

## TITLE 23. WATERS

### DIVISION 2. DEPARTMENT OF WATER RESOURCES

## CHAPTER 5.1 WATER CONSERVATION ACT OF 2009

# NOTICE OF PROPOSED EMERGENCY RULEMAKING

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

### **PROPOSED REGULATORY ACTION**

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.

The Department intends to follow the emergency rulemaking with a regular rulemaking for a permanent regulation. The Department also intends that the permanent regulation will be in place before the expiration of this emergency regulation.

### **OPPORTUNITY FOR PUBLIC COMMENT**

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

**This Notice of Proposed Emergency Rulemaking is being provided 5 days prior to the date that the Department will submit the regulation to the Office of Administrative Law.**

## **WRITTEN COMMENT PERIOD – June 27, 2011 –July 1, 2011**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed emergency regulatory action.

Comments must satisfy the following requirements:

- Comment must be in writing, *which includes email*
- Comment must identify the emergency regulation being addressed
- Comments must be sent to the rulemaking agency's contact person for the emergency regulations
- Comment must be sent to OAL and received by OAL before OAL makes its decision and within five calendar days of the filing of the emergency regulation with OAL.

### **Submit comments to BOTH:**

Office of Administrative Law  
Reference Attorney  
300 Capitol Mall, Suite 120  
Sacramento, CA 95814  
staff@oal.ca.gov

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

## **FINDING OF EMERGENCY**

As authorized by Senate Bill X7-7, section 10608.48(i), and codified in Water Code, Section 10608.48(i), the initial adoption of a regulation authorized by this subdivision is deemed to address an emergency, for purposes of Sections 11346.1 and 11349.6 of the Government Code, and the Department is hereby exempted for that purpose from the requirements of subdivision (b) of Section 11346.1 of the Government Code. After the initial adoption of an emergency regulation pursuant to this subdivision, the Department shall not request approval from the Office of Administrative Law to readopt the regulation as an emergency regulation pursuant to Section 11346.1 of the Government Code.

### **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](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/>
- 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/](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](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](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, however, applies only to federal water contractors.

### **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:</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