



September 14, 2016

Submitted via email to [WUEgrants@water.ca.gov](mailto:WUEgrants@water.ca.gov)

Mr. Fethi BenJemaa  
Water Use and Efficiency Branch  
California Department of Water Resources  
901 P Street, Third Floor  
Sacramento, California 95814

RE: NRDC Comments on 2015 Proposition 1 Agricultural Water Use Efficiency  
Proposal Solicitation – Draft Funding Recommendation

Dear Mr. BenJemaa:

The Natural Resources Defense Council (NRDC) appreciates the opportunity to provide comments to the California Department of Water Resources (“DWR” or “the Department”) on the Draft Funding Recommendation for the 2015 Proposition 1 Agricultural Water Use Efficiency Proposal Solicitation (“Draft Funding Recommendation”). NRDC supports efforts to improve water use efficiency in California’s agricultural sector. As agriculture is the largest user of the state’s developed water supply, it can play a critical role in helping California achieve a more sustainable water future.

We recommend that DWR take the following actions before finalizing the Draft Funding Recommendation:

- I. Reject grant applications from agricultural water suppliers that have failed to file required Agricultural Water Management Plans (AWMPs) and all Farm-Gate Delivery Reports and reallocate proposed grant awards to qualified grant applicants;
- II. Conduct a review of the content of AWMPs sufficient to determine the implementation status of the required critical and conditional efficient water management practices (EWMPs) by agricultural water suppliers;
- III. Modify standard grant agreements to include clear timetables for the implementation of EWMPs and financial consequences for failure to implement required efficiency practices; and
- IV. Make materials submitted by agricultural water suppliers publicly available and easily accessible.

**NATURAL RESOURCES DEFENSE COUNCIL**

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Our recommendations, which are explained in greater detail below, will help the Department to more effectively and responsibly manage planning and funding programs that improve the efficiency of California’s agricultural water suppliers and more consistently apply the requirements of California law.

I. *Reject Grant Applications from Agricultural Water Suppliers that Have Failed to File Required AWMPs and all Farm-Gate Delivery Reports and Reallocate Proposed Grant Awards to Qualified Grant Applicants*

Under California law, agricultural water suppliers are subject to certain planning and reporting requirements:

- As codified in the California Water Code,<sup>1</sup> the Water Conservation Act of 2009 (SBx7-7) requires agricultural water suppliers to prepare and adopt an AWMP by December 31, 2012 (or within one year of becoming an agricultural water supplier); update that plan by December 31, 2015; and complete an updated plan every five years thereafter.
- Directive 13 of Executive Order B-29-15 requires agricultural water suppliers serving between 10,000 and 25,000 irrigated acres, which were conditionally exempted from SBx7-7 planning regulations, to develop and submit an AWMP by July 1, 2016.<sup>2</sup>
- AB 1404 (2007) requires agricultural water suppliers to submit an annual report of the supplier’s aggregated monthly or bimonthly data on farm-gate water deliveries for the prior calendar year to DWR by July 31 of every year.<sup>3</sup> The first such reports were due by July 31, 2013.<sup>4</sup>

While these regulations have been in place for several years, compliance by agricultural water suppliers continues to be a pervasive problem. Approximately 40 percent of the agricultural water suppliers supplying more than 25,000 irrigated acres had not adopted and submitted an AWMP by the January 2016 deadline (nor as of the end of August, eight months after the deadline).<sup>5</sup> Additionally, more than 80 percent of the suppliers supplying 10,000-25,000 irrigated acres had not adopted and submitted an AWMP by the July 1, 2016 deadline.<sup>6</sup>

Notwithstanding this demonstrable lack of compliance, the Draft Funding Recommendation proposes awarding approximately \$2.7 million in total grant funding to three agricultural water

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<sup>1</sup> CA Water Code § 10820.

<sup>2</sup> Executive Order B-29-15 (April 1, 2015).

<sup>3</sup> CA Water Code § 531.10.

<sup>4</sup> CA DWR, “Aggregated Farm-Gate Water Delivery Reporting Requirements,” accessed September 14, 2016, available at <http://www.water.ca.gov/wateruseefficiency/agricultural/farmgatedelivery.cfm>.

<sup>5</sup> CA DWR, “2015 Agricultural Water Management Plans,” accessed September 6, 2016, available at <http://www.water.ca.gov/wateruseefficiency/>.

<sup>6</sup> *Ibid.*

suppliers that are not compliant with AWMP requirements.<sup>7</sup> Similarly, many of the agricultural water suppliers selected for grant awards in the Draft Funding Recommendation have not submitted their 2015 annual Farm-Gate Delivery Report as required by AB 1404.<sup>8</sup> The proposed grant awards to these non-compliant agricultural water suppliers totals nearly \$15 million.

As the Department is well aware, state law prohibits agricultural water suppliers from receiving “a grant or loan awarded or administered by the state” unless they have complied with AWMP requirements.<sup>9</sup> Furthermore, Governor Brown’s April 2014 Executive Order directs all state agencies to require that recipients of future financial assistance have “appropriate conservation and efficiency programs in place.”<sup>10</sup> Awarding funding to agricultural water suppliers that are not in compliance with the necessary AWMP requirements, such as submission of a plan to DWR by the appropriate deadline, is a clear violation of state law and the April 2014 Executive Order.

Additionally, DWR’s failure to condition grant eligibility on agricultural water suppliers submitting an annual Farm-Gate Delivery Report by the appropriate deadline violates the spirit of the executive order as well as state regulations. The California Water Code states that “it is necessary to determine the quantities of water in use throughout the state” to maximize the beneficial use and prevent waste and unreasonable use of California’s limited water supplies.<sup>11</sup> Without receiving the required reports from agricultural water suppliers on the total quantity of water delivered to customers, DWR is unable to fulfill its mission “ [t]o manage the water resources of California...to benefit the State’s people and to protect, restore and enhance the natural and human environments.”<sup>12</sup>

Therefore, the Department must make it a matter of standard practice to reject applications for state funding from agricultural water suppliers that have not submitted an AWMP and all required Farm-Gate Delivery Reports by the application deadline. Timely submission of these plans and reports should be a prerequisite before DWR even begins to evaluate a grant application. To do otherwise would suggest that the Department does not prioritize the compliance of grant applicants with the agricultural water planning and reporting requirements contained in state law. This notion is further reinforced by the Department’s decision to provide

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<sup>7</sup> Natomas Central Mutual Water Company, Reclamation District 108, and Sutter Extension Water District are identified in the Draft Funding Recommendation (Table D, p. 9) as having failed to submit the required 2015-16 AWMP.

<sup>8</sup> Biggs-West Gridley Water District, Cawelo Water District, Lower Tule River Irrigation District, Natomas Central Mutual Water Company, North Kern Water District, Oakdale Irrigation District, Placer County Water Agency, Richvale Irrigation District, Semitropic Water Storage District, Sutter Extension Water District, and United Water Conservation District are identified in the Draft Funding Recommendation (Table D, p. 9) as having not submitted the required 2015 Farm-Gate Delivery Report. Note also that DWR makes no mention of whether Farm-Gate Delivery Reports from 2012, 2013, or 2014 are similarly lacking for any applicants.

<sup>9</sup> SBx7-7 (Water Conservation Act of 2009), codified at CA Water Code § 10852.

<sup>10</sup> Governor Edmund G. Brown, Jr., “A Proclamation of a Continued State of Emergency,” (April 25, 2014) available at <https://www.gov.ca.gov/news.php?id=18496>.

<sup>11</sup> CA Water Code § 520.

<sup>12</sup> CA DWR, “Mission Statement,” accessed September 7, 2016, available at <http://www.water.ca.gov/aboutus.cfm>.

grant awardees with a one-year grace period for complying with all applicable requirements before executing the grant agreement.<sup>13</sup> Rather than repeating this lax approach to statutory enforcement, we recommend that DWR take the following steps with this Proposition 1 Proposal Solicitation:

- Notify all applicants that have not submitted an AWMP and all required Farm-Gate Delivery Reports that their applications in their present form will not be processed further;
- Reallocate funds identified as proposed grant awards for such districts in the Draft Funding Recommendation to those fully compliant applicants that submitted otherwise eligible projects by the original solicitation deadline;
- To the extent that funding remains from the \$30 million allocated by DWR for this solicitation, issue a supplemental solicitation that would be open to fully compliant agricultural water suppliers, including those with rejected applications that come into compliance prior to the application deadline for the supplemental solicitation; and
- In this supplemental solicitation and future grant proposal solicitations, reward agricultural water suppliers that have submitted their plans and reports on time by allocating additional points when scoring their proposals.

II. *Conduct a Review of the Content of AWMPs Sufficient to Determine the Implementation Status of the Required Critical and Conditional EWMPs by Agricultural Water Suppliers*

In addition to requiring the timely completion and submission of AWMPs, California law also explicitly identifies the specific EWMPs that suppliers must implement.<sup>14</sup> Notably, agricultural water suppliers supplying more than 25,000 irrigated acres are required to implement critical EWMPs, such as measurement of the volume of water delivered to customers and adoption of a pricing structure that is based at least in part on the amount of water delivered, and additional EWMPs if found to be “locally cost effective and technically feasible.”<sup>15</sup>

a. *Implementation of Critical EWMPs*

Of the nine agricultural water suppliers selected for funding that are required to implement critical EWMPs, there are four identified by DWR as having not fully complied: Biggs-West Gridley Water District, Buena Vista Water Storage District, Cawelo Water District, and Oakdale

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<sup>13</sup> The Draft Funding Recommendation (p. 2) states that “[g]rant agreement execution is contingent upon grantee’s compliance with all of the requirements as applicable no later than a year from the date of announcing the final grant awards. Failure to comply may result in withdrawal of the grant award.”

<sup>14</sup> CA Water Code § 10826.

<sup>15</sup> CA Water Code § 10608.48.

Irrigation District.<sup>16</sup> In addition to those agricultural water suppliers, the Department should verify three other suppliers' compliance with the critical EWMPs: Reclamation District 108, Richvale Irrigation District, and Semitropic Water Storage District.

According to the list of submitted AWMPs on DWR's website, Reclamation District 108 has yet to complete and submit its 2015 AWMP.<sup>17</sup> Yet the Draft Funding Recommendation indicates that the district has met the requirements for the critical EWMPs. DWR should provide clarification as to how this determination was made given the lack of a 2015 AWMP. The district previously submitted a compliance plan in February 2013 that indicated that full implementation of a measurement program and billing structure compliant with state regulations would occur by spring or summer 2016.<sup>18</sup> However, in a March 2016 letter from Glenn-Colusa Irrigation District and seven other agencies, including Reclamation District 108, the Department was informed that water measurement was still under study, rather than complete.<sup>19</sup>

The Draft Funding Recommendation similarly indicates that Richvale Irrigation District is in compliance with the critical EWMPs. However, the district's 2015 AWMP does not contain a complete schedule or financing plan for full implementation of water delivery measurement and volumetric pricing. As of December 2015, the district had only developed a volumetric delivery accounting and reporting system with billing capabilities; procured and planned installation of metering equipment; and begun evaluation of volumetric pricing structures.<sup>20</sup> The district's 2015 AWMP also claims that it will be fully compliant with the measurement and volumetric billing requirements prior to the 2016 irrigation season.<sup>21</sup> Without additional documentation and verification that full implementation has indeed occurred, it would be premature for DWR to conclude that Reclamation District 108 and Richvale Irrigation District are in compliance with the critical EWMPs.

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<sup>16</sup> Draft Funding Recommendation, Table D, p. 9.

<sup>17</sup> DWR, "List of 2015 Agricultural Water Management Plans Received" (dated August 31, 2016), accessed September 9, 2016, available at <http://www.water.ca.gov/wateruseefficiency/docs/2016/2015-2016%20AWMPs%20Received%208.31.2016.pdf>.

<sup>18</sup> Reclamation District No. 108, *Measurement and Volumetric Billing Compliance (Plan)* (February 15, 2013), available at <http://www.water.ca.gov/wateruseefficiency/sb7/docs/2014/plans/RD%20108%20Measurement%20and%20Volumetric%20Billing%20Compliance%20Plan.pdf>.

<sup>19</sup> Letter to Peter Brostrom, March 23, 2016: "In regard to measurement, the SRSC [Sacramento River Settlement Contractors] will develop a plan to implement a water measurement program through the mutual identification of implementable, reliable, and financially sustainable, field-ready methodologies. The SRSC have participated in the Cooperative Water Measurement Study Report (Cooperative Study) and continues to conduct its own Water Measurement Study and Report to examine various devices that may or may not work in its facilities and environment. These documents provide context in terms of work that has occurred to date to address challenges and proposed solutions that have been evaluated with respect to implementable water measurement projects and programs."

<sup>20</sup> Richvale Irrigation District, "Volume II: Supplier Plan Components," *Feather River Regional Agricultural Water Management Plan* (January 2016), pp. 5-82 to 5-83, available at <http://www.water.ca.gov/wateruseefficiency/sb7/docs/2016/Richvale%20ID%202015%20AWMP.pdf>.

<sup>21</sup> *Ibid.*

Additionally, the Draft Funding Recommendation indicates that Semitropic Water Storage District is in compliance with the critical EWMPs. Yet further review of the district's water rates suggests that contract water users may be paying a rate that is based on their contracted amount and not dependent on the actual amount of water delivered. The district's 2015 AWMP states "...for Contract Water Users, effective 2016, the SWP Water Rate component will be based on the Water User's contract amount of water and the charge will be imposed regardless of the allocation that year."<sup>22</sup> If true, this pricing structure would not comply with the volumetric billing requirement set forth in Section 10608.48(b)(2) of the California Water Code, which states that agricultural water suppliers shall "[a]dopt a pricing structure for water customers based at least in part on quantity delivered." We urge the Department to conduct further review of the district's water rate structure to assess its compliance with state regulations. DWR must also perform equally robust reviews of other agricultural water suppliers' compliance with the critical EWMPs.

b. *Implementation of Conditional EWMPs*

State regulations also require agricultural water suppliers to implement 14 additional water efficiency practices if determined to be "locally cost effective" and "technically feasible."<sup>23</sup> A cursory review of the available AWMPs for agricultural water suppliers included in the Draft Funding Recommendation suggests questionable compliance with these requirements. The Department's AWMP guidebook states that agricultural water suppliers must include "documentation that non-implemented EWMPs [are] either not locally cost-effective or technically feasible."<sup>24</sup> However, many agricultural water suppliers fail to provide this documentation in their AWMP. For example, Lower Tule River Irrigation District's AWMP states that "[t]here are no plans to line or pipeline any of the District channel facilities" because "seepage from the earthen conveyance system is viewed as beneficial recharge to the local groundwater aquifer."<sup>25</sup> This explanation does not sufficiently address the cost-effectiveness or technical feasibility of the measure. Similarly, the district provides an insufficient explanation for not implementing the EWMP related to automating canal structures. The district's AWMP states that "[t]here are no planned projects to automate canal structures in the near-term" and "[t]he District has not studied the potential for automating canal structures but is using District facilities as pilot projects to gage their water management improvement potential."<sup>26</sup> Once again, this explanation does not explicitly address the cost-effectiveness or technical feasibility of the measure.

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<sup>22</sup> Semitropic Water Storage District, *Agricultural Water Management Plan* (December 2015), p. 30, available at <http://www.water.ca.gov/wateruseefficiency/sb7/docs/2016/Semitropic%20WSD%202015%20AWMP.pdf>.

<sup>23</sup> CA Water Code § 10608.48(c).

<sup>24</sup> DWR, *A Guidebook to Assist Agricultural Water Suppliers to Prepare a 2015 Agricultural Water Management Plan* (June 2015), p. 58, available at <http://www.water.ca.gov/waterconditions/docs/Approved-Final-2015-AWMP-Guidebook-June2015.pdf>.

<sup>25</sup> Lower Tule River Irrigation District, *Water Management Plan 2008 Criteria* (2012), pp. 30-31, available at [https://www.usbr.gov/mp/watershare/wcplans/2012/LowerTuleRID\\_WMP\\_2012.pdf](https://www.usbr.gov/mp/watershare/wcplans/2012/LowerTuleRID_WMP_2012.pdf).

<sup>26</sup> *Id.*, p. 33.

While the Department must conduct greater oversight of agricultural water suppliers' implementation of the 14 conditional EWMPs, there also is a key opportunity for DWR to develop additional technical resources to support meaningful implementation of these efficiency practices. Some agricultural water suppliers likely do not have the staff capacity and resources necessary to fully evaluate, let alone implement, all of these practices. Still others may be simply refusing to evaluate and implement the practices that are cost-effective and technically feasible. The Department should assist agricultural water suppliers in complying with these requirements by publishing a practical methodology for evaluating the local cost-effectiveness and technical feasibility of the 14 conditional EWMPs. This methodology should be published by January 2019 for use in developing the 2020 AWMP updates.

III. *Modify Standard Grant Agreements to Include Clear Timetables for the Implementation of EWMPs and Financial Consequences for Failure to Implement Required Efficiency Practices*

In each new grant agreement, the Department should include contractual language that will ensure that agricultural water suppliers receiving grant funding achieve full implementation of required efficiency practices. While state regulations prohibit providing state grants or loans to agricultural water suppliers not in compliance with AWMP requirements,<sup>27</sup> suppliers that have not implemented the critical EWMPs are still eligible for state funds if they have submitted to DWR for approval “a schedule, financing plan, and budget, to be included in the grant or loan agreement, for implementation of the efficient water management practices.”<sup>28</sup> To ensure compliance with these regulations, the Department should include language in standard grant award agreements that establishes clear timetables for implementing critical EWMPs and financial consequences, such as repayment of grant funds, for failing to implement according to the agreed upon schedule.

IV. *Make Materials Submitted by Agricultural Water Suppliers Publicly Available and Easily Accessible*

The Department must make the materials submitted by agricultural water suppliers publicly available and more easily accessible to increase transparency and accountability. Data transparency and accessibility are crucial for ensuring that DWR and agricultural water suppliers are meeting their obligations under state law.

- **Grant proposals** submitted by water suppliers and accepted for review by the Department should be publicly posted on DWR's website. It is difficult for the interested public to provide meaningful review and comment on the Department's proposed funding selections without additional information beyond the cryptic descriptions of proposed projects currently in the Draft Funding Recommendation.

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<sup>27</sup> CA Water Code § 10608.56(b).

<sup>28</sup> CA Water Code § 10608.56(d).

- **Annual Farm-Gate Delivery Reports** have been required since CY 2012. Currently, agricultural water suppliers can either mail a paper copy or email an electronic version of their annual Farm-Gate Delivery Report to DWR. The reports are then presumably archived in some manner, but they are not posted publicly on DWR’s website. Given that the public has an interest in and a right to know how water resources are being used in the state, DWR should require annual Farm-Gate Delivery Reports to be submitted electronically and promptly post them in a publicly accessible form.<sup>29</sup>
- While **AWMPs** are posted publicly on DWR’s website, the Department can facilitate further review of these plans by requiring that each AWMP and future amendments to a plan be submitted electronically and in a standardized format. Currently, use of the AWMP Template and DWR Worksheets is encouraged but not required even though Section 10608.48(e) of the California Water Code requires agricultural water suppliers to report data in a standardized format.<sup>30</sup> Ensuring consistency in the format and content of AWMPs will help to facilitate review of these plans by both DWR staff and other stakeholders, including the public. Additionally, the Department should develop a map showing the submission status of agricultural water suppliers’ 2015 AWMPs as was completed for the previous 2012 AWMPs.<sup>31</sup> These maps provide an important glimpse of compliance with the AWMP submission requirements without necessitating an onerous review and analysis of the plans listed in DWR documents.<sup>32</sup>

Additionally, the Department should streamline its website in order to make it easier to navigate, which also will make data, such as the AWMPs, more readily accessible and locatable. As it stands, agricultural water use efficiency information, including AWMPs, is housed on numerous and oftentimes redundant landing pages.<sup>33</sup>

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<sup>29</sup> For comparison, SB 555 (2015) added Section 10608.34 to the CA Water Code stating that “[t]he department shall post all validated water loss audit reports on its Internet Web site in a manner that allows for comparisons across water suppliers. The department shall make the validated water loss audit reports available for public viewing in a timely manner after their receipt.”

<sup>30</sup> DWR 2015, *A Guidebook to Assist Agricultural Water Suppliers to Prepare a 2015 Agricultural Water Management Plan*, p. 9. For comparison, SB 1420(2014) added Section 10644(a) to the CA Water Code, which requires electronic submission and standardized tables for urban water management plans.

<sup>31</sup> See DWR, “Agricultural Water Management Plan Compliance,” August 12, 2015, available at [http://www.water.ca.gov/wateruseefficiency/docs/2015/AWMP\\_Color\\_20150821.pdf](http://www.water.ca.gov/wateruseefficiency/docs/2015/AWMP_Color_20150821.pdf).

<sup>32</sup> For example, determining the submission status of agricultural water suppliers with respect to 2015 AWMPs would require an in-depth and time-intensive review of the “List of 2015 Agricultural Water Management Plans Received,” available at <http://www.water.ca.gov/wateruseefficiency/docs/2016/2015-2016%20AWMPs%20Received%208.31.2016.pdf>. Agricultural water suppliers that have submitted an AWMP are listed according to date of receipt; suppliers that are in the process of completing an AWMP are in seemingly random order; and suppliers that have not submitted an AWMP are ordered alphabetically.

<sup>33</sup> For example, the 2015 AWMPs are only available from the “Water Use Efficiency” landing page (at <http://www.water.ca.gov/wateruseefficiency/>) whereas the 2012 AWMPs are accessible from that page as well as from the “AWMP Reviews” landing page (at [http://www.water.ca.gov/wateruseefficiency/agricultural/awmp\\_reviews.cfm](http://www.water.ca.gov/wateruseefficiency/agricultural/awmp_reviews.cfm)). Ironically, it is not possible to access the 2015 AWMPs from the multiple sections listed under the “Agricultural Water Use Efficiency” heading in the



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NRDC respectfully requests consideration of these recommendations. We look forward to continuing to work with the Department to ensure proper and effective stewardship of our state's limited public funds and more responsible and sustainable use of our precious water resources. If you would like to discuss these comments in further detail, please do not hesitate to contact me at (310) 434-2300 or by email at [bchou@nrdc.org](mailto:bchou@nrdc.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Ben Chou", with a long horizontal flourish extending to the right.

Ben Chou  
Policy Analyst, Water Program