



San Luis & Delta-Mendota Water Authority

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State Water Contractors

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November 18, 2011

Delivered Via E-Mail: rsatkowski@waterboards.ca.gov

State Water Resources Control Board
Division of Water Rights
1001 I Street, 2nd Floor
Sacramento, California 95814

Re: Comment Letter - Water Measurement

Dear Mr. Satkowski:

The San Luis & Delta-Mendota Water Authority ("Authority") and the State Water Contractors, Inc. ("SWC") appreciate the opportunity to comment on the State Water Resources Control Board's ("State Water Board") Guidance for Complying with Water Diversion Measurement Requirements for Statement Holders (including the draft Statement Form) ("Draft Guidance"). The Authority and the SWC appreciate the State Water Board effort to increase water use measurement and reporting through improvements in the Statements of Diversion and Use (Statements). However, the Draft Guidance is not consistent with the legal requirements.

The State Water Board has consistently recognized the importance of measurement and accurate reporting of water diversions in Statements. Most recently, it explained in its Strategic Workplan for Activities in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary:

Adequate measurement and reporting of agricultural water use is essential for establishing water policy and determining the effectiveness of water conservation strategies.

(Strategic Workplan, page 89.) A Blue Ribbon Task Force, in its Delta Vision Strategic Plan, made the same point and thus recommended:

The Legislature should enact, and the State Board should enforce, a law requiring universal, consistent reporting on water diversion and use by all water agencies and other substantial diverters.

This law should repeal all current exemptions to reporting, plus include reports on groundwater and pre-1914 and riparian users.

(Delta Vision Strategic Plan, p. 51). The California Legislature likewise appreciated the importance of measurement and reporting of water use in Statements and accepted the recommendation of the Blue Ribbon Task Force. In 2009, it adopted Water Code section 5103. Through this section, the Legislature refined the type of information required in Statements:

The measurements of the diversion shall be made using best available technologies and best professional practices. Nothing in this paragraph shall be construed to require the implementation of technologies or practices by a person who provides to the board documentation demonstrating that the implementation of those practices is not locally cost effective.

(Wat. Code, § 5103(e), emphasis added.) Unfortunately, the Draft Guidance does not meet these minimum legal requirements, and, if adopted, it would likely significantly undermine their purposes.

The Draft Guidance allows diverters to unilaterally determine that best available technologies/practices for direct measurement are not locally cost effective and simply report that determination to State Water Board, whereas the statute requires diverters to *demonstrate to the State Water Board* that they are not cost effective. To remain consistent with section 5103, the State Water Board must revise the Draft Guidance to reflect the presumption that direct measurement technologies/practices are locally cost effective. The Guidance must make plain: (1) a water user seeking an exemption must provide the State Water Board with documentation to support his/her position that technologies/practices are not locally cost effective, and (2) upon the filing of documentation, the State Water Board will determine if the documentation supports the water user's position. The State Water Board's determination should be based upon a comparison of the cost to directly measure with the economic value associated with the diversion.

The error in the Draft Guidance is reflected on page 2, under the hearing "Guidance." The Authority and SWC suggest the following revisions to that language to bring the guidance document in line with Water Code requirements.

The State Water Board intends to revise the (calendar year) 2012 Supplemental Statement online reporting form to include a new section that allows Statement holders to (1) ~~report on~~ identify their measuring device or (2) explain why they believe implementation of best available technologies and best professional practices to measure their water diversion is "not locally cost effective." In addition, if the Statement holder ~~determines~~ asserts that use of a measuring device is "not locally cost effective," ~~they can~~ he or she shall provide documentation supporting the assertion and describe the alternative measuring methods proposed to be used in lieu of measuring devices. The 2012 Supplemental Statement online reporting form will be due to the State Water Board on July 1, 2013. In addition, to assist Statement holders with the water diversion measurement requirements, the State Water Board has posted the following information on its Statement Website at:

http://www.waterboards.ca.gov/waterrights/water_issues/programs/diversion_use/index.shtml:

1. examples of water measurement devices;
2. known vendors/suppliers of water measurement devices;
3. examples of alternative measurement methods;
4. definitions of key water measurement terms; and
5. frequently asked questions (FAQs).

To ensure conformity with legal requirements, the State Water Board will need to undertake three additional actions.

First, the State Water Board will need to establish a process for a water user to submit documentation substantiating a claim of “not locally cost effective”, and a State Water Board determination based thereon.

Second, the State Water Board will need to revise its website to make it explicit that alternative measurement methods may only be used when a person has provided documentation to the State Water Board and the State Water Board has made a determination that best available technologies and best professional practices to measure a water diversion are not locally cost effect for that person.

Finally, the State Water Board will need to revise the Supplemental Statement of Water Diversion and Use for 2012 to reflect the process described above. The Authority and SWC recommend the following edits to section 3¹:

**Section 3: Measurement of Water Directly Diverted is "Not Locally Cost Effective."
(and/or Section 4: Measurement of Water Diverted to Storage is "Not Locally Cost Effective")**

Direct measurement of diverted water is presumed to be locally cost effective. The presumption can be overcome by a water user demonstration and State Water Board determination that the cost of the device is high in relation to the economic value of the diversion.

e. Indicate the date on which the State Water Board ~~how you~~ determined that use of best available technologies and best professional practices to measure water diversions is “not locally cost effective:”

- ~~— Diversion is small or minimal in size.~~
- ~~— Diversions are infrequent.~~
- ~~— Cost of device is high in relation to the economic value of diversion.~~
- ~~— Other (Please describe below).~~

(text box)

¹ The State Water Board should change the form immediately. However, the Authority and SWC appreciate that the State Water Board has not yet developed a process to determine when best available technologies/practices for direct measurement are not locally cost effective. If that process cannot be implemented for 2012 reporting, the State Water Board, at a minimum, should recognize it is implementing an interim process because of the procedural impediments and that the State Water Board will develop and implement the process and make the changes in the form required by Water Code section 5103 for 2013 reporting.

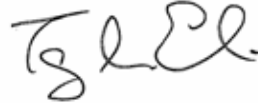
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Thank you for the opportunity to comment. Should you have any questions, please contact Terry Erlewine, General Manager of the SWC at (916) 447-7357, or Daniel Nelson, Executive Director of the Authority at (209) 826-7878.

Sincerely,

Handwritten signature of Daniel G. Nelson in blue ink.

Daniel G. Nelson
Executive Director
San Luis & Delta-Mendota Water Authority

Handwritten signature of Terry L. Erlewine in black ink.

Terry L. Erlewine
General Manager
State Water Contractors