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December 17, 2015

**Transmitted via email to: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)**

Jeanine Townsend, Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24<sup>th</sup> Floor  
Sacramento, CA 95814



**Subject: Comment Letter – Emergency Regulation for Measuring and Reporting the Diversion of Water**

Dear Ms. Townsend:

MBK Engineers represents numerous water right holders throughout the State and have extensive experience with water measurement, data recording and reporting of water diversion and use. The purpose of this letter is to provide comments to the December 7, 2015 Agency Draft Proposed Emergency Regulation for Measurement and Reporting (Proposed Regulation) prepared by the State Water Resources Control Board (SWRCB) pursuant to Senate Bill 88 (SB 88). Our comments are based on our experience and knowledge of diversions and diversion facilities throughout the State.

In general the Proposed Regulation attempts to create a comprehensive measurement, data collection, and reporting regulation applicable statewide. However, the Proposed Regulation fails to recognize the diverse conditions that exist throughout the State, which affect the ability to measure and quantify diversions. Examples of some of the unique conditions that will prove challenging to measure include tidally influenced diversions in the Delta (siphons), historically developed diversion facilities, diversion in remote and rugged areas where physical access and access to power and communication systems may be limited, natural springs and undefined channels supplying water for irrigation or stockponds, harsh natural and biological elements, and areas requiring high instantaneous rates of diversion for frost control purposes, among others. Each of these conditions will pose unique challenges to measure diversions and may also require significant costs for installation and maintenance of devices as well as reconfiguration of existing diversion facilities to meet the accuracy standards identified in the Proposed Regulation. We recommend the SWRCB consult with a leader in water measurement such at the Irrigation Training and Research Center (ITRC), California Polytechnic State University, San Luis Obispo or similar to better understand these unique conditions and provide outreach opportunities to holders of water rights or claimed rights that this Proposed Regulation effects.

The Proposed Regulation requires a water right holder, with a right or a claimed right to divert 1,000 acre-feet or more annually, to install measurement devices or employ a

measurement method and certify the accuracy of a measurement device or method by July 1, 2016. The July 1, 2016 deadline for those water right holders will result in less than six months to identify, obtain, and install or construct a device or develop a measurement method and to certify the accuracy of the device or method. Given the unique conditions of some diversion facilities, installation of measurement equipment or devices will require permits from various agencies, including but not limited to the CADFW, USACE, USFWS, NMFS, or SWRCB. In addition, there is a significant number of devices that will require installation and/or certification throughout the State by that deadline, with some points of diversion requiring multiple devices. We recommend an implementation deadline for compliance by water right holders with a right or claimed right for diversions of 1,000 acre-feet or more each year be no less than one year after the SWRCB adopts a final regulation.

We acknowledge that the Proposed Regulation allows water right holders to submit requests for additional time to comply with the provisions of the order, however, this will also take time for water right holders to prepare and submit the request and for the Deputy Director to review and process. Further, the Proposed Regulation limits the extension of time to no more than 24 months under all requests. Because the time required to obtain necessary permits may result in the inability to install and certify measuring devices even within the extended deadline of 24 months, we recommend the Proposed Regulation be modified to allow the Deputy Director discretion in granting requests for extension of time.

Although the Proposed Regulation allows water right holders the ability to propose alternative compliance for a measuring device or measurement method, the requests must be developed by a California-registered Professional Engineer to be considered on a case-by-case basis by the Deputy Director. There is concern that the SWRCB's Division of Water Rights (Division) does not currently have the staff to review and approve these alternative compliance plans within the time constraints listed in the Proposed Regulation. Not only will the requests for alternative compliance be a potential time burden to the Division, the time and financial burden to the water right holder will be significant. We recognize that the SWRCB needs to be responsive to the actions directed by the Legislature through SB 88; however, a better understanding of the usefulness of the data measured and reported along with the costs associated with those data is needed. To our knowledge, the SWRCB has made no estimate of the costs (both time or capital costs) to water users or to the State associated with the Proposed Regulation, nor have we seen a description of how this potential significant amount of data will be used and for what benefit. It is recommended that a cost/benefit assessment of the measures identified in the Proposed Regulation be conducted.

The Proposed Regulation requires water right holders with a right or a claimed right for diversion of 1,000 acre-feet or more per year to measure and record diversions on an hourly, or more frequent basis. The purpose and usefulness of these data in compliance and enforcement of water rights, including the determination of water availability is unclear. For example, water rights in larger watersheds such as the Sacramento River watershed cannot be managed on an hourly or more frequent basis. In addition, the costs associated with purchasing and installing data loggers or other equipment to record and maintain data at this temporal resolution will be significant and is unreasonable if those data cannot be used for the intended purpose. Therefore, we recommend the SWRCB review the need for this frequency of diversion data and modify the Proposed Regulation to consider regions or watersheds where availability of more frequent data

would be useful for water right compliance and enforcement and limit this requirement to those areas.

The Proposed Regulation identifies specific accuracy standards for diversions according to the volume of water diverted. It is unclear how these accuracy standards were arrived at or if there is technical support for these accuracy standards. It is recommended that the SWRCB consult with leaders in water measurement, such as the Irrigation Training and Research Center (ITRC), California Polytechnic State University, San Luis Obispo or similar, to arrive at reasonable accuracy standards, which should also take into account unique measurement challenges.

The Proposed Regulation would require water right holders to submit the annual Progress Reports by Permittee and Reports of Licensee by the end of March of the year following diversion and use of water. As discussed during stakeholder workshops, many diverters rely on data from the USGS and will not have final data in time to meet the end of March reporting deadline. The Proposed Regulation requires these water users to file initial reports using preliminary or provisional data by the March deadline and to file amended reports by the end of June. We recognize the Division's concern that the new annual reporting requirement for Supplemental Statements of Water Diversion and Use, Reports of Registration, and Certificate Holders may overload the SWRCB's computer network. However, the requirement to submit reports based on preliminary data and submit amended reports once final data is available will unnecessarily burden many water users by requiring them to perform analysis of complex projects multiple times per year. In addition, the submittal of reports and amended reports has the potential to place an additional burden on the SWRCB's computer network, rather than alleviate the concern. In order to accommodate the desire to stagger reporting deadlines and to limit the added burden to water users, we recommend the Proposed Regulation be changed to require annual water use reports for permits, licenses, registrations, and certificates be filed by June 15 of the year following the diversion and use of water.

If you have any questions or require additional information regarding the comments contained in this letter, please contact me at (916) 456-4400.

Sincerely,  
MBK ENGINEERS



Gary Kienlen, P.E.

GK/nl  
SB 88 Comment Letter 12172015

cc: David Guy, Northern California Water Association