

TITLE 23. WATERS

DIVISION 2. DEPARTMENT OF WATER RESOURCES

CHAPTER 5.1 WATER CONSERVATION ACT OF 2009

NOTICE OF PROPOSED RULEMAKING

Certificate of Compliance Rulemaking

Related to Emergency Rulemaking File #2011-0624-01E

NOTICE IS HEREBY GIVEN that the Department of Water Resources (hereafter Department) proposes to adopt the proposed regulation described below after considering comments, objections, and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

This proposed regulation is a Certificate of Compliance rulemaking following the Emergency rulemaking file #2011-0624-01E. The Department proposes to add Chapter 5.1, Sections 597, 597.1, 597.2, 597.3, and 597.4 to Title 23, Division 2 of the California Code of Regulations.

These proposed sections provide for a range of options that agricultural water suppliers may use or implement to comply with the measurement requirements in §10608.48(1) (b) of the California Water Code. The regulation would apply to agricultural water suppliers providing water to 25,000 irrigated acres or more. Suppliers providing water to 10,000 or more irrigated acres but less than 25,000 irrigated acres are also subject to this regulation if sufficient funding is provided to them specifically for that purpose, as stated under Water Code §10853.

OPPORTUNITY FOR PUBLIC COMMENT

WRITTEN COMMENT PERIOD

The opportunity to submit written comment begins July 22, 2011 and closes September 6, 2011. Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action.

Submit written comments to:

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

PUBLIC HEARINGS

The Department will also hold two public hearings. These hearings will be held in accordance with the requirements set forth in Government Code section 11346.8.

August 24, 2011
9:00am to 12:00pm
Hearing Room
Bonderson Building
901 P Street
Sacramento, California 95814

September 8, 2011
9:00am to 12:00pm
Alice Peters Auditorium
California State University, Fresno
5245 North Backer Avenue
Fresno, California 93740

AVAILABILITY OF MATERIALS

The following materials are available for public review throughout the public comment period:

- Text of Proposed Regulation
- Notice of Proposed Rulemaking
- Initial Statement of Reasons
- Materials Relied Upon
- Form 400
- Form 399
- Final Statement of Reasons (when it is prepared)
- Final Text of Regulation

These materials may be viewed by either:

Visiting the Department's website

<http://www.water.ca.gov/wateruseefficiency/sb7/committees/ag/a2/>

Or arranging an in-person review. Please contact Fethi Benjemaa.

Fethi Benjemaa
Department of Water Resources
901 P Street, Suite 313A
Sacramento, CA 95814
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AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Fethi Benjemaa at the address indicated above.

The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

MATERIALS RELIED UPON

- Independent Panel on Appropriate Measurement of Agricultural Water Use - Convened by the California Bay-Delta Authority, Final Report (September 2003).
http://calwater.ca.gov/content/Documents/library/WUE/FinalReport_Sept03.pdf
- 2008 Conservation and Efficiency Criteria. The United States Department of the Interior, Bureau of Reclamation.
[http://www.usbr.gov/mp/watershare/documents/Water_mgmt/Planner/2008%20\(7\)%20Standard%20Criteria.pdf](http://www.usbr.gov/mp/watershare/documents/Water_mgmt/Planner/2008%20(7)%20Standard%20Criteria.pdf)
- Cooperative Measurement Study Report. Sacramento River Settlement Contractors in Cooperation with the Bureau of Reclamation. August 2010.
<http://rd108.org/component/content/article/1-latest-news/82-cooperative-measurement-study-report>
- Discussion Paper: Range of Options for Agricultural Water Measurement. Department of Water Resources. May 2011.
<http://www.water.ca.gov/wateruseefficiency/sb7/committees/ag/a2/>
- Cost Analysis for Proposed Agricultural Water Measurement Regulation in Support of Economic and Fiscal Impact Statement. March 2011.
<http://www.water.ca.gov/wateruseefficiency/sb7/committees/ag/a2/>
- Discharge measurement structures. Third revised edition 1989. Edited by M.G. Bos. International Institute for Land Reclamation and Improvement. Wageningen, The Netherlands 1989.
- Water Measurement Manual - A guide to effective water measurement practices for better water management. The United States Department of the Interior, Bureau of Reclamation. Third Edition, Revised Reprint 2001.
http://www.usbr.gov/pmts/hydraulics_lab/pubs/wmm/
- Arizona Administrative Code, Title 12, Chapter 15, Article 9 - Water Measurement. Sections R12-15-901 through R12-15-909.
- 2007 Census of Agriculture. US Department of Agriculture, Washington D.C. December 2009.
http://www.agcensus.usda.gov/Publications/2007/Full_Report/index.asp
- More with Less: Agricultural Water Conservation and Efficiency in California, Special Focus on the Delta. Pacific Institute, September 2008.
http://www.pacinst.org/reports/more_with_less_delta/more_with_less.pdf

AUTHORITY AND REFERENCE

The Department of Water Resources is proposing this action pursuant to the authority vested by the Water Code, Division 6, Part 2.55, Section 10608.48 (i) (1) “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) of Section 10608.48.”

The particular code sections that are being implemented, interpreted, or made specific are Water Code Sections 10608.48 (b) (1), 10608.48 (i) (1), and 10608.48 (i) (2).

The Department proposes to add Chapter 5.1, Sections 597, 597.1, 597.2, 597.3, and 597.4 to Title 23, Division 2 of the California Code of Regulations.

INFORMATIVE DIGEST

Summary of Existing Laws and Regulations Related Directly to the Proposed Action

In November 2009, the Legislature enacted SB X7-7 (Steinberg) and placed into the California Water Code a requirement that the Department 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) of Section 10608.48

The regulation would apply to agricultural water suppliers providing water to 25,000 irrigated acres or more. Suppliers providing water to 10,000 or more irrigated acres but less than 25,000 irrigated acres are also subject to this regulation if sufficient funding is provided to them specifically for that purpose, as stated under Water Code §10853.

Agricultural water suppliers that are subject to the requirements must measure the volume of water delivered to customers with sufficient accuracy to (1) submit an annual report that summarizes aggregated farm-gate delivery data using best professional practices, and (2) adopt a pricing structure for water customers based at least in part on quantity delivered.

Paragraph 10608.48 (i) (1) of SB X7-7 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).

That paragraph refers to 10608.48 (b) of SB X7-7:

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.

Paragraph 10608.12 (a) of SB X7-7 states:

“Agricultural water supplier” means a water supplier, either publicly or privately owned, providing water to 10,000 or more irrigated acres, excluding recycled water. “Agricultural water supplier” includes a supplier or contractor for water, regardless of the basis of right, that distributes or sells water for ultimate resale to customers. “Agricultural water supplier” does not include the department.

Paragraph 10853 of SB X7-7 states:

No agricultural water supplier that provides water to less than 25,000 irrigated acres, excluding recycled water, shall be required to implement the requirements of this part or Part 2.55 (commencing with Section 10608) unless sufficient funding has specifically been provided to that water supplier for these purposes.

Paragraph 10852 of SB X7-7 states:

An agricultural water supplier is not eligible for a water grant or loan awarded or administered by the state unless the supplier complies with this part.

Objectives of the Regulation

The objective of the regulation is to provide a range of water measurement options that agricultural water suppliers may use or implement to comply with the measurement requirement in paragraph (1) of subdivision (b) of Water Code Section 10608.48.

Section 10608 (e) of the Water Code declares that “the success of state and local water conservation programs to increase efficiency of water use is best determined on the basis of measureable outcomes related to water use or efficiency”. Section 10608.4 requires implementation of specific efficient water management practices (EWMP) for agricultural water use. Section 10608.48 (b) specifically deems two of the EWMPs as critical and that agricultural water suppliers shall implement them: (1) measuring the volume of water delivered to customers with sufficient accuracy (the subject of this regulation), and (2) adopting a pricing structure for water customers based at least in part on quantity delivered. This regulation provides a range of water measurement options that allow agricultural water suppliers to implement the aforementioned critical EWMPs. Ultimately, these will help increase agricultural water use efficiency and conservation.

Comparable Federal Regulation or Statutes

The United States Bureau of Reclamation Conservation and Efficiency Criteria - Public Law 102-575, §3405 (e). This law applies only to federal water contractors.

DISCLOSURES REGARDING THE PROPOSED ACTION

DETERMINATION OF NO MANDATE

The proposed regulation does not impose a mandate on local agencies or school districts.

ESTIMATE OF COSTS OR SAVINGS

Only Agricultural water suppliers that provide water to more than 25,000 acres of irrigated land are subject to this regulation. Costs to the agricultural water suppliers associated with complying with the regulation will be passed on to their customers (i.e., farmers). 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. Significant uncertainty associated with data and assumptions suggest that the range of potential cost is large. 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.

<u>Costs or Savings to Any State Agency:</u>	None
<u>Cost to Any Local Agency or School District that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4, Government Code:</u>	None
<u>Other Nondiscretionary Costs or Savings Imposed on Local Agencies:</u>	None
<u>Costs or Savings in Federal Funding to the State:</u>	None

ASSESSMENT OF COST IMPACTS INCURRED BY PRIVATE SECTOR

Costs to the agricultural water suppliers associated with complying with the regulation will be passed on to their customers (i.e., farmers). Costs to individual farms are likely to vary significantly. The average cost per acre potentially affected were estimated to be \$24 in initial costs and \$6.5 in annual ongoing O&M costs (including reporting).

ASSESSMENT OF EFFECT ON JOBS/BUSINESSES: NONE

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

On the other hand, it is expected that the agricultural water measurement regulation will help create new businesses and expand existing ones in the domain of manufacturing of measurement devices and device testing and calibration.

It is also expected that an identified number of jobs will be created in manufacturing, installation, and maintenance of agricultural water measurement devices.

Statewide costs to comply with proposed agricultural water measurement regulation were estimated to be as high as \$350 million over 20 years. However, only agricultural water suppliers that provide water to 25,000 irrigated acres or more will be affected. About \$45 million of the estimated costs would be initial assessments and capital improvements, which could on the short-term have significant impact on the affected agricultural water suppliers. The average cost per irrigated acre of affected land is estimated to be about \$24 in initial costs and \$6.5 per year in annual operation costs. It is believed however, that implementation of agricultural water measurement will help California farmers be more efficient in using water. Potential water savings from increased water use efficiency could help create additional farming production, thus increasing competitiveness.

The proposed agricultural water measurement regulation may have a potential cost impact on a representative private person or business if the person or the business is a farmer or a farming business that gets its irrigation water from a water supplier that is affected by this regulation. A detailed cost analysis can be found in the document from Materials Relied Upon: Cost Analysis for Proposed Agricultural Water Measurement Regulation in Support of Economic and Fiscal Impact Statement. March 2011.

Therefore, the Department has made an initial determination that the proposed regulations will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

REPORTS REQUIRED FROM BUSINESSES

The proposed regulation for agricultural water measurement will require reporting on water measurement by the agricultural water supplier. The average cost of reporting requirement is estimated at \$1.5 per affected acre.

The proposed agricultural water measurement regulation is considered as a critical efficient water management practice which will potentially contribute to increasing the efficiency of use of an essential resource. Legislative findings and declarations assert that the waters of the state are of limited supply and are subject to ever-increasing demands; that the continuation of California's economic prosperity is dependent on adequate supplies of water being available for future uses; that it is the policy of the state to promote the efficient use of water; and that safe and reliable water supplies are critical to the health, safety, and welfare of all Californians, including the state's future generations.

Agricultural water measurement will also enable agricultural water suppliers to adopt a billing structure that is based at least partially on volume of water delivered as required by the law. The

volumetric pricing of water deliveries is expected to achieve an equitable billing for the agricultural water users as well as further encourage water use efficiency and conservation.

Therefore, the Department finds that it is necessary for the health, safety or general welfare of the people of this state that the proposed regulation which requires a report, apply to businesses.

SIGNIFICANT EFFECT ON HOUSING COST: None

SMALL BUSINESS DETERMINATION: The proposed regulations may affect small businesses.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

To make this determination the Department convened an Agricultural Stakeholder Committee (ASC) prior to the submittal of the Proposed Emergency Regulation File #2011-0624-01E. The ASC provided alternatives to the Department and advised the Department's decision making.

The Department presented a series of draft proposals for this regulation to the ASC. The draft proposals were based on data analysis and input from the ASC. The final draft proposal became the text of the proposed regulation.

A detailed analysis of the consideration of alternatives is found in the document from Materials Relied Upon: [Discussion Paper: Range of Options for Agricultural Water Measurement. Department of Water Resources. May 2011.](#)

Interested persons may present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSONS

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