



# NEVADA IRRIGATION DISTRICT

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VIA ELECTRONIC MAIL: [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

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

Members of the State Water Resources Control Board:

Nevada Irrigation District (NID) appreciates this opportunity to provide comments on the proposed water measuring and reporting regulations. While NID supports the State Water Resources Control Board's (SWRCB) efforts to develop a more accurate understanding of water diversion activities throughout the state, the proposed regulations will be all but impossible to effectively implement across the state's varied and complex water diversion systems. NID's water system is particularly complex compared to those of most water users in the state, and this complexity brings to light foundational problems in the regulations as currently proposed. The SWRCB should not adopt these proposed regulations; modifications are needed to accomplish feasibility, reasonableness, and accuracy in implementing SB 88's water measurement directives.

As an initial matter, we strongly suggest that these regulations be developed and implemented through a traditional rulemaking process, which would provide an opportunity for stakeholders and staff to fully explore and resolve potential problems with the proposed regulations that may not be immediately apparent in an abbreviated rulemaking process. SB 88 directed the SWRCB to adopt implementing regulations as emergency regulations that will remain in place indefinitely. The emergency regulation process is intended to allow state agencies to quickly implement time-limited regulations without following the processes required for traditional regulations. The lack of procedural protections in the emergency regulation process is usually balanced by their time-limited nature. To impose *permanent* emergency regulations eliminates the only check that would have balanced the lack of procedural protections applicable to emergency regulations. Flaws in the rushed regulatory program will perpetuate indefinitely, leading to unnecessary and impossible burdens being placed on water right holders. Although SB 88 directs the SWRCB to adopt initial measurement and reporting regulations as emergency regulations, the SWRCB should, immediately upon adopting the emergency regulations (ideally, before they take effect), begin the process that is normally required to make emergency

regulations permanent, as described in section 11346.1(e) of the Government Code. This will ensure that flawed regulations will not permanently burden those for whom compliance will be incredibly expensive if not impossible under the current proposal.

Rough estimates indicate that initial compliance costs for the proposed regulations for diverters such as NID may well exceed a hundred thousand dollars for measurement devices alone, and may require hiring additional staff. Comments on specific issues in the regulations follow.

### **Proposed § 917 (Reporting – Insufficient Flows to Support all Diversions)**

There needs to be a more focused condition defined as to when this provision would be invoked. Would calculations of insufficiency consider whether diversions are consumptive or non-consumptive, whether they are direct diversions or diversions to storage, and to pre- and post-1914 rights? The hydrology is the largest factor in how much we divert; there is rarely enough water available to divert the face value of all or our rights and if non-consumptive power diversions are included in calculations of water use, then it will always appear as if there are insufficient flows, even though the insufficiency would be illusory. As we commented in relation to the current informational order, with the complexity of our system it takes a significant effort to just report with provisional data, which would be in addition to—not in lieu of—annual reporting. .

### **Proposed § 925 (Progress Reports by Permittee)**

Filing by March 31 is not practical utilizing the water right program that we have developed with Division staff input. First, access to our remote, high-elevation diversion sites is all but impossible in the winter and spring months, when data would need to be retrieved to report by a March 31 deadline. Data would have to be retrieved as late as possible due to normal snow conditions limiting access, reducing the time available to process the data and generate a report. A March 31 deadline would likely require hiring a helicopter at \$900/hour just for the purpose of accessing the sites and retrieving the data. Under the proposed regulation, we would be forced to submit provisional data and then amend our submission once final data become available—a huge waste of staff resources. The inability of the SWRCB computer system to receive large volumes of data is not a sufficient justification for forcing water suppliers to make two reports, knowing that the initial provisional report will need to be corrected. Second, our storage calculations for any particular month require utilization of data from the following month as well, so calendar-year use cannot be calculated until after January 31 of the following year, leaving only two months to collect and process the data.

Due to the complexity of our system, data from pre-1914 and post-1914 water rights must be entered at the same time in order to work out irregularities. Requiring staggered submission would result in more frequent needs to amend filings. As a result, we will have to complete all of our filings by the earliest due date.

If the only reason for the staggered, earlier reporting deadlines is the limitations of the SWRCB computer system, then that system should be upgraded, rather than create an immense burden on water right holders to work around the computer system's limitations.

**Proposed § 929 (Reports of Licensee)**

This proposed regulation has the same problems as proposed § 925, discussed above.

**Proposed § 932(c)(1) (Applicability - Effective dates)**

We have at least seven diversion measurement locations that do not have devices capable of direct measurement. If it is determined that our alternative methods are not acceptable, there is no way we will be able to get through engineering, design, environmental review, permitting (including FERC approval), and installation by July 1, 2016 for the larger sites and probably not by January 1, 2017 for the smaller ones. Effective dates must be extended to make compliance feasible.

**Proposed § 933 (Measuring Device Requirements)**

**(b)(2)(A)** Reporting data for each measurement device is not the same as reporting data from each water right, as is implied by the language. The District has numerous points of diversion that are also points of rediversion, and the measurement at those diversion points is for the total flow, which includes the comingled water—in other words, water diverted or rediverted under multiple water rights may pass together through a single gaging structure at the same time. Raw gage measurement data must be analyzed and processed to determine how much water was diverted under each right.

**(b)(2)(B)** Clarifications are needed. Is the 10,000 acre-foot threshold determined by water right, or by the total sum of all of a diverter's water rights? Is the 50% monthly median flow threshold based on historic or real-time hydrology? The problems related to commingling of diverted and rediverted water under (b)(2)(A) also apply here. Developing and implementing a process to comply with these reporting requirements is going to be very expensive to achieve and maintain—even our reservoir storage in most places is done under multiple rights. The requirement to report real-time flow data is a departure from SB 88's water right diversion reporting requirements.

**(c) (Calculating Volume from Recorded Data)** Calculating volume is a basic skill and is the outcome of everyday water measurement practices. We should not need to report the methods. Delete this section.

**(e) (Certification of Measuring Device Accuracy)** No certifications of accuracy should be required at measurement sites where data is collected and compiled under supervision of the USGS.

Overall, proposed section 933 could be shortened to include only subdivisions (g), (h), (i), and (j); the accuracy standard could be incorporated into subdivision (g).

**Proposed § 937 (Report of Water Measurement Device)**

This is unnecessary and duplicative, creating an unnecessary burden on water right holders that provides no additional benefit to the state. By submitting the various reports as described in these proposed regulations, the diverters are attesting to the accuracy of the information contained therein. This requirement will be burdensome to comply with and provides no benefit.

Respectfully submitted,

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