KINGS RIVER WATER ASSOCIATION

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(12/17/15) Public Workshop
Emergency Reg for Measuring & Reporting Diversions
Deadline: 12/17/15 by 12:00 noon

December 17, 2015

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

Re: December 7, 2015 Agency Draft Emergency Regulation for Measuring and Reporting the Diversion of Water

Ms. Townsned,

The Kings River Water Association (the "KRWA") respectfully submits the following comments on the Proposed Emergency Regulation for Measuring and Reporting.

Background

The KRWA consists of 28 member units that collectively hold all of the pre- and post-1914 appropriative water rights (as well as a variety of other water rights) on the Kings River at and downstream of Pine Flat Dam. The KRWA also administers the Kings River licenses issued by the Board on Applications 353, 360, 5640, 10979, 15231 and 16469. The Board has determined that those licenses render the Kings River fully appropriated at Pine Flat Dam. The only other water rights claimants on the Kings River below the dam are a small number of private parties who claim riparian rights and divert small amounts of water through private facilities.

The KRWA, acting as the Watermaster, allocates water between its members utilizing a settlement schedule that originates from the late 1800s and that was last modified in 1949. The schedule reflects

the water rights of each of the KRWA's members and allocates the full daily natural flow of the River under all conditions. That water is put to beneficial use in a roughly one million acre service area via 61 points of diversion and rediversion recognized in the above-referenced licenses.

Consistent with SB88 the KRWA respectfully requests an alternate compliance procedure as part of the proposed regulation, when existing measurement and recording systems provide sufficient information, the expense of complying with the new requirements is not reasonable in light of the benefits to be derived, or there are other circumstances that make compliance impractical – The KRWA has consistently utilized the most reliable, consistent and technically feasible measuring and recording devices for surface water diversions for many decades. Most are designed to U.S. Geological Survey or U.S. Bureau of Reclamation standards and specifications. The devices we utilize provide continuous analog recordings of diversions that are collected weekly and reported daily for water accounting purposes. From these records instantaneous flows can be determined as well. This system is respected by the member units and has resulted in no questions as to inequities of allocations of water since implementation. This data has been collected since the early 1920's and reported, as required, to the State and member units.

Our measurement and reporting system coupled with communication with the SWRCB staff, was sufficient to allow the local Tulare Lake Basin Watermasters(including the KRWA) to regulate water supplies in lieu of curtailments for the 2014 and 2015 drought years as reported in the Emergency Regulation Digest and Appendices for Title 23, Division 3, Chapter 2, Article 24 Section 879 dated March 11, 2015.

General river and storage conditions are available and online for the system through the U.S. Army Corps of Engineers and the CA Department of Water Resources website CDEC. This data is typically available daily, and for some parameters hourly, weekly, monthly and annually.

Converting the current, proven and efficient analog system to digital, as contemplated in the draft regulation, would require about $3 million and approximately 3 years to implement, due to the relatively few experts available and demand created that will be created by the proposed regulation. The result would be no net gain in the timeliness, quality and quantity of data. And, as the SWRCB is well aware, this expense comes at a time when the drought impacts are straining local ratepayers.

The following are draft regulation specific comments:

§ 929. Reports of Licensee.

(b) The requirement to file the annual report within three months of the close of the twelve month reporting period could be problematic even if using provisional data. Having to amend the annual report of licensee within six months when final data is available causes additional work and potential confusion, and it is unclear what additional value is gained by submitting provisional data that will likely change when the water year is already over. It is

recommended that the current timeline of submitting the annual report within six months of the close of the twelve month reporting period be retained.

(c)(5) The diversion quantities contained in the KRWA licenses were derived from a monthly average rate of diversion, rather than a maximum daily rate of diversion. It is recommended that the following addition be made to this paragraph: *" The maximum rate of diversion,* **or the rate of diversion as utilized in the license**, *achieved from each point of diversion . . ."*

(c)(6) Reservoir storage operations are often controlled by a third party that have their own methods of measurement and certification. In the case of the KRWA licenses, Pine Flat Reservoir operations are monitored and controlled by the U.S. Army Corps, and the operations of Wishon and Courtright Reservoirs are monitored and controlled by Pacific Gas & Electric (PG&E) Company. KRWA relies on reservoir data collected by these third parties, and has no ability to separately monitor collection of the information or to impose accuracy and certification requirements. It is recommended that this paragraph be revised to include the recognition that data collected by third parties is acceptable.

§ 932. Applicability.

(c)(1) Having a deadline for the installation and certification of measuring devices or method by July 1, 2016 for a water right holder that diverts 1,000 or more acre-feet per year will be problematic if not already measured. If a new measurement station must be constructed for diversions or if significant modifications must be made to an existing measurement station, permitting from the appropriate regulatory agencies and compliance with CEQA is likely required, which will be difficult, if not impossible, to obtain by July 1, 2016. Permitting could potentially include California Department of Fish and Wildlife Section 1600 Streambed Alteration Permit, an Army Corps Section 404 Waters of the United States Permit, a Regional Water Quality Control Board Section 401 Clean Water Act and/or a Central Valley Flood Protection Board Encroachment Permit. Once permits are obtained, water conditions and permit conditions must be favorable to allow construction and equipment must be available. Combined this could be 5 years or more in duration. In addition, measurement equipment may not be readily available.

§ 933. Measuring Device Requirements.

(b)(1) Data recording as presented in the draft emergency regulation appears to only allow electronic type devices and precludes some tried and true recording measurement methods that have proven to be extremely reliable and consistent such as a Stevens Recorder with a paper chart that continuously records data but does not automatically upload the data to a computer program.

(b)(2)(B) Why would telemetered diversion data need to be available on a public website? The only people that might need to see that data is State Board staff that may need real-time data for decision making, not the public. In addition, diversion data would only be useful for certain river or stream systems when the SWRCB believes that they must step in to implement curtailments. Providing telemetered diversion data on the Kings River for

instance, or any of the southern river systems in the San Joaquin Valley, would come at a extremely high cost without improvement of accuracy or quality of data. It is recommended that the Deputy Director identify which water right holders need to submit telemetered data, and this paragraph be modified to include the following: "*By January 1, 2020*, as directed by the Deputy Director, *a water right holder who diverts . . .*"

(b)(2)(C) As previously noted, reservoir operations are often controlled by third parties, and the water rights holder must rely on reservoir data collected by these third parties and has no ability to separately monitor collection of storage information. It is recommended that this paragraph be revised to include the recognition that data collected by third parties is acceptable.

(l)(1) If a measuring device is determined to be inadequate, this paragraph requires the water rights holder to notify the Board and take "*appropriate, timely corrective action to comply with the accuracy requirements*". It must be noted that for diversions requiring any construction or modification that permits may be required from the appropriate regulatory agencies and compliance with CEQA/NEPA, along with favorable water conditions to allow construction to occur. Defining a date that is "appropriate and timely" for corrective action may be very difficult for the water rights holder to determine.

§ 934. Measurement Method.

(a)(1)(B) For large diversions, providing all assessor parcel numbers may be impractical. Consider excluding the assessor parcel number requirement for diversions serving areas larger than 1,000 acres.

(d) Regarding certification of measurement method accuracy as applied to diversion of water for agricultural use, this described methodology is very specific and may not be applicable in some geographic areas. It is recommended that a provision be included that allows the Deputy Director to identify alternative approaches.

(e) Shared measurement point described methodology is also very specific and may not be applicable in some geographic areas. It is recommended that a provision be included that allows the Deputy Director to identify alternative approaches to provide for flexibility.

§ 935. Alternative Compliance for a Measuring Device or Measurement Method Requirement. The current draft of this section appears to provide flexibility in the regulation. We encourage the Board to continue in that regard.

§ 936. Request for Additional Time. Current language in the draft emergency regulation states that additional time granted by the Deputy Director shall not exceed 24 months, combined, under all extension requests. As previously mentioned, permitting for diversions from natural water bodies can be time consuming with permits potentially including a CDFW 1600, ACOE 404, RWQCB 401, Central Valley Flood Protection Board encroachment and CEQA/NEPA. Once permits and environmental compliance are obtained, water conditions and permit conditions must be favorable to allow construction to occur, and equipment

must be available. It is recommended that a range of up to 48-60 months be allowed for any extension request, with periodic status updates provided to the Board.

§ 937. Report of Water Measuring Device. Does each device have to be submitted individually, or can a group be submitted at one time? In the instance of the Kings River there are 61 points of diversion or rediversion where measuring devices might need to be submitted.

Thank you for considering our comments. We look forward to working with the SWRCB. If you have any further questions or comments please contact me.

Sincerely,

Steven Haugen, PE
Watermaster

Cc: Felicia Marcus, Chairman, State Water Resources Control Board
DeeDee D'Adamo, Member, State Water Resources Control Board