

May 3, 2012

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

Submitted Electronically

Dear Mr. Benjemaa,

RE: Comments on the Proposed Water Measurement Regulation and “Supplement to the Initial Statement of Reasons”

The undersigned agricultural suppliers appreciate the opportunity to provide comments on the recently circulated revisions to the Supplement to the Initial Statement of Reasons (Supplemental Statement) for the proposed Agricultural Water Measurement regulation. While the Department of Water Resources (DWR) has endeavored to clarify the rationale behind the draft regulation in the Supplemental Statement it is our belief that the regulation is unnecessarily burdensome. If approved, the draft regulation will unnecessarily cost agricultural water suppliers and in turn growers millions of dollars.

According to the Supplemental Statement, Water Code Section 10608.48(i) requires DWR to adopt a regulation and develop a range of options agricultural water suppliers may use to comply with the measurement requirement which requires agricultural water suppliers to:

- (1) “Measure the volume of water delivered to customers with sufficient accuracy to comply with Water Code Section 531.10 and implement paragraph (2).” (*emphasis added*)
- (2) Water Code Section 531.10 requires water suppliers to report aggregated farm-gate deliveries to DWR using “best professional practices.” Aggregated farm-gate deliveries are defined as “information reflecting the total volume of water an agricultural water supplier provides to its customers and is calculated by totaling its deliveries to individual customers.” (*emphasis added*)
- (3) Paragraph (2) (referenced above) requires agricultural water suppliers to “adopt a pricing structure for water customers based at least in part on quantity delivered.” (*emphasis added*)

During the regulation development discussions, DWR determined early on that specific numeric accuracy standards were needed to protect consumers. The rationale used, as described in the Supplemental Statement (Section 597.3, 7th paragraph), is that it is needed to ensure “customers are able to be billed for volume of water delivered to them based on readings of their respective... devices and to provide equitable pricing and billing of all customers.” While we

agree that measurement is needed to equitably bill for the water, we respectfully disagree upon what “sufficient accuracy” should be based upon.

Most agricultural water suppliers have an existing means of measuring water deliveries, but they may not meet the proposed accuracy or verification requirements at the farm-gate. As described above, the regulation was designed based on the assumption that the prescribed accuracies and verification protocols are needed to protect the grower. In doing so, it could likely require the grower to pay a substantial amount of money to improve existing measurement to meet the standard. DWR should not establish a regulation to “protect the grower” when the grower has had no say in the matter. It should be left to the grower to determine if improved measurement is needed, and if so, agricultural water suppliers will work with the grower to make the necessary improvements. The regulation need not dictate this, as the interaction between the grower and the agricultural water supplier will resolve this issue on its own.

As described in the Supplemental Statement (6th paragraph regarding Section 597.3) if accuracy standards were applied to the District reporting, rather than the individual farm-gate, devices with slightly higher accuracies, when combined with devices with slightly lower accuracies would average to be within the 12% accuracy deemed sufficient for reporting. This approach would provide reasonable “aggregated farm-gate delivery” required by the law, without establishing undue hardship on growers. This would allow many existing measurement devices to be used to meet the aggregated farm-gate delivery reporting required under Section 531.10, saving agricultural water suppliers, and in turn California’s growers, millions of dollars. Such an approach would also allow growers to determine what level of accuracy meets their own individual needs with respect to volumetric billing.

SBx7-7 requires agricultural water suppliers to prepare Agricultural Water Management Plans (AWMP) in which agricultural water suppliers demonstrate how water is used within their service area, including an analysis of water supplies delivered to customers. This provides a simple yet effective tool for evaluating compliance with an aggregated farm-gate measurement accuracy standard. A water balance will need to be prepared for the AWMP. The water balance evaluates the various inflows and outflows of the agricultural water suppliers system, including deliveries to customers. To comply with the aggregated (measured) farm-gate deliveries, an agricultural water supplier could cost efficiently compare calculated farm-gate deliveries (from the water balance) to the water measurement data used for billing to determine if it is sufficiently accurate, or in this case within +/-12%. If it is not, agricultural water suppliers could identify improvements needed to meet the aggregated farm-gate delivery reporting requirement. This approach complies with the legislative intent, without assigning undue burden on growers at this economically difficult time.

The rationale DWR has used to justify the farm-gate measurement accuracy standard versus the aggregated farm-gate delivery standard has changed over the course of the regulation SBx7-7

development. In DWR's "Discussion Paper: Agricultural Water Management Options" paper dated February 12, 2011, DWR discussed the rationale as to why it would not be appropriate to allow local conditions to determine appropriate measurement accuracy. The response at that time was that:

"Volumetric pricing is only one of the purposes of sufficient accuracy. The accuracy must be sufficient from the State's viewpoint to provide reliable reporting of aggregated farm-gate delivery data. For example, a supplier could set a volumetric price that is so low that both the supplier and its customers would accept measurement accuracy that the State would deem insufficient for aggregate reporting purposes."

Using the existing measurement, compared to the water balance, will allow both volumetric pricing and a means of ensuring the aggregate farm-gate deliveries comply with the accuracy standards. The price of the water has nothing to do with the accuracy verification methodology described above.

The response in the discussion paper (dated February 12, 2011) went on to state that:

"This framework is essentially the status quo – suppliers already measure water according to local conditions, cost-effectiveness, the suppliers' accounting needs, and customer demands. Nevertheless, SBx7-7 specifically directs DWR to adopt a regulation."

The response seems to imply that agricultural water suppliers are only focused on maintaining the status quo. This is not the case. Agricultural water suppliers recognize that better accountability of water supplies is the intent of the law and is required. Reporting aggregated farm-gate deliveries, volumetric pricing and implementation of an Agricultural Water Management Plan will and has driven improvements in measurement, and provides a means of focusing efforts where it will provide the most benefit – on a case by case basis. The proposed regulation goes beyond the legislative intent, and will result in significant expenses to agricultural water suppliers and in turn their growers, with little to no benefit. This type of a top-down approach isn't appropriate, and was not intended by the legislation.

The proposed regulation will require new devices or substantial calibration efforts, taking resources away from other system improvements which could provide potentially significant water savings, improved operational flexibility, and increased agricultural water supplier efficiency. Whether growers are required to make the necessary improvements, or agricultural water suppliers charge the grower for improvements needed, the program will impact grower costs at a time when agriculture is hard hit by other regulatory requirements (e.g. air quality and water quality regulations).

Requiring agricultural water suppliers with thousands of customer delivery points to comply within a 3-year timeline is impractical and unnecessary. While it is appreciated that DWR provided some time to complete the task, three years is just not enough. No justification is provided for the established timeline. In stark contrast, urban water suppliers were given substantial time to install measurement devices, enabling them to develop funding mechanisms and measurement strategies that work for their particular situation. The same opportunities should be provided to the agricultural community. As with urban water suppliers, water measurement is not a one-size-fits-all approach. If the accuracies are to be met at the farm-gate, rather than using the approach suggested above, additional time should be given, equivalent to the time given for urban water suppliers, to implement a strategy that will work for each individual water supplier.

It should also be noted that the changes to the proposed regulation will undoubtedly increase implementation costs. The Economic and Fiscal Impact Statement should be revised to reflect the changes to the proposed regulation.

As described above, the approach provided in the proposed regulation, does not appear to be the “most equitable and least arbitrary, capricious or burdensome approach” as indicated in the last sentence of the Supplemental Statement. Growers required to make substantial improvements to meet the proposed delivery point measurement requirements, which could cost thousands of dollars, also disagree. When discussing the proposed regulation with local growers it continues to result in statements of disbelief, and comments that this is another unnecessary, unjustified expense with little to no quantifiable benefit. A better, more cost-effective, equitable approach, which complies with the intent of the legislation, to provide accurate “aggregated farm-gate delivery reporting” is described above.

It should also be noted that in its analysis, DWR incorrectly quotes the pricing requirement in SBx7-7 to be to: “Adopt a pricing structure, based at least in part, on the quantity measured.” (*emphasis added*) As stated above, the legislation requires pricing to be, “...based at least in part on quantity delivered,” not measured.

In conclusion, the current draft of the proposed regulation goes far beyond the legislative intent, placing undue burden on agricultural water suppliers and California’s growers. As described above, the regulation can be revised to address these issues as follows:

1. Revise the regulation, making the +/-12% accuracy standard apply to the aggregated farm-gate deliveries, not the individual farm-gates or delivery points.
2. Alternatively, if water measurement accuracies are established at the customer delivery point, revise the regulation to provide the same amount of time to implement water measurement as urban water suppliers were given.

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3. Update the Economic and Fiscal Impact Statement to be reflective of the revised regulation.

We appreciate the serious consideration of these comments as DWR, the Water Commission and the Office of Administrative Law consider finalizing draft regulation. Should you have any questions regarding the above comments, please do not hesitate to contact Debbie Liebersbach at (209) 883-8428.

Sincerely,

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