

**NOTICE PUBLICATION/REGULATIONS SUBMISSION**

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-</b>	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	

AGENCY WITH RULEMAKING AUTHORITY State Water Resources Control Board	AGENCY FILE NUMBER (if any) Resolution No. 2016-0005
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**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE Measurement & Reporting on the Diversion of Water	TITLE(S) 23	FIRST SECTION AFFECTED 907	2. REQUESTED PUBLICATION DATE March 1, 2016
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON Nathan Weaver	TELEPHONE NUMBER (916) 341-5184	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S) Measuring and Reporting Water Diversions	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 908, 911, 912, 916, 917, 922, 924, 931, 931.5, 932, 933, 934, 935, 936, 937, 938
	AMEND 907, 910, 915, 920, 925, 929
TITLE(S) 23	REPEAL

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input checked="" type="checkbox"/> Other (Specify) <u>Wat. Code § 1841, subd. (b)</u>	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))  Effective on filing with Secretary of State  \$100 Changes Without Regulatory Effect  Effective other (Specify) \_\_\_\_\_

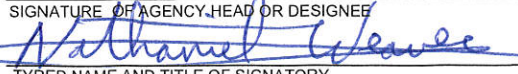
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

Department of Finance (Form STD. 399) (SAM §6660)  Fair Political Practices Commission  State Fire Marshal

Other (Specify) \_\_\_\_\_

7. CONTACT PERSON Nathan Weaver	TELEPHONE NUMBER (916) 341-5184	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) nathan.weaver@waterboards.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 3/1/16
TYPED NAME AND TITLE OF SIGNATORY Nathaniel Weaver, Attorney	

For use by Office of Administrative Law (OAL) only

## Weaver, Nathan@Waterboards

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**From:** Howard, Tom@Waterboards  
**Sent:** Friday, February 05, 2016 8:28 AM  
**To:** Evoy, Barbara@Waterboards; Weaver, Nathan@Waterboards  
**Cc:** George, Michael@Waterboards; O'Hagan, John@Waterboards; Mrowka, Kathy@Waterboards; Wells, Paul@Waterboards  
**Subject:** RE: OAL Designee for Measurement Regs.

Yes as well.

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**From:** Evoy, Barbara@Waterboards  
**Sent:** Thursday, February 04, 2016 5:29 PM  
**To:** Weaver, Nathan@Waterboards; Howard, Tom@Waterboards  
**Cc:** George, Michael@Waterboards; O'Hagan, John@Waterboards; Mrowka, Kathy@Waterboards; Wells, Paul@Waterboards  
**Subject:** RE: OAL Designee for Measurement Regs.

Wow. Kathy is DD – do I get a raise then? ☺

Yes, Nathan I am perfectly happy with you being the designee...

DD Barbara

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**From:** Weaver, Nathan@Waterboards  
**Sent:** Thursday, February 04, 2016 4:58 PM  
**To:** Howard, Tom@Waterboards; Evoy, Barbara@Waterboards  
**Cc:** George, Michael@Waterboards; O'Hagan, John@Waterboards; Mrowka, Kathy@Waterboards; Wells, Paul@Waterboards  
**Subject:** OAL Designee for Measurement Regs.

Hi Tom and Kathy,

Pursuant to paragraph 3 of Resolution No. 2016-0005, the Executive Director and the Deputy Director of the Division of Water Rights may make minor changes to the measurement regulations for clarity and consistency during the OAL process. The resolution specifically provides, in relevant part, as follows:

If, during the approval process, State Water Board staff, the State Water Board, or OAL determines that minor corrections to the language of the regulation or supporting documentation are needed for clarity or consistency, the State Water Board Executive Director, the Deputy Director for the Division of Water Rights or their designees may make such changes;

May I be your designee?

Best,

Nathan Weaver  
Staff Counsel  
Office of Chief Counsel  
State Water Resources Control Board  
1001 I Street

P.O. Box 100  
Sacramento, CA 95812  
Email: [Nathan.Weaver@waterboards.ca.gov](mailto:Nathan.Weaver@waterboards.ca.gov)  
Phone: (916) 341-5184

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**STATE WATER RESOURCES CONTROL BOARD  
RESOLUTION NO. 2016-0005**

TO ADOPT A DROUGHT EMERGENCY REGULATION FOR  
MEASURING AND REPORTING WATER DIVERSIONS

WHEREAS:

1. Senate Bill 88 (SB 88) was signed by Governor Brown on June 24, 2015. Sections 15 through 18 of SB 88 add measurement and reporting requirements for a substantial number of California's water diverters. The measurement requirements authorized under SB 88 could go into effect as early as January 1, 2016. The State Water Board is adopting a regulation to implement these new provisions.
2. The legislation authorizes the State Water Board to adopt a regulation requiring measurement for water right holders and claimants who divert 10 acre-feet of water or more per year. The measurement requirement would apply to approximately 12,000 water right holders and claimants. The legislation also requires annual reporting from statement holders claiming riparian and pre-1914 appropriative rights and persons authorized to appropriate water under a permit, license, registration (small domestic, small irrigation, or livestock stockpond), or certificate for stockpond use.
3. The legislation authorizes the State Water Board to adopt an initial regulation as an emergency regulation that shall remain in effect until revised by the State Water Board. The Board's adoption of the initial emergency regulation is exempt from the California Environmental Quality Act (CEQA).
4. On October 6, 2015, the State Water Board held an initial stakeholder meeting. The meeting brought together a small group of over 20 experts in water rights and water resources management to discuss key concepts that should be considered in the emergency regulation. On October 8, 2015, the State Water Board held a stakeholder meeting in Stockton to discuss how Delta specific issues may be affected by additional measurement and reporting requirements. On October 16, 2015, the State Water Board held a technical workshop with technical experts primarily from federal and state agencies to discuss issues related to regulating, installing, operating, and maintaining water measurement devices or methods. Five additional public outreach meetings were conducted throughout California during the first two weeks of November. The draft regulation reflects stakeholder input.
5. On December 17, 2015, the State Water Board held a workshop on the draft regulation. The proposed regulation was revised based on the workshop presentations and comment letters.
6. Better information quantifying the size and timing of diversions is essential to effectively manage California's water rights system in the 21st century.

7. Information on the largest diverters is the most essential information needed for purposes of effectively managing the water rights system. Moreover, data collection is needed on a more frequent basis for larger diverters in order to accurately model and assess the water supply and water demand situation for purposes of managing the water right priority system. To reflect the varying needs for information based on diversion size, the regulation implements a tiered system, with larger diverters implementing measurement in 2016, mid-size diverters in 2017 and small-size diverters in 2018. The regulation also requires measurement accuracy that is tiered, with accuracy requirements of  $\pm 10$  percent for larger diversions, and  $\pm 15$  percent for smaller diversions. Similarly, the frequency of measurement varies from hourly to monthly based upon diversion size.
8. The tiered system reflects that it is appropriate to simplify compliance with the new regulation for the smallest size class of diverters.
9. The regulation has been structured to eliminate the burden of measurement for the smallest diverters, by establishing that measurement is not required for diversions of 10 acre-feet or less. This eliminates measurement requirements by diverters under small domestic and stockpond registrations and stockpond certificates, with minor exceptions. These small diverters are required to report their diversions annually to the Board.
10. Board staff have compared the California regulation to measurement regulations implemented in five western states: Oregon, Colorado, Washington, Utah and Arizona. The accuracy requirements in the California regulation compare favorably with the numeric accuracy requirements for Washington (10 percent accuracy) and Oregon (15 percent accuracy). Colorado, Utah and Arizona do not have numeric standards. Colorado, Washington and Oregon rely upon watermasters for measurement.
11. The regulation encourages cost savings through combined measurement by multiple diverters that share diversion facilities. Cost savings may also be achieved by utilizing a shared measurement device, and calculating diversions along shared ditch systems.
12. The regulation reflects the diversity in water diversion practices throughout the state, and provides an option for alternative compliance where measurement is not feasible, would be unreasonably expensive, would unreasonably affect public trust uses, or would result in the waste or unreasonable use of water.
13. The regulation also reflects that it may be appropriate for the Board to change the measurement standard from greater than 10 acre-feet to a higher standard, under certain circumstances.
14. To evaluate the effectiveness of the regulation, Board staff will provide a preliminary report during a September 2016 Board meeting on the following components of the regulation: alternative compliance, measurement method, telemetry, stockponds and the cost of implementation including operation and maintenance costs.
15. Pursuant to Water Code section 7, the State Water Board is authorized to delegate authority to the Division of Water Rights Deputy Director and Delta Watermaster. The State Water Board has delegated authority to the Deputy Director for the Division of Water Rights and the Delta Watermaster; and

THEREFORE BE IT RESOLVED THAT:

1. The State Water Board amends, modifies, or adds California Code of Regulations, title 23, sections 907, 908, 910, 911, 912, 915, 916, 917, 920, 921, 922, 924, 925, 929, 930, 931, 931.5, 932, 933, 934, 935, 936, 937, and 938 as appended to this resolution as an emergency regulation;
2. The State Water Board staff will submit the regulation to the Office of Administrative Law (OAL) for final approval;
3. If, during the approval process, State Water Board staff, the State Water Board, or OAL determines that minor corrections to the language of the regulation or supporting documentation are needed for clarity or consistency, the State Water Board Executive Director, the Deputy Director for the Division of Water Rights or their designees may make such changes;

**CERTIFICATION**


The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on January 19, 2016.

AYE: Chair Felicia Marcus  
Vice Chair Frances Spivy-Weber  
Board Member Tam M. Doduc  
Board Member Steven Moore  
Board Member Dorene D'Adamo

NAY: None

ABSENT: None

ABSTAIN: None

  
\_\_\_\_\_  
Jeanine Townsend  
Clerk to the Board

# ADOPTED TEXT OF EMERGENCY REGULATION

## California Code of Regulations

### Title 23. Waters

#### Division 3. State Water Resources Control Board and Regional Water Quality Control Boards

#### CH 2.7 WATER DIVERSION AND USE REPORTS

§ 907. **Definitions.** The following definitions apply to the terms as they are used in this chapter.

(a) “Board” ~~when used in this chapter~~ means the State Water Resources Control Board.

(b) “Board’s website” means www.waterboards.ca.gov.

(c) “Diverter” means:

(1) Any person authorized to divert water under a permit or license; or

(2) Any person required under Water Code, Division 2, Part 5.1 to file a Statement of Water Diversions and Use; or

(3) Any person authorized to divert under a registration or certificate; or

(4) To the extent authorized by federal law, the federal government for rights claimed under permits, licenses, registrations, certificates, statements of water diversion and use, and non-reserved and reserved rights on file with the board.

(d) “Reports” ~~when used in this chapter~~ refers to the following documents:

(1) Supplemental Statement of Water Diversion and Use Forms; ~~Ppursuant to Water Code section 5104, supplemental statements of water diversion and use shall be filed at three-year intervals, prior to July 1 of the year succeeding the end of each three-year interval.~~

(2) Reports of Permittee and Licensee; ~~Ppursuant to sections 847 925 and 929 of this title, prior to issuance of license, annual progress reports shall be filed promptly by the permittee upon forms provided by the board. After issuance of a license, reports shall be made when requested by the board upon forms provided by the board.~~

(3) Reports of Registration and Certificate Holders pursuant to section 924 of this title.

(34) Notices of Extraction and Diversion of Water; ~~Ppursuant to Part 5 of Division 2 of the Water Code, eEach person in the counties of Riverside, San Bernardino, Los Angeles and Ventura who, after 1959, extracts ground water in excess of 25 acre-feet in any year shall file with the board, within six months of the succeeding calendar year, a “Notice of Extraction and Diversion of Water” on a form provided by the board.~~

(45) Forms indicating a change of name, address or ownership.

**Note: Proposed additions to the California Code of Regulations are shown in underline. Proposed deletions are shown in strikethrough**

## ADOPTED TEXT OF EMERGENCY REGULATION

(e) “Twelve month reporting period” means a calendar year beginning January 1 and ending the succeeding December 31.

~~(e) “Website” when used in this chapter means [www.waterboards.ca.gov](http://www.waterboards.ca.gov).~~

Authority: Sections 348, subdivision (a), 1058, 1840, and 1841, Water Code.

Reference: Sections 1003.5, 1395, 1396, 1397, 4999, 5001, 5105 and 12261, Water Code.

### **§ 908. Compliance.**

Failure to meet the requirements of this chapter is a violation subject to civil liability of up to \$500 per day pursuant to Water Code section 1846.

Authority: Sections 348, subdivision (a), 1058, 1840, and 1841, Water Code.

Reference: Sections 348, subdivision (a), and 1846, Water Code.

### **§ 910. Purpose.**

The regulations contained in this chapter are adopted for the purpose of implementing and carrying out provisions of Chapter 2.7 of Division 1 of the Water Code and Parts 2, 5 and 5.1 of Division 2 of the Water Code. The regulations identify requirements for the mandatory electronic filing of reports on the board's ~~internet~~ website. Reports subject to mandatory electronic filing include: supplemental statements of water diversion and use, Water Right Progress Reports by Permittees, Reports of Licensees, Reports of Registration and Certificate Holders, Notices of Groundwater Extraction and Diversion, and reports filed by watermasters pursuant to Water Code section 5101, subdivisions (d) and (e).

Authority: Sections 348, subdivision (a), 1058, 1840, and 1841 Water Code.

Reference: Sections 348, subdivision (a), 5101, 5103, and 5104, Water Code.

### **§ 911. Construction.**

(a) To the extent authorized by federal law, this chapter applies to the federal government and any reports filed by the federal government for rights claimed under permits, licenses, registrations, statements of water diversion and use, stockpond certificates, and non-reserved and reserved rights on file with the board.

**Note: Proposed additions to the California Code of Regulations are shown in underline.  
Proposed deletions are shown in strikethrough**



## ADOPTED TEXT OF EMERGENCY REGULATION

(b) Nothing in this chapter shall be construed to limit or modify the board's authority to obtain information under any other lawful authority.

Authority cited: Sections 348, subdivision (a), 1058, 1840, and 1841, Water Code.

Reference: Sections 348, subdivision (a), 1846, 5101, 5103, and 5104, Water Code.

### **§ 912. No Conflicts with Other Reporting Requirements.**

(a) Any person with a water right identified in or subject to a statute, order, policy, regulation, decision, judgment or probationary designation of the board, a Regional Water Quality Control Board, or a court is responsible for meeting the terms and conditions of the statute, order, policy, regulation, decision or judgment and the requirements of this chapter. If there is any conflict or inconsistency between the water use reporting requirements subject to the statute, order, policy, regulation, decision, judgment or probationary designation and the requirements of this chapter, the more stringent requirement or requirements shall control in each instance.

(b) A permit, license, registration, or certificate holder is responsible for meeting the conditions of the permit, license, registration, or certificate and the requirements of this chapter. If there is any conflict or inconsistency between the permit, license, or registration condition for water use reporting and the requirements of this chapter, the more stringent requirement or requirements shall control in each instance.

Authority: Sections 348, subdivision (a), 1058, 1840, and 1841, Water Code.

Reference: Sections 348, subdivision (a), and 1846, Water Code.

### **§ 915. Changes in Name, Address or Ownership.**

Pursuant to sections 691, 830, 831, and 1074 of this title, changes in name, address or ownership shall be immediately reported to the board electronically using a change of name, address or ownership form or the supplemental statement of change form available on the board's website.

Authority cited: Sections 348, subdivision (a), 1058, 1840, and 1841~~1058~~, Water Code.

Reference: Section 348, subdivision (a), Water Code.

### **§ 916. Request for Additional Time**

A diverter may submit a request for additional time to comply with the provisions of this chapter on a form available on the board's website. The Deputy Director for the Division of Water Rights may grant such requests upon a showing of good cause.

Authority cited: Sections 348, subdivision (a), 1058, 1840, and 1841, Water Code.

Reference: Section 348, subdivision (a), Water Code.

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# ADOPTED TEXT OF EMERGENCY REGULATION

## **§ 917. Reporting – Insufficient Flows to Support All Diversions.**

(a) When flows or projected available supplies in a watershed or subwatershed are sufficient to support some but not all projected diversion demand, the Deputy Director for the Division of Water Rights may require water diverters located within the watershed or subwatershed to electronically submit monthly or more frequent reports of water diversion.

(b) Reports of water diversion shall be submitted in accordance with a schedule approved by the Deputy Director for the Division of Water Rights. The schedule may require monthly, daily, or more frequent reporting. In determining the frequency of reporting, the Deputy Director for the Division of Water Rights shall not exceed the frequency of recording required under section 933, subdivision (b)(1), of this title.

(c) Water right diversion demand projections made under this section may be based on reported diversion and use data, including but not limited to data submitted with Progress Reports by Permittees, Reports of Licensees, Reports of Registration and Certificate Holders, Supplemental Statements of Water Diversion and Use, and reports filed by watermasters pursuant to Water Code section 5101, subdivisions (d) and (e).

(d) Water availability projections made under this section may be based on:

- (1) Projections from the Department of Water Resources or its successor;
- (2) Projections from the National Weather Service, California Nevada River Forecast Center, and similar sources;
- (3) Stream gage data; and
- (4) Other data the Deputy Director for the Division of Water Rights determines is appropriate, given data availability, data reliability, and staff resources.

(e) The failure to electronically submit diversion reports requested in accordance with the applicable schedule approved by the Deputy Director for the Division of Water Rights, even when no diversions are made, is a violation subject to civil liability of up to \$500 per day pursuant to Water Code section 1846.

Authority: Sections 348, subdivision (a), 1058, 1840, and 1841, Water Code.

Reference: Sections 348, subdivision (a), 1846, 5101, 5103, and 5104, Water Code.

## **§ 920. Supplemental Statements of Water Diversion and Use.**

(a) Supplemental statements of water diversion and use shall be filed on forms available at the board's website. A supplemental statement shall be filed annually by July 1 after the close of the twelve month reporting period ~~triennially~~, or promptly if there is a change in the name or address of the person diverting water, or more frequently as directed under section 917. Notice to the board of changes in name, address or ownership must also be reported electronically on the

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## ADOPTED TEXT OF EMERGENCY REGULATION

~~change of name, address or ownership~~ supplemental statement of change form on the board's website. Filing the ~~change of name, address or ownership~~ supplemental statement of change form does not eliminate the requirement to file a supplemental statement of water diversion and use.

(b) After the board has received an initial statement of water diversion and use as required by Water Code section 5101, the board will provide a user name and password to the person required to file supplemental statements of water diversion and use. The electronic supplemental statement form will be pre-populated with current ownership information made available to the board. Failure to receive a notice providing a user name and password does not exempt the filer from the requirement to file a supplemental statement of ~~change~~ water diversion and use. Persons required to file a supplemental statement should notify the board prior to the ~~annual~~ triennial reporting date to request a user name and password if the board has not already provided such information.

(c) The completed supplemental statement form shall include the following information:

(1) ~~Changes to~~ The name(s), address(es), or ~~and other~~ ownership information for the diverter record with the board;

(2) The type of water right being claimed for the water diverted under the statement;

(3) The maximum rate of diversion achieved at any time during each month ~~of the year~~, if available;

(4) The amount of water directly diverted and collected to storage in each month and the total annual amount diverted. Each month must contain an entry. If no diversion occurred, a "0" should be entered;

(5) A description of the diversion works, including type of diversion and capacity of direct diversion and/or storage facility.

(6) Information on the device or method used to calculate the amount of water diverted.

~~(5) On or after January 1, 2012, the~~ (7) The amount of water beneficially used in each month and the total annual amount beneficially used. Each month must contain an entry. If no beneficial use occurred in a given month, a "0" should be entered;

~~(68) The purpose(s) for which the water was diverted and used;~~ Use information to be provided includes:

(A) irrigation, including crop type and acreage;

(B) frost protection, including acres covered;

(C) heat control, including acres covered;

(D) industrial, including type of activity;

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## ADOPTED TEXT OF EMERGENCY REGULATION

(E) stock watering, including number and type of animals;

(F) municipal, including approximate population served, and seven digit public water system number or other identifier;

(G) domestic, including number of persons served, lawn or garden area, and seven digit public water system number or other identifier, if applicable;

(H) power generation, including installed capacity in kilowatts, megawatts or horsepower;

(I) recreational, including boating, fishing or other water sports;

(J) any additional uses not named above, including environmental use.

~~(79)~~ Any changes in the other information contained in the preceding statement;

(10) Report of water transfers during the twelve month reporting period including transfer dates and approving agency;

(11) Report of transferred contract water including contract agency, contract number, source, amount of contract water in acre-feet and projected water use in the upcoming year.

(d) Water diversion measurement, either direct diversion or diversion to storage including the type of device(s) used, additional technology used, who installed the device(s) and any alternative method(s) used in measuring the water diversion.

~~(d)~~(e) If a substitute or alternative water supply, such as groundwater, contract water, or recycled water, is being used in lieu of surface water to be reported under a statement, the report should indicate the source and amount of substitute or alternative water used and the amount of surface water offset, on a monthly basis.

~~(e)~~(f) If the use of an alternative supply of water or any water conservation efforts have resulted in a cessation or reduction in use, the report should include a description of the conservation efforts employed and indicate the extent and monthly amount of the reduction in water use due to these water conservation efforts.

Authority: Sections 348, subdivision (a), 1058, 1840, and ~~1058~~1841, Water Code.

Reference: Sections 348, subdivision (a), 1010, 1011, 1011.5, 5100, 5101, 5103 and 5104, Water Code.

### **§ 921. Watermaster Reports Filed with the Board.**

(a) Watermasters that elect to file annual reports with the board shall file the reports in an electronic format acceptable to the board.

(b) Reports filed with the board by a watermaster pursuant to Water Code section 5101(d) shall include the following information:

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## ADOPTED TEXT OF EMERGENCY REGULATION

- (1) Identity of the person(s) diverting water
- (2) Description of the general purposes of use
- (3) Description of the place of use
- (4) The type of use
- (5) The quantity of water diverted from each source.

(c) Reports filed with the board by a watermaster pursuant to Water Code section 5101(e) shall include the following information:

- (1) Identity of the person(s) diverting water
- (2) Description of the place of use
- (3) The quantity of water diverted from each source.

(d) Reports filed with the board by a watermaster pursuant to Water Code section 5001 shall include the following information:

- (1) Identity of the persons who have extracted or diverted water
- (2) Description of the general place of use
- (3) Quantity of water extracted or diverted from each source.

(e) Additional reporting criteria may be included if such criteria are included pursuant to an agreement between the board and the watermaster. Additional requirements may include: the diverter's mailing address, assessors parcel number(s), tract number, monthly diversion amounts, and total diversion amounts.

Authority: Sections 348, subdivision (a), 1058, Water Code.

Reference: Sections 348, subdivision (a), 5001, 5101(d), 5101(e), Water Code.

### **§ 922. Diverters in a Watermaster Service Area.**

(a) Pursuant to section 5101 of the Water Code, any person who diverts water in a watermaster service area that is not included in reports filed by the watermaster with the board or a court shall report such diversions by filing a Supplemental Statement of Water Diversion and Use pursuant to section 920 of this chapter.

(b) Any person who diverts pursuant to a permit, license, registration, or certificate in a watermaster service area shall file reports pursuant to sections 924, 925 and 929 of this chapter, as applicable, even if the diversion is reported by the watermaster.

Authority: Sections 348, subdivision (a), 1058, 1840, 1841, and 5103, Water Code.

Reference: Sections 348, subdivision (a) 5101(d) and 5101(e), Water Code.

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Proposed deletions are shown in strikethrough**

# ADOPTED TEXT OF EMERGENCY REGULATION

## **§ 924. Water Use Reports of Registration and Certificate Holders.**

(a) Reports of registration and certificate holders shall be filed annually by April 1 after the close of the twelve month reporting period. Provisional streamflow data may be used in preparing the water use report if final streamflow data are not available by the reporting deadline. If provisional streamflow data are used in the water use report, an amended report based on final streamflow data shall be filed within one month of the date the final streamflow data is available. The board may rely upon any report, including a report based on provisional data, until and unless a revised report is filed. The report shall be filed electronically on a form available at the board's website. Compliance with the requirement to file a water use report is a condition of every registration or certificate. A failure to file a report under this section is a violation of registration and certificate terms, as applicable.

(b) The annual reports shall include the following information:

(1) A statement of compliance or of non-compliance with the terms and conditions of the registration or certificate;

(2) The purpose(s) for which water is diverted and used;

(3) The quantity of water diverted from each point of diversion by month (or shorter timeframe if otherwise required); and

(4) For direct diversion, the maximum rate of diversion achieved at any time during each month, if available.

(c) The first reports of registration and certificate holders shall be filed for the diversion and use of water made during calendar year 2016. The report for 2016 shall be filed prior to April 1, 2017.

(d) The requirement to file annual reports of registration and certificate holders is in addition to and does not modify the five year renewal period for registrations under section 1228.5 of the Water Code.

Authority: Sections 348, subdivision (a), 1058, 1228.6, 1840, and 1841, Water Code.

Reference: Sections 348, subdivision (a), 1226.1, 1226.2, 1228.2, 1228.3, and 1846, Water Code.

## **§ 925. Progress Reports by Permittee.**

(a) As specified in section 847 of this title, water right permit holders are required to file annual progress reports. Section 846 of this title provides that permittees may also be required to submit a written statement of the quantities of water beneficially used. Annual reports required under this section are in addition to any specific reporting requirements in a water right permit.

(b) Annual progress reports by permittees shall be filed by April 1 after the close of the twelve month reporting period ~~no later than July of the next year succeeding the year of diversion on~~

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## ADOPTED TEXT OF EMERGENCY REGULATION

forms available at the board's website. Provisional data and information may be used in the progress report if final data are not available by the reporting deadline. If provisional streamflow data are used in the water use report, an amended report based on final streamflow data shall be filed within one month of the date the final streamflow data is available. The board may rely upon any report, including a report based on provisional data, until and unless a revised report is filed. A failure to file a progress report is a violation of permit terms.

(c) The annual reports shall include the following information:

(1) A statement affirming compliance or non-compliance with permit terms and conditions;

(2) The construction status of the permitted project and status of current water use;

(3) The purpose(s) for which water is diverted and used. Use information to be provided includes:

(A) irrigation, including crop type and acreage;

(B) frost protection, including acres covered;

(C) heat control, including acres covered;

(D) industrial, including type of activity;

(E) stock watering, including number and type of animals;

(F) municipal, including approximate population served, and seven digit public water system number or other identifier;

(G) domestic, including number of persons served, lawn or garden area, etc., and seven digit public water system number or other identifier, if applicable;

(H) power generation, including installed capacity in kilowatts, megawatts or horsepower;

(I) recreational, including boating, fishing or other water sports;

(J) additional uses not named above, including environmental use;-

(4) Information on the device or method used to calculate the amount of water diverted.

(45) The amount of water taken from each point of diversion in each month (or shorter period if otherwise required) from the source, including amount directly diverted, and the amount collected to storage, and the total annual amount of water diverted during the twelve month reporting period. Each month must contain an entry. If no diversion occurred in a given month, a "0" should be entered;

(56) The maximum rate of diversion achieved at any time during each month (or shorter period if otherwise required), if available ~~of the year, if available~~;

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## ADOPTED TEXT OF EMERGENCY REGULATION

~~(67) For permits, the annual report shall also include the measurement data required to be collected in section 933 of this chapter. For permits that authorize collection of water to storage, permittees shall also report the maximum and minimum water surface elevations for each reservoir.~~

(d) If a substitute or alternative water supply, such as groundwater, contract water, or recycled water, is being used in lieu of surface water that is required to be reported under this ~~section report~~, the report should indicate the source and amount of substitute or alternative water used and the amount of surface water offset on a monthly basis.

(e) If ~~the use of an alternative supply of water or any~~ water conservation efforts have resulted in a cessation or reduction in use, the report should include a description of the conservation efforts employed and indicate the extent and monthly amount of the reduction in water use due to these water conservation efforts.

Authority: Sections 348, subdivision (a), 1058, 1840, and ~~1841~~1058, Water Code.

Reference: Sections 348, subdivision (a), 1010, 1011, ~~and~~ 1011.5, and 1846, Water Code.

### § 929. Reports of Licensee.

(a) As specified in section 847 of this title, water rights license holders are required to file reports when requested by the board. Annual reports required under this section are in addition to any specific reporting requirements in a water right license.

(b) Reports of licensee shall be filed annually by April 1 after the close of the twelve month reporting period and not later than July of the next year succeeding the year of diversion on forms available at the board's website. Provisional data and information may be used in the report of licensee if final data are not available by the reporting deadline. If provisional streamflow data are used in the water use report, an amended report based on final streamflow data shall be filed within one month of the date the final streamflow data is available. The board may rely upon any report, including a report based on provisional data, until and unless a revised report is filed. A failure to file a licensee report is a violation of license terms.

(c) The annual reports shall include the following information:

(1) A statement affirming compliance or non-compliance with license terms and conditions;

(2) The amount of water diverted;

(3) The purpose(s) for which water is diverted and used. Use information to be provided includes:

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## ADOPTED TEXT OF EMERGENCY REGULATION

- (A) irrigation, including crop type and acreage;
- (B) frost protection, including acres covered;
- (C) heat control, including acres covered;
- (D) industrial, including type of activity;
- (E) stock watering, including number and type(s) of animals;
- (F) municipal, including approximate population served, and seven digit public water system number or other identifier;
- (G) domestic, including number of persons served, lawn or garden area, etc., and seven digit public water system number or other identifier, if applicable;
- (H) power generation, including installed capacity in kilowatts, megawatts or horsepower;
- (I) recreational, including boating, fishing or other water sports;
- (J) additional uses not named above, including environmental use.

(4) Information on the device or method used to calculate the amount of water diverted.

(45) The amount of water taken from the source from each point of diversion in each month (or shorter period if otherwise required), including direct diversion amount, and amount collected to storage, and the total annual-amount of water diverted during the twelve month reporting period. Each month must contain an entry. If no diversion occurred in a given month, a "0" should be entered.

(56) The maximum rate of diversion achieved at any time during each month (or shorter period if otherwise required), if available of the year, if available;

(67) For licenses, the annual report shall also include the measurement data required to be collected pursuant to section 933 of this chapter. For licenses that authorize collection of water to storage, licensees shall also report the maximum and minimum water surface elevations for each reservoir.

(d) If a substitute or alternative water supply, such as groundwater, contract water, or recycled water, is being used in lieu of surface water that is required to be reported under this report, the report should indicate the source and amount of substitute or alternative water used and the amount of surface water offset on a monthly basis.

(e) If ~~the use of an alternative supply of water or any~~ water conservation efforts have resulted in a cessation or reduction in use of surface water, the report should include a description of the conservation efforts employed and indicate the extent and monthly amount of the reduction in water use due to these water conservation efforts.

Authority: Sections 348, subdivision (a), 1011, 1058, 1840, and ~~1841~~1058, Water Code.

Reference: Sections 348, subdivision (a), 1010, 1011, ~~and~~ 1011.5, and 1846, Water Code.

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## § 930. Notices of Extraction and Diversion.

(a) Annual notices of groundwater extraction and diversion required pursuant to Part 5 of Division 2 of the Water Code shall be submitted to the board electronically, within six months after the close of the succeeding calendar year, on the forms available at the board's website. A failure to file an annual notice of groundwater extraction and diversion is considered non-use of water.

(b) The report shall include the following information:

- (1) Type of diversion;
- (2) Amount of groundwater extracted during the calendar year;
- (3) Amount of surface water diverted and used, if applicable;
- (4) Method of measurement;
- (5) Supplemental information, if applicable.

(c) Electronic reporting of groundwater extraction and diversion does not apply to those persons reporting to local oversight agencies pursuant to section 5009 of the Water Code.

(d) As specified in Section 1070 of this title, a filing fee is required. The fee must be submitted separately from the electronic report. Filing is not complete until the board receives the filing fee.

(e) If the use of an alternative supply of water or any water conservation efforts have resulted in a cessation or reduction in use, the report should indicate the extent and amount of the reduction in water use due to water conservation efforts.

Authority: Sections 348, subdivision (a), 1058, and 1529, Water Code.

Reference: Sections 1005.1, 1005.2, 1005.3, 1005.4, 1011, 1011.5, 1530, 4999, 5000, 5001, 5002, 5003 and 5004, Water Code.

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# ADOPTED TEXT OF EMERGENCY REGULATION

## CH 2.8 MEASURING AND MONITORING

**§931 Definitions.** The following definitions apply to the terms as they are used in this Chapter.

(a) “Accuracy” means the measured volume relative to the actual volume, expressed as a percent, and determined at the same frequency as is specified for monitoring in section 933, subdivision (b) of this title. The percent shall be calculated as  $100 \times (\text{measured value} - \text{actual value}) / \text{actual value}$ .

(1) “Measured value” is the value indicated by the device or measurement method or determined through calculations, such as flow rate combined with duration of flow.

(2) “Actual value” is the value as determined through laboratory, design, or field testing protocols.

(b) “Board” means the State Water Resource Control Board.

(c) “Delta” means the Delta as defined in section 12220 of the Water Code and the Suisun Marsh as defined in section 29101 of the Public Resources Code.

(d) “Deputy director” means the Deputy Director for the Division of Water Rights.

(e) “Diverter” means:

(1) Any person authorized to divert water under a permit or license; or

(2) Any person required under Water Code, Division 2, Part 5.1 to file a Statement of Water Diversions and Use; or

(3) Any person authorized to divert under a registration; or

(4) To the extent authorized by federal law, the federal government for rights claimed under permits, licenses, registrations, statements of water diversion and use, and non-reserved and reserved rights on file with the board.

(f) “Diverter with multiple claimed rights” means a diverter who diverts water under more than one of the following: permits, licenses, registrations, stockpond certificates, or statements of water diversion and use.

(g) “Executive director” means the Executive Director of the board.

(h) “Measurement method” means a method capable of accounting for the rate of direct diversion, rate of collection to storage, and rate of withdrawal or release from storage where the method is likely to achieve accuracy standards comparable to those of individual measuring devices as described in section 933 subdivision (d) of this chapter.

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## ADOPTED TEXT OF EMERGENCY REGULATION

(i) “Measuring device” means a device by which a diverter determines and records the numeric value of flow rate, velocity or volume of the water passing a designated and calibrated observation point during a specific time period. A measuring device may be a manufactured device, an on-site built device, or an in-house built device.

(j) “Place of use” means the legal location where water is used under the water right or claimed water right, subject to the following clarifications:

(1) For livestock stockpond registrations, as defined in section 1228.1, subdivision (b)(3) of the Water Code, and for stockpond certificates, as described in section 1226.1 of the Water Code, the place of use is the stockpond.

(2) For single purpose recreational ponds, the place of use is the pond.

(3) For other ponds or reservoirs, the deputy director may designate the pond or reservoir as the place of use for the purposes of compliance with this chapter.

(4) For instream flow beneficial uses and wetland preservation and enhancement dedications, the place of use is the designated reach of the stream or the wetland area where the water is applied to beneficial use.

(k) “Point of diversion” means the legal location where water is diverted from its source.

(l) “Qualified individual” means:

(1) For diversions greater than or equal to 100 acre-feet per year:

(A) A California-registered Professional Engineer; or

(B) A California-licensed contractor authorized by the State License Board for C-57 well drilling or C-61 Limited Specialty/D-21 Machinery and Pumps; or

(C) A person under the supervision of a California-registered Professional Engineer and employed to install, operate, and maintain water measurement and reporting devices or methods; or

(D) In the case of a right or a claimed right to divert by an agency of the federal government, a hydrologist or professional engineer experienced and trained in water measurement who is employed by the federal agency in that capacity.

(2) For diversions less than 100 acre-feet per year, a person trained and experienced in water measurement and reporting. This may include the diverter or the diverter’s agent.

(m) “Threatened, endangered, or fully protected fish” means a population of fish that belong to a species listed as threatened or endangered pursuant to the Endangered Species Act, (16 U.S.C. §§ 1531-1544), or the California Endangered Species Act, (Fish & Game Code, §§ 2050-2097) or fully protected pursuant to Fish & Game Code, § 5515.

(n) “Twelve month reporting period” has the same meaning as in section 907, subdivision (e) of this title.

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## ADOPTED TEXT OF EMERGENCY REGULATION

(o) “Type of measuring device” means a class of measuring devices manufactured or built to perform similar functions. For example, inline flow meters, submerged orifice gates, and rectangular, v-notch, and broad crested weirs are types of measuring devices.

Authority: Sections 1058, 1840, and 1841, Water Code.

Reference: Sections 13 and 5103, Water Code.

### **§931.5 Authority of the Delta Watermaster.**

The Delta Watermaster may exercise all powers assigned to the deputy director under this chapter for any point of diversion located within the Delta. The deputy director may exercise these powers within the Delta during a vacancy in the position of Delta Watermaster or as authorized by the Delta Watermaster.

Authority: Sections 1058, 1840, and 1841, Water Code.

Reference: Sections 85230, Water Code.

### **§932 Applicability.**

(a) Except as provided in subdivision (d), the following diverters shall install and maintain a measuring device or employ a measurement method capable of measuring the rate of diversion, rate of collection to storage, the rate of withdrawal or release from storage, and the total volume of water diverted or collected to storage:

(1) Any person authorized to divert greater than 10 acre-feet of water per year under a permit or license.

(2) Any person who has previously diverted or intends to divert greater than 10 acre-feet of water per year and is required under Water Code Part 5.1 to file a Statement of Water Diversions and Use.

(3) Any person authorized to divert greater than 10 acre-feet of water per year or to have a storage facility with a capacity greater than 10 acre-feet under a registration.

(b) A diverter with multiple claimed rights shall install and maintain a measuring device or employ a measurement method for all water rights to divert from the same point of diversion or serving the same place of use if the sum of the diverter’s multiple claimed rights serving the place of use exceeds 10 acre-feet per year, or exceeds such other measurement threshold as the deputy director may establish under subdivision (d) of this section. Measurement methods employed by a diverter with multiple claimed rights shall be capable of measuring the rate of diversion, rate of collection to storage, the rate of withdrawal or release from storage, and the total volume of water diverted or collected to storage.

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### (c) Effective Dates.

(1) The deadlines for the installation and certification of measuring devices or the adoption of a measurement method shall be:

(A) On or before January 1, 2017, for a diverter with a right or a claimed right to divert 1000 acre-feet of water per year or more.

(B) On or before July 1, 2017, for a diverter with a right or a claimed right to divert 100 acre-feet of water per year or more.

(C) On or before January 1, 2018, for a diverter with a right or a claimed right to divert greater than 10 acre-feet of water per year.

(2) For a diverter with multiple claimed rights, the deadlines for the installation and certification of measuring devices or methods shall be as follows for each point of diversion or place of use shared by multiple claimed rights:

(A) On or before January 1, 2017, where the sum of all the multiple claimed rights to divert from the same point of diversion or to serve the same place of use is 1000 acre-feet of water per year or more.

(B) On or before July 1, 2017, where the sum of all the multiple claimed rights to divert from the same point of diversion or to serve the same place of use is 100 acre-feet of water per year or more.

(C) On or before January 1, 2018, where the sum of all the multiple claimed rights to divert from the same point of diversion or to serve the same place of use is greater than 10 acre-feet of water per year.

(D) In the event of any conflict between deadlines for a diverter with multiple claimed rights, the more stringent requirement shall control.

### (d) Increasing the Measurement Threshold.

(1) Beginning January 1, 2017, the deputy director may issue orders to increase the 10 acre-feet measurement threshold of subdivision (a) in a watershed or subwatershed incrementally to or above 25 acre-feet. The deputy director may authorize an increased measurement threshold after:

(A) Considering the total monthly quantities of water diverted in relation to the monthly quantity of water available within the watershed or subwatershed; the requirements of any policy, decision or order of the board or a court; and the need for diversion and bypass information to evaluate impacts from the diversions of water to public trust resources. The deputy director may require submission of documentation on the nature and scope of diversions in the watershed prior to issuing the order; and

(B) Reviewing any relevant information submitted by affected diverters, federal, state, local, or tribal governments, or other interested parties regarding a proposed increase in reporting threshold; and

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## ADOPTED TEXT OF EMERGENCY REGULATION

(C) Determining that the benefits of the additional reporting information at a specific measurement threshold are substantially outweighed by the cost of installing measuring devices, or employing measurement methods, or employing alternative compliance plans; and

(D) Determining that increasing the measurement threshold will not injure public trust resources or any threatened, endangered, or fully protected fish.

(2) The deputy director shall not increase the measurement threshold in a watershed or subwatershed above those established in any other regulation, policy, decision, order or other legal requirement adopted by the board, a Regional Water Quality Control Board, or a court, unless the change is authorized by such previous requirements.

(3) The deputy director may review each proposal to increase the reporting threshold on a case-by-case basis.

(4) The deputy director may authorize an increased measurement threshold for a period not to exceed five years. If changing conditions warrant, the deputy director may modify or cancel any such authorization.

(5) The deputy director shall maintain and post on the board's website a list of measurement thresholds for watersheds or subwatersheds where the measurement threshold is greater than 10 acre-feet.

(6) A decision or order issued under this section by the deputy director is subject to reconsideration under article 2 (commencing with section 1122) of chapter 4 of part 1 of division 2 of the Water Code, and all applicable sections of this title.

### (e) Other Measurement and Monitoring Requirements.

(1) Any person with a water right identified in or subject to a statute, order, policy, regulation, decision, judgment or probationary designation of the board, a Regional Water Quality Control Board, or a court is responsible for meeting the terms and conditions of the statute, order, policy, regulation, decision or judgment and the requirements of this chapter. If there is any conflict or inconsistency between the measurement and monitoring requirements subject to the statute, order, policy, regulation, decision, judgment or probationary designation and the requirements of this chapter, the more stringent requirement or requirements shall control in each instance.

(2) A permit, license, or registration holder is responsible for meeting the conditions of the permit, license, or registration and the requirements of this chapter. If there is any conflict or inconsistency between the permit, license, or registration condition for measurement and monitoring and the requirements of this chapter, the more stringent requirement or requirements shall control in each instance.

(f) Failure to maintain a measuring device, employ a measurement method, or implement an alternative compliance plan in accordance with the requirements of this chapter is a violation subject to civil liability of up to \$500 per day pursuant to Water Code section 1846.

Authority: Sections 1058, 1840, and 1841, Water Code.

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# ADOPTED TEXT OF EMERGENCY REGULATION

Reference: Sections 13, 1122, 1123, 1846, and 5103, Water Code.

## **§933 Measuring Device Requirements.**

(a) Measurement Options. A diverter may choose any measuring device, or combination of devices, that meet the requirements of this section.

### (b) Data

(1) Data Recording. The measuring device shall be capable of recording the date, time, and at least one of the following: total volume of water diverted, flow rate, water velocity, or water elevation. The data shall be recorded in a format retrievable and viewable using Microsoft Excel, Microsoft Access, or other software program authorized by the deputy director. The measuring device shall be capable of recording the required information as follows:

#### (A) For direct diversion:

(i) On an hourly or more frequent basis for a diverter with a right or a claimed right to divert 1000 acre-feet of water per year or more.

(ii) On a daily or more frequent basis for a diverter with a right or a claimed right to divert 100 acre-feet of water per year or more.

(iii) On a weekly or more frequent basis for a diverter with a right or a claimed right to divert more than 10 acre-feet of water per year.

#### (B) For direct diversion by a diverter with multiple claimed rights:

(i) On an hourly or more frequent basis, where the sum of the diversions made under the claimed rights from the same point of diversion or to serve the same place of use is 1000 acre-feet of water per year or more.

(ii) On a daily or more frequent basis, where the sum of the diversions made under the claimed rights from the same point of diversion or to serve the same place of use is 100 acre-feet of water per year or more.

(iii) On a weekly or more frequent basis, where the sum of the diversions made under the claimed rights from the same point of diversion or to serve the same place of use is greater than 10 acre-feet of water per year.

(iv) In the event of any conflict between recording requirements for a diverter with multiple claimed rights from the same point of diversion or to serve the same place of use, the more stringent requirement shall control.

#### (C) For storage in a reservoir or pond:

(i) On an hourly or more frequent basis for a reservoir or pond with a storage capacity of 1000 acre-feet or more.

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(ii) On a daily or more frequent basis for a reservoir or pond with a storage capacity of 200 acre-feet or more.

(iii) On a weekly or more frequent basis for a reservoir or pond with a storage capacity of 50 acre-feet or more and less than 200 acre-feet.

(iv) On a monthly or more frequent basis for a reservoir or pond with a storage capacity of greater than 10 acre-feet and less than 50 acre-feet.

(v) In the event of any conflict between recording requirements for a diverter with multiple claimed rights to divert to storage in a reservoir or pond, the more stringent requirement shall control.

### (2) Data Submittal.

(A) Each diverter to which a measurement requirement applies shall submit the data from each measuring device to the board as required by chapter 2.7 of division 3 of this title, and within 30 days of any request or order by the board.

(B) For a reservoir subject to drawdown and refill during the collection to storage season, or that is otherwise operated in a cyclical manner, the maximum and minimum water surface elevations, the corresponding reservoir volume, and the monitoring dates shall be measured and the resulting data maintained.

(C) For each reservoir, if water is diverted or flows into the reservoir under more than one bases of right, including groundwater or water purchased under a contract, the amounts reported to the board shall be limited to the amounts covered by the water right being reported. A record of the alternative supplies entering the reservoir throughout the year shall be maintained to demonstrate that water stored is under a separate basis of right or contract.

(3) Data Retention. Each diverter shall keep records of the data from each measuring device for a period of no less than 10 years.

### (4) Telemetry Requirements.

(A) This paragraph applies to any diverter who:

(i) Diverts more than 10,000 acre-feet annually; or

(ii) Owns or operates a reservoir or pond with a storage capacity of 10,000 acre-feet or more; or

(iii) Diverts during the period from June 1 through September 30, and directly diverts more than 30 cubic feet per second at any time; or

(iv) Diverts during the period from June 1 through September 30, and has claimed water right(s) to more than 20 percent of historic calculated mean monthly stream flow as measured by a stream gage with publically available records maintained by the U.S. Geological Survey, the California Department of Water Resources, the U.S. Army Corps of Engineers, or the board, or such other percentage as the deputy director shall determine; and any of the following conditions apply:

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(a) Threatened, endangered, or fully protected fish species are present or have historically been present; or

(b) The diversion is made from a stream that is part of the board's North Coast Instream Flow Policy area; or

(c) The diversion is made from the Deer Creek, Mill Creek, or Antelope Creek watersheds of the Sacramento River watershed; or

(d) The diversion is made from the Mark West Creek, Green Valley Creek, Mill Creek, or Dutch Bill Creek watersheds of the Russian River watershed; or

(B) This paragraph applies to all rights, claimed rights, or combinations of rights and claimed rights to divert from a single or shared point of diversion if the sum of such rights or claimed rights meets the criteria of subparagraphs (A)(i), (A)(iii), and (A)(iv) of this paragraph.

(C) By January 1, 2020, diverters subject to subparagraphs (A)(i), (A)(ii), or (A)(iii) of this paragraph shall provide telemetered diversion data via a public website that displays the data on at least a daily basis, and that is updated weekly, at minimum. For diverters subject to subparagraph (A)(iv), the deputy director may establish the appropriate date and percentage of stream flow for telemetering after notice and opportunity for comment. The data shall be provided to the board upon the request of the deputy director in a format retrievable and viewable using Microsoft Excel, Microsoft Access, or other software program authorized by the deputy director. The deputy director shall not require telemetering of any diverter who diverts less than 10 percent of the calculated stream flow.

(D) The board may adjust the percent threshold of historic calculated mean monthly stream flow below 10 percent on an individual stream after notice and opportunity for comment and following a board meeting.

(c) Calculating Volume from Recorded Data. If a measuring device measures the flow rate, water velocity, or water elevation, and does not report the total volume of water diverted or delivered, the diverter shall report the conversion method used to convert the measured value to volume. The conversion method shall be approved by a qualified individual.

(1) For a measuring device that measures flow-rate, the report shall describe protocols used to record the duration of operation where volume is derived by the following formula:  $\text{Volume} = (\text{flow rate}) \times (\text{duration})$ .

(2) For a measuring device that measures flow velocity only, the report shall describe protocols used to determine the cross-sectional area of flow and the duration of operation, where volume is derived by the following formula:  $\text{Volume} = (\text{velocity}) \times (\text{cross-section flow area}) \times (\text{duration})$ .

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(3) For a measuring device that measures water elevation at the device (e.g. flow over a weir or differential elevation on either side of a device), the report shall describe protocols used to derive flow rate at the measuring device and the method or formula used to derive volume from the measured elevation value(s).

(d) Required Accuracy. The accuracy for each measuring device applies to the volume diverted or stored.

(1) A measuring device installed on or before January 1, 2016, shall be certified to be accurate to within  $\pm 15$  percent by volume based on periodic testing of the installed device.

(2) A measuring device installed or replaced after January 1, 2016 that is used to measure the diversion of water shall be certified to be accurate to within:

(A)  $\pm 5$  percent by volume in the laboratory if using a laboratory certification.

(B)  $\pm 10$  percent by volume based on periodic testing of the installed device if using a non-laboratory certification for a diverter with a right or a claimed right greater than or equal to 100 acre-feet per year.

(C)  $\pm 15$  percent by volume based on periodic testing of the installed device if using a non-laboratory certification for a diverter with a right or a claimed right greater than or equal to 10 acre-feet per year.

(3) A measuring device installed or replaced after January 1, 2016 that is used to measure the water stored in a reservoir or pond shall be certified to be accurate to within:

(A)  $\pm 10$  percent by volume in based on periodic testing of the installed device for a reservoir or pond with a storage capacity of 200 acre-feet or more.

(B)  $\pm 15$  percent by volume in based on periodic testing of the installed device for a reservoir or pond with a storage capacity greater than 10 acre-feet and less than 200 acre-feet.

(e) Certification of Accuracy. The accuracy of a measuring device shall be initially certified and documented as follows:

(1) For a measuring device installed prior to January 1, 2016, the accuracy required shall be initially certified and documented by field-testing performed by an individual trained in the use of relevant field-testing equipment. The results from the field testing shall be documented in a report approved by a qualified individual and shall be filed with the next subsequent water use report. Stream gages installed and maintained by the U.S. Geological Survey or the U.S. Army Corps of Engineers do not require additional certification of the stream gage device accuracy pursuant to this section.

(2) For a measuring device installed or replaced after January 1, 2016, the accuracy shall be initially certified and documented by either:

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(A) Laboratory certification prior to installation of a measuring device as documented by the manufacturer or an entity, institution or individual that tested the device following relevant industry-established protocols. Documentation shall include the manufacturer's literature or the results of laboratory testing of an individual measuring device or type of measuring device; or

(B) Non-laboratory certification after the installation of a measuring device based on periodic testing of the installed device, as documented by either:

(i) The affidavit or declaration of a qualified individual documenting the design and installation of the measuring device at a specified location; or

(ii) A report approved by a qualified individual documenting the field-testing performed on the installed measuring device by an individual trained in the use of field testing equipment.

(f) Protocols for Field-Testing and Field-Inspection and Analysis. Field-testing shall be performed for a measuring device according to the manufacturer's recommendations or design specifications and be overseen by a qualified individual. Field inspection and analysis protocols shall be performed and the results shall be approved by a qualified individual for each measuring device to demonstrate the following:

(1) The design and installation standards used for each measuring device meets the accuracy standards of subdivision (d) of this section; and

(2) The operation and maintenance protocols will ensure compliance with the accuracy standards of subdivision (d) of this section.

(g) Installation, Maintenance and Performance Requirements. A measuring device shall be installed, maintained, operated, inspected, and monitored to ensure the accuracy standards of subdivision (d) of this section are met. The installation of a measuring device shall be performed by a qualified individual.

(h) Calibration. The measuring device shall be calibrated by a qualified individual upon installation and at least once every five years thereafter. The diverter shall be responsible for more frequent calibration of measuring device(s) as necessary to ensure the accuracy requirements of subdivision (d) of this section are met.

(i) Measuring Device Location. No delivery or use of water shall occur between the point of diversion and the location of the measuring device, unless otherwise measured.

(j) Accessibility. The measuring device shall be installed in a manner such that it is readily accessible for reading, inspection, testing, repair or replacement. The diverter shall make the measurement device reasonably available for inspection by an authorized representative of the board upon request. The diverter shall provide the board's representative with reasonable access to inspect the measuring device. Failure to provide such reasonable access is a violation of this regulation.

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## ADOPTED TEXT OF EMERGENCY REGULATION

(k) Verification of Measuring Device. The board may conduct a field inspection or request additional information from the diverter to determine if the measuring device has been properly installed and meets the requirements of this section. Failure to timely install a measuring device or verify its accuracy is a violation of this regulation.

(l) Inadequate Measuring Device. If a measuring device fails to meet the accuracy requirements of subdivision (d) of this section, the diverter shall repair or replace the measuring device at their own expense to meet such requirements.

(1) Notification. A diverter shall timely notify the board in writing upon detecting that the holder's measuring device does not comply with the accuracy requirements of subdivision (d) of this section. The notification shall include the diverter's plan to take appropriate, timely corrective action to comply with the accuracy requirements of subdivision (d) of this section.

(2) Enforcement. Failure to timely repair or replace a measuring device that does not comply with the accuracy requirements of subdivision (d) of this section is a violation of this regulation.

(m) Lawful authority. Nothing in this section shall be construed to limit or modify the board's authority to obtain information under any other lawful authority.

Authority: Sections 183, 1051, 1058, 1840, and 1841, Water Code.

Reference: Sections 13, 1846, and 5103, Water Code.

### **§934 Measurement Method.**

(a) A measurement method is a protocol for measuring water diversions, other than through a measuring device at each authorized point of diversion, where the method achieves the accuracy requirements of subdivision (e) of this section. The board encourages diverters on a local or regional basis to cooperate and establish a measurement method or methods to measure direct diversion, diversion to storage, and withdrawal or release from storage in an efficient and cost effective manner which meets the accuracy requirements of subdivision (e) of this section. Any measurement method shall be able to quantify the amount of water diverted under all separate priorities of rights being exercised. If the claimed water rights included in a measurement method have different requirements under section 933, the more stringent requirement shall control for all of the claimed water rights covered by the measurement method.

(b) Minimum Standards for Measurement Method.

(1) Form and Content. A measurement method shall be prepared by a qualified individual and shall include, at a minimum, a written description that includes the following information:

(A) Name and contact information of all participants, including designation of an agent to serve as the primary contact person.

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## ADOPTED TEXT OF EMERGENCY REGULATION

(B) Topographic or aerial map(s) showing location of participants and covered lands (including all assessor parcel numbers). The map shall conform to the mapping requirements of article 7 of chapter 2 of division 3 of this title.

(C) Description of how the measurement method is implemented to meet the requirements of this chapter.

(D) Documentation required under subdivision (f) of this section verifying the accuracy of the measurement method.

(E) Description of the permits, licenses, registrations, certificates and water right claims covered by the measurement method including for each individual right: file number, owner name, water right type, priority of diversion, monthly and annual diversion amounts, place of use, purpose of use, and alternative sources of water.

(F) Description of how the measurement method will account for each priority of right during periods of insufficient supply.

(2) Action by the deputy director. The deputy director may review measurement methods at the deputy director's discretion, and may reject measurement methods that fail to meet the requirements of this section. A measurement method shall not be authorized where any requirement of any contract, policy, order, decision, judgment, determination, or other regulatory requirement of the board, a Regional Water Quality Control Board, other state or federal agency, or a court requires that diversions be measured by a measuring device at each point of diversion.

(3) Initial Term and Renewal. The deadlines for the adoption of a measurement method shall be in accordance with subdivision (c) of section 932 of this title.

(c) Shared Measurement Point Upstream of the Delivery Point or Farm Headgate. A group of diverters may measure water diverted at a location upstream of their respective delivery points or farm headgates or at shared points of diversion if a written agreement is in place for the diverters to share a measuring device located at the shared point of diversion. Diverters using a shared measuring device under this subdivision shall report the following additional information to the board on an annual basis:

(1) The methodology used to apportion the volume of water delivered from the shared point of diversion to each downstream diverter, including how water will be apportioned among the diverters participating in the agreement during periods of insufficient supply while preventing injury to any other legal user of water or to public trust resources.

(2) The field or flow condition at each individual diverter's delivery point downstream of the point of measurement including the duration of water delivery to the individual diverter, annual water use patterns, irrigated acreage (including GIS map showing assessor's parcel number and USDA field identification number), crops planted, on-farm irrigation system, and other relevant distinctions in beneficial uses and water management practices.

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(3) Consumptive use of water for each individual diverter, if available.

### (d) Data

(1) Data Recording. The measurement method shall be capable of reporting the date, time, and total amount of water diverted in accordance with the requirements of subdivision (b) of section 933 of this title. The data shall be recorded in a format retrievable and viewable using Microsoft Excel, Microsoft Access, or other software program authorized by the deputy director.

(2) Data Submittal. Each diverter or claimant shall submit data from the measurement method to the board pursuant to chapter 2.7 of division 3 of this title, or within 30 days of request of the deputy director. Water use data for each twelve month reporting period shall be submitted on a form available on the board's website with the appropriate water use report including a Progress Report by Permittee, Report of Licensee, Supplemental Statement of Water Diversion and Use, and Water Use Reports of Registration and Certificate Holders.

(e) Required Accuracy. The accuracy of the measurement method to determine the volumes of water diverted, diverted to storage, and withdrawn or released from storage shall reasonably achieve accuracy standards comparable to the standards listed in subdivision (d) of section 933 of this title for individual measuring devices. The accuracy of the measurement method shall be determined by a qualified individual.

(f) Certification of Measurement Method Accuracy. The accuracy of a measurement method shall initially be certified and documented by field-testing performed by an individual trained in the use of relevant field-testing equipment. The results from the field testing shall be documented in a report approved by a qualified individual and shall be filed with the subsequent water use report. When the measurement method applies to water diverted for agricultural use, the certification shall be based on a statistically significant number of sampling points based on crop type and field size, include field testing and measurement during multiple phases of the crop-growth cycle, include all factors which influence consumptive use of water, and include any estimated tailwater return flows and percolation losses, where applicable. Field notes, calculations, and other materials used in the certification shall be included in the report.

(g) Operation and Performance Requirements. A measurement method shall be operated and maintained to meet the accuracy standards of subdivision (e) of this section. Field testing and re-analysis that the measurement method meets the requirements of this section shall be performed by a qualified individual upon installation, and at least once every five years thereafter.

(h) Inadequate Measurement Method. If a measurement method fails to meet the accuracy standards of subdivision (e) of this section, the measurement method shall be corrected to comply with such standards.

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## **ADOPTED TEXT OF EMERGENCY REGULATION**

(1) Notification. The diverters employing a measurement method shall notify the board in writing within 30 days of finding a measurement method does not comply with the accuracy standards of subdivision (e) of this section. The notification shall include a plan to take appropriate, timely corrective action.

(2) Enforcement. Failure to correct defects or to ensure the measurement method complies with the accuracy standards of subdivision (e) of this section is a violation of this regulation.

(3) Measuring Devices Required. If defects in the measurement method are not timely corrected, measuring devices shall be installed at each point of diversion previously covered by a measurement method within 90 days.

### (i) Measurement Method Duration and Renewal.

(1) A measurement method may remain in effect for a period of not more than five years, commencing from the effective date applicable to diversions subject to the plan pursuant to subdivision (c) of section 932 of this title.

(2) A diverter may renew a measurement method by resubmitting it, with or without amendment, before the method expires.

(3) The deputy director may reject a measurement method renewal for failure of the diverter(s) to implement a previous measurement method or for failure to achieve the required accuracy. Incomplete measurement method documentation, documentation that do not meet the minimum standards of this section, and lapses in measurement methods shall not relieve a diverter of the requirement to fully comply with sections 933 and 934 of this chapter.

(j) Measurement methods submitted in accordance with the provisions of this section shall be timely implemented.

Authority: Sections 183, 1058, 1840, and 1841, Water Code.

Reference: Sections 13, 1846, and 5103, Water Code.

### **§935 Alternative Compliance for a Measuring Device or Measurement Method Requirement.**

(a) Alternative Compliance – Generally. In circumstances where strict compliance with sections 933 or 934 of this title is not feasible, would be unreasonably expensive, would unreasonably affect public trust uses, or would result in the waste or unreasonable use of water, a diverter may submit an alternative compliance plan.

(b) Minimum Standards – an alternative compliance plan under subdivision (a) shall meet the following minimum standards:

(1) The plan shall include the following information:

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## ADOPTED TEXT OF EMERGENCY REGULATION

- (A) The name and contact information for all diverters covered by the plan;
- (B) The name and contact information for the person designated to represent all diverters covered by the plan in matters before the board;
- (C) Identification of each individual water right type and priority covered by the plan;
- (D) A detailed description of the area served by the plan, including all points of diversion whether used or not used, all methods of diversion, any conveyance systems, all beneficial uses of water, and all acreage served;
- (E) The assessor's parcel numbers and ownership within the area covered by the plan;
- (F) Identification of the proposed measurement frequency;
- (G) Identification of the proposed measurement methodology;
- (H) Topographic map(s) or aerial photograph(s) of the area covered by the plan that show the separate places of use authorized to be served by claimed water rights covered by the plan and showing the acreage served;
- (I) An implementation schedule, including date-specific, objective milestones of plan implementation from date of filing through final implementation, including the estimated milestones for acquiring permits required for plan implementation and the estimated milestones for compliance with the California Environmental Quality Act, if required;
- (J) Budget for implementation of the plan and the source(s) of financing for the plan;
- (K) A list of any permits required for plan implementation, the agencies that will issue the permits, and expected dates for issuance;
- (L) An affirmation, signed by all diverters covered by the plan, that the plan will be implemented in accordance with the schedule contained therein and that all claimed water rights covered by the plan will not be exercised outside the scope of the plan.

(2) The plan shall include an explanation and substantiating documentation of alternative compliance for each of the requirements of sections 933 and 934 of this title. Absent substantiation of the specific basis for reduced performance standards, the plan shall state how compliance with sections 933 and 934 of this title will be achieved.

(3) The plan shall provide detailed documentation establishing and supporting the specific basis for claiming that strict compliance with sections 934 and 935 of this title is not feasible, would be unreasonably expensive, would unreasonably affect public trust uses, or would result in the waste or unreasonable use of water. Any claim that strict compliance is unreasonable expensive shall be accompanied by a cost analysis.

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(4) The plan shall include a certification by a qualified individual that the plan is in compliance with this chapter.

### (c) Filing of Alternative Compliance Plan.

(1) The alternative compliance plan shall be filed no later than the compliance deadline applicable to the diverter(s)' claim(s) of right under subdivisions (b) and (c) of section 932 of this title.

(2) The alternative compliance plan shall be filed electronically on a form available on the board's website.

(3) The alternative compliance plan shall be filed under penalty of perjury.

(d) Diverseters under an alternative compliance plan shall report on plan implementation. Documentation of compliance with the timelines and other elements of the alternative compliance plan shall be filed with the applicable annual report under chapter 2.7 of this title.

(e) All plans submitted in accordance with the provisions of this section shall be timely implemented in accordance with the schedule contained therein.

(f) The deputy director may make such determinations for a plan, group of substantially similar plans, or group of plans for substantially similar projects.

(g) Alternative compliance plans received pursuant to this section will be posted on the board's website. The deputy director shall provide opportunity for comment by any interested parties.

(h) The deputy director may:

(1) Review any plan, request additional information to support a plan, and confer informally with a plan's sponsor to suggest modification in the plan;

(2) Audit any plan or any element of a plan for compliance with this chapter;

(3) Require submission of evidence of plan implementation in accordance with the schedule therein;

(4) Require changes or modification to any plan or plan component necessary to achieve compliance with this chapter,

(5) Require that any defect in a plan be corrected within a reasonable time; and

(6) Reject any plan that fails to meet the requirements of this chapter.

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## ADOPTED TEXT OF EMERGENCY REGULATION

(j) A decision or order issued under subdivision (h) of this section is subject to reconsideration under article 2 (commencing with section 1122) of chapter 4 of part 1 of division 2 of the California Water Code, and all applicable sections of this title.

(k) Plan Duration and Renewal.

(1) An alternative compliance plan may remain in effect for a period of not more than five years, commencing from the effective date applicable to diversions subject to the plan pursuant to subdivision (c) of section 932 of this title.

(2) A diverter may renew an alternative compliance plan by resubmitting it, with or without amendment, before the plan expires.

(3) The deputy director may reject a plan renewal for failure of the diverter to implement a previous plan according to its schedule, or for failure of a previous plan to achieve the required accuracy. Incomplete plans, plans that do not meet the minimum standards of this section, and lapses in plans shall not relieve a diverter of the requirement to fully comply with sections 933 and 934 of this chapter.

Authority: Sections 1058, 1840, and 1841, Water Code.

Reference: Sections 13, 1846, and 5103, Water Code.

### **§936 Request for Additional Time.**

(a) A diverter may submit a request for additional time to comply with the provisions of this Chapter on a form available on the board's website. The additional time granted by the deputy director shall not exceed 24 months per extension.

(b) Approval of a time extension request is contingent on the following:

(1) Financial considerations shall be considered only in cases where the diverter has requested agency funding, and is awaiting grant or loan award.

(2) Extensions based on other considerations are limited to:

(A) minimum time needed to access site due to weather conditions; or

(B) minimum time needed to obtain other agency permits; or

(C) minimum time needed to comply with construction time periods set in other agency permits; or

(D) unforeseen circumstances.

(c) All time extension requests shall be accompanied by documentation of grant or loan request or agency permit requests, as applicable. Funding and/or permit approval documents shall be submitted to the deputy director within 30 days of receipt. Time extension requests based on

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## ADOPTED TEXT OF EMERGENCY REGULATION

unforeseen circumstances shall be accompanied by a showing of good cause and a showing that all reasonable efforts have been made to comply with the timelines established in the subdivision (c) of section 932 of this chapter.

(d) All time extension requests shall be accompanied by a plan documenting the additional time needed to comply with the provisions of this chapter. The plan shall describe the interim measurement practices the diverter will implement while diligently pursuing compliance with this chapter.

Authority: Sections 1058, 1840, and 1841, Water Code.

Reference: Sections 13, 1846, and 5103, Water Code.

### **§937 Report of Water Measuring Device.**

(a) Report - Filing Requirements. A report of water measuring device shall be filed electronically on a form available on the board's website.

(1) For measuring devices installed on or before January 1, 2016, a diverter shall submit a report of water measuring device to the board with the first water use report filed after January 1, 2017.

(2) For measuring devices installed after January 1, 2016, a diverter shall submit a report of water measuring device to the board with the first water use report submitted after installation of the device.

(3) After the initial report has been submitted, the diverter shall provide the board with a report of water measuring device at five year intervals.

(4) The diverter shall submit a report of water measuring device to the board within 30 days of installation or calibration of a new or replacement measuring device.

(5) The diverter shall submit a report of water measuring device to the board within 30 days of request from the board.

(b) Form - Content. The report of water measuring device shall contain the following information, as applicable:

(1) Name of diverter.

(2) Contact information for the person testing the performance of the device, including email address.

(3) Water right identification number, if assigned.

(4) Type of measuring device.

(5) Make, model number and serial number of the measuring device.

(6) Type of recording device.

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## **ADOPTED TEXT OF EMERGENCY REGULATION**

- (7) Make, model number and serial number of the recording device.
- (8) Units of measurement.
- (9) The date of installation.
- (10) Certification of accuracy.
- (11) Name of the person who installed the measuring device.
- (12) Date of most recent calibration or recalibration of the measuring device.
- (13) Maintenance schedule for the measuring device and the recording device.

Authority: Sections 1058, 1840, and 1841, Water Code.

Reference: Sections 13, 1846, and 5103, Water Code.

### **§938 Compliance.**

Failure to meet the requirements of this Chapter is violation subject to civil liability of up to \$500 per day pursuant to Water Code section 1846.

Authority: Sections 1058, 1840, and 1841, Water Code.

Reference: Sections 1846, Water Code.

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