



PACIFIC INSTITUTE

Research for People and the Planet

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RE: The Department of Water Resources' emergency agricultural water measurement regulation fails to comply with SBX7-7 and would result in little change in agricultural water management

To whom it may concern,

The Water Conservation Act of 2009 (SBX7-7) is a critical piece of legislation for the future of water management in the state of California. The legislation required, for the first time, quantitative targets for reducing per capita urban water use and accurate water measurement for the purpose of volumetric pricing of agricultural water use. This legislation represents an important break from the past in terms of requiring empirical measurement of agricultural water use since the state's current understanding of agricultural water use is based on estimates of crop water consumption rather than actual measurement. In addition, the legislation makes it clear that the measurement must be accurate so that it can be used as the basis of volumetric pricing. In both ways, it is clear that the intent of the law is to measure water to individual customers (not groups of customers or classes of customers) with a high enough level of accuracy to support billing customers based on the volume of water that they use.

Over the last year, the Pacific Institute, Natural Resources Defense Council, and Sierra Club have been engaged in the agricultural stakeholder committee, tasked initially with helping guide the Department of Water Resources' (DWR) in writing regulations to implement the agricultural water measurement portion of the law. Unfortunately, we find that the recently approved emergency regulation lacks vision, leadership, and does not meet the intent of the law (SBX7-7). Indeed, the Office of Administrative Law suggested substantive changes to the law before approval (only one of which was made). Here, we briefly describe how the regulation falls short and why it must be revised.

The regulation provides an unlawful exemption to the measurement requirements for agricultural water suppliers subject to the CVPIA or RRA

The Water Conservation Act of 2009 offers a broad vision for encouraging wiser use of the state's water resources in the future, including new measurement and pricing requirements for large agricultural water suppliers, described in Section 10608.48:

- (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 the quantity delivered.*

A different section of the statute requires a new reporting process through “Agricultural Water Management Plans.” Section 10828 recognizes existing planning processes, such as those related to federal legislation including the Central Valley Project Improvement Act (CVPIA) and the Reclamation Reform Act (RRA) and seeks to streamline *reporting* requirements. Throughout the process, DWR has mistakenly interpreted this as an exemption to the measurement and pricing requirements in Section 10609.48 rather than the reporting requirements in Section 10828.

The Office of Administrative Law flagged this as a major concern. An email dated 7/11/11 from Andria Avila (DWR) to agricultural stakeholder committee members states: “OAL [The Office of Administrative Law] notified DWR staff they would reject the regulation in its entirety if DWR failed to remove the ‘or future amendments’ phrase from the agricultural water suppliers subject to CVPIA or RRA provision of the regulation. OAL also strongly urged DWR to remove the entire provision regarding agricultural water suppliers subject to CVPIA or RRA.”

DWR has not removed the provision, and must in order to comply with the intent and language of SBX7-7.

The regulation provides unlawful exceptions to empirical measurement at the farm-gate

Despite, the clear intent of SBx7-7 to require empirical measurement of agricultural water use to individual customers at the farm-gate in order to support volumetric billing, Section 597.3 (b) provides a long list of exceptions to empirical measurement at the farm-gate. The breadth of these exceptions would serve to exempt the majority of large agricultural water suppliers subject to the law from its main purpose.

For instance, the regulation wrongly asserts that if accurate measurement of water cannot be obtained through the use of a *single* measurement device, that farm-gate level measurement is not necessary. An objective reading of the law makes it clear that the law does not restrict the method of water measurement to one device, in fact it’s intent clearly suggests that it is not the number or type of device that matters but the ability of the device or devices to: “(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 the quantity delivered.*”

In conclusion, the Water Conservation Act of 2009 is a clear message from the Legislature that California must become more efficient with its scarce water resources. In the face of ecosystem collapse in the Delta, decreased snowmelt, recent drought, and projections of more frequent and intense droughts in the future (DWR 2010), this legislation is critical to meeting current and future water demands in the state. We urge you to ensure that the agricultural water use measurement methods are robust and respect the intent of the Water Conservation Act of 2009.