MEMORANDUM

TO: MANUCHER ALEMI AND BARYOHAY DAVIDOFF, DWR

FROM: JULIET CHRISTIAN-SMITH, PACIFIC INSTITUTE

EDWARD R. OSANN, NATURAL RESOURCES DEFENSE COUNCIL

SUBJECT: DRAFT REGULATION

DATE: 1/26/2011

CC: DAVE CEPPOS AND CHRISTAL LOVE, CCPS

The comments below provide feedback on the draft regulation passed out at the January 18, 2011 A2 Subcommittee meeting. We are pleased to be working with actual draft text of a regulation. However, we find that in some areas the draft text is overly complex and in others overly lenient, creating loopholes that we do not believe meet the intent of the law. What's more, we believe that the regulation should spell out a more complete framework for compliance. We refer to section 10608.48 (i) that directs the Department to "adopt regulations that provide for a range of options that agricultural water suppliers may use or implement to *comply* with the measurement requirement…" As has been expressed during the stakeholder process, agricultural water suppliers should not be kept guessing by a regulation that is too narrowly drawn. The regulation should clearly set out the activities that will constitute compliance with the measurement requirement. We offer the following recommendations for modifying the current draft to move the process and dialog forward:

- New measurement devices: Agricultural water suppliers shall measure water delivered to each customer using devices that can be shown to be accurate within ±6% by volume or flow rate before field installation (this could be measured by manufacturers, by irrigation equipment testing labs, by district staff that are licensed engineers, or designed by a licensed engineer). This is in line with the Bureau of Reclamation's requirements for CVPIA contractors, who are mostly meeting or exceeding this standard according to reports to the Bureau. In addition, Charles Burt has stated that almost all measurement devices currently available in California fall within the ±6% range. We find that this is a scientifically defensible level of accuracy that would be sufficient for billing purposes.

- Installation of new devices and maintenance of existing devices: Agricultural water suppliers should be required to demonstrate that they have installed these devices consistent with manufacturers' recommendations and following best professional practices, and that they are recalibrated on a regular basis. At a minimum, water suppliers shall maintain sufficient resources (budget, staff, or support by contract) to ensure that malfunctioning measurement devices receive timely repair or replacement

and that at least 20% of measurement devices are tested annually and recalibrated as necessary.

- Five-year statistical assessment of accuracy: Every 5 years (in the year prior to completion of the California Water Plan Update), the accuracy of the aggregate volume of measured farm gate water deliveries shall be established by means of a statistically significant sample of district measurement devices. Sampling methods acceptable to the Department shall be employed, and shall be designed and implemented to achieve a confidence level of __%. The measured aggregate deliveries, the adjustment factor resulting from the assessment, and aggregate deliveries as adjusted shall be reported pursuant to Section 531.10.

- Reporting on volumetric billing: The number of customers receiving water through measured delivery points in compliance with the act and the number of such customers receiving water through a volumetric billing structure, and the total number of all customers, shall be reported to the Department each year.

- Lateral measurement: We find the text around measurement to multiple individual customers to be outside the intent of law. The legislation clearly states its intent to require water *measurement* – not estimation – of sufficient accuracy to support customer billing based at least in part on volume. It is still unclear to us how appropriate price signals can be sent without actually measuring the water provided to individual customers. For example, how many individual customers can be served by a lateral – 10, 100, more? If a lateral is supplying 100 individual customers, how can the supplier provide accurate price signals to customers based on the volume of water used, and how might customer adjustments to water use in response to volumetric charges be reflected in the amounts actually paid?