



December 17, 2015

**VIA E-MAIL AND U.S. MAIL**

State Water Resources Control Board  
Attn: Jeanine Townsend  
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State Water Resources Control Board  
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E-Mail: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

Re: Senate Bill 88 and Draft Emergency Regulations for Measuring and Reporting on the Diversion of Water

Dear Members of the Board:

The San Luis & Delta-Mendota Water Authority ("Water Authority") appreciates this opportunity to comment on Senate Bill 88 and the Draft Emergency Regulations for Measuring and Reporting on the Diversion of Water ("Draft Regulations"). If the State Water Resources Control Board ("Water Board") plans to adopt the Draft Regulations, the Water Authority requests that it first make two changes to address the concerns outlined below.

First, the Draft Regulations should be modified to increase transparency regarding the approval of exceptions from and alternative compliance for the reporting and measuring requirements otherwise required by the Draft Regulations. A number of the Draft Regulations describe exceptions or alternative compliance procedures for reporting and measuring, including the following:

- Draft section 932(d) would allow the Executive Director to "issue orders to increase the 10 acre-feet reporting threshold . . . to or above 25 acre-feet," assuming various criteria are met. (Draft § 932, subd. (d).)
- Draft section 934(e) would allow groups of water right holders to measure water at shared points of diversion and report combined information regarding their shared measurements. (Draft § 934, subd. (e).)
- Draft section 935 would authorize the Deputy Director to consider alternative compliance to one or more of the requirements of section 933 and section 934 "upon finding that strict compliance is not feasible, would be unreasonably expensive, would unreasonably affect public trust uses, or would result in the waste or unreasonable use of water." (Draft § 935, subd. (a).)

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- Draft section 936 would authorize the Deputy Director to grant additional time for compliance with the measuring and reporting requirements “upon a showing of good cause,” for up to 24 months. (Draft § 936.)

In the interest of transparency, the Water Board should revise each of these sections to require posting on the Water Board website and transmittal through “lyris” to interested parties any decision granting any requests for such exceptions or approval of alternative compliance.

Second, the Draft Regulations should be modified to authorize water right holders to seek reconsideration of decisions on requests for alternative compliance. As noted above, the Draft Regulations describe a procedure in draft section 935 by which a water right holder may seek alternative compliance for a measuring device or measurement method. Although draft section 935 describes how a water right holder should make a request (Draft § 935, subd. (c)), and provides that the Deputy Director may grant such requests (Draft § 935, subd. (b)), it does not include any detail about appeals of the Deputy Director’s decision. In contrast, draft section 932(d)(6) expressly provides that the decision to increase the reporting threshold is subject to reconsideration. (Draft § 932, subd. (d)(6).) Draft section 935 should include a counterpart to section 932(d)(6), to make clear the Deputy Director’s decisions regarding alternative compliance are subject to reconsideration.

Thank you for your consideration.

Regards,



Jon D. Rubin  
General Counsel