

Sent via ELECTRONIC MAIL to DWR-Measurement@waterboards.ca.gov

April 23, 2025

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

RE: ACWA Comment Letter regarding Water Measurement and Reporting Revisions

Dear Ms. Tyler,

The Association of California Water Agencies (ACWA) appreciates the opportunity to provide comments to the State Water Resources Control Board (State Water Board) on the revised Measuring and Reporting and Water Diversion and Use Reporting Regulations (Regulations). ACWA represents approximately 470 local public water agencies that supply water for domestic, agricultural, and industrial uses to over 90 percent of California's population.

ACWA submitted written comments to the State Water Board on December 2, 2024, during the pre-rulemaking process, providing input on the proposed draft revisions to the Regulations. Specific to the revised Regulations, ACWA offers the following input.

1. Provide more detailed guidance on the Regulations' requirements.

ACWA recommends that the revised Regulations include clearer and more precise language. The current draft allows for varying interpretations among water right holders, which could result in inconsistent data reporting. To illustrate our concerns, we have included a non-exhaustive list of examples where additional clarity is needed.

a. Data requirements

Clarify data requirements, particularly regarding the level of detail expected in reporting and the type of data to be submitted. For example, the revised Regulations do not indicate whether diverters are required to report raw instrument data or processed, interpreted data; the expected level of quality assurance and quality control; etc. This ambiguity creates uncertainty for the regulated community, particularly when conflicting language in separate sections of the revised Regulations could lead to different interpretations. ACWA recommends that the State Water Board provide clearer guidance on the data requirements and the specific data formats that would be accepted, ensuring that diverters are not burdened with unnecessary submissions or

potential misinterpretations. We urge the State Water Board to collaborate with diverters and draw on their expertise to develop more detailed and practical language.

b. Measurement methodology review and verification process

The revised Regulations do not establish an appropriate procedure for diverters to respond to requests for additional information about their measurement methodologies. Specifically, there is not a clear process for diverters to dispute, or otherwise raise legal arguments, defenses, confidentiality, and/or privileges in response to these requests. This lack of procedural clarity also extends to situations where the State Water Board directs a diverter to change or modify a methodology, or when it determines that a methodology must be rejected because it violates a contract, policy, order, decision, determination, regulatory requirement, or court ruling. ACWA recommends that the State Water Board establish a clear, transparent process for diverters to respond to such determinations, including an opportunity to raise legal concerns and submit supporting documentation as needed.

c. Weekly submission requirements for large diverters

The revised Regulations do not specify the timeframe each weekly submission is intended to cover, which could lead to inconsistent reporting practices. For example, if a diverter submits data on a Friday, it is unclear whether the submission should include data from the current week or the preceding one. The State Water Board should clarify when data should be reported and which period it should reflect. To address potential security risks, ACWA recommends incorporating a lag time between the measurement and reporting periods for weekly submissions by large diverters. Some of the data subject to these requirements is associated with infrastructure critical to energy grid reliability, and the real-time publication of operational information could increase exposure to cybersecurity threats. ACWA urges the State Water Board to work with utilities to develop reporting methods and security protocols that would mitigate vulnerabilities.

In addition, following discussions with State Water Board staff, it is our understanding that the purpose of the weekly submission requirements for large diverters is not to apportion diversions by type (e.g., direct diversions or diversions to storage) or water right. As currently written, the revised Regulations do not clearly convey this intent. ACWA requests language be included in the final Regulations that explicitly states that diverters are not required to apportion diversions for their weekly submissions.

ACWA has additional concerns about reporting diversions to storage under the weekly submission requirements, which are outlined in Comment #2.

d. Timeline for rejection of Alternative Compliance Plans (ACPs)

The revised Regulations do not currently provide a clear timeline for notifying applicants when an ACP has been rejected. To increase certainty, ACWA recommends that the

State Water Board include language in the final Regulations establishing a defined timeframe, such as a specific number of days, for issuing such notifications.

e. Implementation timeline and reporting documents

ACWA and its members remain concerned about the uncertainty surrounding the implementation timeline for the California Water Accounting, Tracking, and Reporting System (CalWATRS). While discussions with State Water Board staff indicate a more realistic timeline that is better aligned with operational realities, key details—such as the format of required reports (e.g., supplemental statements of water diversions and use, reports of permittee or licensee)—remain unclear. We encourage the State Water Board to be more explicit and transparent about the expected implementation timeline and deadlines to provide clarity for water right holders preparing to comply. ACWA also urges the State Water Board to share examples of reporting formats and release CalWATRS for public review and testing to ensure the regulated community has sufficient time to provide feedback prior to the Regulations becoming effective.

2. Ensure weekly submission requirements are feasible for large diverters.

Following discussions with State Water Board staff, it is our understanding that the purpose of the weekly submission requirement for large diverters is to provide the State Water Board with a general sense of how much water is being removed from the system and where it is going. Currently, the proposed approach for weekly submissions does not align with how diversions to storage are defined or measured under existing regulations. Under sections 657 and 658 of the State Water Board’s regulations, water is not considered stored until it has remained in a reservoir for at least 30 days. Whether water is diverted or stored depends on a comparison of inflows and outflows over that 30-day period. Water only accumulates in storage when inflows exceed outflows, and any attempt to estimate storage on a shorter timeframe—such as weekly—would not reflect actual storage under the law, but rather speculative projections.

ACWA recommends that, instead of weekly submissions, the State Water Board require large diverters to report data on a monthly timestep. Alternatively, if the State Water Board wishes to retain weekly reporting, it could require weekly submissions of reservoir inflows and outflows in place of diversions to storage. These proposed metrics would more appropriately align with the operational and legal realities of storage under California water law. These alternatives would still provide the State Water Board with a general understanding of how water is moving through the system without imposing unworkable or inaccurate reporting burdens on diverters.

3. Amend section 934, subdivision (b)(3)(F)(ii).

Section 934, subdivision (b)(3)(F)(ii) would require diverters with multiple claimed water rights covered by the same measurement methodology to include in their reports “the methodology for apportioning measurement data to each claimed water right” and to “include calculations, as necessary, to allocate diversion amounts according to the priority

date of each claimed water right.” Neither Senate Bill (SB) 88 nor the Water Code authorizes the State Water Board to require diverters with multiple claimed water rights to report diversions in any set order of priority. SB 88 only requires that diverters accurately measure and report their diversions. ACWA recommends amending the language in this subdivision to clarify that diverters must document how their measurement data are apportioned among multiple claimed water rights but are not required to allocate diversions according to the priority date.

4. Remove section 934, subdivision (h)(6).

ACWA recommends that section 934, subdivision (h)(6) be removed in its entirety. SB 88 does not grant the State Water Board authority to evaluate whether a water right holder’s particular methodology for, among other things, apportioning diversions across a portfolio of water rights is consistent with the requirements 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.” This type of evaluation would require a legal determination based on a specific set of facts and is therefore quasi-judicial in nature and beyond the scope of SB 88—which simply authorizes the State Water Board to “adopt regulations requiring measurement and reporting of water diversion and use.” (Water Code section 1841)

At a minimum, the State Water Board should revise the draft Regulations to be consistent with section 934, subdivision (b)(2) of the existing Regulations, wherein a measurement methodology may be effectively rejected because there is a “contract, policy, order, decision, judgment, determination, or other regulatory requirement of the board, [a regional board], other state or federal agency, or a court [that] requires...diversions be measured by a measuring device at each point of diversion,” thereby negating the need for any methodology to calculate diversions. ACWA recommends that any review of a measurement methodology be limited to its technical and mathematical aspects and not extend into legal or contractual interpretations.

5. Require a finding, per Water Code section 1840, subdivision (b), before approving ACPs.

Water Code section 1840, subdivision (b) authorizes the State Water Board to “modify” the measurement requirements in Water Code section 1840, subdivision (a) only after it has made at least one of two “findings” listed in subdivision (b). Because an ACP is a proposed modification, the State Water Board must make one of the required findings before it can approve an ACP. Neither the current Regulations nor section 936 of the revised Regulations requires the State Water Board to make a finding before one or more diverters may begin using an ACP. Thus, both the existing Regulations and proposed section 936 exceed the State Water Board’s delegated authority. ACWA recommends that the State Water Board amend the revised Regulations to explicitly require that a finding be made prior to the approval or use of an ACP, in accordance with Water Code section 1840, subdivision (b).

6. Coordinate with Updating Water Rights Data Project (UPWARD) Advisory Group and public water agencies on implementation.

ACWA recommends that the State Water Board collaborate with the UPWARD Advisory Group, which includes technical experts well positioned to support efforts to address compliance with the final Regulations, develop reporting templates, and ensure the Regulations align with real-world water management. In addition, public water suppliers—who are deeply familiar with their watersheds—have valued past engagement with the State Water Board and should continue to be key partners in developing technically sound, cost-effective, and practical approaches to water rights data collection.

We appreciate the State Water Board’s consideration of these comments. If you have any questions regarding these comments, please contact us at StephenP@acwa.com.

Sincerely,



Stephen Pang
State Relations Advocate
Association of California Water Agencies

cc: The Honorable Joaquin Esquivel, Chair, State Water Resources Control Board
 The Honorable Dorene D’Adamo, Vice Chair, State Water Resources Control Board
 The Honorable Laurel Firestone, State Water Resources Control Board
 The Honorable Sean Maguire, State Water Resources Control Board
 The Honorable Nichole Morgan, State Water Resources Control Board
 Mr. Eric Oppenheimer, Executive Director, State Water Resources Control Board
 Mr. Erik Ekdahl, Deputy Director, Division of Water Rights
 Mr. Marwan Khalifa, Interim Executive Director, Association of California Water Agencies
 Ms. Cindy Tuck, Deputy Executive Director, Association of California Water Agencies