

March 29, 2016

Information is Power: What do the State's New Water Reporting Requirements Mean for You?

The ongoing drought has highlighted this commonly accepted maxim: "You can't manage what you don't measure." In response, the State Water Resources Control Board (State Board) has adopted new measuring and reporting requirements for surface water right holders in California. The emergency regulations implement a major component of Senate Bill 88, the drought trailer bill signed into law last summer. Unlike other emergency regulations, the requirements will remain in effect indefinitely.

SB 88 regulations will impact thousands of water users, with several key implications. First, the frequency of required reporting will increase. Beginning this summer, riparian and pre-1914 appropriative right holders will be required to submit annual rather than triennial reports. Water users who divert under a small domestic, small irrigation, or livestock stockpond registration or certificate will also need to report diversion data annually. All water users must now record monthly usage and file this information electronically on the State Board's website every year.

Of particular significance are new requirements for measuring and monitoring diversions. Surface water users diverting more than 10 acre-feet per year (AFY) must now use a measurement device capable of capturing certain diversion metrics. The new regulations contain detailed requirements about allowable ranges of error, the manner in which the devices must be certified and calibrated, and the intervals at which diversions must be measured (e.g., weekly, daily or hourly). The requirements are more stringent for larger diverters. Although many water users currently measure their diversions, few have data loggers to regularly record data.

Because it may be difficult to find installers and "qualified individuals" to certify the new devices, the State Board has adopted a phase-in period, with more rigorous installation deadlines and requirements for larger water users. All water users should be preparing for these changes and factoring the cost of installing these new devices into their budgets, which the State Board estimates will range from \$300 to \$800 for small diverters and up to \$19,100 for large diverters. The State Board has prepared a list of options for financial assistance, which can be found [here](#).

Deadlines for the installation and certification of measuring devices are:

- January 1, 2017, for diversions of 1,000 AFY or more.
- July 1, 2017, for diversions between 100 and 1,000 AFY
- January 1, 2018, for diversions between 10 and 100 AFY.

In conjunction with the first water use report after device installation, the diverter must electronically file a report with certain information on the measuring device, including the date of installation, name of the person who installed the device, date of most recent calibration, and the maintenance schedule for the device. Notably, all diverters will be subject to civil liability of \$500 per day for violations of the new

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reporting and monitoring requirements. However, the regulations also outline specific methods for requesting more time in which to comply and for submitting alternative compliance proposals.

Finally, the new regulations require that by 2020, larger diverters begin disclosing daily, telemetered diversion data through a public website updated on at least a weekly basis. Despite the potential implications of these disclosure requirements, this provision has not been subject to significant debate and was not specifically included in Senate Bill 88. Accordingly, it remains to be seen whether this public disclosure requirement will evolve pending any future deliberations.

Additional details of these requirements are also outlined in Brownstein's [Annual Water Rights Checklist](#). Contact your attorney to see if your water device measures up.

This document is intended to provide you with general information regarding Senate Bill 88 in California. The contents of this document are not intended to provide specific legal advice. If you have any questions about the contents of this document or if you need legal advice as to an issue, please contact the attorney listed or your regular Brownstein Hyatt Farber Schreck, LLP attorney. This communication may be considered advertising in some jurisdictions.

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