

State Water Resources Control Board Division of Water Rights

P.O. Box 2000, Sacramento, CA 95812

NOTICE OF OPPORTUNITY TO COMMENT

GUIDANCE FOR COMPLYING WITH WATER DIVERSION

MEASUREMENT REQUIREMENTS FOR STATEMENT HOLDERS

Comment Letter – Water Measurement

November 13, 2011

Regarding revisions acknowledging alternate water measurement methods for purposes of reporting water quantities, we are appreciative that recognized general purpose engineering alternative means of quantification are now considered acceptable. The previously determined most expensive and inappropriate metering requirements would pose a distinct hardship upon the majority of vested interests, and would certainly prove economically fatal for some, with no provisions allowed for compensation.

Many of those you have notified in your original Statement introductory letter acknowledges their original riparian rights superior to that of the State. It is our contention that the State has no standing to impose restrictions upon water rights and use contrary to the Constitutional principle of condemnation with compensation. To require devices exclusive to the use and purpose of a State agency and place the oppressive costs of purchasing, repairing, and monitoring that requirement upon the vested owner, effectively amounts to a 'taking' of the use and enjoyment of that property. Therefore, compliance with those demands must be considered voluntary, without implied limitations of legally vested use, and any reasonably acceptable methods of quantification utilized in the normal scope of site operation should be considered adequate.

We also object to the phrasing of 'best available technologies' referring exclusively to high cost technologically complex and unreliable in line 'metering'. While in certain circumstances, particularly industrial, in line meters may be the most cost effective choice, in highly variable natural conditions frequently involving suspended sediments and biota, it is often the LEAST cost effective choice relative to benefit. To label such methods as 'best' infers the Agency's conditional ability and intent to limit measuring devices to the Agency's definition irrespective of alternate acceptably effective means. As stated in your Request for Comment letter, "the State Water Board will decide whether to provide additional guidance and/or develop water diversion measurement regulations for future reporting years". With alternative quantifying methods readily available, the only rationale for labeling direct read meters as 'best' would be under an assumption of future Agency imposed water restrictions or fee structure, which is a rationale exceeding the parameters of justification for your approved legislated metering provisions.

In summary, we would recommend purging the 'best available' references, simply have the person check their equally acceptable method of measurement, and eliminate the structured inference of future regulatory implications extending beyond the legislated purpose of quantifying estimates.

Rex Cozzalio