



March 23, 2011

Baryohay Davidoff  
California Department of Water Resources  
1416 9th Street  
Sacramento, CA 95814

Re: Comments to Draft Language of California Code of Regulations, title 23, section 597.1, subdivision *et seq.* (Agricultural Water Measurement)

Dear Mr. Davidoff:

Pursuant to the March 24, 2011, email notice and invitation from Ms. Andria Avila of DWR, the following comments to the draft language of California Code of Regulations, title 23, section 597, *et seq.*, are submitted jointly by members of the Agricultural Stakeholder Committee the Friant Water Authority (“FWA”) and the San Luis & Delta-Mendota Water Authority (“SL&DMWA”).

FWA and SL&DMWA are each a joint powers authority organized and operating under California law. The member agencies of FWA are 20 irrigation districts and other agencies<sup>1</sup> that have contracted with the United States Bureau of Reclamation (“USBR”) as long-term contractors for USBR’s Friant Division of its Central Valley Project (“CVP”). FWA’s member districts deliver irrigation water to over 15,000 mainly small, family-owned, farms, totaling over a million acres located on the east side of the southern San Joaquin Valley. Under contract with USBR, FWA operates the 152-mile-long Friant-Kern Canal. SL&DMWA’s member agencies are 29 federal and exchange water service contractors<sup>2</sup> that serve approximately 2.1 million acres of irrigable land in the western San Joaquin Valley, San Benito and Santa Clara Counties. Under contract with USBR, SL&DMWA operate and maintains USBR’s CVP facilities, including the 117- mile Delta-Mendota Canal, Jones Pumping Plant and O’Neill Pump Generating Plant located South of the Delta.

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<sup>1</sup> Arvin-Edison Water Storage District, Delano-Earlimart Irrigation District, Exeter Irrigation District, Fresno Irrigation District, Ivanhoe Irrigation District, Kaweah Delta Water Conservation District, Kern-Tulare Water District, Lindmore Irrigation District, Lindsay-Strathmore Irrigation District, Lower Tule River Irrigation District, Madera Irrigation District, Orange Cove Irrigation District, Pixley Irrigation District, Porterville Irrigation District, Saucelito Irrigation District, Shafter-Wasco Irrigation District, Stone Corral Irrigation District, Tea Pot Dome Water District, Terra Bella Irrigation District, Tulare Irrigation District.

<sup>2</sup> Banta Carbona Irrigation District, Broadview Water District, Byron Bethany Irrigation District, Central California Irrigation District, City of Tracy, Columbia Canal Company, Del Puerto Water District, Eagle Field Water District, Firebaugh Canal Water District, Fresno Slough Water District, Grassland Water District, Henry Miller Reclamation District #2131, James Irrigation District, Laguna Water District, Mercy Springs Water District, Oro Loma Water District, Pacheco Water District, Pajaro Valley Water Management Agency, Panoche Water District, Patterson Irrigation District, Pleasant Valley Water District, Reclamation District 1606, San Benito County Water District, San Luis Water District, Santa Clara Valley Water District, Tranquillity Irrigation District, Turner Island Water District, West Side Irrigation District, West Stanislaus Irrigation District, Westlands Water District.

To begin, FWA and SL&DMWA have a *fundamental disagreement* with recent changes in the draft language of California Code of Regulations, title 23, section 597.1, subdivision (h) (hereinafter “CCR 597.1(h)”). The language of that subdivision, as revised, now reads as follows:

“Agricultural water suppliers that are subject to either the Central Valley Project Improvement Act (Public Law 102-575) or the Reclamation Reform Act of 1982, or both, shall be deemed in compliance with this article, if all irrigation water delivered by those suppliers is delivered through devices that meet the United States Bureau of Reclamation accuracy standards outlined in the **2008** Conservation and Efficiency Criteria Standards.” (Draft Cal. Code of Regs., tit. 23, § 597.1, subd. (h) [as amended on Friday, March 11, 2011]) (emphasis added.)

The previous version of the draft language for this section did not specify the edition of the Conservation and Efficiency Criteria Standards (“CECS”) to be referenced by an agricultural water supplier (“AWS”).<sup>3</sup> Instead, the language of the code stated the version of the CECS to be referenced was the most current edition published by the USBR. We believe the change in the draft language is in direct contravention of the purposes of Senate Bill No. 7X-7 (“SBX7-7”). Indeed, application of the regulation, as it now reads would promote an environment of non-compliance with both the Central Valley Project Improvement Act (“CVPIA”) or Reclamation Reform Act of 1982 (“RRA”) and the relevant sections of the California Water Code.

As you know, SBX7-7 reauthorized the Agricultural Water Management Planning Program, the effect of which was to require an AWS to prepare agricultural water management plans. (Sen. Bill No. 7X (2009-2010 Ex. Sess.) § 7 [achieved through reauthorization of Water Code section 10608.48, subdivisions (d), (e) and (f) and section 10828].)

Section 10608.48, subdivisions (d) and (e), of the Water Code provide that an AWS must create, on a standardized form, a water management plan that includes a report on efficient water management practices and certain efficiency estimates. However, subdivision (f) of section 10608.48 provides that an AWS may meet its requirements in subdivisions (d) and (e) so long as it submits a water conservation plan to USBR and meets the requirements of Water Code section 10828. Section 10828 provides that an AWS that is required to submit a water conservation plan to USBR pursuant to the CVPIA or RRA may submit that plan in place of the plan required under the Water Code.<sup>4</sup>

There are several reasons why the new draft language in CCR 597.1(h) is in direct contravention of the purpose and intent of SBX7-7. The most obvious reason is the lack of language in SBX7-7 tying

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<sup>3</sup> The previous draft language to CCR 597.1(h) provides:

“Agricultural water suppliers that are required to submit water conservation plans to the United States Bureau of Reclamation pursuant to either the Central Valley Project Improvement Act (Public Law 102-575) or the Reclamation Reform Act of 1982, or both, shall be deemed in compliance with the measurement requirement, if all irrigation water delivered by that supplier is delivered through devices that comply with the measurement accuracy standards outlined in the Conservation and Efficiency Criteria Standards written for Public Law 102-575, §3405 (e).”

<sup>4</sup> Subdivisions (a)(1) and (a)(2) of section 10828 specify the AWS must have submitted the water conservation plan to USBR within the previous four years and the USBR must have accepted the plan as adequate

the requirements to a specific edition of USBR's CECS. The Legislature, in enacting SBX7-7, must have been informed that the CECS is subject to revision either by the mandatory three year review required under Section 3405, subdivision (e) of CVPIA, or possible future Congressional amendment of CVPIA or RRA.<sup>5</sup> Indeed, if the Legislature intended the 2008 CECS to be applied perpetually to Section 10828 of the Water Code, it would have amended the Code to reflect that intent. There was additionally no indication in the legislative history of SBX7-7 that the Legislature was concerned about the criteria under the CVPIA or RRA changing. In fact, an examination of the plain meaning of SBX7-7 and its legislative history bears the conclusion that the Legislature intended to defer to USBR's CECS.

SBX7-7 re-implements Water Code section 10828. Section 10828, subdivision (b), states that any AWS that must submit a water conservation plan to USBR pursuant to either CVPIA or RRA need not comply with the scheduling requirements under SBX7-7, but should instead comply with the scheduling requirements in the CECS. Under the CECS scheduling requirements, a "contractor" must submit a revised water conservation plan every five years. (See Section 8 of the 2008 CECS.) The CECS further provides that a "contractor" must use the *most recently adopted* CECS when submitting a new or revised water conservation plan. (Emphasis added.) An argument may be made under the plain language of section 10828, in conjunction with the criteria set forth in the CECS scheduling requirement, that an AWS submitting a water conservation plan is effectively required to use the most recently adopted CECS. A supplier attempting to satisfy both USBR requirements and DWR requirements under the current draft language of CCR 597.1(h) would be unable to do so because DWR requirements, referencing only the 2008 CECS, will likely be different than the USBR requirements, which change based on revisions made to the CECS. This is a fundamental flaw in the draft language of CCR 597.1(h) which our member agencies find highly objectionable.

The history of SBX7-7 is significant to demonstrate the incompatibility between SBX7-7 and the current draft language of CCR 597.1(h). The legislators who introduced SBX7-7 consulted USBR regularly during the process of writing the bill. Indeed, the efficient water management practices in SBX7-7 are based exclusively on USBR's "best management practice" as set forth in the CECS. DWR initially recognized the important role USBR's CECS played in SBX7-7 and acted accordingly in enlisting USBR to aid in the creation of the previous draft language of CCR 597.1(h). However, DWR then unilaterally altered the language of CCR 597.1(h) to rely exclusively on the 2008 CECS. This change to the draft language was made on the basis of unwarranted concern that USBR has the authority to change and decrease the accuracy standards in subsequent revisions to the CECS. This action both illogically assumes USBR will decrease their accuracy standards and circumvents the underpinnings of SBX7-7. The draft language to CCR 597.1(h), as it currently stands, vastly limits USBR's ability to assess and revise the CECS based on updates in technology and environmental change.

It is also noteworthy to reference the legislative analysis of SBX7-7, which addresses the purpose of reauthorization of the Agricultural Water Management Planning program. In section 16, subdivision (c), of the Bill Analysis for SBX7-7, it is noted that the purpose of this bill, SBX7-7, is to "allow compliance [with the Agricultural Water Management Planning program] by submission of water management plans in accordance with ... water conservation plans under federal law." (Brandt, Alf W., Legis. Analyst, analysis of Sen. Bill No. 7X (2009-2010 Ex. Sess.) § 7, p. 7.) Where the Legislature has

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<sup>5</sup> Section 3405, subdivision (e) of CVPIA requires the Secretary of the Interior to review the CECS every three years at minimum and revise the criteria as deemed necessary.

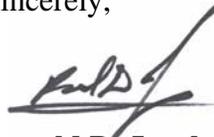
Baryohay Davidoff  
March 23, 2011  
Page 4

specifically provided language allowing an AWS to comply with California water management planning requirements by meeting its duties under federal law, it is not likely the Legislature would then approve of DWR's current draft language for CCR 587.1(h), which makes it an impossibility to comply with federal law once a revision of the CECS occurs. The draft language for CCR 587.1(h), as it currently stands, acts as an obstacle to fulfillment of an AWS's federally and state mandated objectives. Consequently, ratification of DWR's current draft language for CCR 587.1(h) would be detrimental to both the State and the AWS.

As a solution, we respectfully suggest DWR remove subdivision (h) of CCR 597.1 in its entirety, as that section merely confuses what is already clearly addressed in Water Code section 10828, or, alternatively, revert to the draft language which mirrors the requirements under section 10828 of the Water Code.

Thank you for your time and consideration and we look forward to your response to this comment.

Sincerely,



**Ronald D. Jacobsma**  
General Manager,  
for FRIANT WATER AUTHORITY



**Daniel G. Nelson**  
Executive Director for SAN LUIS & DELTA-MENDOTA  
WATER AUTHORITY

cc: Mark Cowin, Director Department of Water Resources  
Donald R. Glaser, Regional Director Mid Pacific Region