United States Department of the Interior

FISH AND WILDLIFE SERVICE
911 NE 11th Avenue
Portland, Oregon 97232-4181

In Reply Refer to:
ABA-EN-WR

December 16, 2015

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

RE: Comment Letter - Emergency Draft Regulation for Measuring and Reporting the Diversion of Water

Dear Ms. Townsend:

Thank you for the opportunity to comment on the draft Proposed Emergency Regulations for Measuring and Reporting, dated December 7, 2015. The U.S. Fish and Wildlife Service (Service) recognizes and fully supports California's need for improved water measurement and diversion information. However, we are concerned that several provisions are either unnecessary or burdensome for the agency. The recommended changes below will make it more feasible for the Service to comply with the proposed regulations.

In regards to §931(g) and §934 (a)(1), the Service finds the definition of "Qualified Individual" in Chapter 2.8, §931 (g) of the Proposed Emergency Regulations to be too restrictive and burdensome. The Service's Water Resources Branch (Branch) of the Division of Engineering, located in the Regional Office in Portland, Oregon, is responsible for water measurement and reporting for national wildlife refuges and the national fish hatcheries in the states of California, Nevada, Oregon, Washington, Idaho, and Pacific Islands. The Branch has a staff of eight hydrologists under the leadership of a Ph.D. supervisory hydrologist. All of these professionals are highly skilled and trained in the area of water monitoring and water measurement methods and are employed in that capacity. Four of the eight Branch employees were formerly employed by the U.S. Geological Survey (USGS) as hydrologists or hydrologic technicians. A fifth employee in the Branch is an Oregon-registered professional engineer and licensed surveyor and was previously employed as the manager of the Hydrographics/Measurement and Reporting Section of the Oregon Water Resources Department.

In our work, we routinely use water measurement equipment and install water measurement devices to record water velocities, water elevations, and water volumes, and compute stream discharge, reservoir and wetland storage, and groundwater pumping volumes. We regularly evaluate and establish monitoring sites and design monitoring networks as part of our work at

refuges and hatcheries. It is the practice of the branch to follow USGS standards and protocols for all of our water monitoring. The monitoring data that we collect are used to meet state water monitoring and reporting requirements for water rights as well as to address resource management and information needs.

The staff of the Branch are very capable of doing what is required under the proposed regulations and are employed in that capacity. Our professional hydrologists are just as familiar and competent with water monitoring devices and methods as a California-registered professional engineer. Furthermore, if we need engineering consultation, we can seek the advice of an Oregon-registered professional engineer employed within the Branch or other registered professional engineers within the Services' Division of Engineering. Therefore, the Service recommends adding the following definition of "qualified individual" to Chapter 2.8, §931 (g):

(3) For any federally managed diversion, a hydrologist or professional engineer experienced and trained in water measurement, who is employed by a federal agency in that capacity.

In addition, the Service recommends that federal water resources measurement experts be allowed to prepare requests for Approval of Measurement Method for federal projects in Chapter 2.8, §934 (a)(1):

(a)(1) Form and Content. A Request for Approval of Measurement Method shall be prepared by a California-registered Professional Engineer, or in the case of a federal project, a hydrologist or professional engineer experienced and trained in water measurement who is employed by a federal agency in that capacity. The request . . .

In regards to §932(c), the deadlines for the installation and certification of measuring devices or methods based on diversion rate are burdensome and unrealistic for agencies that oversee a large number of water rights. The Service currently is responsible for reporting water diversions for 32 appropriative water rights and 17 riparian and pre-1914 water rights at national wildlife refuges and national fish hatcheries within California. Many of these diversions are greater than 1000 acre-feet annually and, as such, would fall under the proposed July 1, 2016 deadline for installation and certification of measuring devices or methods. The Branch is continually working with refuge and hatchery staff to improve reporting accuracy, but 6 months' time is insufficient for us to bring all of these facilities into compliance with the new regulations. The Service will likely need at least two years to meet this goal.

In regards to §933(b)(B), the Service also fully supports having real-time data available on a public website for diversions greater than 10,000 acre-feet per year. However, the Service questions the need for this in the case of non-consumptive diversions, where the water is diverted and returned to the river or stream immediately. The Service has large volume (> 10,000 acre-feet annually), non-consumptive diversions at Coleman NFH. We see the value in reporting large volume diversions but we do not see the need for real-time data in the case of non-consumptive rights. The Service recommends an exemption process for real-time reporting for non-consumptive rights where water is returned to the source within a reasonable distance of the diversion.

In regards to §933(b)(d), it is unclear what is meant by "non-laboratory certification." The Service recommends that an example be provided. For example, in practice, the accuracy of measurements are defined by a combination of accuracy of water elevation measurement (which is subject to both laboratory and field error), error rate of state-discharge rating curves, and accuracy of discharge measurements used to establish such curves, among other factors. Therefore, the Service recommends including language that explains what is meant by "non-laboratory certification."

Sincerely,

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