

>>> <[Brian.McGurty@sce.com](mailto:Brian.McGurty@sce.com)> 11/17/2011 3:34 PM >>>

Gents -- Thanks to Phil for returning my call, to John and Rich for explanations re. the subject matter given to me over the phone, and to Bob for e-mailing docs to me re. this matter.

Following below are the comments from Southern California Edison Company (SCE) to the "Notice of Opportunity to Comment: Guidance for Complying with Water Diversion Measurement Requirements for Statement Holders", posted 10/24/11, due to be filed with you by e-mail by 12:00 noon tomorrow, 11/18/11.

We appreciate and concur with the accommodation made by the Water Board to add new information boxes on the annual report forms that now include the opportunity to indicate where/when water use measurements are not cost effective, including a list of acceptable alternative measuring methods in those cases. For this we think that the proposed modifications to the form accomplish their intended purpose of making the "not locally cost effective" exception available to water rights reporters, provided of course that an adequate reason is given.

However, we still have some concerns remaining on the matter of reporting the rate of use, which is also a new reporting requirement, as previous forms required only the reporting of volumes of use.

Based on the definitions provided in the emergency regulations adopted by the Water Board on 11/2/10, which made certain revisions to the Water Code definitions for reporting water use, it appears that the intended rate of diversion that we are to report is instantaneous, which is stated as "the maximum rate of diversion achieved at any time during each month of the year, if available" (emphasis added). However, the word instantaneous itself is not used in any of our initial information filings for Supplemental Statements, nor in any of our Licenses or Permits, and otherwise the defined time step at which such rates are to be determined is highly variable within those documents.

For example, in some cases our licenses state that "the rate of diversion shall not exceed a maximum daily average..." (emphasis added), while in other cases we have permits in which the authorized rate of diversion is given in "gallons per day". Otherwise, many of our licenses and permits simply state that the rate of diversion shall not exceed a given amount in "cubic feet per second" without any indication of the time step in which it is to be measured, which at first glance implies an instantaneous measurement, except that it is stated "to be used" over an extended period of time, typically "January 1 to December 31", thereby alternately implying that the rate is intended to be a long-term average over the stated period of time that it is "to be used", rather than an instantaneous measurement. Indeed, in support of an interpretation that the authorized rate is intended to be an average over an extended period of time, we have a 2/18/59 letter on file from Les Hill, then Executive Officer of the Water Board, addressed to SCE's then Chief Counsel, in which it is stated that compliance in terms of the rate of diversion is to be determined "as the average during a sustained period".

We provided additional discussion to this effect in SCE's prior comment letter of 8/10/11, filed with the Board, including mention of the fact that SWRCB staff indicated at the 7/21/11

workshop that a “daily average” computation for rate of diversion would be a reasonable presumption. I raise this point again in these comments because we are concerned that listing an instantaneous rate in the annual reports will make it appear to some that we are out of compliance, when that is not actually the case.

For example, we had a prior situation in which streamflow data posted on the U.S. Geological Survey website was interpreted by some to have shown widespread non-compliance with our FERC license minimum instream flow requirements at numerous locations, spanning thousands of days, causing a massive amount of effort on our part to show FERC that the flows on those days were in fact the full natural streamflow available, which at times is less than the stated minimum flow requirements, at which time consequently no diversion was taking place, and therefore there was no non-compliance after all (even though there appeared to be). Likewise, we are anticipating a day in the future when we could get accused of not meeting our minimum streamflow temperature requirements by someone who does not know that no diversion takes place during those times when the target streamflow temperature is exceeded, and therefore the minimum temperature requirement does not apply as it is out of our control when we are not diverting any water.

Now, potentially offsetting these concerns are verbal comments from staff indicating that the rate of diversion given in the annual reports is only for information purposes, and not otherwise intended to be used in-and-of itself for compliance purposes, which would necessitate analysis of the actual limitations stated within the license and permit documents.

Accordingly, it would be much appreciated if it could be clarified in writing within the regulations, and/or within the annual report forms, that either (i) the rate of diversion to be reported is only that by which it is limited by the conditions stated within the actual licenses and permits, and thereby a time step of the daily average rate of use would be deemed to be appropriate, or otherwise (ii) that it is intended only for informational purposes if instead it is expected that the time step intended for reporting purposes is an instantaneous rate of diversion.

Thanks again for the opportunity to provide comments on these newly developing water use measurement requirements. If you have any questions or need additional information pertaining to these comments, I can be reached at (909) 394-8718 or at [Brian.McGurty@SCE.com](mailto:Brian.McGurty@SCE.com).

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