



March 14, 2012

Fethi Benjema
Department of Water Resources
901 P Street, Suite 313A
Sacramento, CA 95814
jemaa@water.ca.gov

RE: Comments on revised draft agricultural water measurement regulation

Dear Mr. Benjema:

On behalf of the Natural Resources Defense Council, which has more than 250,000 members and activists in California, I am writing to provide comments on the Department of Water Resources' ("Department") draft agricultural water measurement regulation. In response to the disapproval of the draft regulation by the Office of Administrative Law, the Department and Commission proposed several changes to the draft regulation, striking former section 597.1(i) and modifying section 597.3(b)(1)(B). As a result of these changes, NRDC no longer opposes the language of the draft regulation, and we recommend that the Commission adopt the draft regulation. We also recommend three minor clarifying edits to the language of section 597.3(b)(1)(B).

In particular, the draft regulation that the Commission approved last month for public comment eliminated and substantially narrowed the exemptions from the statutory requirement for farm gate measurement, addressing two of the key concerns that NRDC has raised for more than a year. The current language of section 597.3(b)(1)(B) does not allow exemptions from water measurement at the farm gate as a result of cost-effectiveness or cost, but allows water suppliers to determine the most cost-effective way to accurately measure the volume of water delivered at the farm gate. Thus, as currently drafted the exemption in 597.3(b)(1)(B) does not apply if one or more measurement devices (e.g., a high flow and low flow measurement device) can be used to meet the accuracy standard at the farm gate. This approach is consistent with the requirements of SB 7x 7 (the Water Conservation Act of 2009). In addition, the draft regulation eliminates the exemption for federal contractors in section 597.1(i), which was inconsistent with the statutory requirements of SB 7x 7. As DWR acknowledged in its presentation to the Commission, the Reclamation criteria is not identical to this regulation, and the Department lacked the statutory authority to exempt federal contractors. Both of these changes appear responsive too, and consistent with, OAL's disapproval notice. NRDC supports both of these changes.

Accurate measurement of the volume of water delivered to customer farm gates is necessary to implement volumetric pricing as required by section 10608.48(b)(2) of the Water Code (part of SB 7x7). The change to section 597.3(b)(1)(B) should ensure that most if not all water suppliers will accurately measure farm gate deliveries, and the change to section 597.1(i) ensures that all water supplies have documentation demonstrating the accuracy of their measurement devices.

NRDC comments on agricultural water measurement regulation
March 14, 2012

As currently drafted, the draft regulation appears consistent with SB 7x 7 and is necessary to implement the requirements of section 10608.48(b) of the Water Code.

In addition, we recommend that the Department and Commission consider three minor changes to clarify awkward and potentially confusing language in section 597.3(b)(1)(B). We have included a redline of these proposed clarifying changes. These changes do not change the substance of the regulation, but instead fix grammatical errors and clarify what we understand to be the intent of the regulation.

Finally, we believe there may be value in better clarifying what constitutes compliance with respect to the timing and extent of implementation of the measurement and volumetric pricing requirements of SB 7x 7. *See* Water Code §§ 10608.48(b), 10608.56(d). We may present additional recommendations to the Department and/or Commission.

We appreciate the hard work of the Commission and Department to revise the regulation to be consistent with SB 7x 7. Thank you for consideration of our views.

Sincerely,

A handwritten signature in cursive script that reads "Doug Obegi".

Doug Obegi
Staff Attorney

Encl: Redline of proposed clarifying changes to section 597.3(b)(1)(B)

ENCLOSURE

Redline of Proposed Clarifying Changes to Section 597.3(b)(1)(B)

When ~~the~~ measurement options in §597.3(a) cannot be met, as ~~approved~~ determined by an engineer, by installing a commercially available or on site built measurement device or devices; ~~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 that occur during the delivery season at those delivery points fall outside the operational range of the devices and preclude attainment of exceed the device accuracy standard. ~~When a water measurement device becomes commercially available, that is comparable in cost to other measurement devices commonly in use, and~~ When conditions at the delivery points change such that the accuracy standard in that can meet the measurement options in §597.3(a)(2) can be attained at the individual customer's delivery points, an agricultural water supplier shall include in its Agricultural Water Management Plan, as specified in §597.4, a schedule, budget and ~~finance~~ plan to measure water at the individual customer delivery points in compliance with §597.3(a)(2) of this Article. Agricultural water supplier shall report in its Agricultural Water Management Plan a schedule, budget, and plan and demonstrate progress over time to measure at all farm gates using commercially available or on site built measurement device or devices consistent with §597.3(a)(2) of this Article.