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Via Email and U.S. Mail

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814
Email: commentletters@waterboards.ca.gov

**Re: SENATE BILL 88 AND DRAFT EMERGENCY REGULATION
FOR MEASURING AND REPORTING ON THE DIVERSION OF WATER**

Dear Ms. Townsend:

The San Joaquin Tributaries Authority (SJTA) reviewed the draft emergency regulations for measuring and reporting (Proposed Regulations). The SJTA generally supports measuring and reporting data to the State Water Resources Control Board (State Water Board) and its members already measure and report diversions. However, we have concerns regarding the specific requirements of the Proposed Regulations, which significantly depart from the existing requirements. The SJTA believes the Proposed Regulations go beyond reporting requirements appropriate and necessary to enable the State Water Board to properly manage and allocate water resources. In addition, the SJTA is concerned with the failure of the State Water Board's identification of how this information will be used in the future and the delegation to the Executive Director.

(1) Overreaching Regulations

The Proposed Regulations require larger diverters to install water measuring devices that are capable of measuring water diversions on an hourly basis. (Cal. Code of Regs., Tit. 23, § 933(b)(1)(A)(i).) The Proposed Regulations also require measuring devices for the diversion of water to a pond of 10 acre-feet. (*Id.*, § 933(b)(1)(B)(iii).) In addition, the Proposed Regulations require double reporting if provisional data is initially relied upon. (*Id.*, at § 929(b).) These three requirements reflect the unnecessarily stringent nature of the Proposed Regulations. Neither the State Water Board's general responsibilities for water allocation nor the drought emergency call for minimizing the unreasonable use of water should result in the requirement to measure water diversions by the hour, installing measuring devices on small stock ponds, or duplicative reporting. This kind of information is simply too detailed for the State Water Board to use in any practical or meaningful manner.

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The Proposed Regulations will require water users to invest significant time, effort, and resources to comply with the very stringent requirements. This investment comes at a time where resources are already over-burdened. The State Water Board should revise the Proposed Regulations to ensure the requirements provide the State Water Board with sufficient information but do not unnecessarily burden water users.

(2) Purpose of Information Collection

The Proposed Regulations do not identify the purpose for requiring increased measuring and reporting requirements. It is unclear why the State Water Board is requiring this level of data, especially from water users who historically report diversion information. To the extent that the State Water Board identifies specific data gaps that are hindering its management and allocation of water resources, it should identify these specific gaps and craft reporting requirements to resolve those gaps. The Proposed Regulations fail to identify any specific problem with measuring and reporting and are not narrowly tailored to remedy any such deficiency. To the contrary, the Proposed Regulations require broad compliance with very stringent measuring requirements and fail to explain how the data will be used in the future. The State Water Board must revise the Proposed Regulations to disclose the purpose of the regulations and how it plans to use the collected data.

(3) Delegation to the Deputy Director

The Proposed Regulations delegate the authority to determine when flows are insufficient to support all diversions to the Deputy Director. (Cal. Code of Regs., Tit. 23, § 917.) This determination is significant and has implications beyond the reporting requirements in the Proposed Regulations. The delegation of such a determination is beyond the delegation authority of the State Water Board. The Proposed Regulations should be revised to remove such a delegation. In addition, the Proposed Regulations have the Deputy Director setting reporting schedules, determining thresholds for required measurement, authorizing software programs, and authorizing measurement methods. (Cal. Code of Regs., Tit. 23, § 917(a); 932(b); 933; 934.) These delegations are also beyond the authority of the State Water Board. Instead of delegating these decisions to the Deputy Director, the State Water Board should set forth these provisions in the Proposed Regulations so that stakeholders are able to understand the full impact of the regulations and provide comment on such proposed regulations.

(4) Unclear Requirements

Several components of the Proposed Regulations lack sufficient clarity to enable compliance. Section 932 of the Proposed Regulations requires measurement methods to determine the rate of water collected to storage. The Proposed Regulations should be revised to make clear that methods include calculations which are most often relied upon to calculate storage rates. Similarly, the Proposed Regulations lack clarity with regard to regulated entities and qualified individuals. Often water right holders rely on qualified individuals such as the United States Geological Survey (USGS) for measuring data and information. The Proposed Regulations seem to presuppose that the regulated entities can direct and/or control qualified individuals. Whereas, in practice, this presumption may not always be appropriate. The Proposed Regulations should recognize the practical implications of how

water right holders access and use existing information and revise the Proposed Regulations to reflect these limitations.

The SJTA appreciates the opportunity to comment on the Proposed Regulations, and we are hopeful the State Water Board will revise the Proposed Regulations pursuant to the comments above.

Very truly yours,



Valerie C. Kincaid

VCK/llw

cc: SJTA