

## State Water Resources Control Board

# NOTICE OF PROPOSED EMERGENCY RULEMAKING

## Measurement and Reporting on the Diversion of Water

### Amendments and Additions to Chapter 2.7, Division 3 of Title 23 of the California Code of Regulations and Addition of Chapter 2.8, Division 3 of Title 23 of the California Code of Regulations

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#### Required Notice of Proposed Emergency Action

Government Code section 11346.1, subdivision (a)(2) requires that, at least five working days prior to submission of a proposed emergency action to the Office of Administrative Law (OAL), the adopting agency must provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After the submission of the proposed emergency to OAL, OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6. This document provides the required notice.

#### Proposed Emergency Action

Governor Edmund G. Brown, Jr. signed Senate Bill (SB) 88 on June 24, 2015. Sections 15 through 18 of SB 88 add measurement and reporting requirements for a substantial number of diverters.

The legislation authorizes the State Water Resources Control Board (State Water Board) to adopt an emergency regulation requiring measurement for diverters who divert more than 10 acre-feet of water per year. The measurement requirement would apply to approximately 12,000 water right holders and claimants. The legislation also authorizes the State Water Board to adopt a regulation requiring annual reporting for Statement holders and persons authorized to appropriate water under a permit, license, registration (small domestic, small irrigation, or livestock stockpond), or certificate for livestock stockpond use.

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 adoption of the initial regulation is exempt from CEQA.

As part of this rulemaking, the State Water Board adopted a regulation amending California Code of Regulations, title 23, division 3, Chapter 2.7, and adding California Code of Regulations, title 23, division 3, Chapter 2.8 at its January 19, 2016 meeting.

## Proposed Text of Emergency Regulations

See the attached proposed text of the emergency regulation.

### Finding of Emergency (Gov. Code, § 11346.1, subd. (b))

Senate Bill No. 88 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. (Wat. Code, § 1841, subd. (b).) The adoption of the initial regulation is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare. (*Ibid.*) The adoption of the initial regulation is exempt from CEQA. (*Id.*, subd. (c).)

### Authority and Reference (Gov. Code, § 11346.5, subd. (a)(2))

Water Code section 1841 provides authority for the emergency regulation. The proposed regulation implements, interprets, or makes specific sections 13, 183, 348, 1010, 1011, 1011.5, 1058, 1122, 1123, 1226.1, 1226.2, 1228.2, 1228.3, 1228.6, 1840, 1841, 1846, 5100, 5101, 5103, 5104, and 85230 of the Water Code.

### Informative Digest (Gov. Code, § 11346.5, subd. (a)(3))

Water Code sections 1840 and 1841 specifically recognize the need for improved measurement and reporting of diversions. The proposed amendments to Chapter 2.7 require: (1) all diverters to report their diversion and use of water annually; (2) water right holders with permits, licenses, registrations, and stockpond certificates to file reports by April 1 for water diverted in 2016 and thereafter; (3) persons who file a statement to submit reports by July 1 for water diverted in 2016 and thereafter; and (4) monthly or more frequent reporting in affected areas during times of insufficient supply. All annual reports will continue to document diversions during the prior calendar year. The filing deadlines for submitting the water use reports for 2015 and 2016 are summarized in the table below:

DIVERSION/STORAGE PERIOD	ANNUAL WATER USE REPORT DEADLINES				
	PERMITS	LICENSES	STATEMENTS	REGISTRATIONS	CERTIFICATES
2015	JULY 1, 2016	JULY 1, 2016	JULY 1, 2016	VARIES	NOT REQUIRED
2016	APRIL 1, 2017	APRIL 1, 2017	JULY 1, 2017	APRIL 1, 2017	APRIL 1, 2017

The proposed addition of Chapter 2.8 establishes new measurement requirements for all diverters who divert more than 10 acre-feet of water per year (approximately 12,000 water right holders). The regulation provides for a phased approach to compliance with the new measurement requirements based on the amount of water diverted. The regulation also links measurement device accuracy and monitoring frequency to the volume of water diverted. Larger diversions and larger reservoirs or ponds have more stringent measurement and monitoring requirements and more stringent requirements for the installation and certification of measurement devices as described in the following table. The regulation also allows water right holders to request additional time to comply.

Type of Diversion (af = acre-feet)	Installation Deadline	Required Accuracy	Required Monitoring Frequency	Installation And Certification
Direct Diversion ≥ 1000 af/year Storage ≥ 1000 af	January 1, 2017	10%	Hourly	Engineer/Contractor/ Professional
Direct Diversion ≥ 100 af/year Storage ≥ 200 af	July 1, 2017	10%	Daily	Engineer/Contractor/ Professional
Direct Diversion > 10 af/year Storage ≥ 50 af	January 1, 2018	15%	Weekly	Individual experienced with measurement and monitoring
Storage > 10 af	January 1, 2018	15%	Monthly	Individual experienced with measurement and monitoring

The regulation allows a diverter or group of diverters to propose a collaborative measurement method in lieu of a measurement device at each point of diversion. The regulation also allows a diverter to submit an alternative compliance plan when strict compliance with one or more of the measurement requirements is not feasible, would be unreasonable expensive, would unreasonable affect public trust resources, or would result in the waste or unreasonable use of water.

There is no comparable federal statute or regulation. The proposed regulation is consistent and compatible with existing state regulations.

**Other Matters Prescribed by Statute** (Gov. Code, § 11346.5, subd. (a)(4))

The proposed regulation establishes measurement and reporting requirements for water diversion and use by persons authorized to appropriate water under a permit; license; registration for small domestic, small irrigation, or livestock stockpond use; or certification for livestock stockpond use, and for water diversion and use by persons required to comply with measurement and reporting regulations pursuant to subparagraph (B) of paragraph (1) of subdivision (e) of Section 5103 of the Water Code. (Wat. Code, § 1841, subd. (a).)

No other matters are prescribed by statute or regulation for this rulemaking.

**Local Mandate** (Gov. Code, § 11346.5, subd. (a)(5))

The proposed emergency regulation does not impose a mandate on local agencies or school districts because it does not mandate a new program or a higher level of service of an existing program. The regulation is generally applicable to public and private entities, and is not unique to local government. No state reimbursement is required by part 7 (commencing with section 17500) of division 4 of the Government Code.

### **Estimate of Cost or Savings to Local Governments** (Gov. Code, § 11346.5, subd. (a)(6))

The primary fiscal effect of the proposed regulation relevant to Government Code section 11346.5, subdivision (a)(6) is the cost that would be incurred by state and local government agencies to comply with the new measurement and reporting requirements.

The fiscal impact analysis was based on information prepared by State Water Board staff. M.Cubed partners Richard McCann, PhD, and Steven Moss, MPA, reviewed this report and provided comments on it, which were addressed by State Water Board staff before the study was finalized. M. Cubed, founded in 1993, provides economic and public policy consulting services to public and private sector clients.

The State Water Board estimates that the average costs to state and local agencies and governments to comply with the measurement and reporting requirements will be:

1. File Supplemental Statements of Water Diversion and Use on an annual basis under section 5104 of the Water Code and section 920 of the proposed regulation. The State Water Board estimates that there are 436 active statements held by state and local government agencies. The total cost incurred to state and local government agencies to complete and submit the supplemental statement on an annual basis would be **\$19,000 a year (average of \$43 per statement per year)**.
2. Complete an Annual Water Use Report under section 924 for Registration and Certificate holders. The State Water Board estimates there are 14 registrations and certificates held by state and local government agencies. The total cost incurred to state and local government agencies to complete and submit the annual water use report would be **\$1,000 a year (average of \$65 per registration/certificate per year)**.
3. Complete and submit an online Report of Water Measuring Device and/or Recording Device in accordance with section 937. The State Water Board estimates that there are 2979 points of diversion and 786 ponds and reservoirs held by state and local government agencies that would require the filing of an online Report of Water Measuring Device and/or Recording Device. The total cost incurred to state and local government agencies to complete and submit the online informational form and supporting documentation would be **\$367,000 (\$199 per water right)**.
4. Government agencies will need to install, repair, or modify existing measuring devices or measurement methods to comply with the requirements of Chapter 2.8, section 931 through section 937. The State Water Board estimates that there are 2979 points of diversion and 786 ponds and reservoirs held by state and local government agencies that would require measurement. The cost incurred to state and local government agencies to install, repair, or modify measuring devices or implement measurement methods in accordance with Chapter 2.8 would be between **\$4,291,000 and \$8,819,000 (\$2,300 to \$4,800 per**

**water right or claimed right).**

5. Government agencies will need to operate and maintain measuring devices or measurement methods to comply with the requirements of Chapter 2.8, section 931 through section 937. The State Water Board estimates that there are 2979 points of diversion and 786 ponds and reservoirs held by state and local government agencies that would require measurement. The cost incurred to state and local government agencies to operate and maintain measuring devices or measurement methods in accordance with Chapter 2.8 would be between **\$950,000 and \$1,962,000 a year (\$500 to \$1,100 per water right or claimed right).**
  
6. Special reporting - During a critically dry year, reporting of monthly diversions online may be required in specific critical water supply regions in accordance with section 917. The State Water Board estimates that there are 2423 water rights and claimed water rights held by state and local government agencies that may be affected by this requirement. The cost incurred to state and local government agencies to complete and submit the diversion data online once a month for nine months would be **\$1,766,000 (\$729 per water right or claimed right).**

The expenses associated with items 1, 4, and 5 are required in accordance with Senate Bill 88 signed by Governor Edmund G. Brown Jr. on June 24, 2-15. These expenses would be incurred by state and local government agencies regardless of whether the regulation was adopted by the State Water Board.

There are not expected to be any other nondiscretionary costs or savings to local agencies from the regulation. The regulation is not anticipated to have a fiscal impact on school districts or to result in costs or savings in federal funding to the State.

### **Cost of Compliance for Small Diversions**

The following table summarized the estimated costs of measurement that apply to over 75 percent of the direct diversion and storage rights in California who are affected by the new measurement requirement (includes diverters who divert more than 10 acre-feet of water per year or store more than 10 acre-feet of water.)

Category		Device/Service	Cost Range	
			Low	High
<b>Reservoir Storage (acre-feet)</b>	10 af < storage < 200 af (78% of affected reservoirs)	Staff Gauge	\$300	\$800
<b>Direct Diversion (acre-feet/year)</b>	10 af/yr < diversion < 100 af/yr (42% of affected points of diversion)	In-line flow meter	\$1,200	\$1,800
	100 af/yr ≤ diversion < 1000 af/year (34% of affected points of diversion)	In-line flow meter / Open Channel	\$2,000	\$6,000
		Data logger	\$250	\$600
		Total	\$2,250	\$6,600

The cost of measuring and monitoring water use is case specific and can vary widely based on the requirements of each specific situation. The cost of compliance will also depend on whether the diverter can use an existing device or needs to install a new one and on the cost of installation by a qualified individual. In the table above, the cost estimates for reservoir storage assume a reservoir survey has been completed as part of determining the amount of water stored in the reservoir or pond.

Diverters who are required to measure are also required to complete an online Report of Water Measuring Device in accordance with section 937. The State Water Board estimates that the average cost to complete and submit the online informational form and supporting documentation would be \$98 for each required measurement device.

The average costs of complying with the annual reporting requirements of the regulation are:

- No additional cost for reporting annual water use by permit holders and license holders.
- Average of \$43 per year additional cost for each statement holder to file Supplemental Statements of Water Diversion and Use on an annual basis instead of once every three years.
- Average of \$65 per year additional cost for each registration holder and certificate holder to file annual water use reports.

All of the above are explained in greater detail in the State Water Board's Emergency Regulation Digest, which is available at:

[http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/measurement\\_regulation/](http://www.waterboards.ca.gov/waterrights/water_issues/programs/measurement_regulation/)