From: Alemi, Manucher
To: Sims, Susan; Ballanti, Rachel;
cc: Jemaa, Fethi Ben;
Subject: FW: Federal Contractors and SBX7-7----------Clarification Questions---DWR 11-24-2010 Legal Answers
Date: Monday, May 16, 2011 12:25:36 PM
Attachments: AgMeasurementLegalQuestions-11-24-10.pdf

From: Mario Santoyo [mailto:msantoyo@friantwater.org]
Sent: Monday, May 16, 2011 10:28 AM
To: Avila, Andria K.; Alemi, Manucher
Cc: Guivetchi, Kamyar; Frances Mizuno; Looper, Sheryl A (Sheri); Ronald D. Jacobsma; dnelson@sldmwa.org; Robert Sawyer; Kevin Wang; Mike Wade; Brandon Souza
Subject: Federal Contractors and SBX7-7----------Clarification Questions---DWR 11-24-2010 Legal Answers
Importance: High

Dear Mr. Alemi,

I would first like thank you and your staff for all the hard work you put into developing the draft SBx7-7 Agricultural Water Measurement Regulation. I really appreciate you did this with the inclusion and cooperation of the various stakeholders. Clearly, the challenge of completely satisfying all the stakeholders in this process was and is a very tall order and I commend you for your effort.

Having said that, the Federal Water Contractors that our agency represents remain very concern with the potential lack of reference in this draft which clearly identifies the compliance with this regulation by the Federal Contractors thru their submission of their USBR approved Water Conservation Plans. The absence of this reference will unfortunately lead to confusion and most likely litigation against the Federal Water Contractors.

That is why I on May 4th and then again on May 11th, requested that the following be paragraph be inserted into section 597.3 "Range of Options for Agricultural Water Measurement" as paragraph "C":

"An agricultural water supplier subject to CVPIA or RRA shall be deemed in compliance with this article if all irrigation water

delivered by that water supplier to each customer is delivered through measurement devices that meet United States Bureau of Reclamation accuracy standards defined in Reclamation's Conservation and Efficiency Criteria Standards of 2008 or future amendments."

In looking back to your 11-24-2010 legal responses to our committee questions regarding this same issue, your legal answers are clear and consistent with our request. If you look at specifically your legal answer "A3", I read it to say that as long as our Federal Contractors measure all water from all other sources of water and include it in their Federal Water Measurement Plans; they meet the Water Measurement Requirements under SBx7-7.

Therefore, having Federal Contractor compliance referenced in section 597.3 (as per our above recommendation) would be consistent and appropriate. I would also suggest a footnote to water code 10828 be included.

I plan to attend the May 18th Water Commission meeting to provide input on this issue to the Commissioners and hope that with your consideration and help we can achieve a satisfactory conclusion to this important issue.

From page 1 of the DWR "Ag Measurement Legal Questions" document:

Q2. Will Federal water contractors' Water Management Plans (WMP) approved by the USBR satisfy the requirements of Water Management Planning under SBx7-7?

A2. For the purpose of WMPs Federal Water Management Plans are deemed to meet state WMP requirements.

Q3. Would approved Federal Water Management Plans satisfy Water Measurement requirements under SBx7-7?

A3. Federal guidelines require Federal water contractors to measure only Federal Water which is contractual water titled as “Class 1 water” As such, for the specific purpose of meeting SBx7-7 Water Measurement Requirements and to satisfy Water Measurement Requirements under SBx7-7, Federal contractors, will need to either:

1. Measure all water from all other sources of water (state and local, excluding groundwater) and include it in Federal Water Management Plans; or

2. Provide DWR a separate state water measurement to meet the water measurement requirements of SBX7-7 (section 10608.48 (a) (b) and Section 531.10). This option will be applicable and include measurements of the water which is non-Federal water and is 2000 AF or more delivered annually. Note Section 10608.48 (a) and (b) require water measurement and pricing structure and a report to DWR in a WMP and 531.10 requires annual report of farm-gate deliveries on a monthly basis.

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