden of measurement for the smallest diverters, by establishing that measurement is not required for diversions of 10 acre-feet or less. This eliminates measurement requirements by diverters under small domestic and stockpond registrations and stockpond certificates, with minor exceptions. These small diverters are required to report their diversions annually to the Board.
10. Board staff have compared the California regulation to measurement regulations implemented in five western states: Oregon, Colorado, Washington, Utah and Arizona. The accuracy requirements in the California regulation compare favorably with the numeric accuracy requirements for Washington (10 percent accuracy) and Oregon (15 percent accuracy). Colorado, Utah and Arizona do not have numeric standards. Colorado, Washington and Oregon rely upon watermasters for measurement.
11. The regulation encourages cost savings through combined measurement by multiple diverters that share diversion facilities. Cost savings may also be achieved by utilizing a shared measurement device, and calculating diversions along shared ditch systems.
12. The regulation reflects the diversity in water diversion practices throughout the state, and provides an option for alternative compliance where measurement is not feasible, would be unreasonably expensive, would unreasonably affect public trust uses, or would result in the waste or unreasonable use of water.
13. The regulation also reflects that it may be appropriate for the Board to change the measurement standard from greater than 10 acre-feet to a higher standard, under certain circumstances.
14. To evaluate the effectiveness of the regulation, Board staff will report back to the Board on the following components of the regulation: alternative compliance, measurement method, telemetry, and stockponds.
15. Pursuant to Water Code section 7, the State Water Board is authorized to delegate authority to the Division of Water Rights Deputy Director and Delta Watermaster. The State Water Board has delegated authority to the Deputy Director for the Division of Water Rights and the Delta Watermaster; and

THEREFORE BE IT RESOLVED THAT:

1. The State Water Board amends, modifies, or adds California Code of Regulations, title 23, sections 907, 910, 911, 915, 916, 917, 920, 921, 924, 925, 929, 930, 931, 932, 933, 934, 935, 936, and 937, as appended to this resolution as an emergency regulation;
2. The State Water Board staff will submit the regulation to the Office of Administrative Law (OAL) for final approval;
3. If, during the approval process, State Water Board staff, the State Water Board, or OAL determines that minor corrections to the language of the regulation or supporting documentation are needed for clarity or consistency, the State Water Board Executive Director, the Deputy Director for the Division of Water Rights or their designees may make such changes;

**CERTIFICATION**

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on January 19, 2016.

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Jeanine Townsend  
Clerk to the Board