FRIANT
WATER AUTHORITY

SAN LUIS & DELTA-MENDOTA
WATER AUTHORITY

TEHAMA-COLUSA CANAL
AUTHORITY

October 6, 2011

Fethi Ben Jemaa
Department of Water Resources
901 P Street, Suite 313A
Sacramento, CA 95814

VIA EMAIL TO jemaa@water.ca.gov

Re: SBX7-7 - agricultural water measurement regulations

Dear Mr. Ben Jemaa:

Friant Water Authority, San Luis & Delta-Mendota Water Authority, and the Tehama-Colusa Canal Water Authority (the "Authorities") collectively represent 65 water suppliers that contract with the United States Bureau of Reclamation (BOR) to receive water from the Central Valley Project (CVP). The Authorities respectfully submit this comment letter regarding the permanent agricultural water measurement regulations the California Water Commission is considering in connection with 2009's SBX7-7, and specifically, 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). As is evident from the plain text of the statute, the California Legislature's intent in enacting SBX7-7 was merely to extend the requirements that CVP contractors are *already meeting* to agricultural water suppliers that are not subject to these federal laws.

As we have previously noted, SBX7 -7 reauthorized the Agricultural Water Management Planning Program. (Sen. Bill No. 7X (2009-2010 Ex. Sess.) § 7.) Subdivisions (d) and (e) of Water Code section 10608.48 reauthorized the agricultural water management plan requirements under Water Code sections 10800, et seq. While subdivision (d) requires that a contractor's plan include a report on which of the Efficient Water Management Practices (EWMPs) listed under Section 10608.48 have been or will be implemented, subdivision (f) provides 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." Section 10828, in turn, provides that water conservation plans submitted to the United States Bureau of Reclamation under the CVPIA or the RRA satisfy the requirements of the Agricultural Water Management Planning Program as long as: (1) the plan was adopted and submitted within the previous four years, and (2) the Bureau of Reclamation has accepted the water conservation plan as adequate. Thus, under Water Code section 10608.48(f), a plan that was adopted and submitted under the CVPIA or the RRA within the previous four years and was

accepted by the Bureau of Reclamation as adequate is deemed to meet the EWMPs requirements of Water Code section 10608.48(d).

Because CVP contractors were already subject to measurement and pricing requirements under the water conservation criteria imposed by the federal laws – the two EWMPs that were identified as "critical" under SBX7-7 – Section 10608.48(f) specified that CVP contractors satisfy the EWMPs requirement by providing a copy of their federal water conservation plan. Notably, in its text, SBx7-7 included essentially the same language to accommodate CVP contractors that had appeared in the Agricultural Water Management Council's AB 3616 MOU as well as in SB 820 and SB 1640. (*See* attachment.)

Throughout this regulatory process, we have been urging the Commission to adopt a regulation that reaffirms that agricultural water suppliers who prepared accepted water management plans under the CVPIA or the RRA that satisfy the requirements of Water Code section 10828 have fully complied with Water Code section 10608.48. Whether or not the Commission ultimately decides to adopt a regulation specifically reaffirming this point, the plain text of Section 10608.48(f) provides that federal water contractors "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."

We thank the Commission for its careful consideration of SBX7-7's limited application to CVP contractors.

Sincerely,

Ronald D. Jacobsma, Executive Director
Friant Water Authority

Daniel C. Nelson, Executive Director
San Luis & Delta-Mendota Water Authority

Jeff Sutton, Executive Director
Tehama-Colusa Canal Authority

Attachment: As indicated in text

cc: Spencer Kenner, Staff Counsel, California Department of Water Resources
Sue Sims, Interim Executive Officer
Anthony Saracino, Chair
Paul Kelley, Vice-Chair
Andrew Ball, Member
Joseph Byrne, Member
Dave Cogdill, Member
Daniel Curtin, Member
Joe Del Bosque, Member
Kimberley Delfino, Member
Luther Hintz, Member
California Water Commission
P.O. Box 942836
Sacramento, CA 94236-0001

The Agricultural Water Management Council was formed in 1996 as a result of 1990's AB 3616 and administers a voluntary memorandum of understanding (MOU) between itself, agricultural water suppliers and environmental interest groups. The MOU serves as a guide for the development, submission, review and endorsement of agricultural water management plans.

At the time that the MOU was authored it was recognized that specific irrigation and water districts were already conducting water management planning and reporting for Central Valley Project and Reclamation Reform Act water service contractors under federal criteria administered by the U. S. Bureau of Reclamation (USBR). Provisions in the MOU were added to allow water suppliers to submit their USBR water conservation plans in lieu of completing a separate plan under the MOU. This accommodation was included in the MOU so that districts participating in the AWMC water management planning process would not be required to complete both a USBR plan and an AB 3616 plan. This accommodation was included in the MOU to recognize the CVPIA plans as meeting the requirements of the AB3616 plan, eliminating the need for them to expend limited conservation dollars completing two planning processes.

USBR plans exceed the industry standards by complying with a requirement that water deliveries be measured to accuracy standards defined in the USBR water conservation criteria. AB 3616 plans included measurement and volumetric pricing as optional efficient water management practices (EWMPs), based on a net benefit analysis. The Council's decision was based on a desire to prevent water suppliers that were completing AB 3616 water management plans from having to conduct mandated measurement and volumetric pricing as required in USBR plans.

Agricultural Water Management Council MOU
Section 4.03 (E)
For water suppliers who have water supply contracts with the U.S. Bureau of Reclamation (USBR) and join the Council:

1. The Council may deem any WMP which USBR has deem adequate under federal criteria on or before November 16, 1998 to be endorsed as of that date pursuant to Section 4.03(C) of the MOU. The Council will review progress reports for any such endorsed WMP pursuant to federal criteria and in accordance with Section 4.07.

2. If a WMP has not been submitted to, or has not been deemed adequate by, the USBR on or before November 16, 1998, the water supplier will submit its federal WMP to the Council. The Council will review the WMP for conformity with federal criteria. The Council will timely act to endorse or not endorse the WMP pursuant to Section 4.03(C) of the MOU, and will make the best efforts to take such action prior to USBR's final action on the WMP. The Council will review progress reports for any such

endorsed WMP pursuant to federal criteria and in accordance with Section 4.07.

SB 820/1640 – Kuehl, 2005/2006

In 2005 Sen. Sheila Kuehl introduced SB 820 that, among other things, made water management planning a required activity for agricultural water suppliers. The water management planning process contained in SB 820 was lifted from the Council's AB 3616 MOU, including language allowing USBR plans to satisfy the requirements of the bill. Ultimately vetoed by the Governor, Sen. Kuehl reintroduced the agricultural water management planning language in 2006 as SB 1640 with an additional provision that water suppliers use a cost benefit analysis on listed efficient water management practices and that they develop an implementation plan for those practices deemed to be locally cost effective.
See footnote 1, p. 3

The Water Conservation Act of 2009

SBx7-7 was adopted as part of the comprehensive package of water bills passed by the legislature and signed by the Governor in 2009. Among other things, SBx7-7 made water management planning a required activity for agricultural water suppliers serving 25,000 acres or more. Once again language from the Council's original AB 3616 water management planning process was lifted and included in the bill, with the addition of two new EWMPs associated with an assessment of the effects of climate change and estimates of the amount of water conserved in the past and projected into the future as a result of district water management planning activities.

Mandatory measurement and volumetric pricing were redefined as "critical" EWMPs and placed in a new section of the bill, separate from the other EWMPs that were in the water management planning section.
See footnote 2, p. 7

Conclusion

Because CVP contractors were already conducting measurement and pricing activities under the federal water conservation criteria, the new "critical" EWMPs in SBx7-7 were understood and intended to apply only to water suppliers that were not already doing those activities. SBx7-7 included essentially the same accommodating language for CVP contractors that appear in the Council's AB 3616 MOU as well as in SB 820 and SB 1640.

Footnote 1

SB 820/1640
SB 1640 changes occur in red

10826. A plan shall be adopted in accordance with this chapter and shall do all of the following:

(a) Describe the agricultural water supplier and the service area, including all of the following:

(1) History and size of the service area.

(2) Location of the service area and its water management facilities.

(3) Terrain and soils.

(4) Climate.

(5) Operating rules and regulations.

(6) Water delivery measurements or calculations.

(7) Water rate schedules and billing.

(8) Water shortage allocation policies.

(b) Describe the quantity and quality of water resources of the agricultural water supplier, including all of the following:

(1) Surface water supply.

(2) Groundwater supply.

(3) Other water supplies.

(4) Source water quality monitoring practices.

(5) Water uses within the water supplier's service area, including all of the following:

(A) Agricultural.

(B) Environmental.

(C) Recreational.

(D) Municipal and industrial.

(E) Groundwater recharge.

(F) Transfers and exchanges.

(G) Other water uses.

(6) Drainage from the water supplier service area.

(7) Water accounting, including:

(A) Quantifying the water supplier's water supplies.

(B) ~~Tabulate~~Tabulating water uses.

(C) Overall water budget.

(8) Water supply reliability.

(c) Review previous water management activities.

(d) Identify efficient water management practices.

(e) Include a cost benefit analyses of all applicable water management practices.

(f) Develop a schedule for program implementation of management practices that are locally cost effective, estimate the budget needed for implementation, and identify the results expected from full implementation of the agricultural water management plan.

SEC. 39.30. Section 10826.1 is added to the Water Code, to read:

10826.1. Agricultural water suppliers that are members of the Agricultural Water Management Council, and that submit water management plans to that council in accordance with the "Memorandum of Understanding Regarding Efficient Water Management Practices By Agricultural Water Suppliers In California," dated January 1, 1999, may submit the water management plans identifying water demand management measures currently being implemented, or scheduled for implementation, to satisfy the requirements of Section 10826.

SEC. 40.31. Section 10826.2 is added to the Water Code, to read:

10826.2. (a) Agricultural water suppliers that are required to submit water conservation plans to the United States Bureau of Reclamation pursuant to either the Central Valley Project Improvement Act (P.L. 102-575) or the Reclamation Reform Act of 1982, or both, may submit those water conservation plans to satisfy the requirements of Section 10826, if both of the following apply:

(1) The agricultural water supplier has adopted and submitted the water conservation plan to the United States Bureau of Reclamation within the previous four years.

(2) The United States Bureau of Reclamation has accepted the water conservation plan as adequate.

(b) Notwithstanding subdivision (a) of Section 10821, nothing in this part is intended to require agricultural water suppliers that are required to submit water conservation plans to the United States Bureau of Reclamation pursuant to either the Central Valley Project Improvement Act (P.L. 102-575) or the Reclamation Reform

Act of 1982, or both, to develop and adopt water conservation plans on a schedule different from that required by the United States Bureau of Reclamation.

SEC. ~~41.~~32. Section 10840 of the Water Code is amended to read:

10840. Every agricultural water supplier shall prepare its plan pursuant to Article 2 (commencing with Section 10825).

SEC. ~~42.~~33. Section 10841 of the Water Code is amended to read:

10841. An agricultural water supplier required to prepare a plan may consult with, and obtain comments from, any public agency or state agency or any person who has special expertise with respect to water conservation and reclamation and management methods and techniques.

SEC. ~~43.~~34. Section 10844 of the Water Code is amended to read:

10844. (a) An agricultural water supplier shall file with the entities listed in subdivision (b) a copy of its plan no later than 30 days after adoption. Copies of amendments or changes to the plans shall be filed with the entities listed in subdivision (b) within 30 days after adoption.

(b) An agricultural water supplier shall file a copy of its plan and amendments or changes to the plan with each of the following entities:

(1) The department.

(2) Any city or county, or city and county, within which the agricultural water supplier provides water supplies.

(3) Any groundwater management entities within which the agricultural water supplier extracts or provides water supplies.

(4) Any urban water supplier within which district the agricultural water supplier provides water supplies.

(5) Any city or county library within which district the agricultural water supplier provides water supplies.

(6) The California State Library.

(7) Any local agency formation commission within which county the agricultural water supplier provides water supplies.

(c) The department shall prepare and submit to the Legislature, on or before December 31, in the years ending in six ~~and~~or

one, a report summarizing the status of the plans adopted pursuant to this part.

The report prepared by the department shall identify the outstanding elements of the individual plans. The report shall include an evaluation of the effectiveness of this part in promoting efficient agricultural water management practices and shall include recommendations relating to proposed changes to this part, as appropriate. The department shall provide a copy of the report to each agricultural water supplier that has submitted its plan to the department. The department shall also prepare reports and provide data for any legislative hearings designed to consider the effectiveness of plans submitted pursuant to this part. Nothing in this subdivision authorizes the department, in preparing the report, to approve, disapprove, or critique individual plans submitted pursuant to this part.

SEC. ~~44.~~35. Section 10845 of the Water Code is repealed.

SEC. ~~45.~~36. Section 10845 is added to the Water Code, to read:

10845. (a) Not later than 30 days after the date of adopting its plan, the agricultural water supplier shall make the plan available for public review on the agricultural water supplier's Internet Web site.

(b) An agricultural water supplier that does not have an Internet Web site shall submit to the department, not later than 30 days after the date of adopting its plan, a copy of the adopted plan in an electronic format. The department shall make the plan available for public review on the department's Web site.

SEC. ~~46.~~37. Section 10853 of the Water Code is repealed.

SEC. ~~47.~~38. Section 10853 is added to the Water Code, to read:

10853. The adoption of a plan as specified in Section 10820 satisfies any requirements of state statute, regulation, or order, including those of the board, for the preparation of water management plans. If the board requires additional information concerning water conservation to implement its existing authority, nothing in this part limits that board in obtaining that information.

SEC. ~~48.~~39. Section 10854 of the Water Code is repealed.

SEC. ~~49.~~ 40. Section 10854 is added to the Water Code, to read:

10854. An agricultural water supplier that does not prepare, adopt, and submit its agricultural water management plan in accordance with this part, is ineligible to receive funds made available pursuant to any program administered by the board, the department, or the California Bay-Delta Authority until the agricultural water management plan is submitted pursuant to this article.

(SB 1640 differed from 2005's SB 820 only with the addition of requiring a cost benefit analysis of all applicable water management practices and requiring an implementation schedule for management practices that are locally cost effective.)

Footnote 2

Excerpt - SBx7-7

Chapter 4. Agricultural Water Suppliers

10608.48. (a) On or before July 31, 2012, an agricultural water supplier shall implement efficient water management practices pursuant to subdivisions (b) and (c).

(b) Agricultural water suppliers shall implement all of the following critical efficient management practices:

(1) Measure the volume of water delivered to customers with sufficient accuracy to comply with subdivision (a) of Section 531.10 and to implement paragraph (2).

(2) Adopt a pricing structure for water customers based at least in part on quantity delivered.

Excerpt - SBx7-7

10828. (a) Agricultural water suppliers that are required to submit water conservation plans to the United States Bureau of Reclamation pursuant to either the Central Valley Project Improvement Act (Public Law 102-575) or the Reclamation Reform Act of 1982, or both, may submit those water conservation plans to satisfy the requirements of Section 10826, if both of the following apply:

(1) The agricultural water supplier has adopted and submitted the water conservation plan to the United States Bureau of Reclamation within the previous four years.

(2) The United States Bureau of Reclamation has accepted the water conservation plan as adequate.

(b) This part does not require agricultural water suppliers

that are required to submit water conservation plans to the United States Bureau of
Reclamation pursuant to either the Central Valley Project Improvement Act
(Public Law 102-575) or the Reclamation Reform Act of 1982, or both, to prepare and adopt water conservation plans according to a schedule that is different from that required by the United States Bureau of Reclamation.