FINAL STATEMENT OF REASONS

Pursuant to Administrative Procedures Act Government Code Section 11346.9

TITLE 23. WATERS
DIVISION 2. DEPARTMENT OF WATER RESOURCES
CHAPTER 5.1 WATER CONSERVATION ACT OF 2009
ARTICLE 2. Agricultural Water Measurement

Table of Contents

Section	Item	Page
A	Update on Initial Statement of Reasons	3
B	Important Dates of Notices and Rulemaking Activities	3
C	Public Comments Received During the Comment Periods	4
D	Description of Regulatory Action	4
E.	Statutory Provisions Mandating Changes to the Regulation	4
F.	Changes to the Text Of Regulation	4
G	Summary and Responses from the noticed 45-day public comment period (July 22, 2011 through September 6, 2011, and 15-day public comment period (September 23, 2011 and October 7, 2011)	8
H	Authority and Reference	24
I	Determinations	24
I.1	Local Mandate, Gov. Code, 11346.5 (a) (5)	24
I.2	Estimate of Cost and Savings, Gov. Code, 11346.5 (a) (6)	24
I.3	Economic Impact on Small Business, Gov. Code, 11346.5 (a) (8)	25
I.4	Assessment of Cost Impacts By Private Sector	25
I.5	Assessment of Effect on Jobs/Business	25
I.6	Reports Required From Business	26
I.7	Significant Effect on Housing Cost	26
I.8	Small Business Determination	26
I.9	Alternative Determination	26
J	Updated Informative Digest	26

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A. UPDATE ON INITIAL STATEMENT OF REASONS

The Final Statement of Reasons, pursuant to Administrative Procedures Act Government Code Section 11346.9, is an update of information contained in the Initial Statement of Reasons. Consistent with Government Code Section 11347.3, the Department of Water Resources (the Department) has made a copy of its file of rulemaking in this matter available for public inspection.

B. IMPORTANT DATES OF NOTICES AND RULEMAKING ACTIVITIES

Date of Notice of Proposed Rulemaking: July 12, 2011

Date of Initial Statement of Reasons: July 12, 2011

Date of Notice of Modifications to the Proposed Regulation and Modified Text of Regulation: September 22, 2011

Date of Notice of Addition of Documents and Information to Rulemaking File: None added

Statement of 15-Day Notice of Availability of Documents and Information: September 22, 2011

Date of Notice on Status of Proposed Rulemaking: October ??. 2011

Date of Final Statement of Reasons: October ??, 2011

Dates of all public participation events (comment periods and hearings):

The mandatory 45-day public comment period on the Agricultural Water Measurement regulation was held July 22, 2011 to September 6, 2011. The Department also conducted two public hearings on the proposed regulation on August 24, 2011 in Sacramento, and September 8, 2011 in Fresno. DWR modified the proposed text of regulation in response to comments received during the 45-day comment period. DWR provided a Notice of changes on September 22, 2011, to the Proposed Agricultural Water Measurement Regulation. DWR accepted written comments during the 15 day public comment period between September 23, 2011 and October 7, 2011.

§597.3(a) if the downstream individual customer's delivery points meet either of the following conditions:

A) The agricultural water supplier does not have legal access to the delivery points of individual customers or group of customers ~~downstream of the point of measurement~~ needed to install, measure, maintain, operate, and monitor a measurement device.

Or,

B) The measurement options in §597.3(a) cannot be met, as approved by an engineer, by installing a commercially available measurement device, that is comparable in cost to other measurement devices commonly in use, at each ~~of the downstream~~ individual customer's delivery points because small differentials in water level or large fluctuations in flow rate or velocity occur during the delivery season at those delivery points. When a water measurement device becomes commercially available, that is comparable in cost to other measurement devices commonly in use, and that can meet the measurement options in §597.3(a)(2) at the individual customer's delivery points, an agricultural water supplier shall include in its Agricultural Water Management Plan a schedule, budget and finance plan to measure water at the individual customer delivery points in compliance with §597.3(a) of this Article.

(Section 597.3(b)(2) has been modified to add the word 'current' to ensure that up-to-date documentation gets submitted in the Agricultural Water Management Plans.)

2)An agricultural water supplier choosing an option under paragraph (b)(1)of this section shall provide the following current documentation in its Agricultural Water Management Plan(s)submitted pursuant to Water Code §10826:

(Section 597.3(b)(2)(A) has been modified to require suppliers claiming the lack of access to customers delivery points to make a certification through their legal counsel.)

A) When applicable, to demonstrate lack of legal access at delivery points of individual customers or group of customers downstream of the point of measurement, the agricultural water supplier's legal counsel shall ~~self-~~certify to the Department that it does not have legal access to measure water at customers delivery points and that it has sought and been denied access from its customers to measure water at those ~~customer delivery~~ points.

(Section 597.3(b)(2)(B) has been modified to require documentation of device unavailability and water level conditions to be consistent with the reasons described in section 597.3(b)(1)(B).)

B) When applicable, the agricultural water supplier shall document the water measurement device unavailability and that the ~~field~~ water level or flow conditions described in §597.3(b)(1)(B) exist at individual customer's delivery points downstream of the point of measurement as approved by an engineer.

(Section 597.4(e)(4) has been modified to specify the Plan submittal date as specified in Water Code Section 10820(a).)

e) Reporting in Agricultural Water Management Plans

4) If an existing water measurement device is determined to be out of compliance with §597.3(a), and the agricultural water supplier is unable to bring it into compliance before submitting its Agricultural Water Management Plan in December 2012, the agricultural water supplier shall provide in its 2012 plan, a schedule, budget and finance plan for taking corrective action in three years or less.

(Section 597.2 has been modified to add five definitions.)

§597.2. Definitions

a) **For purposes of this article, the terms used are defined in this section.**

1) "Accuracy" means the measured volume relative to the actual volume, expressed as a percent. The percent shall be calculated as 100 x (measured value – actual value) / actual value, where "measured value" is the value indicated by the device or determined through calculations using a measured value by the device, such as flow rate, combined with a duration of flow, and "actual value" is the value as determined through laboratory, design or field testing protocols using best professional practices.

2) "Accuracy certification" means the formal procedure by which a measurement device is assessed and verified to meet the accuracy standards.

3) "Agricultural water management plan" means a plan prepared by an agricultural water supplier pursuant to the Agricultural Water Management Planning Act (Water Code Section 10800 et seq.)

4) "Agricultural water management plan cycle" means the time period between the agricultural water management plan submittal dates of December 31, 2012, December 31, 2015, and December 31 every five years thereafter.

5) "Agricultural water supplier," as defined in Water Code §10608.12(a), means a water supplier, either publicly or privately owned, providing water to 10,000 or more irrigated acres, excluding acres that receive only recycled water. "Agricultural water supplier" includes a supplier or contractor for water, regardless of the basis of right, which distributes or sells water for ultimate resale to customers. "Agricultural water supplier" does not include the Department.

6) "Approved by an engineer" means a California-registered Professional Engineer has reviewed, signed and stamped the plans, design, testing, inspection, and/or documentation report for a measurement device as described in this article.

7) "Best professional practices" means practices attaining to and maintaining accuracy of measurement and reporting devices and methods described in this article, such as operation and maintenance procedures and practices recommended by measurement device manufacturers, designers, and industry professionals.

8) "Customer" means the purchaser of water from an agricultural water supplier who has a contractual arrangement with the agricultural water supplier for the service of conveying water to the customer delivery point.

9) "Delivery point" means the location at which the agricultural water supplier transfers control of delivered water to a customer or group of customers. In most instances, the transfer of control occurs at the farm-gate, which is therefore, a delivery point.

10) "Existing measurement device," means a measurement device that was installed in the field prior to the effective date of this article.

11) "Farm-gate," as defined in Water Code §531(f), means the point at which water is delivered from the agricultural water supplier's distribution system to each of its customers.

12) "In-house built device" means a device manufactured by or for the supplier by entities not certified to meet industry standards.

13) "Irrigated acres," for purposes of applicability of this article, is calculated as the average of the previous five-year acreage within the agricultural water supplier's service area that has received irrigation water from the agricultural water supplier.

14) "Manufactured device" means a device that is manufactured by a commercial enterprise, often under exclusive legal rights of the manufacturer, for direct off-the-shelf purchase and installation. Such devices are capable of directly measuring flow rate, velocity, or accumulating the volume of water delivered, without the need for additional components that are built on-site or in-house.

15) "Measurement device" means a device by which an agricultural water supplier determines the numeric value of flow rate, velocity or volume of the water passing a designated delivery point. A measurement device may be a manufactured device, on-site built device or in-house built device.

16) "New or replacement measurement device" means a measurement device installed after the effective date of this article.

17) "On-site built device" means a device or a structure that is built in-situ on the water delivery canal, such as concrete structures that are built on site.

18) "Recycled water" is defined in subdivision (n) of §13050 of the Water Code as water that, as a result of treatment of waste, is suitable for a direct beneficial use or a controlled use that would not otherwise occur, and is therefore considered a valuable resource.

19) "Type of device" means a measurement device that is manufactured or built to perform similar functions. For example, rectangular, v-notch, and broad crested weirs are one type of device. Similarly, all submerged orifice gates are considered one type of device.

G7: Add definitions.

Department Response: Reject - Some of the terms mentioned ('In-House Built Devices' and 'On-Site Built Devices') were used in previous drafts of the regulation and are no longer included in the current text of the regulation. Other terms were defined as needed.

G8: Same as comment G1.

Department Response: Reject.

G9: Allow supplier-wide averaging of device accuracies to comply with the proposed accuracy standard.

Department Response: Reject - This alternative has been discussed and deemed not meeting the intent of the law to achieve sufficient accuracy of the measurements. Consider the example of two flow measurement devices being evaluated in a district. One is +30% accurate and the other is -35% accurate. Evaluated individually, they are both quite inaccurate and would certainly not meet the proposed regulation, but measured in the aggregate they would be -5% accurate and meet the regulation. This simple example illustrates the basis for not allowing an average or aggregate accuracy for compliance where an aggregate or average accuracy could be shown to meet the requirements when in fact individual devices are well out of compliance. As a result, averaging device accuracies is not an acceptable method and is deemed unable to provide sufficiently accurate measurements of water deliveries to individual customers.

G10: The District operates and maintains over 700 propeller type meters to serve 90,000 acres of irrigated farm lands. At the time of installation, all of these met the requirements of §597.3(a)(2)(A). Since these meters are used for volumetric billing of water to its customers, the District has an active monitoring, repair, replacement and accuracy verification program. The accuracy verification is implemented by comparing the District's aggregate metering records to upstream metering conducted by DWR (using venturi rather than propeller meters - a different device type). Such comparisons are made monthly and consistently show values within the metering accuracy standards described in §597.3(a). Such comparisons effectively test 100% of the District meters in use in a given month (rather than 10% of meters over a year). This achieves a much higher standard than contemplated in §597.3(a). Therefore, the District has an effective accuracy verification system already in place that far exceeds the intent of §597.4(a)(1). However, it could be argued that because the District does not perform individual field meter tests as suggested in §597.4(a)(l), it would not comply with said section. Therefore, an additional paragraph (C) should be added to §597.4(a)(l), and read as follows *(added language in italics): "§597.4(a)(1)(C) Field testing wherein the aggregate accuracy of multiple devices can be verified via comparison with a set of upstream or downstream devices may be used to identify compliance provided that all farm gates within the reach being evaluated are metered. "*

Department Response: Reject - Verification of aggregate accuracy of multiple devices via comparison with a set of upstream or downstream devices would only show that the accuracies of individual devices are within acceptable range on an aggregate basis. This is similar to showing compliance based on average accuracies of multiple devices described in 'Comment #3' and deemed not meeting the requirements. However, since the accuracies of all individual

devices at time of installation have already met the accuracy requirements of §597.3(a)(2)(A), these devices will be deemed in compliance with the accuracy requirements as long as they are field-inspected and analyzed as required by §597.4(a)(1)(B). The verification of aggregate accuracy can be part of the field-inspection and analysis approach that would also include inspection of individual devices performed by trained individuals.

G11: The appropriate standard is critically dependent on various factors including whether the standard is locally cost-effective. The District supports the standard in California Water Code §531.1O (b) which should be included or referenced in the proposed regulation: *"Nothing in this article shall be construed to require the implementation of water measurement programs that are not locally cost effective."*

Department Response: Reject - The legislation (SBx7-7) explicitly included the 'cost-effectiveness' condition for the implementation of other efficient water management practices listed under section 10608.48(c). The 'cost-effectiveness' condition was however left out from the water measurement requirement in section 10608.48(b) for agricultural water suppliers with irrigated acreage greater than 25,000 acres (the subject of this regulation).

G12: Section 597.3(b)(1)(A) impermissibly exempts water suppliers from measuring water deliveries at the farm gate if they lack legal access to the farm gate. Some water suppliers may have never needed legal access to the farm gate and may not currently have such access, but are authorized by law to acquire such access. In addition, urban water agencies have successfully implemented a similar statutory mandate to install meter waters on the private property of their urban customers, without resorting to this kind of exception.

Department Response: Accept in part - Measurement at laterals upstream of multiple farm-gates will be accepted only for special cases as specified in Section 597.3(b)(1) and a supplier has to demonstrate that measurement under section 597.3(a) is not legally accessible by demonstrating the lack of legal access as outlined in Section 597.3(b)(2)(A). Language pertaining to the certification of the lack of legal access has been strengthened.

Changes to the language of the regulation: Section 597.3(b)(2) has been revised as follows:

An agricultural water supplier choosing an option under paragraph (b)(1) of this section shall provide the following current documentation in its Agricultural Water Management Plan(s) submitted pursuant to Water Code §10826:

(A) When applicable, to demonstrate lack of legal access at delivery points of individual customers or group of customers downstream of the point of measurement, the agricultural water supplier's legal counsel shall ~~self-~~certify to the Department that it does not have legal access to measure water at customers delivery points and that it has sought and been denied access from its customers to measure water at those ~~customer delivery~~ points.

G13: Section 597.3(B)(1)(A) is overbroad and may allow water suppliers to avoid measurement at the farm gate, without even requiring the water supplier to ask for permission to access the private canal. For instance, this exception may prevent measurement at the farm gate if water is delivered through canals owned by mutual water companies, which could affect significant numbers of water suppliers.

Department Response: Reject - As mandated by the legislation, the regulation requires that suppliers measure water they deliver to their customers. Mutual Water Companies are considered as customers to the agricultural water supplier. Therefore the agricultural water supplier is only required to measure the water it delivers to its customer (in this case the Mutual Water Company (MWC) and not the MWC's customers). Similarly, if a MWC is an agricultural water supplier, it will be required to measure water deliveries to its own customers (provided it meets the applicability thresholds as required by the legislation and outlined in Section 597.1).

G14: The Department has not provided a rationale why section 597.3(b)(1)(B) is limited to a single measurement device, particularly when two devices may effectively and accurately measure water deliveries at the farm gate. The obvious, albeit unstated, reason for this exception is the cost of requiring more than one measurement device. However, as we have previously noted, two provisions of SB 7X 7 conclusively demonstrate that a "locally cost effective" exemption does not apply to the measurement requirement. First, the Act includes explicit cost effectiveness exemptions for other efficiency practices in section 10608.48(c), but not with respect to water measurement and volumetric pricing requirements in section 10608.48(b).

Department Response: Reject – DWR believes that requiring more than one measurement device to be installed at each farm-gate is not practical, technically challenging, and imposes undue hardship to the agricultural water supplier. The regulation does however require that suppliers measure water deliveries at farm-gate when a water measurement device becomes commercially available, that is comparable in cost to other measurement devices commonly in use, and that can meet the measurement options in §597.3(a)(2).

G15: Section 597.1 of the draft regulation would provide that certain CVP and RRA contractors "are deemed in compliance" with the requirements of SB 7X 7, and thus exempts such contractors from having to comply with the measurement requirement of Section 10608.48(b). However, all Agricultural Water Suppliers subject to SB 7X 7, including CVP contractors, must meet the measurement requirement of Section 10608.48, and the proposed exemption is unlawful.
SB 7X 7 specifically excludes certain CVP contractors from having to prepare and submit Agricultural Management Plans, permitting certain CVP contractors to instead submit the water conservation plan that has been accepted as adequate by the U.S. Bureau of Reclamation (Reclamation).

Department Response: Accept in part - The Regulation did not exempt the CVP and RRA contractors. However, Water Code section 10608.48(b)(1)(i) limits the DWR's regulatory authority to the following:

> "[P]roviding a range of options that agricultural water suppliers may use or implement to comply with the measurement requirement in [section 10608.48(b)(1)]."

Water Code section 10608.48(b)(1) requires agricultural water suppliers to measure the volume of water delivered to customers with sufficient accuracy to comply with section 531.10 and nothing more. *See Barton v. Napa Co. Bd. of Supervisors* (1991) 226 Cal.App.3d 1467, 1480. The statute's clear and unambiguous regulatory authority to the Department to provide a range of water measurement requirement options does not extend to interpreting section 10828, the so-called CVP water supplier statutory exemption. That section describes a possible exemption for certain federal water suppliers from state water plan requirements and falls outside of section 10608.48's regulatory charge to the Department. Affected water suppliers may interpret that provision's language as they see fit.

The U.S. Constitution's Supremacy Clause in Art. IV, could also affect whether the Department can interpret the CVP provision. A state regulation that conflicts with a federal statute, making compliance with the state law in effect impossible, would be pre-empted by the federal statute and a barrier to implementing the state regulation. *See Louisiana Public Service Comm'n v. F.C.C.* (1986) 476 US 355, 366.

Though the CVP provision's language is ambiguous, DWR agrees that the exemption for CVP contractors seems to apply to the planning and reporting requirements and not from the water measurement requirements.

Changes to the language of the regulation: Section 597.1 is revised to remove section 597.1(i).

G16: The proposed accuracy standard should be revised downward from 12% to 10% so not to conflict with the statutory requirement that suppliers "Measure the volume of water delivered to customers with sufficient accuracy.

Department Response: Reject - Accuracy Standards in paragraph (1) of Section 597.3(a) are for existing devices installed in the field. The standard (12%) is slightly higher than that of new devices (10%) so that suppliers who already have measurement devices installed prior to the effective date of this regulation will not need to immediately replace those devices that are already meeting the slightly lower standard of 12% that is also deemed acceptable and meeting the statutory requirement of 'sufficient accuracy'. Furthermore, given the life cycle of measurement devices, existing devices will eventually need to be replaced and meet the 10% accuracy standard.

G17: the Department has provided no explanation for what constitutes field inspection as a methodology for determining the accuracy of measuring devices, as provided for in section 597.4 of the draft regulation. To the contrary, the regulation appears to allow field inspection to certify the accuracy of all measurement devices without testing even a single measurement device, nor does the regulation provide any standard or criteria for assessing the accuracy of field inspections. Because nothing in the record explains how field inspections will determine the "sufficient accuracy" of the measurement of water deliveries, the draft regulation should be revised to eliminate field (testing)*.

** We believe the commenter meant '...regulation should be revised to eliminate field inspection'.*

Department Response: Reject - To avoid having a regulation that is too prescriptive, and given that testing protocols are device specific (agricultural water measurement devices include a vast array of device types including: propeller meters, acoustic meters, differential head meters, meter

gates, slide or sluice gates, constant head orifices, weirs, flumes, radial gates, ...etc.), suppliers are required to use best professional practices and follow device manufacturers' recommendations as stated in 597.4(b). In addition, the proposed regulation requires that field inspection and analysis shall be approved by a California Registered Professional Engineer. Deletion of field inspection and requiring field testing of water measurement devices would be very onerous. DWR believes that field inspection of devices, certified by a registered professional engineer, ensures compliance with the regulation. Additionally, field testing is an option that suppliers can always use to certify their device accuracy.

G18: The regulation must be consistent with applicable law including Proposition 218, which divests local public agencies of authority to impose or increase general taxes assessments and fees without voter approval. The erroneous assumption that local public agencies can simply pass through the costs of the regulation through to their customers is inconsistent with Proposition 218.

Department Response: Reject - DWR, in its document of April 13, 2011 "Cost Analysis for Proposed Agricultural Water Measurement Regulation in Support of Economic and Fiscal Impact Statement" recognized that many categories of costs might be imposed on agricultural water suppliers. The major categories would include:

- Initial assessment of measurement devices
- Installation of new devices or repair/adjustment of existing devices, as needed
- On-going O&M of upgraded measurement devices (the incremental change in cost compared to what the supplier would have spent in the absence of the regulation)
- Periodic re-testing and certification
- Record-keeping, training, other administrative costs.

DWR recognizes that agricultural water suppliers may need to hold a Proposition 218 vote, and other costs to them may also include the cost of holding an approval vote for increased rates or assessments as may be required by Proposition 218 process. This however, does not mean that those fees and assessments won't be eventually passed to the rate payers.

G19: Because the regulations result in costs imposed on local agencies estimates must be prepared in accordance with Department of Finance instruction. Gov Code § 11346.5, sub. (a)(6); State Administrative Manual § 6601-6616). The regulation applies to local public agencies including the mandate to measure surface water and groundwater that it delivers to its customers pursuant to the accuracy standards in this section. However, the language of STD 399 conflicts with the regulation by stating that the regulation does not affect any Local entity or program.

Department Response: Reject – The regulation applies to agricultural water suppliers, which recuperate any cost incurred in relation to delivering water from the agricultural water users (farmers). The agricultural water users are therefore deemed to be the entity economically impacted. Form 399 and the accompanying economic analysis document "Cost Analysis for Proposed Agricultural Water Measurement Regulation in Support of Economic and Fiscal Impact Statement" reflect the above.

G20: The Department of Water Resources must obtain the concurrence of the Department of Finance in its findings and conclusions contained in STD 399.

Department Response: Reject - Finance approval and signature is only required when SAM sections 6601-6616 require completion of Fiscal Impact Statement in the STD. 399. As noted in the responses to G18. and G19., DWR believes that costs are eventually passed to the rate payers, and as a result, SAM sections 6601-6616 does not apply and the 'Fiscal Impact Statement' section of Form 399 did not need to be completed.

G21: Department has ignored a reasonable and less costly alternative consisting of permitting supplier-wide averaging of device accuracies to comply with the accuracy requirements.

Response: Reject - This alternative has been discussed and deemed not meeting the intent of the law to achieve sufficient accuracy of the measurements (see response to Comment G9). Allowing an average or aggregate accuracy for compliance will result in an average accuracy that could be shown to meet the requirements, when in fact individual devices are well out of compliance. As a result, averaging device accuracies is not an acceptable method to measure water deliveries to individual customers with sufficient accuracy.

G22: The proposed regulation requires the use of specific technologies or equipment namely water measurement devices that measure water within 12% accuracy by volume for existing devices, 10% by volume new device with non laboratory certification, or 5% by volume (new device with laboratory certification). Despite this requirement, the Initial Statement of Reasons does not include the reason why the specific technology or equipment is required.

Department Response: Reject - DWR, with input from the Agricultural Stakeholder Committee and the Measurement Subcommittee, considered three alternative frameworks for developing a range of options for measuring agricultural water deliveries: (1) develop a regulation that includes a list of acceptable measurement devices maintained in defined manners to achieve desired accuracy; (2) develop a regulation setting a performance standard that defines minimum benchmarks for device accuracy that could be met or bettered by a range of devices; or (3) develop a regulation that provides a process for suppliers to assess and report their own locally-determined standards for measurement accuracy.

Option (2) specifying a performance standard that defines minimum device accuracy benchmarks – provided the most appropriate framework and flexibility to establish a range of measurement options. A performance standard meets the intent of the legislation in the most flexible and cost-effective manner. No specific technology is required and no specific device is required. The only requirement is to use a device that meets an acceptable minimum accuracy standard. The Department did not recommend adopting a specific technology or a list of acceptable measurement devices for the following reasons:

- Dictating specific devices can unintentionally constrain suppliers or impose unreasonable or unnecessary costs to accommodate the defined devices.
- Measurement technology changes over time, so a list of approved devices would need frequent review and modification.

- Measurement requirements are to assure agricultural water suppliers are able to meet 10608.48(b), which states "Measure the volume of water delivered to customers with sufficient accuracy…" The paragraph is stated in terms of measurement accuracy, not specific devices or technologies.

SUMMARY OF COMMENTS AND DEPARTMENT RESPONSES FROM THE NOTICED 15-DAY PUBLIC COMMENT PERIOD (SEPTEMBER 23 THROUGH OCTOBER 7, 2011)

G23: Treat sub-laterals similar in size and operation to improvement districts and community service ditches/pipelines where the flows are certifiable at the headgate. The District can likely justify measurement improvements at the head of sublaterals, but we clearly cannot justify the high costs for improvements at every one of these turnouts, especially in the case of "dead-end systems" (those laterals that do not spill to a drain). If improvements are required at every turnout, the result could conceivably be that the District and other similar agencies will be situated like an improvement district, and practice a rotation style delivery like an improvement district, then it should be treated like an improvement district.

Department Response: Reject-All sub-lateral water delivery farm-gates are subject to the regulation. If conditions of Section 597.3 (b) apply, then the water supplier may use option b and install measurement devices upstream of multiple customers.

G24: Exempt turnouts servicing Garden-head acreage, usually less than 5 acres gross. Turnouts that serve these parcels are usually ranchet-type gates that are owned by individuals whose concern is not agricultural or farming, but rather landscaping or growing self consumed crops. These parcels tend to be located on small laterals which are hardly accessible. Should service be discontinued due to lack of funds needed to upgrade the turnouts, the District has no means of continually patrolling for illegal acquisition of water where accounting for water is totally lost.

Department Response: Accept in part - Turnouts that serve parcels owned by individuals whose purpose is not agricultural or farming, but rather landscaping or growing self-consumed crops are not subject to this regulation.

G25: Exempt or allow more lenient measures for measuring small acres (usually less than 10 acres gross) which irrigate infrequently. The District will be hard-pressed to justify necessary improvements on systems that have infrequently irrigated and may stay dry for years to come.

Department Response: Reject- Any water supply delivered to agricultural irrigated land is subject to the regulation regardless of frequency of irrigation.

G26: Consider adding definitions for: Accuracy Certification, Agricultural Water Management Plan, Agricultural Water Management Plan Cycle, Agricultural Water Measurement, Efficiency Water Management Practices, In-House Built Devices, and On-Site Built Devices.

Department Response: Accept in part - Five definitions have been added to provide clarity. "Accuracy certification" means the formal procedure by which a measurement device is assessed and verified to meet the accuracy standards.

"Agricultural water management plan" means a plan prepared by an agricultural water supplier pursuant to the Agricultural Water Management Planning Act (Water Code Section 10800 et seq.)

"Agricultural water management plan cycle" means the time period between the agricultural water management plan submittal dates of December 31, 2012, December 31, 2015, and December 31 every five years thereafter.

"In-house built device" means a device manufactured by or for the supplier by entities not certified to meet industry standards.

"On-site built device" means a device or a structure that is built in-situ on the water delivery canal, such as concrete structures that are built on site.

G27: In 1992, the Central Valley Project Improvement Act (CVPIA) passed, supplementing the water conservation provisions of RRA. CVPIA required Reclamation to establish Best Management Practices (BMPs) and criteria (known herein after as Standard Criteria) for evaluating the adequacy of all water conservation plans developed by CVP contractors, including those plans required by RRA. Further, CVPIA required that all contracting districts or agencies entering into, renewing, or amending water service or repayment contracts for Central Valley Project water shall ensure that all surface water delivery systems within its boundaries are equipped with water measuring devices or water measuring methods of comparable effectiveness acceptable to the Secretary within five years of the date of contract execution, amendment or renewal. CVPIA also required that any new surface water delivery systems installed within its boundaries, on or after the date of contract renewal, also be equipped with measurement devices.

The requirements for water conservation Plans under CVPIA are much more rigorous and prescriptive than those in Section 210(b) of RRA. CVPIA changed the landscape of water conservation in the Central Valley and accelerated the water use efficiency efforts of CVP contractors. In creating the BMPs and Standard Criteria, water measurement became critical BMP 1 (non-exemptible). The BMP states that CVP contractors must measure the volume of water delivered by the contractor to each customer, except Class II water, with devices that are operated and maintained to a reasonable degree of accuracy, under most conditions, to +/- 6 percent by volume. The reporting of this is encompassed within a District's Plan that is submitted under the Standard Criteria. To date, all districts submitting Plans under the Standard Criteria are held to the +/- 6 percent in field accuracy. This represents 2,132,561 irrigable acres within the Central Valley, of which 2,045,999 acres have the potential to be affected by this regulation.

Plans submitted under the Standard Criteria contain the measurement compliance information. These Plans undergo a multi-tiered review and acceptance process that is different and much more rigorous than typical RRA Plans. The following process is specific to Plans submitted under the Standard Criteria.

At minimum, two technical staff members review each Plan for adequacy in meeting the Standard Criteria and proper implementation of the BMPs. Often times, there is considerable communication back and forth for clarifications and supporting documentation between districts and Reclamation before Plans are deemed adequate. Once the Plan is deemed adequate by the technical staff, the Plan is listed in the Federal register and the Plan is released for a 30-day

public review and comment period. If no comments are received (which is most often the case), the Plan is considered accepted. If public comments are received, the comments are addressed, and depending on the significance of required changes based on comments, the Plan may or may not be sent out for another public review.
Reclamation tracks Plan compliance carefully and implements several strategies to deal with non-compliance. These strategies include, but are not limited to the following:

- Restrictions on contract renewals or assignments
- Ineligibility for any Reclamation grant program
- Restrictions on rescheduling
- Restrictions on water banking
- Restrictions on inclusion and exclusion requests

Department Response: Comment consists of a statement and not a request for change. However, including the CVP provision in the regulation (the deleted previous section 597.1 (i)) would, in the Department's view, improperly alter and enlarge the statute's scope, and it would extend the Department's statutory authority beyond what section 10608.48(i)(1) allows. Federal water suppliers that comply with the Reclamation Criteria (stated in the comment) and measure water using devices that are maintained and calibrated to meet the more stringent federal standards would easily meet the accuracy standards of this regulation. See also response to G15.

G28: Valley Ag Water Coalition (VAWC) has always maintained that the Department is incorrect in its assertion that the locally cost effective standard does not apply to agricultural water measurement requirements as codified by SB X7-7. While measurement must occur under the mandate of SB X7-7, it must be held to a locally cost effective standard. The Department errs in reading the provisions of Section 10608.48(b)(1) to the exclusion of the locally cost effective standard set forth in subdivision (b) of Section 531.10. Reference only to subdivision (a) of Section 531.10 is merely appropriate statutory reference to the measurement requirement. The provisions of subdivision (b) of that section cannot be ignored or else a plain reading of the statute—and the clear intent of the Legislature—is turned on its head. The Department must balance achievement of the measurement mandate.

Department Response: Reject - The Water Code section 10608.48(a) requires implementation of efficient water management practices (EWMPs) in accordance to sections 10608.48(b) and (c). Section 10608.48(b) refers to two critical EWMPs, water measurement and adoption of a volumetric pricing structure. Section 10608.48(c) requires implementation of other EWMPs when locally cost effective. As such, the local cost effectiveness does not apply to the critical EWPMs, including water measurement.

G29: The proposed permanent regulation relies on the "Cost Analysis for Proposed Agricultural Water Measurement Regulation in Support of Economic and Fiscal Impact Statement," dated April 22, 2011. Yet, for purposes of that economic and fiscal impact analysis, suppliers subject to CVP Water Management Plans were excluded. Therefore, the estimated statewide costs to comply with the proposed agricultural water measurement regulation are not accurate within a reasonable range of direct costs. The Department, for example, estimated that nearly 21,000 current measurement sites statewide would require modification, repair or a new device and that the mid-range estimates of total present value of costs would be $333 million over 20 years, and $420 million over 40 years. These estimates are no longer valid with the elimination of the exemption for federal water contractors.

VAWC asserts that the record of the regulatory proceeding includes sufficient expert opinion to establish that it is neither necessary nor cost effective to require federal contractors to comply with a new state-imposed regulation that essentially duplicates federal requirements. VAWC does not believe it is in the public interest to create a duplicative requirement regarding agricultural measurement for federal water contractors.

Department Response: Reject - Federal water suppliers that currently comply with the Reclamation Criteria and measure water using devices that are maintained and calibrated to meet the more stringent federal standards would easily meet the accuracy standards of this regulation. Federal suppliers already meeting the Reclamation Criteria would only incur minimal additional costs, if any, to comply with the State's regulation. Like any other agricultural water supplier, federal water suppliers will need to provide initial certification that their devices meet the accuracy standards. The certification can be done through field testing which is voluntary, alternatively they can perform field inspection of their devices by trained individuals and approved by a Professional Engineer. Any associated certification cost will be minimal given the fact that federal suppliers have already device inspection and calibration programs in place. (See also Response to Comment G27 & G 15)

G30: A significant change in the proposed permanent measurement regulation now requires an agricultural water supplier's legal counsel to certify to the Department that the supplier does not have legal access to measure water at a customer's delivery point. This change requires legal certification where the previous version required a supplier to "self certify." The addition of a legal certification requirement will necessarily impose significant legal expenses that VAWC does not believe were subjected to cost impact analysis. Self-certification by the governing body of a water supplier should be sufficient to address the matter of access to private property. Requiring the services of legal counsel will create an unnecessarily time consuming and very expensive mandate that will not likely result in better information.

VAWC asserts that the record of the regulatory proceeding includes sufficient expert opinion to establish that it is neither necessary nor cost effective to require a legal certification regarding access to private property.

Department Response: Reject - The clarification added does not change the regulation, it only requires that the water supplier's legal counsel to certify a matter that has legal implications to ensure that the claim is prepared by a subject matter expert and is legally defensible. The cost effectiveness claim does not apply as certification was already a requirement and the cost effectiveness criterion does not apply to water measurement provisions of SBX7-7. See also Department Response to G28.

G31: The proposed permanent regulation would require that all measurement devices be brought into compliance within three years of December 2012 instead of within three years of determining that they are out of compliance. This creates a conflict for devices that are found to be out of compliance after the December 2012 deadline. The previous three-year compliance schedule for devices found to be out of compliance provides a logical and cost-effective method for dealing with devices that are found to be out of compliance after 2012.

VAWC is unaware of any information in the record of the regulatory proceeding that addresses the cost impact of such a change. VAWC believes such a change is unnecessary, burdensome and not locally cost-effective.

Department Response: Reject – the inclusion of 2012 deadline to demonstrate compliance of existing devices with the regulation is a clarification. Section 597.4(d)(2) requires all devices installed to be in compliance at all times. Section 597.4(e)(4) requires existing devices that are not in compliance before 2012 shall be brought into compliance within three years after submittal of the 2012 plan. DWR recognized that requiring compliance of all existing devices that do not meet the regulation accuracy standards by 2012 might not be reasonable; thus allowed three-years beyond 2012 to bring noncompliant devices into compliance by Plan submittal date of 2015. All plan submittal dates are established by the statute. After 2012, if any device no longer meets the accuracy requirements, appropriate corrective actions has to be taken (597.4(d)(2) and after 2015 there is no reason for the device to not be compliant for three years. The inclusion of the 2012 date is not a change in the regulation; it only adds clarification to ensure that section 597.4(e)(4) is consistent with 597.4(d)(2).

G32: Section 597.4, d, 1 and elsewhere in the document it is implied that water measurement devices operation and maintenance are addressed. We suggest the group consider adding a subsection that explicitly discusses operation and maintenance (i.e. the need for an O&M plan, regular recertification, etc.) beyond the initial certification of existing and new devices.

Department Response: Reject – The regulation is already requiring reporting in §597.4(d)(1) that: All measurement devices shall be correctly installed, maintained, operated, inspected, and monitored as described by the manufacturer, the laboratory or the registered Professional Engineer that has signed and stamped certification of the device, and pursuant to best professional practices. To avoid having a regulation that is too prescriptive, and given that maintenance protocols are device specific (agricultural water measurement devices include a vast array of device types including: propeller meters, acoustic meters, differential head meters, metergates, slide or sluice gates, constant head orifices, weirs, flumes, radial gates, etc.), suppliers are required to use best professional practices and follow device manufacturers' recommendations.

G33: The law describes water measurement as needed to facilitate volumetric pricing. We suggest the group consider the appropriateness of adding language to add value to farm delivery water measurement by providing water volume data to the farmer at the times and units they can use for on-farm water management.

Department Response: Reject - The comment is beyond the scope of this regulation. The regulation is for setting accuracy standards and giving a range of measurement options that suppliers may use to comply with the measurement requirements. Suppliers' compliance with the volumetric pricing requirement is outside the scope of this regulation. It is the responsibility of the suppliers to adopt a volumetric pricing structure as required of them.

G34: 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).

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."

Department Response: See response to Comment G27.

G35: The language in SBx7-7 requires water suppliers serving 25,000 irrigated acres or more to measure the volume of water delivered to customers. Affected federal water contractors are already required to measure water deliveries and utilize a pricing structure that is at least in part based on the volume delivered. Without adequate clarification these contractors may unnecessarily be required to comply with two sets of regulations.

Department Response: See response to Comment G27

G36: Federal water contractors that are in compliance with federal water conservation criteria are already measuring water deliveries in compliance with 531.10(a).

Department Response: See response to Comment G27.

G37: Legal certification limiting access to private ditches – 597.3 (b) (2) (A). Additional changes in the measurement regulation now require "…agricultural water suppliers legal counsel to certify to the Department that it does not have legal access to measure water as a customer's delivery points…" This change requires legal certification where the previous version allowed a district to "self certify." If enacted with the new requirement of "legal certification," it will be necessary to engage in a host of title search processes that will be unnecessarily time consuming and very expensive. Self-certification by the elected Board of a water supplier should be sufficient to accommodate questions about access to private property.

To complicate the issue further, the new requirement conflicts with Water Code Section 22234 where the responsibility of engaging with the District for improvements clearly falls on the landowner:

Part 5, Chapter 2, Article 1 Sec. 22234. A district may contract to operate, maintain, or improve ditches and laterals not owned by the district upon petition of at least two-thirds of the owners of land served by such ditches or laterals.

Department Response: Reject - the comment that the land owners may have a contract with the water supplier supports the proposed regulation. When land owners have a contract with the

supplier to manage and operate the private ditch, the supplier will have legal access to install and manage the water measurement device. See also Department Response to G30.

G38: This change in the regulation requires that all measurement devices be brought into compliance within three years of December 2012 instead of within three years of determining that they are out of compliance. This creates a conflict for devices that are found to be out of compliance after the December 2012 deadline. It is also unlikely that districts have accommodated for water measurement device assessments in their 2012 budgets in order to comply with the new water management plan deadline of December 2012. The previous three-year compliance schedule for devices found to be out of compliance more provides a logical method for dealing with devices that are found to be out of compliance after 2012.

Department Response: Reject. See response to G31.

G39: However, as noted in our prior comment letters, the proposed regulation allows measurement upstream of the farm gate if the supplier lacks legal access to the farm gate (§ 597.3(b)(1)(A)) or if the supplier cannot measure deliveries with a single measurement device "comparable in cost to other measurement devices commonly in use" (§ 597.3(b)(1)(B)). These exceptions are overbroad and are inconsistent with the mandate of the Water Conservation Act of 2009. We have repeatedly provided alternative language for these regulatory sections that are consistent with the requirements of the statute.

These exceptions have the potential to exempt a significant proportion of the water suppliers covered by the statute from measurement at the farm gate. For instance, the Department's economic analysis estimates that, "half of the potentially affected irrigated acreage in the Sacramento Valley region would be measured at the lateral level."3 That economic analysis further assumes that all other suppliers would measure at the turnout 4 but this assumption is arbitrary in light of the breath of these two exceptions and the failure to consider whether other suppliers would utilize these exceptions. Thus it is likely that an ever greater proportion of affected water deliveries will not be measured at the farm gate.

Department Response: Reject - Measurements at locations upstream of farm gates are accepted only for restricted and special cases where farm-gate measurement is not technically or legally feasible. Suppliers can use this option only if they can demonstrate that measurement at farm gate is not legally accessible or technically feasible and cannot meet the required level of accuracy required. Section 597.3(b)(2) lists documentation that suppliers have to provide in order to use this option. Having a regulation that accommodates special cases and conditions that exist in the real world will ensure compliance by all suppliers. It is also an attempt to provide a range of options as directed by the legislation to help agricultural water suppliers comply with the measurement regulation.

G40: **Section 597.3(b)(1)(A)** While the language proposed to be stricken appears to be merely redundant, the remaining language continues to be flawed. Some water suppliers may have never needed legal access to the farm gate in the past, but are authorized by law to acquire such access. This exception is overbroad and is inconsistent with the intent and requirements of the Act, and the language should be revised to provide a more narrowly drawn exception that is consistent with the intent of the law. We recommend that the language be amended to read: "The agricultural water supplier does not have, and lacks the legal authority to obtain, legal access . . . "

Department Response: Reject - Agricultural water suppliers claiming lack of legal access are required to certify through their legal counsel that they do not have legal access to measure water at a customer's delivery point. Requiring such certification to be made through the supplier's legal counsel ensures that the claim is legally defensible. Additionally, those suppliers are required to document that they have sought and been denied access to measure water at customer farm-gates.

G41: Section 597.3(b)(1)(B) Similarly, the language proposed to be stricken appears redundant, but the remaining language provides an impermissibly broad exemption from measurement at the farm gate. The language of the Act does not support an exemption that turns on whether a measurement device is not simply "commercially available", but "comparable in cost to other measurement devices" as well. Even if the cost of commercially available devices were a permissible consideration under the statute, the lack of guidance on making cost comparisons between measurement devices renders the provision unworkable.

We believe that a more narrowly drawn exemption, coupled with a reporting requirement that would document the specific field conditions where measurement accuracy could not be achieved with commercially available measurement devices, would strike the appropriate balance. We recommend that the language be amended to read:

"The agricultural water supplier has determined that the applicable accuracy standard of 597.3(a) cannot be met with commercially available measurement devices, where the agricultural water supplier provides documentation of the flow rates, elevations, and operating conditions that make it impossible to measure volume at each customer delivery point for which the measurement exemption is claimed, and these data and the finding have been reviewed, signed and stamped by a registered Professional Engineer."

Department Response: Reject - DWR believes that requiring more than one measurement device to be installed at each farm-gate is not practical, technically challenging, and imposes undue hardship to the agricultural water supplier. The regulation does however require that suppliers measure water deliveries at farm-gate when a water measurement device becomes commercially available, that is comparable in cost to other measurement devices commonly in use, and that can meet the measurement options in §597.3(a)(2). If the supplier cannot meet the conditions stated in 597.3(a)(2) the supplier shall measure at the farm-gate.

G42: Section 597.3(b)(2)(A) We have no objection to this change, although as noted above, we believe that section 597.3(b)(1)(A) should be limited to water suppliers that lack the legal authority to obtain sufficient access to customer delivery points.

Department Response: Reject – see response to G39.

G43: Section 597.3(b)(2)(B) We have no objection to this change, although as noted above, we believe that section 597.3(b)(1)(B) should not be based upon the lack of availability a single measurement device (as contrasted with two devices, for high and low flows respectively) nor be based upon an vaguely stated standard of cost comparability.

Department Response: Reject – see response to G39.

G44: **Section 597.4(e)(4)** The Act requires that water suppliers "shall implement" the critical efficient management practices (volumetric pricing and water measurement) on or before July 31, 2012. Cal. Water Code § 10608.48(a). However, this section of the regulation provides a limited exception that allows certain water suppliers to avoid implementing the accuracy standards for water measurement by this statutory deadline. This exception applies only for agricultural water suppliers that are "unable to bring [an existing water measurement device] into compliance," allowing them until 2015 to comply. It appears unclear what "unable to bring into compliance" means under the regulation (presumably this would not include cost-effectiveness, given the statutory scheme and structure of cost-effectiveness exceptions), and the December 2012 date appears inconsistent with the statutory requirement (as may this entire section). This section provides the only guidance on the implementation timing, and because the regulation provides this timing provision for existing devices, under accepted principles of regulatory and statutory construction the reasonable inference from the regulatory scheme is that all new devices must be installed and certified by the statutory deadline.

Department Response: Reject - DWR recognizes that requiring compliance of all existing devices that do not meet the regulation accuracy standards by 2012 might not be reasonable; thus allowed three-years beyond 2012 to bring noncompliant devices into compliance, by the 2015 water management plan submittal date, provided that the supplier provide in its water management plan a schedule, budget, and finance plan to bring those devices into compliance. However, after 2012, if any device no longer meets the accuracy requirements, and as stated in section 597.4(d)(2), appropriate corrective actions have to be taken that may include repair or replacement of the device.

G45: Nevertheless, NRDC recognizes that fully complying with new measurement requirements will take time, and at several stages in the stakeholder process we have noted that the lack of clarity on the timing of implementing the measurement standard has created unnecessary uncertainty for agricultural water suppliers and frustrated attempts at consensus on the language of the rule. The lack of guidance on the time available for completion has hardened the demands of the regulated community for the regulation to require as little change as possible from the status quo. It was clear from the outset of the stakeholder process in the summer of 2010 that full implementation of farm gate measurement for some districts would require a multiyear process at best, and with significant issues pending in a protracted rulemaking, little time would be left to fully "implement" the required measures before the date of July 31, 2012 contained in the act. Unfortunately, the Department has failed to provide much guidance to water suppliers as to the deadlines for implementation, and we believe the Department has missed an opportunity to reach consensus on stronger regulations that more fully comply with the Act's requirements while also providing a more realistic schedule for full implementation.

Department Response: Reject – the deadline for compliance with the regulation has been set by the SBx7-7 legislation. Although the scope of this regulation is to provide a range of measurement options that agricultural water suppliers may use; phasing the implementation schedule is outside the scope of the regulation. DWR believes that the regulation text, which is the culmination of over a year long process with participation and input from stakeholders, meet the intent of the legislation in putting forth a range of measurement options that provide for a reasonable and effective way to comply with the measurement requirements.

H. AUTHORITY AND REFERENCE

Under the authority included under California Water Code Section 10608.48(i)(1), the Department of Water Resources is required to adopt regulations that provide for a range of options that agricultural water suppliers may use or implement to comply with the measurement requirements in paragraph (1) of subdivision (b) of Section 10608.48.

Water Code Section 10608.48(i)(1) states:

> *The department shall adopt regulations that provide for a range of options that agricultural water suppliers may use or implement to comply with the measurement requirement in paragraph (1) of subdivision (b).*

The section above refers to Section 10608.48(b), which states:

> *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.*

I. DETERMINATIONS

I.1 Local Mandate Determination:

The proposed regulation does not impose a mandate on school districts. The regulation would impose specific farm gate water delivery measurements and reporting requirements on local agricultural water districts that supply water to more than 25,000 acres of irrigated land.

I.2 Estimate Cost and Savings:

I.2.1 Non-federal water suppliers

There is significant uncertainty regarding the potential cost to agricultural water suppliers associated with compliance with the regulation due the large range of data and assumptions. The mid-range estimates of total present value of costs are $333 million over 20 years. About $70 million of that would be initial assessments and capital improvements, and the remainder is the present value of annual O&M, administration, and capital replacement. Costs could be as little as half that amount or as much as twice that amount. Average costs per acre potentially affected were estimated to be $24 in initial costs and $6.5 in annual ongoing O&M costs. Costs to individual farms are likely to vary significantly.

I.2.2 Federal (CVPIA and RRA) water suppliers

Federal water suppliers that comply with the Reclamation Criteria would comply with the State Regulation, provided the water suppliers submit initial certification signed by a professional engineer, that they meet the federal standards and devices are maintained and calibrated to operate to accuracy of +/- 6 percent, under most conditions. If the federal contractors have not been complying with the Reclamation criteria DWR has estimated the maximum cost to federal water suppliers, for doing field testing, to be approximately $32 million assuming that there is 1.8 million acre of irrigated land with 22 water suppliers greater than 25,000 acres of irrigated land that would be in the same condition as other non-federal water suppliers in terms of measuring water. However, federal water suppliers have been under the Standard Criteria for many years and therefore should have implemented devices with accuracy of +/- 6%. Consequently, we anticipate the only cost to the federal water suppliers would be the cost of initial certification of compliance (needed with the 2012 Agricultural Water Management Plans) for existing devices by a Professional Engineer. Though no analysis was done to estimate the cost of initial certification it is expected to be minimal.

I.3 Economic Impact on Small Business:

Fiscal impacts and costs to water suppliers are indirectly dealt with in this section, as costs to the agricultural water suppliers associated with complying with the regulation will be passed on to their customers (i.e., farmers) through higher water rates and assessments. Though agricultural water suppliers might need voter approval to increase rates since they are subject to Proposition 218, which divests local public agencies of authority to impose or increase general taxes assessments and fees without voter approval. Nevertheless, the legislation has clearly singled out two efficient water management practices and considered them as 'critical' including the water measurement requirement. Unlike other efficient water management practices that are required only when locally cost effective under section 10608.48(c), SB X7-7 legislation does not provide any exemptions from the water measurement requirement of 10608.48(b)(1).

Only Agricultural water suppliers that provide water to more than 25,000 acres of irrigated land are subject to this regulation. As mentioned, costs to those agricultural water suppliers will be passed on to their customers. However, as required by legislation, agricultural water suppliers have to measure water deliveries to their customers in order to adopt a billing structure that is based at least partially on volume of water delivered. The volumetric pricing of water deliveries is expected to achieve an equitable billing for the agricultural water users, as well as encourage water use efficiency and conservation.

I.4 Assessment of Cost Impacts Incurred By Private Sector:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

I.5 Assessment of Effect on Jobs/Business:

The proposed regulation for agricultural water measurement will not:

- Eliminate jobs within California;

- Eliminate existing businesses within California:
- Affect the expansion of businesses currently doing business within California

I.6 Reports Required From Business:

The proposed regulation for agricultural water measurement will require new criteria and methods in reports submitted in Agricultural Water Management Plans.

I.7 Significant Effect on Housing Cost:

None.

I.8 Small Business Determination:

The proposed regulations may affect small businesses.

I.9 Alternative Determination:

DWR considered three alternative frameworks for developing a range of options for measuring agricultural water deliveries: (1) develop a regulation that includes a list of acceptable measurement devices maintained in defined manners to achieve desired accuracy; (2) develop a regulation setting a performance standard that defines minimum benchmarks for device accuracy that could be met or bettered by a range of devices; or (3) develop a regulation that provides a process for suppliers to assess and report their own locally-determined standards for measurement accuracy.

This regulation is based on alternative (2), which specifies a performance standard that defines minimum device accuracy benchmarks. This alternative provided the most appropriate framework and flexibility to establish a range of measurement options. A performance standard meets the intent of the legislation in the most flexible and cost-effective manner. No specific technology is required and no specific device is required. The only requirement is to use a device that meets an acceptable minimum accuracy standard.

Pursuant to Administrative Procedures Act Government Code 11346.5 (a) (13), the Department has determined for the reasons discussed above in this Final Statement of Reasons and in the summary and response to comments to the initial 45-day comment period and subsequent 15-day notice that no alternatives considered would be more effective in carrying out the purposes for which the Agricultural Water Measurement proposed or would be as effective and less burdensome to affected private persons than the adopted Agricultural Water Measurement.

J. Updated Informative Digest:

No revision to the original informative digest needed.