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Thomas D. Cumpston
General Counsel

In reply refer to: L2011-034

November 17, 2011

VIA US MAIL AND EMAIL TO rsatkowski@waterboards.ca.gov

State Water Resources Control Board
Division of Water Rights
Attn: Richard Satkowski
P.O. Box 2000
Sacramento, CA 95812

Re: Comment Letter – Water Measurement

Dear Mr. Satkowski:

El Dorado Irrigation District appreciates the opportunity to comment on the draft Guidance and Statement of Water Diversion and Use reporting form section relating to water measurement.

The guidance and new portion of the Statement are helpful, but they seemed to be directed primarily toward agricultural diverters in the Delta who currently have crude or no measuring devices for direct diversions from watercourses. The guidance and new form language do not address a number of significant issues that the District and other upstream diverters experienced in 2011 as we completed our Statements, Licensee Reports, and Permittee Progress Reports.

For example, these new materials address only indirectly the State Board's request that reports for diversions to storage include monthly amounts diverted to and released from storage. While answering such a request might be straightforward for the operator of an off-stream storage facility, it is impracticable and perhaps impossible for an on-stream storage facility. For the latter type of facility, inflow typically comes not only from multiple stream channels, but also from sheet flow off of the entire watershed tributary to the reservoir, and direct deposition of precipitation onto the reservoir surface. Conversely, evapotranspiration is a factor, especially in larger reservoirs. There is no way to directly measure all of these variables.

Accurately determining what portion of outflow represent a release or use of stored water (versus release of water that was merely reregulated in the on-stream facility) is likewise infeasible, if not impossible. The state Board's 30-day rule for defining "storage" and its "last-in-first-out" accounting rule essentially require a diverter to perform a day-by-day analysis of dynamic reservoir operations to even begin to approach this problem. Adding the uncertainty described above regarding quantities diverted to storage adds another layer of guesswork to the process.



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Without guidance, implementing a statutory requirement of “best available” measuring technology in the face of such intractable practical problems creates significant uncertainty about what a water diverter is expected to do – and how much it is expected to spend – to comply with the law. El Dorado Irrigation District requests that the State Board amplify its guidance to address these concerns.

The guidance also does not address proper methods of reporting complex, overlapping water rights. Many water rights have combined use limits and/or apply to multiple facilities and points of diversion; also, it is not uncommon for multiple water rights to attach to a single facility. Although the State Board has instructed diverters to apply beneficial use totals to overlapping water rights on a seniority basis – a legally dubious proposition – and has stated that a separate statement should be filed for each point of diversion, it has not otherwise provided guidance on these common issues.

After a meeting with concerned diverters in June, State Board staff has recently announced a forthcoming demonstration of a new reporting module for diverters with multiple rights. It is unclear, however, to what extent this new module will address these issues. Therefore, El Dorado Irrigation District also requests that the State Board ensure that its final guidance and forms fully address these complex issues, preferably after full consultation with the affected parties.

Finally, the guidance has little or no content on determinations of whether a measuring device or method is “not locally cost effective.” In the District’s service area, extremely remote and/or inaccessible locations, challenging high-altitude weather conditions, rugged terrain, and lack of power supplies all affect the feasibility and cost of implementing certain measuring technologies. We believe that all of these factors are relevant to a determination of local cost-effectiveness, but the draft guidance and form are silent on these points. El Dorado Irrigation District requests that the State Board’s final documents elaborate on these issues and specifically that they endorse the view that geography, topography, weather, accessibility, and availability of power sources are all legitimate criteria for determining a technology’s local cost-effectiveness.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Thomas D. Cumpston', is written over a light blue horizontal line.

Thomas D. Cumpston
General Counsel

TDC:pj

cc: Brian Mueller, Director of Engineering
Brian Poulsen, Deputy General Counsel
Robert E. Donlan, Esq.