



BEST BEST & KRIEGER
ATTORNEYS AT LAW

Robert M. Sawyer
Kevin Wang
Robert.Sawyer@bbklaw.com
Kevin.Wang@bbklaw.com

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400 Capitol Mall, Suite 1650
Sacramento, CA 95814
Phone: (916) 325-4000
Fax: (916) 325-4010
bbklaw.com

To the California Water Commission

Anthony Saracino, Chair
Paul Kelley, Vice-Chair
Andrew Ball
Joseph Byrne
Dave Cogdill
Daniel Curtin
Joe Del Bosque
Kimberley Delfino
Luther Hintz

Re: Comments of Friant Water Authority to Update on Agricultural Water Measurement Regulations and Consideration of Proposed Changes
Agenda Item: 35
California Water Commission Meeting of September 21, 2011

Dear Chair Saracino and Members of the Commission:

This letter is submitted to you on behalf of the Friant Water Authority (FWA), in connection with your consideration tomorrow of Agenda Item 35, an update concerning the emergency and permanent agricultural water measurement regulations your Commission has been working on in connection with 2009's SBX7-7. FWA is pleased to present the following information concerning those parts of SBX7-7 and the regulations that deal with the water management and conservation programs undertaken by agricultural water suppliers that contract with the United States Bureau of Reclamation's (BOR) Central Valley Project (CVP).

FWA is a California joint powers authority made up of 20 irrigation districts and other agencies¹ that have contracted with BOR as long-term contractors for BOR's Friant Division of the CVP. FWA's member districts deliver irrigation water to over 15,000 mainly small family-owned farms, totaling over a million acres located on the east side of the southern San Joaquin Valley. Under contract with BOR, FWA operates the 152-mile-long Friant-Kern Canal.

¹ Arvin-Edison Water Storage District, Delano-Earlimart Irrigation District, Exeter Irrigation District, Fresno Irrigation District, Ivanhoe Irrigation District, Kaweah Delta Water Conservation District, Kern-Tulare Water District, Lindmore Irrigation District, Lindsay-Strathmore Irrigation District, Lower Tule River Irrigation District, Madera Irrigation District, Orange Cove Irrigation District, Pixley Irrigation District, Porterville Irrigation District, Saucelito Irrigation District, Shafter-Wasco Irrigation District, Stone Corral Irrigation District, Tea Pot Dome Water District, Terra Bella Irrigation District, Tulare Irrigation District.

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SBX7-7 reauthorized the Agricultural Water Management Planning Program, the effect of which was to require agricultural water suppliers such as FWA's members to prepare agricultural water management plans (hereafter "plans") under state law. (Sen. Bill No. 7X (2009-2010 Ex. Sess.) § 7 [achieved through reauthorization of Water Code section 10608.48, subdivisions (d), (e) and (f) and section 10828].) During the Legislature's consideration of SBX7-7 it was recognized that under longstanding federal law, including the Central Valley Project Improvement Act (CVPIA) (Public Law 102-575) and the Reclamation Reform Act (RRA) of 1982, FWA members and other CVP contractors had for many years already been submitting to BOR for its acceptance -- and then filing annual reports with BOR to update -- periodic plans for conservation and efficiency, "using best available cost-effective technology and Best Management Practices (BMPs) [to promote] the highest level of delivery water management achievable by Contractors and the implementation of water-use efficiency measures reasonably achievable by their customers." (2008 Conservation and Efficiency Criteria, U.S. Department of the Interior, Bureau of Reclamation, Mid-Pacific Region,, p. 7-3.)

In light of this historic federal program, in Section 16, subdivision (c), of the Bill Analysis for SBX7-7, it was noted that one of the purposes of the bill was to "allow compliance [with the Agricultural Water Management Planning program] by submission of water management plans in accordance with ... water conservation plans under federal law." (Brandt, Alf W., Legis. Analyst, analysis of Sen. Bill No. 7X (2009-2010 Ex. Sess.) § 7, p. 7.) And as a result, Water Code Sec. 10828 was included in SBX7-7, to provide that CVP contractors that are subject to CVPIA's plan requirements may satisfy state water conservation plan requirements by submitting their federal plans to the Department of Water Resources (DWR), provided that such plans have been accepted by BOR.

In providing this alternative to CVP contractors, the Legislature was aware that the Standard Criteria for Evaluating Water Management Plans ("federal Criteria"), including agricultural water measurement standards, are subject to revision by BOR either through the mandatory three year review required under Section 3405, subdivision (e) of CVPIA, or possible future Congressional amendment of CVPIA or RRA.² The latest review of the federal Criteria is now being undertaken, and it is expected that BOR's 2011 Conservation and Efficiency Criteria will be circulated by the end of this year.

Within SBX7-7, subdivisions (d) and (e) of Water Code Sec. 10648.48 reauthorized the agricultural water management plan requirements under Water Code section 10800, *et seq.* Subdivision (d) requires that a contractor's plan include a report on just which of the many Efficient Water Management Practices (EWMPs) listed under Sec. 10608.48 have been implemented, or are planned to be implemented. Subdivision (f) provides, *inter alia*, that a CVP contractor "may meet the requirements of subdivisions (d) and (e) by submitting to [DWR] a water conservation plan submitted to [BOR] that meets the requirements described in Section 10828." (I.e., is subject to CVPIA or RRA, or both, has been adopted and submitted within the prior four years, and has been accepted by BOR.)

SBX7-7 expressly authorized federal contractors to satisfy state agricultural water management plan requirements by submission of BOR-accepted plans. This does not mean, however, that the same contractors are precluded from satisfying EWMP requirements by submission and acceptance of those

² Section 3405, subdivision (e) of CVPIA requires the Secretary of the Interior to review the CECS every three years at minimum and revise the criteria as deemed necessary.

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same federal plans. The Bill Analysis for SBX7-7 demonstrates that the Legislature was clearly aware that "[t]he two mandatory EWMPs are already required of all federal water contractors (e.g. Westlands WD and Friant WA) since 1992 under the Central Valley Project Improvement Act." (Alf, Brandt W., Bill Analysis of SB7X7, at p. 7.) (Emphasis added.) Thus, the Legislature clearly intended by the express terms and legislative history of Water Code Secs. 10608.48, subdivision (f), 10828 and 10826 to avoid burdening federal contractors – which were already operating under BOR-accepted plans subject to the CVPIA -- with the requirement of also filing a separate and distinct state agricultural water management plan merely based upon the inclusion of two “critical” EWMPs that are already in the federal Criteria, e.g., volumetric pricing and measurement accuracy, in the statute.

The emergency regulations previously approved by the Commission and the Office of Administrative Law provided, *inter alia*, that:

“An agricultural water supplier subject to Central Valley Project Improvement Act (CVPIA) (Public Law 102-575) or the Reclamation Reform Act (RRA) of 1982 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 the United States Bureau of Reclamation accuracy standards defined in Reclamation’s Conservation and Efficiency Criteria Standards of 2008.” (23 Cal. Code Regs. §597.1(i))

While it is appropriate for the statutory alternative that applies to CVP contractors to be recognized in the regulations, citation to a particular year’s edition of the federal Criteria is problematic. While as a practical matter BOR’s standards for measurement accuracy have not been relaxed over the years, changes to the federal Criteria may occur over time as the result of the triennial review required by CVPIA, potentially leading to a situation in which a federal contractor’s compliance with the 2008 federal Criteria for purposes of submitting a plan to BOR for its acceptance and subsequent submission to the Department of Water Resources (DWR) may not result in the plan conforming to the 2011 or later federal Criteria, at best setting up a confusing situation, and at the worst, a situation in which the plan meets the requirements of neither federal nor state law.

FWA is advised that the Commission is now considering removing subsection (i) from the regulations in its entirety. It should be clearly understood that FWA’s members can comply with the 2008 federal Criteria (and indeed have been doing so), and that they prefer that the above-quoted emergency regulation remain in the permanent regulations you are now considering, rather than that the submission to DWR of BOR-accepted plans not be included in the regulations at all. Complete elimination of any reference to what is clearly addressed in Water Code Sec.10828, i.e., that federal contractors that submit plans using the federal Criteria; receive acceptance of those plans from BOR; and subsequently submit those plans to DWR, aren’t subject to the regulations, may simply create more confusion.

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Thank you for your consideration.

Very truly yours,

BEST BEST & KRIEGER, LLP
Special Counsel for the Friant Water Authority



By ROBERT M. SAWYER and KEVIN WANG

cc: Spencer Kenner
Staff Counsel, California Department of Water Resources

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California Department of Water Resources