April 11, 2012

Fethi Benjemaa
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SUBJECT: March 26 - Notice of Modifications to the Text of Proposed Agricultural Water Measurement Regulation

Dear Fethi:

Below are our comments in response to the March 26th "Notice of Modifications to the Test of the Proposed Agricultural Water Measurement Regulation."

<u>The Department Failed to Establish Sufficient Necessity in the Initial Statement of Reasons</u>

As stated in our March 14 letter, we continue to be very concerned that the Department has not adequately responded to the Office of Administrative Law (OAL) February 8, 2012 decision, which states the following in comment section (C):

> "The Initial Statement of Reasons provided with this regulatory action is inadequate. For the most part, it describes "what" the regulations do, not "why" they are needed. The Initial Statement of Reasons fails to provide the public with the rationale for the determinations by the Department as to why the specific regulatory changes are needed to carry out the purpose for which they are proposed. This vital information should have been made available to the public during the rulemaking process so that the public is informed of the basis of the proposed action and can comment knowledgably during the public comment period."

The Department of Water Resources' March 26th "Supplement to the Initial Statement of Reasons" again fails to address OAL's decision. We have attempted to resolve this very issue of "why" the regulation is needed and how the regulation answers the "why" question. Clearly, this matter has not been resolved and we believe OAL will again make the same findings and disapprove the regulation.

Following that outcome, we are willing to meet with the Department to construct a regulation that will be based on the objectives and goals of the legislation.

<u>The Regulation Lacks Sufficient Necessity to Justify Numeric Accuracy Standards</u>

Additionally, we continue to reiterate the concerns we raised in our March 14, 2012 letter (see attached) regarding the failure to establish sufficient necessity to justify the use of a numeric accuracy standard, or the specific levels of accuracy (±5%, ±10% or ±12%) within the regulation.

Water Code Section 10608.48(b) requires agricultural water suppliers to "Measure the volume of water delivered to customers with sufficient accuracy" to submit an annual report to the Department that summarizes aggregated farm gate delivery data and "adopt a pricing structure for water customers based at least in part on quantity delivered." The Department has not established why this language necessitates or justifies the levels of accuracy established by the regulation. For the purpose of adopting a pricing structure, why wouldn't sufficient accuracy be determined by the local water supplier, who would need to justify the accuracy to the water users it serves? If the water users are comfortable with an accuracy level of ±15% for the purpose of developing a pricing structure, why would it be necessary for the Department to establish a more narrow accuracy standard?

Clarity Standard

We appreciate the effort the Department has made to clarify Sec. 597.3(b)(1)(B) regarding the requirements for turnout level measurement. The proposed amendment to strike "or devices" helps to clear up what requirement regulated entities will be expected to meet. Certainly, this change is consistent the legislation requiring "sufficient accuracy" for reporting aggregated turnout water deliveries and for local agencies to implement volumetric pricing. Absent this change, the regulation would have essentially required "absolute accuracy," which would be inconsistent with the legislation.

Thank you for considering our comments. Please call Todd Manley at (916) 442-8333 if you have any questions.

Sincerely,

Todd Manley
Northern California Water Association

Thad Bettner
Glenn-Colusa Irrigation District

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