



January 21, 2014

Dr. Karl Longley, Chairman
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670-6114

ATTN: Mark Cady

RE: Tentative Order - Sacramento River Watershed WDR/MRP

Dear Chairman Longley:

On behalf of the 8000 plus growers and ranchers enrolled in the Sacramento Valley Water Quality Coalition (Coalition) and those who appeared at the Public Workshop held last October 2013, we appreciate your response to the concerns expressed on the Sacramento River Watershed Waste Discharge Requirements (WDR) General Order. Many of the changes requested at the Public Workshop are reflected in the Tentative WDR and Monitoring Reporting Program (MRP) Order released December 19, 2013. It is important for decision makers to find equilibrium between needed regulatory protections and economic impact, especially in establishing precedential programs that will exist for decades after they are implemented. Without balance, those saddled with the responsibility of funding the program will diminish, thus both agriculture and water quality lose.

It is also important that inaugural regulatory proposals such as the groundwater quality component of the Irrigated Lands Regulatory Program have an adaptive management component to reflect evolving circumstances over the life of the program. That is especially true in light of the impact Mother Nature is having on the economic viability of agriculture throughout the State of California. Whether it is 1976-77, 1987-1992, 2008, or the unprecedented drought currently being experienced, there is real economic impact, not just to the grower, but throughout the communities whose very existence is tied to agriculture.

Growers will be seriously calculating whether it is cost prohibitive to plant or best to fallow their lands in months to come, if not already. Their decisions will be based upon a number of factors: cost of feed, cost of water, and/or cost of energy for pumping groundwater to name a few. The increasing regulatory cost burden facing agriculture must not be discounted and do know it is compounding that decision, to plant or to fallow.

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With the recent increase in the State Water Quality Fee, the Coalition currently collects \$890,805. This is a significant amount. And, this is on top of the annual monitoring and reporting costs of over \$1.5 million for **surface water only**. As demonstrated at the Public Workshop, grower and landowner contributions and commitment to protecting water quality is clear. Keep in mind the expanded Irrigated Lands Regulatory Program will likely double the annual cost to growers in the Sacramento Valley.

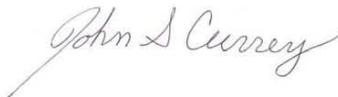
We are predicting that hundreds of thousands of dollars in costs annually will be borne by growers for database development, groundwater quality assessment, management practices evaluation studies, and litigation to defend challenges to the newly adopted WDR; therefore, we are encouraging you for opportunities to reduce costs in the historically successful surface water program, where justified, which will be critical in implementing the Long-Term Irrigated Lands Regulatory Program.

Attached are the Coalition's specific comments on the Tentative WDR and MRP. They are intended to ensure the goals of the Coalition, and the Order, reflect the stewardship of the Sacramento Valley growers and landowners. We would like to make record of our successes with the surface water program and that they are fully, and clearly, captured in the WDR and MRP. In addition, the WDR brings opportunities to the right-size monitoring and reporting requirements, while continuing to be protective of water quality and meeting the balance, between needed regulatory protections and economic impact as mentioned above. The growers and ranchers of the Sacramento Valley Water Quality Coalition strongly believe that results not reports should be the metric of success.

Sincerely,



Larry Domenighini
President/Grower
Colusa Glenn Subwatershed



John Currey
Manager Dixon Resources Conservation District/Grower
Dixon Solano Subwatershed

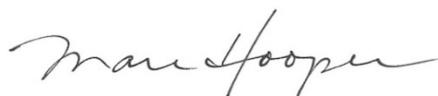


Steve Danna
President/Grower
Butte Yuba Sutter Subwatershed



Carolyn Mansfield
President/Grower
El Dorado County Water Quality Management
Corporation

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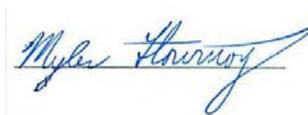
Marc Hooper
President
Lake County Farm Bureau



Tom Aguilar
President/Grower
Placer-Nevada-South Sutter-North Sacramento
Subwatershed



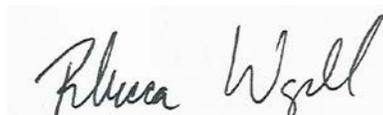
Sandy Elles
Executive Director
Napa County Farm Bureau



Myles Flourney
President/Rancher
Northeastern California Water Association



Robert Harris
President/Rancher
Shasta Tehama Watershed Education Coalition



Rebecca Waegell
Manager
Sacramento Amador Water Quality Alliance



Russell Reid
Chairman
Upper Feather River Watershed Group



Denise Sagara
Executive Director
Yolo County Farm Bureau Education Corporation

Cc: Jenny Lester Moffitt, Vice-Chair
Sandra Meraz
Robert Schneider

Jon Costantino
Carmen Ramirez

Pamela Creedon
Susan Fregien

Joe Karkoski
Mark Cady

ATTACHMENT - Sacramento Valley Water Quality Coalition Specific Comments Tentative Order (released December 19, 2013)

1. Waste Discharge Requirements (WDR) Order- Finding 46, Page 13

Growers of rice for seed should be covered under the Rice Commission Order. It is requested that this be stricken from the Sacramento River Watershed Order.

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2. Waste Discharge Requirements (WDR) Order – Discharge Limitations Provisions III.A. and B. Page 18

“Wastes discharged from Member operations shall not cause or contribute to an exceedance.”

This is an important item to have clarified. It is important given the type of exceedances (i.e., pH, dissolved oxygen, *E. coli*) that occur in the Sacramento Valley, which could be from natural background sources or non-irrigated lands, to understand the extent of the ILRP obligation.

Is any contribution considered sufficient? What determines how much of a “contribution” is necessary to require management practices implementation?

1-2

3. Waste Discharge Requirements (WDR) Order – Requirements for Members of a Third Party Group Section IV. B. 8, Page 20

The word “need” was stricken and replaced with “consumption” in the following sentence:

All Members shall implement practices that minimize excess nutrient application relative to crop consumption.

What prompted the change? What is the Regional Board’s view of the difference between “need” and “consumption”?

1-3

4. Waste Discharge Requirements (WDR) Order – Requirements for Third Party Group, Section IV. C. 7. Page 22,

The language states that a Notice of Confirmation (NOC) be provided within 45 days of the Notice of Applicability (NOA). To reduce paperwork and align the NOC with annual invoicing cycles it is requested that the 45 day language be stricken and replace with,

“ . . . as part of the 2014 annual member invoicing a Notice of Confirmation (NOC) form will be provided.”

In the Westside San Joaquin Coalition WDR, the Regional Board agreed to modify the language to allow the Third-party to provide Members with a notice of the requirements and process for the NOC and Farm Evaluation Plan within 30 days of the NOA, but will not require the actual forms be provided within 30 days.

1-4

5. Waste Discharge Requirements (WDR) Order - Notice of Confirmation / Notice of Intent / Membership Application, Section VII. A. 1., Page 24

Will the “requirements” specified in this section be provided by the Coalition or by the Regional Board Executive Officer as referenced in Section IV. B. 18, Page 21?

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The Member shall also maintain excerpts of the Order’s Member requirements

6. Waste Discharge Requirements (WDR) Order - Farm Evaluations, Section VII. B. 1, Page 25

The Coalition notes the date change for the initial Farm Evaluation for low vulnerability areas from March 1 2016 to March 1 2015.

1-6

1. *All Members must submit the initial Farm Evaluation to the third-party by 1 March 2015.*

The Coalition appreciates that the reporting cycle for low vulnerability areas will still be once every five years, with the next farm evaluation for those in low vulnerability areas is due in March 2020. A 2015 or 2016 due date for Farm Evaluation will tie the information to Assessment Year monitoring (2015) and enable areas seeking Reduced Monitoring/Management Practices Verification alternative to tie management practices to monitoring results.

7. Waste Discharge Requirements (WDR) Order - Farm Evaluations, Section VII. B., Page 25

The Coalition appreciates the inclusion of Footnote 22

1-7

“Any farm map or information on the location of wells on the farm does not need to be provided to the third-party group.”

This change will simplify and expedite completion of the Farm Evaluations.

8. Waste Discharge Requirements (WDR) Order – Templates, Section VIII. C., Page 30

Significant change to the development of templates and timeline for modification to the template is reflected in this section. The ability of the Coalition to modify the templates approved by the Regional Board on December 9, 2013, has been removed. The Coalition can only comment within 30 days on the proposed templates provided by the Executive Officer.

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Additionally, Language states that third party shall provide templates to Members within 90 days of NOA, or approximately 120 days after Regional Board action. That makes the date July 2014. Current members have until June 2015 to provide the third party the Notice of Confirmation.

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Recommendation: Request original language is reinstated for modification to template. Request the date for distributing the templates be a “date certain” versus tied to a triggering event/milestone. The date in this case should be October or November 2014.

“ . . . the third-party shall make the templates available to its Members by November 1 2014.”

9. Waste Discharge Requirements (WDR) Order – Watershed/Subwatershed Based Sediment and Erosion Control Plans, Section VIII. F., Page 32

The timeline for the third party to submit a list of those individual members participating in a collective (watershed or subwatershed) sediment and erosion control plan has been reduced from 180 days to 90 days. The 90 period (April – July) falls during a busy time for agriculture operations and a period when the third party will be submitting reports and responding to Regional Board comments.

1-10

Recommendations: Rather than the third party “submitting a list of those individual members,” the third party will “compile a list of those individual members” which the Regional Board Executive Officer can review if a sediment discharge occurs in the area where a collective program is implemented. It is requested that the time period the third party to submit the list be 120 days after the Regional Board Executive Officer accepting the third party’s Sediment and Erosion Control Assessment Report.

10. Waste Discharge Requirements (WDR) Order – Surface Water/Groundwater Quality Management Plan (SQMP/GQMP), Section VIII. , I., 1. Page 33,

Language in this section states. . .

“SQMPs triggered by data gathered under Conditional Waiver Order R5-2006-0053 that were not completed or approved by the Executive Officer prior to adoption of this Order shall be implemented in accordance with MRP-1 of this Order.”

Appendix MRP-1 (Management Plans) changes significantly the current determination if a management plan is required and imposes requirements even if irrigated agriculture is not the source of the exceedance. The language in C. 4. d., on Page 4 of MRP 1 states that the Management Plan Strategy must provide a “time estimated to identify new management practices as necessary to meet the Order’s surface and groundwater receiving water limitations”. Inclusion of this language in the Management Plan Strategy presumes irrigated agriculture is the source and appears to preclude the ability of the third party to request the management plan be deemed complete after source identification work is done.

1-11

Over two-thirds of the Coalition’s management plans are related to field parameters and *E.coli*. This documentation requirement for dissolved oxygen, pH, and *E. coli* seems excessive and costly. Furthermore, establishing measureable performance goals (C.4. e) for these constituents of concern will be challenging given natural background in some instances.

The current Management Plan process allows the Coalition to prepare a Source Evaluation Report Equivalent to the results of the “Source Identification Study” in the WDR. If irrigated agriculture is not found to be the source a request is made of the Executive Officer to deem the Management Plan complete.

In MRP-1 there is a Source Identification Study that may be requested but no initial step of determining whether irrigated agriculture is the source or the Executive Officer finding a management plan is not required because irrigated agriculture is not the source.



The Coalition requests the Order be modified to make clear that the first optional step, taken at the Coalition’s discretion, is to conduct a Source Identification Study of a scope approved by the Executive Officer, to determine whether agriculture is a significant contributor to the observed exceedances that triggered the management plan requirement.



Additionally, the Coalition seeks clarification on when current Management Plans with goals of increasing implementation of management practices and no reoccurring water quality exceedances will be allowed to discontinue monitoring for that parameter?

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11. Attachment B – Monitoring and Reporting Program (MRP), Section III. C. 1.a., Reduced Monitoring/Management Practices Verification Option, Page 9

The Coalition appreciates the direction of the Regional Board to eliminate the “Valley Floor exclusion” language for the proposed Order. The increased costs of reporting and groundwater quality monitoring must be offset where appropriate in the surface water monitoring program.

Surface water monitoring results coupled with information from every member’s Farm Evaluation on their management practices will provide the Regional Board with the assurance that beneficial uses are being protected as a result of ongoing efforts and actions by the Coalition and its members. In these instances reduced monitoring of surface water should be an option.

However, the language referencing low intensity of agriculture land use in the subwatershed would seem to negate any documentation of management practices or surface water quality results.

Recommendations: 1) In areas where there are existing Management Practices Pilot Programs surface water quality monitoring will only be required in 2015 if there has been a significant change in agricultural land use and mixture of crops.

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2) Either strike the language referencing low intensity of agricultural land use in Section III.C.1.a., or add a bullet stating:

“Where management practices are well documented and surface water quality monitoring results have not resulted in a continuing trend or pattern of registered pesticides cooper or nutrients or, toxicity attributed to an irrigated agricultural source the Executive Officer may permit a reduction in the annual frequency of surface water quality monitoring.”

1-14

12. Attachment B – Monitoring and Reporting Program (MRP), Section III. C. 2 Monitoring Schedule and Frequency, Page 10

The Coalition is concerned that the language below will require monitoring more than once. In discussions with Regional Board staff concerned was expressed that monitoring during the storm season (November –April) would not capture actual storm event runoff. The Coalition made the commitment to ensure that at least two monitoring events would be scheduled to capture runoff during the storm season. The 2014 monitoring schedule reflects that commitment. The Coalition requests that the language “may require monitoring more than once per month” be replaced with the following language, “The monitoring program will be designed

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and implemented to ensure that adequate characterization of runoff from storm season monitoring is captured.”



*Monitoring must be conducted when the pollutant is most likely to be present. If there is a temporal or seasonal component to the beneficial use, monitoring must also be conducted when beneficial use impacts could occur. The frequency of data collection must be sufficient to allow determination of compliance with the relevant numeric water quality objective(s) or water quality triggers. **Adequate characterization of the presence of some pollutants may require monitoring more than once per month.** The third-party may submit written requests for the removal or addition of monitoring sites or parameters, or to modify the monitoring **schedule and frequency**, for approval by the Executive Officer.*

13. Attachment B – Monitoring and Reporting Program (MRP), Section III. C. 3, Monitoring Parameters, Footnote 5, Page 11

The Coalition proposes the following alternative language to Footnote 5;

Pesticides to be monitored includes the parent compound and any environmentally stable degradates of the registered active ingredient. The evaluation factors applies to the parent compound and the degradates, which constitutes the total registered pesticide. Potential pesticides to evaluate will be identified through rice specific process.

1-16

14. Attachment B – Monitoring and Reporting Program (MRP), Section V. C. 20 Report Component 20, Page 32

The Coalition questions the need and strongly objects to the need to submit individual data records. The Farm Evaluation templates will require the member to “certify under penalty of law” that what is being submitted is “true, accurate and complete.” The Regional Water Board originally indicated it would *only* require submittal of data aggregated to the Township geographic level. What is the point of our aggregating the data if we also must submit all individual data? This will require the Regional Water Board to develop another parallel and massive data management system for this information that will be even more complex than the current water quality data management system. It is not reasonable for growers to be required to support the cost of two redundant data management efforts.

1-17

Recommendation: Strike the requirement that individual data be submitted.



**EL DORADO AGRICULTURAL WATER QUALITY
MANAGEMENT CORP**

PROTECTING OUR PRECIOUS RESOURCE

Comment Letter 2

P. O. Box 286
Placerville, CA 95667
(530) 622-7773
Fax (530) 622-7839

January 21, 2014

Sent via email: mcady@waterboards.ca.gov

Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670

Attention: Mark Cady

Re: Tentative Sacramento Valley Waste Discharge Requirements (WDR)

Dear Mr. Cady,

We appreciate this opportunity to comment on the reference document which will be applicable to our members of the El Dorado County Subwatershed Coalition. Our organization is a member of the Sacramento Valley Water Quality Coalition which also represents our interests. We have reviewed the Tentative Order and provide the following comments:

1. **Reduced Monitoring/Management Practices Verification Option.** We would like to thank the Regional Board for recognizing the need for tailoring surface water monitoring in subwatersheds "...deemed to have a lower potential for surface water quality impacts from irrigated agricultural discharges." (Attachment B, Para III.C.1.a.) The El Dorado County Agricultural Water Quality Management Corporation is in its fourth year of our successful Pilot Management Practices Program with reduced monitoring requirements based on verification of our members' practices implementation. 2-1
2. **Inspection of facilities.** While we recognize that there may be a need to access a member's facilities (WDR, Para IV.B.13 and footnote 22) we recommend that the definition of facilities be specific to "those facilities associated with the irrigated agricultural operation". Many of our members have facilities not associated with their irrigated agricultural operations located on site and those should not be subject to inspection under this order. 2-2

We appreciate the efforts of staff in considering our previous comments and recommendations for a management practices-based approach to preserving our excellent surface water quality while providing ground water quality protections.

Sincerely,

Carolyn Mansfield, President

cc: Bruce Houdesheldt, Sacramento Valley Regional Water Quality Coalition
Pamela Creedon, Central Valley Regional Water Quality Control Board
Dr. Karl Longley, Chairman, Central Valley Regional Water Quality Control Board
Joe Karkoski, Central Valley Regional Water Quality Control Board



2460 Headington Road
Placerville, CA 95667-5216
Phone: 530.622.7773
Fax: 530.622.7839
Email: info@edcfb.com

January 21, 2014

Sent via email: mcady@waterboards.ca.gov

Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670

Attention: Mark Cady

Re: Comments on the Tentative Sacramento Valley Waste Discharge Requirements (WDR)

Dear Mr. Cady,

We appreciate this opportunity to comment on the reference document. The El Dorado County Farm Bureau represents over 300 member families who will be affected by the Tentative WDR on their irrigated agricultural lands.

1. **Surface Water Monitoring.** We appreciate the Board including an opportunity for reduced surface water monitoring based on having a lower potential for surface water quality impacts. Our Pilot Management Practices Program includes practices that have been identified to be specifically applicable to our crops and our growers' use has been verified annually. 3-1
2. **Administrative & Cost Burdens.** The administrative burden of adding new member data and reporting requirements adds expenses that must be borne by our growers. This imposes a disproportionate burden on the small farms and ranches that populate El Dorado County. We believe the economic affect on our growers is understated. 3-2

We welcome the opportunity to work with the Regional Board and the El Dorado Subwatershed to develop a program that will provide groundwater protections without sacrificing the economic viability of El Dorado County's small family farms and ranches.

Sincerely,

A handwritten signature in black ink, appearing to read 'James E. Davies'.

James E. Davies, President

cc: Bruce Houdesheldt, Sacramento Valley Regional Water Quality Coalition
Pamela Creedon, Central Valley Regional Water Quality Control Board
Carolyn Mansfield, El Dorado County Agricultural Water Quality Management Corporation
Kari Fisher, California Farm Bureau Federation
Dr. Karl Longley, Chairman, Central Valley Regional Water Quality Control Board



CALIFORNIA FARM BUREAU FEDERATION

OFFICE OF THE GENERAL COUNSEL

2300 RIVER PLAZA DRIVE, SACRAMENTO, CA 95833-3293 · PHONE (916) 561-5665 · FAX (916) 561-5691

Sent via E-Mail

mcady@waterboards.ca.gov

January 21, 2014

Mr. Mark Cady
 Central Valley Regional Water Quality Control Board
 11020 Sun Center Drive, #200
 Rancho Cordova, CA 95670-6114

Re: *Comments on the Sacramento River Watershed Tentative Draft WDRs/MRP for Discharges from Irrigated Lands*

Dear Mr. Cady:

The California Farm Bureau Federation (“Farm Bureau”) is a non-governmental, non-profit, voluntary membership California corporation whose purpose is to protect and promote agricultural interests throughout the state of California and to find solutions to the problems of the farm, the farm home, and the rural community. Farm Bureau is California’s largest farm organization, comprised of 53 county Farm Bureaus currently representing approximately 78,000 agricultural, associate, and collegiate members in 56 counties. Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California’s resources.

Farm Bureau appreciates the opportunity to provide comments on the tentative draft of the Sacramento River Watershed Administrative Draft Waste Discharge Requirements and Monitoring and Reporting Program (collectively “Tentative WDR”) for Discharges from Irrigated Lands and respectfully presents the following remarks. Many of the comments raised in Farm Bureau’s previous letter on the Draft WDR, dated October 11, 2013, are still pertinent, and are incorporated and reiterated herein.

Upon reviewing the Sacramento River Watershed Tentative WDR, as well as the previously adopted Eastern San Joaquin River Watershed WDR and Tulare Lake Basin Tentative WDR, Farm Bureau is concerned that the general orders are not being individually developed and tailored, but rather are duplications of previously prepared orders with *minor* revisions. Each coalition represents unique geographic characteristics, including, but not limited, to rainfall, hydrology, drainage, commodities grown, and topography. Given all of these vast differences, each general order should be individually drafted specific to the region it regulates in order to properly reflect the unique circumstances of the area.

4-1

NANCY N. McDONOUGH, GENERAL COUNSEL

ASSOCIATE COUNSEL:

CARL G. BORDEN · KAREN NORENE MILLS · CHRISTIAN C. SCHEURING · KARI E. FISHER · JACK L. RICE

General Order Page 1, Finding 1—Definition of “Waste”

The Tentative WDR seeks to regulate discharges of “waste” from irrigated lands. As referenced in the footnote to Finding 1, Attachment E defines the term “waste” to not only include the statutory definition found in Water Code section 13050(d), but also adds additional language to include the regulation of “earthen materials..., inorganic materials, organic materials such as pesticides and biological materials” as wastes which “may directly impact beneficial uses...or may impact water temperature, pH and dissolved oxygen.” (Tentative WDR, Attachment E, pp. 6-7.) No rationale is provided within the WDR for the overly broad expansion of a statutorily defined term; accordingly, the term “waste” should be limited to its definition found in Water Code section 13050(d). To provide clarity and conformance with Water Code section 13050(d), Farm Bureau offers revising the second sentence of the definition of “waste” to read (additions are underlined):

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“Potential examples of wastes from irrigated lands that may conform to this definition include, but are not limited to, earthen materials (such as soil, silt, sand, clay, rock), inorganic materials (such as metals, salts, boron, selenium, potassium, nitrogen, phosphorus), organic materials such as pesticides, and biological materials, such as pathogenic organisms.”

General Order Page 2, Finding 5—Regulation of Water Quality

The Tentative WDR amends the scope of regulatory coverage from the previous conditional waiver by deleting specific provisions limiting the regulation of water traveling through particular structures. (Tentative WDR, p. 2.) The current scope of coverage causes concern regarding the regulation of on-farm conveyances and between-farm conveyances, causing potential ambiguity regarding the point of demarcation for regulation; as currently written, the regulation could be read to regulate any water that leaves the root zone whether or not it reaches saturated groundwater. In order to provide clarity, Finding 5 should be revised.¹

4-3

General Order Page 9, Finding 28—Basin Plan Amendment and Beneficial Use De-designation; Page 37, Finding M—Basin Plan Amendment Workplan

Farm Bureau appreciates the inclusion of a process for the third-party to pursue a basin plan amendment to address the appropriateness of a beneficial use. Such a process recognizes the unique topography and geography in the Sacramento River Watershed,

4-4

¹ Finding 5 could be potentially revised to state: “This Order is not intended to regulate water in agricultural fields, including, but not limited to, furrows, beds, checks, and ancillary structures, contained on private lands associated with agricultural operations. This Order is not intended to address the lawful application of soil amendments, fertilizers, or pesticides to land.” Additionally or in the alternative, the following phrase, “from which there are discharges of waste that could affect the quality of any waters of the state,” could be added to Finding 5 to clarify that the WDR is not regulating water that moves past the root zone when there is no threat to waters of the state or that the movement of water below the root zone is a de facto discharge of waste.

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including the naturally occurring constituents in groundwater, and acknowledges that specific beneficial use designations may be unattainable.



General Order Pages 9-10, Findings 33-37—Compliance with the California Environmental Quality Act

The Tentative WDR relies upon the environmental analysis conducted in the Program Environmental Impact Report (“PEIR”) and concludes that “[a]lthough the Order is not identical to any of the PEIR alternatives, the Order is comprised entirely of elements of the PEIR’s wide range of alternatives.” (Tentative WDR, p. 10, ¶ 34, *see also id.* at ¶ 35.) Relying on such analysis, the Tentative WDR further concludes “the PEIR identified, disclosed, and analyzed the potential environmental impacts of the Order” and the “potential compliance activities undertaken by the regulated Dischargers...fall within the range of compliance activities identified and analyzed in the PEIR.” (*Id.* at ¶ 34.) However, the Tentative WDR, or its estimated costs, is not within the realm of alternatives analyzed within the PEIR, but rather goes beyond those alternatives by including provisions substantially different from elements in those alternatives, especially alternatives 3 through 5. These new components, such as provisions creating end-of-field discharge limitations, as well as the farm management performance standards, in addition to the associated costs, do not represent merely a “variation” on the alternatives in the PEIR, but rather are elements that were not thoroughly considered previously and are likely to result in the imposition of new burdens on irrigated agricultural operations that will have a significant and cumulatively considerable impact on the environment. Thus, reliance on the PEIR for CEQA compliance is inappropriate.² In order to comply with CEQA, the Regional Board should prepare a supplemental EIR that analyzes the new elements along with revised cost estimates.

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General Order Pages 11-12, Finding 40-41—California Water Code Sections 13141 and 13241

Pursuant to the Water Code, the Regional Board is obligated to consider costs associated with the entire Long-Term Irrigated Lands Regulatory Program, as well as each individual general order, such as the Sacramento River Watershed WDR. (Wat. Code, § 13141.) Finding 40 incorrectly concludes that any new cost analysis is unnecessary given that “the Basin Plan includes an estimate of potential costs and sources of financing for the *long-term irrigated lands program*.” (Tentative WDR, p. 11, ¶ 40, *emphasis added*.) Although the Basin Plan was amended to include costs associated with the *long-term irrigated lands program*, the Basin Plan Amendment did not include specific costs associated with the Sacramento River Watershed WDR as it was not in

4-6

² Farm Bureau also questions the Regional Board’s authority to require mitigation measures within the Tentative WDR for farm level activities. Implementation of management practices at the farm level, which is the heart of the WDR, is not subject to a discretionary approval by the Regional Board. (See Pub. Resources Code, § 21080, CEQA generally applies only to discretionary projects.) Mitigation measures that cannot be legally imposed need not be proposed or analyzed. (CEQA Guidelines, § 15126.4(a)(5).)

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existence at the time nor were the specific program requirements analyzed (such as the templates and individual reporting summarized by the third-party). The templates, as well as the instructions as to how frequently these reports must be completed and compiled, were not available when the cost study was performed and could not have been accounted for in that study. Given that this Tentative WDR proposes new costly regulatory components not previously analyzed during the environmental review stage or when adopted in the Basin Plan, the Regional Board must analyze, evaluate, and estimate all of the costs of these new regulatory requirements.

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General Order Pages 14-15—Coordination and Cooperation with Other Agencies

Farm Bureau appreciates the provisions within the Tentative WDR that describe the Regional Board’s coordination and cooperation with other agencies as well as how the implementation of the WDR will utilize such coordination and cooperation. Growers within the Sacramento Valley Watershed have a long-standing relationship with many agencies, including the United States Department of Agriculture Natural Resources Conservation Service (“NRCS”). To highlight this relationship, a provision should be added, such as Provision 52 in the San Joaquin County and Delta Draft WDR, stating:

4-7

The United States Department of Agriculture Natural Resources Conservation Service (NRCS) administers a number of programs related to water quality. NRCS can provide technical assistance to growers and has identified practices that are protective of the environment and are feasible in an agricultural setting. The NRCS Environmental Quality Incentives Program (EQIP) provides cost share assistance for management practice installation. The NRCS has also provided assistance with research of management practice effectiveness. The third-party and its Members are encouraged to utilize the information and resources available through the NRCS to meet the requirements of this Order.

General Order Page 15, Provision 51—Nitrogen Management and Control

Farm Bureau appreciates the acknowledgement of the assessment of nitrogen management and control currently underway by the California Department of Food and Agriculture’s Task Force, as well as the soon to be convened State Water Resources Control Board’s Expert Panel. Given the assessments and recommendations to be made by both processes to determine appropriate nitrogen tracking and reporting systems and management practices, adjusting the nitrogen management plan deadlines to allow for the incorporation of future recommendations is both appropriate and appreciated.

4-8

General Order Page 19, Provisions III. A and III. B—Receiving Water Limitations

The use of “shall not cause *or contribute*” to an exceedance of applicable water quality objectives is overly expansive and creates an unreasonable standard that is undefined, ambiguous, and holds farmers and ranchers liable for even the smallest *de minimus* contribution. Accordingly, a qualifier should be added before “contribute” or the discharge limitations for both surface water and groundwater should be rewritten to

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state “wastes discharged from Member operations shall not cause an exceedence of applicable water quality objectives in surface water [or the underlying groundwater], unreasonably affect applicable beneficial uses, or cause a condition of pollution or nuisance.” Such proposed revisions will not impact the Regional Board’s program, but will provide regulatory clarity.



General Order Page 20, Provision IV. B. 8—Nitrogen Management Plans

Provision IV. B. 8 requires all members to prepare and implement an annual nitrogen management plan. Such plans should analyze “nitrogen” application rather than “nutrient” application. (Tentative WDR, p. 20, ¶ 8; see also Attachment A, Information Sheet, p. 34 stating “the Order requires that Members implement practices that minimize excess **nitrogen** application relative to crop consumption” (emphasis added).) As seen in previous drafts for other WDRs, only members in high vulnerable areas where nitrate is a constituent of concern were required to prepare annual nitrogen budgets and management plans. Rather than requiring all members to prepare nitrogen budgets and plans, as Provision 8 is currently written, the Tentative WDR should be revised to allow flexibility in the requirements for those areas that have no or a lower propensity to impact water quality.

4-10

General Order Page 26, Provision VII. B—Farm Evaluation

Farm Bureau appreciates the inclusion of footnote 23 specifying that any farm maps or information on the locations of wells does not need to be provided to the third-party.

4-11

General Order Page 32, Provision VIII. C—Template Requirements for Farm Evaluations, Nitrogen Management Plans, and Sediment and Erosion Control Plans; Attachment A, Information Sheet, VII. D, p. 37

The Tentative WDR deletes the ability of the Coalition to provide modified templates and replaces it with the ability to solely provide comments. (Tentative WDR, p. 32; see also Attachment A, p. 37.) Although Farm Bureau understands the rationale for requiring standardized information, the Regional Board must allow for flexibility and variability depending on the geographic area, the commodities grown, known water quality impairments, the propensity to impact water quality, and the size and scale of farming operations. Such tailoring will allow the Regional Board to obtain the most relevant information specific to the area being regulated, while also allowing growers to minimize costs. Farm Bureau respectfully requests that the language in the previous Draft WDR allowing for modifications be reinstated and the last two sentences in section VII. D of Attachment A be deleted.

4-12

General Order Page 20, Provision IV. B 7; General Order Page 28, Provision VII. B. 2; and General Order Page 34, Provision VIII. F—Watershed/ Subwatershed Based Sediment and Erosion Control Plans

Farm Bureau appreciates the inclusion of watershed/subwatershed based plans, allowing growers the option to work together on sediment and erosion control, in lieu of

4-13



preparing individual Sediment and Erosion Control Plans. This option represents a cost effective approach to compliance, as control of sediment and erosion will occur while allowing growers to minimize costs.



Attachment B, MRP, Pages 9-10, Provision III. C. 1(a)—Reduced Monitoring/Management Practices Verification Option

Farm Bureau appreciates the inclusion of a reduced monitoring/management practices verification option as such an option will provide flexibility to growers who have a lower potential for surface water quality impacts. Farm Bureau appreciates the deletion of the following sentence which previously limited the application of the reduced monitoring option: “The Central Valley Water Board does not anticipate that this option will apply to areas of the valley floor due to the intense agricultural land use.” (Tentative Attachment B, MRP, p. 9, sentence in strike-out.) In order to fully utilize this option, however, Farm Bureau respectfully requests the incorporation of the following additional changes:

- (1) A new element or bullet point should be added recognizing those areas with current pilot programs, such as those in Napa County and El Dorado County, and allow such programs to continue to be implemented as previously approved.
- (2) The requirement that the agricultural land use must be low intensity should be deleted.³

4-14

The ability to utilize this option should not be negated based solely on location or use, especially since portions of the Sacramento Valley have successfully completed management plans and have taken action to address water quality exceedances by funding and using management practices. As drafted, to qualify to use the reduced monitoring and management practices verification option, any such program must first be approved by the Executive Officer. Thus, the Executive Officer can and should make the decision on the applicability of this option on a case-by-case basis rather than limiting its application by location and use.

Attachment B, MRP, Pages 14-15, Provision III. C. 4—Toxicity Testing

As currently drafted, the Tentative MRP’s language could be interpreted that both acute and chronic toxicity testing is required for all toxicity tests. (See Tentative Attachment B, MRP, p. 14, footnotes 7 and 8 stating that chronic and acute toxicity testing should be completed in accordance with U.S. EPA testing methods.) Since the inception of the Irrigated Lands Regulatory Program, surface water monitoring has occurred and has utilized acute aquatic toxicity testing, with no evidence of any shortcomings. If there is no U.S EPA acute toxicity testing method of *Selenastrum capricornutum*, Farm Bureau recommends adding language to footnote 8 to specify that the use of chronic testing is appropriate *only* in this circumstance.

4-15

³ As an alternative to deleting the reference to low intensity agriculture, Farm Bureau supports the recommended language suggested by the Sacramento Valley Water Quality Coalition in its January 21, 2014 letter (see provision 11) regarding situations in which the Executive Officer may permit a reduction in the frequency of surface water quality monitoring.

Letter to Mark Cady
Comments on the Sacramento River Watershed Tentative WDRs/MRP
January 21, 2014
Page 7

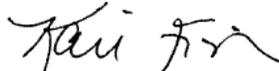
Attachment B, MRP, Page 33, Reporting Components 19 and 20⁴

Reporting Components 19 and 20 outline the process in which a third-party will collect data from members and report the data to the Regional Board at the township level. As currently drafted, Farm Bureau supports the reporting at the township level. Reporting at the township level allows coalition groups to properly compare crop data, evaluate nitrogen management trends, and manage the data in an efficient and effective manner. The comparison of data at the field level, with or without the identification of a member's parcel, is not supported and would not result in an efficient use of resources or the ability to assess and evaluate trends.

Reporting Component 20—Summary of Management Practice Information further requires a third-party to provide the individual data records to the Regional Board in addition to aggregating and summarizing information collected in the Farm Evaluations. (Attachment B, p. 33.) No explanation is provided in the MRP or WDR to support the necessity of needing the individual data records. Rather, the summary of management practices provided by the third-party will be more meaningful than the individual data records and will include the appropriate analysis needed by the Regional Board. Thus, Farm Bureau questions the need for third-parties to submit individual data records and suggests this addition to the management practices information reporting component be removed.

Thank you for the opportunity to provide our comments and concerns. We look forward to further involvement and discussion with the Regional Board on the Sacramento River Watershed WDR and MRP for Discharges from Irrigated Lands.

Very truly yours,



Kari E. Fisher
Associate Counsel

KEF:pkh

⁴ See also Attachment A, Information Sheet, Pages 35-36—Spatial Resolution of Nitrogen Management Plan and Farm Evaluation Information.



United States Department of the Interior



FISH AND WILDLIFE SERVICE

Pacific Southwest Region
 2800 Cottage Way, Room W-2606
 Sacramento, California 95825-1846

In reply refer to:
 FWS/R8

Mr. Mark Cady
 Central Valley Water Board
 11020 Sun Center Drive, Suite 200
 Rancho Cordova, California 95670

Dear Mr. Cady:

Please except these comments from the U.S. Fish and Wildlife Service (Service) on the December 2013 Proposed Waste Discharge Requirements for discharges from irrigated lands within the Sacramento River Watershed (Sacramento River Watershed Order). These comments follow written and oral comments by federal (Service and Bureau of Land Management) and private (Grassland Water District) wetland managers regarding impact of the Irrigated Lands Regulatory Program on managed wetlands. The Service generally supports all of those comments which were in regards to current efforts to regulate managed wetlands similar to irrigated agricultural lands.

The referenced previous correspondences establish that:

1. Managed wetlands provide food and habitat for millions of resident and migratory birds of the Pacific Flyway each year and provide a host of public trust benefits including habitat for listed species, improved water quality, and flood management. 5-1

2. Management of these lands is fundamentally different from that of commercial agriculture. Goals and objectives for managed wetlands include sustainable water management and use; establishment and maintenance of aquatic and terrestrial fish and wildlife habitat and habitat conditions, legislatively mandated crop depredation for surrounding agricultural lands, water quality improvement, and visitor services. 5-2

3. The Order states that managed wetlands are considered “waste dischargers” while its supporting documentation claim that creating and enhancing wetlands are suitable for mitigation. No scientific evidence has been provided showing managed wetlands discharge waste or cause water quality impairments. 5-3

4. Efforts to include managed wetlands into the existing structure of Waste Discharge Requirement templates and control plans are hampered by this fundamental difference in land management. 5-4

5. Limited funding available to state and federal managed wetlands would best be utilized to address overall water quality goals and objectives as they apply to operation and management of these unique properties. 5-5

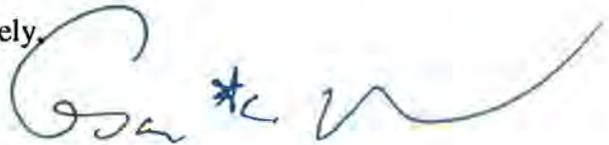
While there has been some progress in recognizing the fundamental differences between commercial agriculture and managed wetlands within the context of the developing Long-Term Irrigated Lands Program (LT-IRLP) and templates (e.g., nitrogen management plans are no longer required for parcels that are solely operated as a managed wetland), we believe those fundamental differences warrant an approach for managed wetlands that takes into consideration the unique landscape, flood management, groundwater recharge, habitat, mitigation, and other public trust benefits these lands provide to the State of California.

We believe further discussion with the Board is needed to address a way forward that recognizes managed wetland function and value within context of overall water quality goals. In doing so, it is our hope that the Board will conclude that managed wetlands are important features on the landscape that help improve overall ecological value, including water quality.

5-6

We appreciate your consideration of these written comments, and welcome the opportunity to work with the Board to address these critical issues which we believe are critical to successful continued operation of state and federal managed wetlands, and the public trust values they provide. You may contact Mr. Dale Garrison, at (916) 414-6728.

Sincerely,



Cesar Blanco
CVPIA Implementation Division Chief
U.S. Fish and Wildlife Service

cc:

Dan Frisk, Project Leader USFWS
Curt McCasland, Refuge Supervisor USFWS
Kim Forrest, Project Leader USFWS
Dale Garrison, CVPIA Refuge Water Supply Coordinator USFWS
Andy Atkinson, Senior Environmental Scientist (Supervisory) CDFW
Carol Oz, Senior Environmental Scientist (Specialist) CDFW
Greg Martinelli, Environmental Program Manager CDFW
Karen Kovacs, Environmental Program Manager CDFW
Jane Vorpapel, Senior Environmental Scientist (Specialist) CDFW
William Cook, Senior Environmental Scientist (Supervisory) CDFW
Andy Gordus, Staff Toxicologist CDFW
Paul Forsberg, Senior Environmental Scientist
Brad Burkholder, Senior Environmental Scientist (Specialist) CDFW
Ric Ortega, Manager, Grasslands Water District
Joe Karkoski, ILRP Program Manager, Central Valley Regional Water Quality Control Board



State of California – Natural Resources Agency
 DEPARTMENT OF FISH AND WILDLIFE
 Ecosystem Conservation Division/Water Branch
 830 S Street
 Sacramento, CA 95811
www.wildlife.ca.gov

EDMUND G. BROWN JR., Governor
CHARLTON H. BONHAM, Director



January 21, 2014

Mr. Mark Cady
 Central Valley Regional Water Quality Control Board
 11020 Sun Center Drive, Suite 200
 Rancho Cordova, CA 95670

Dear Mr. Cady:

Please accept these comments from the California Department of Fish and Wildlife (Department) on the December 2013 Proposed Waste Discharge Requirements for discharges from irrigated lands within the Sacramento River Watershed (Sacramento River Watershed Order). These comments follow previous written and oral comments by federal (United States Fish and Wildlife Service and Bureau of Land Management) and private (Grassland Water District) wetland managers regarding impact of the Irrigated Lands Regulatory Program on managed wetlands. The Department generally supports all of those comments which were in regards to current efforts to regulate managed wetlands similar to irrigated agricultural lands.

The referenced previous correspondences establish that:

1. Managed wetlands provide food and habitat for millions of resident and migratory birds of the Pacific Flyway each year and provide a host of public trust benefits including habitat for listed species, improved water quality, and flood management. 6-1

2. Management of these lands is fundamentally different from that of commercial agriculture. Goals and objectives for managed wetlands include sustainable water management and use; establishment and maintenance of aquatic and terrestrial fish and wildlife habitat, legislatively mandated crop depredation for surrounding agricultural lands, water quality improvement, and visitor services. 6-2

3. The Order states that managed wetlands are considered “waste dischargers” while its supporting documentation claim that creating and enhancing wetlands are suitable for mitigation. No scientific evidence has been provided showing managed wetlands discharge waste or cause water quality impairments. 6-3

4. Efforts to include managed wetlands into the existing structure of Waste Discharge Requirement templates and control plans are hampered by this fundamental difference in land management. 6-4

Mr. Mark Cady
Central Valley Regional Water Quality Control Board
January 21, 2014
Page 2

5. Limited funding available to state and federal managed wetlands would best be utilized to address overall water quality goals and objectives as they apply to operation and management of these unique properties.

6-5

While there has been some progress in recognizing the fundamental differences between commercial agriculture and managed wetlands within the context of the developing Long-Term Irrigated Lands Regulatory Program (LT-ILRP) and templates (e.g., nitrogen management plans are no longer required for parcels that are solely operated as a managed wetland), we believe those fundamental differences warrant an approach for managed wetlands that takes into consideration the unique landscape, flood management, groundwater recharge, habitat, mitigation, and other public trust benefits these lands provide to the State of California.

From 1982 until 2003, managed wetlands were categorically exempt from waste discharge requirements. In 2003, the Department responded to a Board proposal to include managed wetlands in conditional waivers of waste discharge requirements for irrigated lands. The Department submitted comments to the Board in May 23, 2003 stating that managed wetlands should not be regulated the same as production agriculture. The Department was compelled at that time to join two watershed coalitions to obtain regulatory coverage through conditional waiver orders.

In 2008, the Department participated in public processes related to the development of the LT-ILRP. In a May 30, 2008 memorandum to Board staff, we identified a number of concerns associated with the "one size fits all" approach which does not recognize the unique background, setting, and public trust contribution of managed wetlands. We did not opt out at this time, and continued participation in the Irrigated Lands Regulatory Program (ILRP) for the purpose of regulatory efficiency. We suggested continued discussions with Board staff to better understand how ILRP changes would impact managed wetlands and public trust benefits.

The Department believes further discussion is needed to address a way forward that recognizes managed wetland function and value within context of overall water quality goals. In doing so, it is our hope that the Board will conclude that managed wetlands are important features on the landscape that help improve overall ecological value, including water quality.

6-6

We appreciate your consideration of these written comments, and welcome the opportunity to work with the Board to address these critical issues. You may contact Mr. Paul Forsberg, at (916) 323-7215.

Mr. Mark Cady
Central Valley Regional Water Quality Control Board
January 21, 2014
Page 3

Sincerely,



Scott Cantrell
Chief, Water Branch
California Department of Fish and Wildlife

ec: Dan Frisk, Project Leader
U.S. Fish and Wildlife Service
dan_frisk@fws.gov

Curt McCasland, Refuge Supervisor
U.S. Fish and Wildlife Service
curtis_mccasland@fws.gov

Kim Forrest, Project Leader
U.S. Fish and Wildlife Service
kim_forrest@fws.gov

Dale Garrison, CVPIA Refuge Water Supply Coordinator
U.S. Fish and Wildlife Service
dale_garrison@fws.gov

Harry L. McQuillen, Preserve Manager
Consumnes River Preserve
hmcquill@blm.gov

Andy Atkinson, Senior Environmental Scientist (Supervisory)
California Department of Fish and Wildlife
Andrew.Atkinson@wildlife.ca.gov

Carol Oz, Senior Environmental Scientist (Specialist)
California Department of Fish and Wildlife
Carol.Oz@wildlife.ca.gov

Greg Martinelli, Environmental Program Manager
California Department of Fish and Wildlife
Greg.Martinelli@wildlife.ca.gov

Mr. Mark Cady
Central Valley Regional Water Quality Control Board
January 21, 2014
Page 4

Karen Kovacs, Environmental Program Manager
California Department of Fish and Wildlife
Karen.Kovacs@wildlife.ca.gov

Jane Vorpagel, Senior Environmental Scientist (Specialist)
California Department of Fish and Wildlife
Jane.Vorpagel@wildlife.ca.gov

William Cook, Senior Environmental Scientist (Supervisory)
California Department of Fish and Wildlife
William.Cook@wildlife.ca.gov

Andy Gordus, Staff Toxicologist
California Department of Fish and Wildlife
Andy.Gordus@wildlife.ca.gov

Paul Forsberg, Senior Environmental Scientist (Supervisory)
California Department of Fish and Wildlife
Paul.Forsberg@wildlife.ca.gov

Brad Burkholder, Senior Environmental Scientist (Specialist)
California Department of Fish and Wildlife
Brad.Burkholder@wildlife.ca.gov

Ric Ortega, Manager
Grasslands Water District
rortega@gwdwater.org

Joe Karkoski, ILRP Program Manager
Central Valley Regional Water Quality Control Board
Joe.Karkoski@waterboards.ca.gov

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VALLEY
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Cosumnes River Preserve
13501 Franklin Boulevard
Galt, California 95632
916.684.2816 telephone
916.683.1702 facsimile
info@cosumnes.org
www.cosumnes.org

January 14, 2014

Central Valley Regional Water Quality Control Board
ATTN: Mark Cady
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670-6114

Dear Mr. Cady:

Please accept these comments from the Cosumnes River Preserve for inclusion in the record for the tentative waste discharge requirements (WDR) for discharges from irrigated lands within the Sacramento River Watershed.

The Cosumnes River Preserve is a cooperative partnership between federal, state, and local agencies as well as private, non-profit conservation organizations. For 25 years the Preserve's partnership has protected, restored and managed some of the California Central Valley's most threatened habitats, including freshwater wetlands, valley oak riparian forests and vernal pool grasslands, as well as the native species that depend upon these habitats for their survival.

In June 2013 we, along with the U.S. Fish and Wildlife Service's Stone Lake National Wildlife Refuge, met with Board staff to discuss our concerns and provide input into the development of the draft WDR as it related to managed wetlands. During the public meeting that was held on October 30, 2013, in Colusa, California we also provided oral comments to the Board that re-emphasized our concerns and the need to re-consider the inclusion of managed wetlands with irrigated agricultural lands. Both times our concerns have echoed the concerns and comments that the Board has received from others regarding managed wetlands including, the U.S. Fish and Wildlife Service San Luis National Wildlife Refuge and Grassland Water District during the development of the WDR for the Western San Joaquin River Watershed. The purpose of our comment letter is to once again re-iterate our continued concerns over issues in the tentative WDR that relate specifically to private and publicly managed wetlands.

7-1

We appreciate that the Board now acknowledges in the tentative WDR that managed wetlands do not receive applications of fertilizers and pesticides and, therefore, should not be treated in the same manner as agricultural lands. However, what the tentative WDR does not acknowledge is a well-documented, scientifically proven fact that wetlands are excellent systems for reducing nitrates, phosphorus, pesticides, sediments, and other would-be contaminants of surface and ground water and, as such, they should be completely excluded from the tentative WDR. For example, Fisher and Acreman (2004) did a literature review on the nutrient removal abilities of wetlands. They reviewed more than 57 wetlands from 60 scientific publications or other papers

7-2

Cooperators

Bureau of Land Management, California Department of Fish and Wildlife, California State Lands Commission, California Department of Water Resources, Ducks Unlimited, Galt Joint Union Elementary School District, Natural Resources Conservation Service, Sacramento County Department of Regional Parks, Sacramento Valley Conservancy, The Nature Conservancy, and the U.S. Fish and Wildlife Service

that spanned work done in 16 different countries from around the world. Their conclusion was that the majority (80%) of wetlands reduced nutrient loading. Long before Fisher and Acreman (2004) conducted their review, Bowden (1987) reported “In general, larger amounts of nitrogen cycle within freshwater wetlands than flow in or out.” Bowden (1987) further states: “At any given time the fraction of nitrogen in wetlands that could be lost by hydrologic export is probably a fraction of the potentially mineralizable nitrogen and is certainly a negligible fraction of the total nitrogen in the system.” Simply put, wetlands help to remove and/or retain nitrogen from incoming water. If further proof is needed to corroborate these author’s findings, see any one of several other scientific publications spanning 40+ years including Karpuzcu and Stringfellow (2012); Budd (2010); Gehrels and Mulamoottil (2006); Reddy (2004); Ingersoll and Baker (1998); Horne (1995); Baker (1994); Johnston *et al.* (1984); Lowrance *et al.* (1984); Gersberg *et al.* (1983); Karr and Schlosser (1978); Khalid *et al.* (1977), Lee *et al.* (1975) and countless others that have documented the capacity of wetlands to remove nutrients and contaminants from water. These professional, peer-reviewed authors provided factual evidence that wetlands do not need to be subjected to the regulatory burdens of the tentative WDR because wetlands are, in fact, accomplishing the very objectives set forth in the tentative WDR.

7-2

In addition to the numerous scientists cited above, there are other scientists and professional engineers throughout the world that have designed, built, and tested hundreds of constructed wetlands over the past several decades for use as wastewater treatment systems. In Reddy and DeLaune’s (2008) book entitled the “*Biogeochemistry of Wetlands: Science and Applications*” the authors state: “constructed wetlands have been heavily used to treat a wide variety of wastewater, including domestic (ranging from individual homes to small towns), agricultural, mine drainage, landfill leachate, urban stormwater, and agricultural drainage or surface runoff water.” Reddy and DeLaune (2008) go on to state more specifically that: “The basic biogeochemical processes involved in removing contaminants from wastewaters are the same as those encountered in natural systems. These may include filtration, sedimentation, and microbial degradation. For example, total suspended solids are removed by filtration and sedimentation, biological oxygen demand (BOD) by microbial degradation, nitrogen by nitrification-denitrification, and phosphorus by adsorption and precipitation reactions.” Assuming from their reputations that Reddy and DeLaune (2008) are correct in their conclusions about the value and importance of wetlands when it comes to clean water, it seems counter-intuitive that the tentative WDR continues to state that managed wetlands should be further regulated as “waste dischargers.”

7-3

Contrary to the vast quantity of scientific evidence that is available, the tentative WDR does not specify any scientific evidence to support the inclusion of managed wetlands as “dischargers” of pollutants to surface or groundwater. The only justification provided for including managed wetlands among agricultural dischargers that we were able to find in the tentative WDR was in reference to sedimentation in Attachment A “Information Sheet” Section VII (A) where it was claimed that “wetland drainage channels, access roads, or stream crossings may contribute to discharge of excess sediment.” This justification is completely inadequate since the majority of managed wetlands are typically filled with emergent and submergent wetland vegetation that actually traps incoming sediments from upstream water sources. In cases where individual managed wetland ponds are mowed or disced to create specific habitat characteristics, the mowing and discing are done when the wetland pond is completely dry. Water is then applied in the fall where it is held for months at a time before it is eventually discharged during the spring drawdown. During this holding period emergent and submergent wetland vegetation reestablish and, once again, help to trap or settle sediments before they are discharged. In short, very little sediment is ever discharged by design from a managed wetland.

Erosion is essentially a non-issue as well since in a managed wetland unit water is not applied to large areas of bare ground as it is in a graded or contoured agricultural setting; it is applied to vegetated ground in wetland ponds that are built on nearly flat terrain with only enough of a gradient to allow water to drain through the outlet structure. Even in the case of summer irrigations following mechanical manipulations such as discing, “erosion” and discharges of sediments are not typically the case. Nearly all wetland managers hold water for a minimum of 7 to 28 days in order to stimulate the growth of the desired emergent and submergent vegetation that produces optimal food for resident and winter migratory waterfowl (*e.g.*, watergrass, smartweed, swamp timothy, etc.). In the Sacramento Valley if you can only do a single irrigation per year to promote watergrass, for example, then it is best to do one, 28-day irrigation rather than several shorter duration irrigations (J. Eadie, pers. com. 2012). Holding water for this length of time allows sediments to settle and since the topography of a pond is nearly flat, there is no erosion per se. In some cases, wetland managers irrigate and then allow the irrigation water to simply evaporate to further stimulate plant growth and/or provide temporal “mudflat” habitat for species such as resident or early migratory shorebirds. In this case, there is absolutely no discharge of water from a managed wetland pond or unit. Once again, erosion and sediment are essentially non-issues for managed wetlands. This further validates our position that managed wetlands are not “waste dischargers” and should not be included in the tentative WDR.

One final point regarding the inclusion of managed wetlands in the tentative WDR is in Attachment D “Findings of Fact and Statement of Overriding Considerations” Section D (4). It states that the Board will require “purchase [of] credits for the affected wetland type (*e.g.*, perennial marsh, seasonal wetland) at a locally approved mitigation bank” and/or “develop and ensure implementation of a wetland restoration plan that involves creating or enhancing the affected wetland type.” If wetlands are considered “waste dischargers” and are detrimental to clean water in the State of California in one section of the tentative WDR, then why are they considered suitable mitigation in another section of the document? Once again, this goes back to the countless number of authors that have demonstrated scientifically the value and importance of wetland ecosystems in helping to achieve the goal of clean water through the tentative WDR.

7-4

In the absence of further scientific evidence provided in the tentative WDR that demonstrates that managed wetlands are “waste dischargers” or, are otherwise contributing to the problem rather than solving the clean water problem, we strongly recommend that the Board reconsider the inclusion of managed wetlands under the tentative WDR. It is simply not appropriate to lump this critical natural resource in with irrigated agricultural in a “one size fits all” approach to clean water, especially since this ecosystem is helping to achieve the results that are desired through the implementation of the tentative WDR.

If you have any questions or need additional information regarding our comments or how we manage our wetlands, please contact me at 916-838-8475 or via email at hmcquill@bim.gov.

Regards,



Harry L. McQuillen
Preserve Manager

References

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Personal Communication

Dr. John Eadie. Annual Wetland Manager's Meeting, Sacramento National Wildlife Refuge, Willows, California. March 2012

January 21, 2014

140015:EC

Sent via e-mail to Mark.Cady@waterboards.ca.gov

Subject: Sacramento River Source Water Protection Program Comments on ILRP Tentative Waste Discharge Requirements General Order for Sacramento River Watershed

Dear Mr. Mark Cady:

On behalf of the Sacramento River Source Water Protection Program (SRSWPP), thank you for the opportunity to provide comments on the Irrigated Lands Regulatory Program (ILRP) Tentative Waste Discharge Requirements General Order for discharges from irrigated lands for growers who are members of a third-party group within the Sacramento River Watershed. The SRSWPP is sponsored by the City of Sacramento and the Sacramento County Department of Water Resources; this program is coordinated with other agencies that draw their drinking water from the Sacramento River (or have plans to do so), including the City of West Sacramento, East Bay Municipal Utility District, and the Woodland-Davis Clean Water Agency. We serve drinking water to more than 600,000 people in Northern California.

Watershed management programs are essential for preserving the high quality of the Sacramento River watershed. The Central Valley Regional Board and other regulatory agencies, regulated communities, and educational organizations have made significant strides. We appreciate the substantial efforts of the Sacramento Valley Water Quality Coalition (SVWQC) and the ILRP to protect water quality.

We have one clarification comment for the Central Valley Water Board's consideration. On page 37 of Attachment B, Monitoring and Reporting Program (MRP), there is a reference to Table 5, as follows: "Table 5 of this MRP lists Basin Plan numeric water quality objectives and NTR/CTR criteria for constituents of concern that may be discharged by Members. Table 5 does not include water quality criteria that may be used to interpret narrative water quality objectives, which shall be considered Trigger Limits." We understand that Table 5 is not meant to be a list of all the applicable water quality objectives. We recommend that a sentence be added after "... may be discharged by Members." to state that there are other constituents with numeric water quality objectives that could be present in the discharge and those objectives apply as well.

8-1

Please contact Elissa Callman at 916-808-1424 if you have any questions or would like to discuss our comment.

Thank you.

Sincerely,



Sherill Huun
Supervising Engineer

Cc:

Joe Karkoski, Central Valley Water Board
Susan Fregien, Central Valley Water Board
Ali Rezvani, CDPH
Dave Brent, Director
Joe Robinson, Senior Deputy City Attorney
Bill Busath, Engineering and Water Resources Manager
Michael Malone, Operations and Maintenance Manager
Pravani Vandeyar, Water Quality Superintendent
Dave Phillips, Water Treatment Superintendent
Forrest Williams, Sacramento County Department of Water Resources
Vicki Butler, Sacramento County Department of Water Resources
Dan Gwaltney, Sacramento County Department of Water Resources
Dan Mount, City of West Sacramento
Hubert Lai, EBMUD
Eileen White, EBMUD
Jacques DeBra, Woodland-Davis Clean Water Agency
Bonny Starr, Starr Consulting
Kelly Moran, TDC Environmental



California Sportfishing Protection Alliance

"An Advocate for Fisheries, Habitat and Water Quality"

3536 Rainier Avenue, Stockton, CA 95204

T: 209-464-5067, F: 209-464-1028, E: deltakeep@me.com, W: www.calsport.org

21 January 2014

Mark Cady
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670-6114
mcady@waterboards.ca.gov

VIA: Electronic Submission
Hardcopy if Requested

Re: CSPA and CWIN Comments on Proposed Waste Discharge Requirements for Discharges From Irrigated Lands Within the Sacramento River Watershed

Dear Mark Cady,

Thank you for this opportunity to comment on the proposed waste discharge requirements for discharges from irrigated lands within the Sacramento River Watershed area (hereinafter the "Proposed WDRs"). These comments are submitted on behalf of California Sportfishing Protection Alliance ("CSPA") and California Water Impact Network ("C-WIN") (collectively "CSPA"). Once again, the Regional Board has proposed a water pollution control regimen that unrealistically relies on a convenient fiction that regional monitoring can provide a technically sound basis for curtailing and preventing widespread pollution discharges by some 12,000 farms discharging polluted irrigation water and storm water flows to the Sacramento River and a number of its tributaries. The data collected thus far only proves the folly of a control program that relies exclusively on not looking directly at the individual discharges causing the problem and hoping to "regulate" from a distance. As expert hydrogeologist Steven Bond comments, despite years of monitoring of regional sample sites by the Sacramento Valley Water Quality Coalition, the Coalition in its annual reports consistently conclude that beneficial uses are not being protected, that the water quality exceedances can be attributed to any number of causes or sources, but no such causes have ever been identified. As Mr. Bond concludes, the newly proposed WDRs will not do any better:

Given that under the proposed Order the discharges from irrigated agriculture are never directly measured, the existing stations, always distant points downstream, will never definitively identify the sources of pollution or characterize upstream water quality. Under the existing program and the proposed Order, the sources of pollution and impairment will likely remain undefined, and a matter only for speculation. The identification of high quality waters will not be possible for the reasons stated above.

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Comments of Steven Bond, p. 6 (Jan. 20, 2014) (attached). This is indisputable evidence that downstream monitoring stations cannot and do not measure water quality occurring miles upstream. It also is indisputable that downstream stations cannot determine water quality either in-stream or from individual discharges for the many miles of surface waters upstream of these locations.

↑
9-1

Staff proposes that the Regional Board continue to water down this critical regulatory program based on the unreasonable fears of this large and relatively well-off community of chronic pollution dischargers because they don't want to air the dischargers' dirty laundry in public or in response to an unreasonable fear of being sued by third-parties. One cuts against the basic tenet of every other water quality control program managed by the Board and the other indicates a profound misunderstanding of the enforcement opportunities presented by the Water Code. Likewise, perhaps similar to every other regulated industry in the State, Regional Board staff hides behind a rhetoric of poverty or the dischargers' refrain that they are "price takers" and not "price makers." The simple fact is that the massive amounts of pollution impairing this portion of the Sacramento Valley watersheds are dumped into the State's waterways by a multi-billion dollar industry that has accrued substantial profits for the last decade even while bemoaning the modest costs of the current waiver program. Slightly more than 1,118 dischargers control 547,080 irrigated acres, or about 94 percent of the 582,000 acres of irrigated lands to be governed by the Proposed WDRs. These large farms on average are over 300 acres in size.

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9-3

And, although one must extrapolate from county-wide data because of the lack of information gathered by staff, these large farms likely generate billions of dollars in net profits within the WDR area. Staff has failed to articulate any evidence demonstrating that farm-specific monitoring and more direct control over the west-side dischargers involve unreasonable costs. Nor does staff present the Board with sufficient evidence to make the findings necessary to authorize, as staff proposes, degradation of every surface and groundwater throughout the WDR area, signaling the Regional Board's wholesale retreat from carrying out its duty to protect surface and ground water quality when well-heeled farmers are the polluters.

9-4

CSPA requests that the Regional Board reject the Proposed WDRs and send the proposal back to staff to incorporate appropriate farm-specific discharge and receiving water monitoring, adequate groundwater monitoring, a commitment to preventing degradation of all high quality waters, and to make all reports and plans prepared pursuant to the WDRs available to the public and, in the case of key management plans, subjected to review and approval through the Regional Board's public, decision-making procedures.

A. As Proposed, The Order Would Not Waive Filing of Reports of Waste Discharge By All Dischargers Within the WDR Area.

If the intent is for the Regional Board to maintain the waiver of reports of waste discharge (“RWD”), the Regional Board must comply with Water Code Section 13269, including circulating a proposed waiver to the public for review and comment and making sure the Board has sufficient evidence to make the requisite findings. Although the Regional Board “may prescribe requirements although no discharge report has been filed[,]” that provision does not exempt any discharger from submitting the report of waste discharge mandated by Water Code § 13260. Water Code § 13263(d).

The requirement to file a report of waste discharge is comprehensive:

(a) Each of the following persons shall file with the appropriate regional board a report of the discharge, containing the information that may be required by the regional board: (1) A person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state, other than into a community sewer system.

Water Code § 13260(a)(1). The only exception to submitting a RWD for a person discharging waste is if the Regional Board issues a conditional waiver pursuant to Water Code § 13269:

(b) No report of waste discharge need be filed pursuant to subdivision (a) if the requirement is waived pursuant to Section 13269.

Water Code § 13260(b). Staff’s information sheet appears to assume that by issuing general WDRs, the dischargers within the covered area need not file the RWD required by Section 13260. Water Code § 13263(d) provides no such exemption. Indeed, by its plain terms, it merely emphasizes that the RWD requirement applicable to each discharger is separate and distinct from the WDR requirement applicable to the Regional Board. The distinctness of the two provisions is demonstrated by the waste discharge prohibitions set forth in Water Code § 13264. Section 13264 provides that:

(a) No person shall initiate any new discharge of waste or make any material changes in any discharge, or initiate a discharge to, make any material changes in a discharge to, or construct, an injection well, prior to the filing of the report required by Section 13260 and no person shall take any of these actions after filing the report but before whichever of the following occurs first:

(1) The issuance of waste discharge requirements pursuant to Section 13263.
 (2) The expiration of 140 days after compliance with Section 13260 if the waste to be discharged does not create or threaten to create a condition of

pollution or nuisance and any of the following applies: [describing various CEQA scenarios and associated timelines...]

(3) The issuance of a waiver pursuant to Section 13269.

Water Code § 13264(a). Thus, it is clear that filing a RWD is a separate and distinct duty from the Board's issuance of WDRs. Indeed, the discharge prohibition is complete prior to the filing of an RWD even where a WDR is issued. Second, the only way to avoid the discharge prohibitions **after the filing of a RWD** is the issuance of WDRs or a waiver. Given this requirement, WDRs cannot be read to exempt RWDs.

9-5

The only exemption to the RWD requirement is the issuance of a waiver pursuant to Water Code § 13269. Because the current action items do not propose to issue a waiver of the Section 13260 RWDs for any of the irrigated lands dischargers in the WDR Area, every discharger will still have to file an RWD, including the monitoring and other information already required by the Regional Board. CSPA believes that RWDs would go a long way toward curing the farm-specific data gap that the WDRs propose to maintain.

B. The Regional Board Has No Authority To Deputize Third-Parties To Hold Section 13267 Reports For The Regional Board And Insulate The Reports From Public Disclosure.

Despite the availability of electronic reporting and other efficient methods of handling large numbers of reports and data, Board staff once again propose that irrigated lands dischargers to be allowed to keep their management practices to themselves and the third-party coalition, rather than the Regional Board and the rest of the interested public. Proposed WDRs, p. 25.

The Farm Evaluation Reports ("FERs") are one of the reports proposed by the WDRs pursuant to Section 13267 authority. *Id.*, p. 9. Water Code § 13267 does not authorize the Regional Board to order reports to be submitted to any entity other than the Board. Nor is there any authority in the Water Code authorizing the Regional Board to designate third parties to manage 13267 reports on behalf of the Regional Board. Section 13267 authorizes the Regional Board to require that dischargers "**shall furnish**, under penalty of perjury, technical or monitoring program reports which the regional board requires." Water Code § 13267(b)(1) (emphasis added). "In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person **to provide the reports.**" *Id.*, § 13267(b)(1) (emphasis added). Lastly, Section 13267 expressly preserves dischargers' trade secrets when providing the reports to the Regional Board, emphasizing however, that "these portions of a report shall be available for use by the state or any state agency in judicial review or enforcement proceedings involving the person **furnishing the report.**" *Id.*, § 13267(b)(2) (emphasis added).

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Nothing in Section 13267's provisions suggests or implies that the Regional Board can order a discharger to provide a report to a third-party, either for safe-keeping or any other reason. It is untenable that "furnishing" or providing a report under 13267 is intended to be to any other entity but a regional board. Perhaps most obviously, the language regarding trade secrets would hardly be relevant if Section 13267 anticipated that the authorized reports would be furnished to a private entity rather than a public agency, *i.e.* the relevant regional board. More importantly, by deputizing third-parties to retain 13267 reports like the FERs, the Regional Board frustrates Section 13267's plain intent to have the reports, even their trade secrets, available to the state or any state agency for enforcement. For these reasons, the FERs and other plans and reports earmarked for storage at the third-party coalition's office must be provided directly to the Regional Board and, with the exception of legitimate trade secrets, be accessible to the public.

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C. If the Regional Board Makes the Findings Under the High Quality Waters Policy to Allow Degradation in Both Surface and Ground Waters Throughout The 1,770,000 Acre WDR Area, the Regional Board Will Have Abused Its Discretion and Proceeded in a Manner Inconsistent With the Law.

Staff asks the Board to take the unprecedented action of authorizing degradation of an entire area of the Central Valley spanning several watersheds based on little more than a hope that 12,000 dischargers, about 4,320 of which consist of very large, generally very profitable farms spanning 96% of irrigated acres, will effectively volunteer to do the right things to protect water quality. And that proposal is based on evidence that is yet to be collected and, in the case of discharge data or meaningful receiving water data, may never be collected.

The Regional Board's decisions must be based on the weight of the evidence. That means, the Regional Board must gather in a preponderance of evidence in order to support its decisions implementing the High Quality Waters Policy. Staff proposes that the Water Board turn this standard on its head by suggesting that the Board should make a determination to allow every high quality water in the Sacramento Watershed area to be degraded without any evidence at all.

9-7

Staff tries to convince itself that a pollution discharge from an irrigated field is unique to the world of pollution regulation. It is not. Staff surmises, "Very little guidance has been provided in state or federal law with respect to applying the antidegradation policy to a program or general permit where multiple water bodies are affected by various discharges, some of which may be high quality waters and some of which may, by contrast, have constituents at levels that already exceed water quality objectives." Information Sheet, p. 48. Every waterbody in the state is affected by multiple dischargers. And, despite staff's effort to contrive complexity where none exists, no one discharger is emitting pollutants from any particular field to multiple waterbodies. Whether staff likes it or not, the high quality water policy, indeed the entire Porter-Cologne Act, applies to each discharge. Just

because there are numerous discharges releasing large quantities of pollution to waterways, does not mean the high quality waters policy is complicated for any single discharger.

State Board Resolution No. 68-16 provides:

Whenever the existing quality of water is better than the quality established in policies as of the date on which such policies become effective, such existing high quality will be maintained until it has been demonstrated to the State that any change will be consistent with maximum benefit to the people of the State, will not unreasonably affect present and anticipated beneficial use of such water and will not result in water quality less than that prescribed in the policies.

The findings necessary to allow degradation under the Policy are stringent:

When the state's antidegradation policy is triggered, as here, Resolution No. 68-16 provides that the Regional Board is authorized to allow the discharge of waste into high quality waters only if it makes specified findings. The State Board has described these findings as a two-step process. "The first step is if a discharge will degrade high quality water, the discharge may be allowed if any change in water quality (1) will be consistent with maximum benefit to the people of the State, (2) will not unreasonably affect present and anticipated beneficial use of such water, and (3) will not result in water quality less than that prescribed in state policies (e.g. water quality objectives in Water Quality Control Plans). The second step is that any activities that result in discharges to such high quality waters are required to use the best practicable treatment or control of the discharge necessary to avoid a pollution or nuisance and to maintain the highest water quality consistent with the maximum benefit to the people of the State."

Asociacion de Gente Unida por el Agua v. Central Valley Regional Water Quality Control Bd. (2012) 210 Cal.App.4th 1255, 1278-1279, citing (State Bd., Guidance Mem. (Feb. 16, 1995) p. 2.).

Applying the Policy for any given discharge requires that (1) data going back to 1968 from the receiving water be reviewed to determine whether it is a high quality water for the pollutants likely to be discharged; (2) data regarding the levels, presumably concentration levels that can be compared to the best receiving water concentrations, of pollutants being discharged by the farm; (3) identification for that farm of the levels of control, treatment, or management practices which would comply with the high quality water levels; (4) identification for that farm of the levels of control, treatment, or management practices which would comply with the applicable water quality standards for those pollutants; (5) the relative cost difference, if any, between those actions, and (6) a determination whether the cost of maintaining the high quality water level is so

disproportionate to the mandatory cost of achieving standards that the discharger should be allowed to degrade the receiving water down to, but not lower than, the applicable standards because that would be consistent with the “maximum benefit to the people of the State.” This outline is how the Policy has been applied for four decades to individual dischargers. The Policy does not provide an exception to a category of dischargers simply because there are thousands of them. If anything, that fact warrants much more allegiance by the Regional Board to the Policy’s requirements, not, as staff is proposing, a dilution of those requirements to a meaningless self-fulfilling prophecy – we hope the dischargers will do the right thing, hence there won’t be degradation or, if there is, giving that particular discharge a break assumes a maximized benefit to the people of the State will result.



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The only legal way to apply these mandatory criteria to farm dischargers in the WDR area is to require each farmer to submit a detailed farm evaluation report which contains sufficient monitoring of the farm’s discharges, representative monitoring of their local receiving water quality, and details about their existing and proposed discharge pollution controls and management practices, and the costs of such controls. If either existing data already in the Board’s database or the submitted receiving water data establish water quality higher than standards for any pollutant being discharged, the Board would then be in a position to decide whether the measures in place or being proposed will protect the highest quality of water in the farm’s receiving waters and, if not, whether the costs to that particular farmer of maintaining that highest water quality are not to the maximum benefit of the people of the State.

1. The Regional Board Cannot Allow Degradation Under the High Quality Waters Policy Prior to Identifying the High Priority Waters in the WDRs’ Geographic Area

In order to make a rationale decision to allow degradation of a high quality water, the Regional Board must first identify which of the waters within the WDR area are high quality waters. Neither the Board nor its staff have reviewed the available irrigated lands program data and determined which of the waterbodies within the watershed are high quality waters, *i.e.*, what is the highest water quality that has been achieved in any given stretch of water since 1968. Nor did they seek monitoring data from other agencies, like the U.S. Geological Survey, U.S. Fish and Wildlife Service or U.S. Bureau of Reclamation that, over many years, have been collecting water quality data in the subject area. This is despite staff’s acknowledgement that plenty of data exists – much of which would identify that perhaps every waterbody within the Watershed is high quality waters. *Asociacion de Gente Unida por el Agua v. Central Valley Regional Water Quality Control Bd.* (2012) 210 Cal.App.4th 1255, 1271 (although data more recent than 1968 may not demonstrate a water body is not high quality, such data can demonstrate a water body is high quality). But they do not know if that is the case because, despite years of presumably reviewing all of that data and claiming to have designed an effective water monitoring program in the watershed, for purposes of the WDRs and the High Quality water policy, staff makes no effort to review the data for the waterbodies at issue. Information Sheet, pp. 48-49. It is a



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simple task, that could have been accomplished in the last three to four years, for a staff person to run a simple search of the data to determine the best water quality for every water segment in the watershed. Without knowing what level of water quality is necessary to protect high quality waters, it is an abuse of discretion for the Board to claim that it has considered the costs of achieving those concentrations by each of the relevant upstream dischargers, whether they can feasibly be achieved, and evaluated the cost to the public of not achieving them.

If staff claims it does not have the data for a particular waterbody or reach of a waterbody, then obviously the Board's past monitoring program and any proposed monitoring based on that effort are deficient and, thus, in violation of the Policy. This is particularly true for the vast stretches of waterbodies that lie upstream of the relatively few monitoring locations sampled by the Coalition or agencies over the years. If the Board cannot determine whether or not a water or a relevant stretch is high quality or not for lack of any data, than the Board is not in any position to make a finding that degradation in that waterbody is authorized consistent with the Policy. As CSPA's experts point out, this is the norm for most of the waters included in the WDR area. Bond Comments, Comments of Richard McHenry (Jan. 21, 2014). That means many miles of that creek drainage may or may not be high quality and may or may not be being degraded. That data gap is not evidence that the Board can even begin to apply the High Quality Waters Policy's criteria and make the prerequisite findings. In order to apply the Policy based on the weight of evidence, the Board must first gather some relevant evidence by requiring the discharger(s) it is considering authorizing to degrade water quality to gather in the necessary data – whether collected in the past or anew – to determine whether the water is high quality or not and what costs might be associated to both the discharger(s) and the public by allowing degradation their receiving waters.

The Court of Appeal has spelled out the necessity of comparing the actual pollutant-specific, baseline water quality of a particular waterbody as compared to the applicable water quality standard as the first step in applying the High Quality Waters Policy:

When undertaking an antidegradation analysis, the Regional Board must compare the baseline water quality (the best quality that has existed since 1968) to the water quality objectives. If the baseline water quality is equal to or less than the objectives, the objectives set forth the water quality that must be maintained or achieved. In that case the antidegradation policy is not triggered. However, if the baseline water quality is better than the water quality objectives, the baseline water quality must be maintained in the absence of findings required by the antidegradation policy.

Asociacion de Gente Unida por el Agua, 210 Cal.App.4th at 1270. The Court of Appeal found that even a single water sample from the receiving water that is above the applicable standard was sufficient to establish that a waterbody is a high quality water. *Id.*, 210 Cal.App.4th at 1271. Likewise, the Board has to identify which constituents qualify the

water as high quality in order to rationally apply the Policy. *Id.* (“Water can be considered high quality for purposes of the antidegradation policy if it is determined to be so for any one constituent, because the determination is made on a constituent by constituent basis”). *See* Information Sheet, p. 46 (Waters can be of high quality for some constituents or beneficial uses but not for others.”)

Because the Board does not know which waters are high quality waters, the Board has no idea which farm or farms are discharging into those high quality waters. As a result, the Board has none of the requisite information necessary to apply the High Quality Waters Policy’s balancing test. The Board does not know what the economic situation is for the discharging farmer or any affected users. The Board does not know what additional measures may be available to prevent the degradation staff is so willing to authorize. There is no information about what incremental cost might be required for any given farmer to achieve the highest quality water versus having to comply with standards. *See Asociacion de Gente Unida por el Agua*, 210 Cal.App.4th at 1270 (“The baseline quality of the receiving water determines the level of water quality protection”). Thus, there is no evidence – nevermind a preponderance – to establish that relieving that farmer or many farmers of that incremental cost somehow maximizes benefit to all Californians.

Staff’s information sheet attempts to expand the data required to assess the presence of high quality waters or otherwise apply the Policy. The information sheet, Appendix A, states that:

There is no comprehensive, waste constituent-specific information available for all surface waters and groundwater aquifers accepting irrigated agricultural wastes that would allow site-specific assessment of current conditions. Likewise, there are no comprehensive historic data.

Information Sheet, p 48. First, the Court of Appeal has rejected the need for “comprehensive” data or assessments to determine whether the Policy applies. 210 Cal.App.4th at 1270-71. There is plainly ample data to determine whether at least some water segments within the WDR area are high quality and whether they are already being degraded by numerous unidentified farm dischargers. Second, there is likely available monitoring data collected by other agencies over the years that could be evaluated if staff would only endeavor to collect it. Third, by conceding that staff does not have data, which is indeed true for many of the waterbody segments within the WDR area, that concession admits that the Board cannot support any finding that degradation by every discharger in those unmonitored areas of the WDR area is warranted.

2. **Staff’s Proposal Would Have the Regional Board Determine That Degradation is Authorized Even for Parameters and Waterbody Reaches That, Although High Quality, Discharges are Not Currently Degrading.**

To the extent the farms covered by the proposed WDRs are not degrading waters at least for a few pollutants where monitoring stations are located, there is obviously no legitimate rationale for the Regional Board to authorize degradation.¹ Yet that is precisely what staff proposes the Board do. The WDRs propose a blanket authorization for farms in the WDR area to degrade waters even for pollutants at the monitoring locations that they cannot show any reason degradation is necessary for the public benefit or any other reason. Yet a review of the data, even for a few of the core monitoring locations, shows that, at least for a few pollutants at those locations, although the waters are high quality, there is no degradation observed at those locations. Where there is no discernable discharge degrading water or any information on a discharger's potential costs available to compare to the general public benefit, there is no evidence on which to base an approval of future discharges causing degradation. This type of advance authority to degrade for any pollutant is entirely inconsistent with the Policy.

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3. The Regional Board Does Not Have Sufficient Evidence to Establish that Any Given Discharger's Degradation of Surface and Ground Waters Throughout the WDR Area Will Maximize Benefits to the People of California.

In order to authorize any degradation from high quality down to the applicable water quality objective, the Regional Board must be presented with evidence a discharge's degradation of high quality water will be consistent with maximum benefit to the people of California. "The first step is if a discharge will degrade high quality water, the discharge may be allowed if any change in water quality (1) will be consistent with maximum benefit to the people of the State. *Asociacion de Gente Unida por el Agua*, 210 Cal.App.4th at 1278. The State Board has provided guidance, endorsed by the Court of Appeal, which makes clear that evaluating maximum benefit must be done for a specific discharge, not based on Central Valley wide generalities:

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The State Board's guidance memorandum defines the term "maximum benefit to the people of the State" as follows: "Before **a discharge** to high quality water may be allowed, it must be demonstrated that any change in water quality 'will be consistent with the maximum benefit to the people of the state.' This determination is made on a **case-by-case basis** and is based on considerations of reasonableness under the circumstances **at the site**."

Id. (emphasis added) (quoting State Board, Guidance Mem. (Feb. 16, 1995) pp. 4-5). The State Board guidance lays out factors, making clear that they must be considered for a specific discharge, not thousands of discharges at once:

¹ Because the only data is at the downstream monitoring locations, the fact that no degradation for several pollutants is observed at those locations does not preclude extensive degradation from discharges well upstream.

Factors to be considered include (1) past, present, and probable beneficial uses of the water (specified in Water Quality Control Plans); (2) economic and social costs, tangible and intangible, of **the proposed discharge** compared to the benefits, (3) environmental aspects of **the proposed discharge**; and (4) the implementation of feasible alternative treatment or control methods. With reference to economic costs, both costs to **the discharger** and the affected public must be considered. 'Cost savings to **the discharger**, standing alone, absent a demonstration of how these savings are necessary to accommodate "important social and economic development" are not adequate justification' for allowing degradation. See [State Board] Order No. WQ 86-17, at 22, n. 10.

Id. (emphasis added). The Information Sheet acknowledges this fundamental aspect of the High Quality Waters Policy – "Waters can be of high quality for some constituents or beneficial uses but not for others." Information Sheet p. 48. Despite that understanding, staff has not evaluated any particular farm, any specific waterbody, or any given discharge within the WDR area to determine what improvements are necessary to its management practices (assuming it has any such practices), the costs of such improvements, or that farm's discharges contribution to any degradation measured far downstream. Only close to a year after the Regional Board authorizes degradation, does staff propose any Farm Evaluation Reports be submitted, and then only to the third-party Coalition. The proposed WDR does not indicate what such reports will contain, so whether at that time they will provide the information relevant to applying the Policy is anybody's guess. And, as the above highlighted text makes clear, the degradation evaluation is to be done on a site-specific, or in this case, farm-specific basis.

Likewise, staff provides no data whatsoever about what any specific farm operation may be discharging to groundwater. Although such discharges are clearly occurring, the Board is not yet in any evidentiary position to apply the factors relevant to maximum public benefit and to declare any degradation acceptable under the High Quality Waters Policy.

The economic impact analysis conducted on a region-wide basis does not provide any evidence relevant to whether authorizing a discharge from any particular farm in the WDR area will be consistent with the maximum benefit to the people of California. Staff relies upon the 2010 *Draft Technical Memorandum Concerning the Economic Analysis of the Irrigated Lands Regulatory Program* prepared for the PEIR. See Information Sheet, p. 59. Although that cost analysis may be sufficient to comply with Water Code § 13141, it is not sufficient to conduct a site-specific degradation analysis applying the High Quality Waters Policy. Indeed, the proposed WDRs expressly disavow any applicability of its Section 13141 region-wide economic analysis to any individual farmers' costs or management measure decisions:

Any costs for water quality management practices will be based on a market transaction between Members and those vendors or individuals providing

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services or equipment and not based on an estimate of those costs provided by the board.

Proposed WDRs, p. 11. Thus, the Section 13141 economic analysis does not reflect “costs to the discharger” required to be considered by the High Quality Waters Policy.

Staff’s proposed rationales for the Regional Board to authorize wholesale degradation of water quality in the WDR area identify two almost generic assertions. One, that “Central Valley communities depend on irrigated agriculture for employment,” and two, “[t]he state and nation depend on Central Valley agriculture for food....” Appendix A, p. 57. These generic assertions neither resemble the site specific factors identified by the State Board’s Guidance and endorsed by the Court of Appeal nor allow for any coherent comparison of costs to specific dischargers and any cogent reason why they should be authorized to degrade high quality waters based on maximum benefit to all Californians. *Asociacion de Gente Unida por el Agua*, 210 Cal.App.4th at 1278. Any cogent review of the actual economic conditions prevalent in the area to be governed by the WDRs would show that farms, and in particular the larger farms operating within that area, are economically robust, forming a significant portion of a multi-billion dollar industry in the region. *See* Jennings Comments. Because staff has not provided any evidence of the covered dischargers’ ability to pay for individual monitoring and management practices necessary to determine compliance with the WDRs and the Water Code, the Board is unable to make a determination of maximum benefit to the people of California.

Lastly, whether looking at surface water or ground water, the WDRs’ proposed monitoring is so far removed from any specific source, the monitoring will not be capable of discerning any change in water quality from hundreds, perhaps thousands of farms in the WDR area. McHenry Comments, Bond Comments. Because the WDRs do not include any monitoring that would detect any changes in water quality from a discharge, the Regional Board will not know what degree of change is or may occur and, hence, cannot make any rational finding that allowing such change is consistent with maximum benefit to the people of the State. *Asociacion de Gente Unida por el Agua*, 210 Cal.App.4th at 1280 (where monitoring plan inadequate to detect degradation of waters, cannot make finding that such degradation will be of maximum benefit to the people of California).

It is clear that the Board’s record currently is devoid of evidence necessary for it to consider whether any one discharger, nevermind thousands of dischargers, can be authorized en masse to degrade waters throughout a 1,770,000 acre swath of the Central Valley.

4. **The Regional Board Cannot Authorize Degradation of all Waters Within the WDR Area Because the Proposed WDR Conditions, Even if Complied With, Will Only Further Demonstrate That the Authorized Discharges will Result in Water Quality Less Than the Basin Plan’s Water Quality Objectives.**

The current coalition program in the Sacramento Valley has been in place since 2003. Despite ten years of implementing the program continued by the proposed WDRs, no discernable improvement is evident:

“The Sacramento River Watershed 2012 *Water Quality Management Plan Progress Report*, is broken down into sub-watersheds and shows routine exceedance of water quality standards for: dissolved oxygen, pH, pesticides, pathogens, salinity, toxicity and trace metals. Clearly, water bodies accepting discharges from numerous represented irrigated lands are not meeting water quality objectives and existing high quality waters are not being maintained.”

McHenry Comments. “Since many of the water bodies in the area have been designated as impaired and sampling shows routine exceedances of water quality standards, the represented agricultural practices have been shown to be not protective of water quality.” *Id.* The few tweaks to the program proposed in the WDRs will not dramatically change these results. Indeed, given the proposed 10-year compliance schedules for addressing the few pollutants that may be included in a SWMP, the WDRs are guaranteed to allow discharges to continue violating water quality objectives for the foreseeable future. As a result, the Regional Board cannot make the required finding that the irrigated lands discharges in the WDR area “will not result in water quality less than that prescribed in state policies (e.g. water quality objectives in Water Quality Control Plans),” as required to authorize degradation down to standards.

Although the proposed WDRs proposes to begin breaking down the barrier to identifying management practices and pollution sources on specific farms by providing for a Farm Evaluation Report (albeit the proposal does not disclose what information will be requested in the FERs and, thus, it is impossible to evaluate whether the FERs will provide sufficient information), the WDRs rely for the most part on continuing the coalition group program that has been in place for the WDR area since 2003. Thus, although the SWMP appears to provide some additional discretion to the Executive Officer that may be applied at some point in the future, the SWMP continues to rely on regional monitoring coupled with a management planning process mirroring the waiver program. This monitoring scheme does not detect violations of water quality objectives for large expanses of the watersheds upstream of the monitoring stations. *See* Bond Comments, McHenry Comments. And it will continue to detect violations of the objectives at the stations if individual farmers’ discharges are not meaningfully monitored. *Id.* “To the extent that the Order allows historic practices to continue without change, degradation will continue.” *Asociacion de Gente Unida por el Agua*, 210 Cal.App.4th at 1273.

Likewise, although groundwater is included in the WDRs, the process to address discharges to groundwater relies on existing monitoring wells that will not pick up degradation. This program will neither detect nor prevent violations of the nitrate objective for the foreseeable future. *See Asociacion de Gente Unida por el Agua*, 210 Cal.App.4th at 1273. The Proposed WDRs only trigger ponderous, multi-year management



plans and more generalized receiving water monitoring upon multiple exceedances of a water quality objective and or a trend in degradation. This evidence does not provide evidence that the Board can rely on to find that discharges will not violate objectives.

The WDRs propose to allow 10-year long compliance schedules once a SQMP or GQMP is triggered or requested. Proposed WDRs, pp. 38-39. It is again entirely inconsistent with the High Quality Waters Policy for the Board to presume to allow degradation for dischargers who are not even complying with water quality objectives. The discharges will automatically result in water quality less than objectives, precluding any finding by the Board to the contrary. Likewise, such discharges are and will continue to “unreasonably affect present and anticipated beneficial use of such water.” Accordingly, the Board also cannot make a finding to the contrary, as is also required to allow degradation under the Policy.

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The fact that, as designed, the Proposed WDRs will not ensure compliance with applicable objectives, also is inconsistent with the Water Code’s basic WDR requirements. WDRs “shall implement any relevant water quality control plans that have been adopted, and shall take into consideration the beneficial uses to be protected, [and] the water quality objectives reasonably required for that purpose,....” Water Code § 13263(a). Because the WDRs replicate existing waivers that have not implemented the applicable objectives, the Proposed WDRs fail to implement objectives.

5. The Regional Board Does Not Have Sufficient Evidence to Establish that All Dischargers Within the WDR Area are Implementing the Best Practical Treatment Controls for Discharges to Surface Waters and Ground Water.

Resolution No. 68-16 requires specific steps to protect high quality waters, including mandating the use of WDRs through specified technology-based effluent limitations. The High Quality Waters Policy provides, in relevant part, that:

Any activity which produces or may produce a waste or increased volume or concentration of waste and which discharges or proposes to discharge to existing high quality waters will be required to meet waste discharge requirements which will result in the best practicable treatment or control [“BPTC”] of the discharge necessary to assure that (a) a pollution or nuisance will not occur and (b) the highest water quality consistent with maximum benefit to the people of the State will be maintained.

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To comply with Resolution No. 68-16’s BPTC mandate, the Regional Board must require the discharger to demonstrate that the proposed manner of compliance constitutes BPTC. *Asociacion*, 210 Cal.App.4th at 1282 (“The second step of Resolution No. 68-16’s two-step process for determining whether a discharge into high quality waters is permitted, is a finding that the discharge will be required to undergo the “best practicable treatment or

control ... necessary to assure that (a) a pollution or nuisance will not occur and (b) the highest water quality consistent with maximum benefit to the people of the State will be maintained”).

“In determining BPTC, the discharger should compare the proposed method to existing proven technology; evaluate performance data (through treatability studies), compare alternative methods of treatment or control, and consider the method currently used by the discharger or similarly situated dischargers.” *See* SWRCB Order No. WQ 2000-07.

The Board does not yet have evidence of what any particular discharger within the WDR area is actually discharging to surface or ground waters. Instead of having evidence of what practices are currently in place for the current members of the Sacramento Valley Coalition, the Board relies upon future Farm Evaluation Reports based on templates the contents of which have not yet even been proposed. More than a year will pass after the Board issues the WDRs and, as proposed, the authorization of degradation, before any information about individual farms starts to flow into the Regional Board’s files. Proposed WDR, p. 26. Without existing information about what each discharger within the WDRs area is implementing for management practices and data regarding the practices’ effectiveness to control pollutants, there is no evidence upon which the Board can base a finding that each discharger is implementing BPTC.

There is no evidence in the record that a farm entity, especially a large farm, is any less economically capable of taking a few representative discharge samples as any small industrial business currently regulated by the industrial storm water permit. CSPA does not believe that any evidence has been presented that demonstrates there is a valid economic reason for not requiring every farmer to collect some water quality samples, expend funds necessary to have a pollution control plan, and expend funds to implement the necessary measures to assure that farm’s pollution will neither degrade water quality nor violate standards. *See* Exhibit C.

Staff’s proposed “Farm Management Performance Standards” do not provide staff evidence justifying a determination to authorize degradation throughout the Sacramento Valley watershed. *See* Proposed WDRs, p. 21. Even assuming the performance standards somehow provide more guidance than already is apparent on the face of the Basin Plan or even the existing waivers, the Board still cannot meaningfully evaluate or apply the High Quality Waters Policy as it applies to any given discharger in the Watershed by having them submit information after the decision to allow degradation is made and without any information about the actual pollution that farm is discharging or even which river or channel it is discharging to and the quality of that receiving water.

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D. IN ADDITION TO PROPOSING UNSUPPORTED FINDINGS TO AUTHORIZE DEGRADATION, THE DEGRADATION AND VIOLATIONS OF WATER QUALITY OBJECTIVES THAT WILL RESULT FROM THE WDRS IS INCONSISTENT WITH THE HIGH QUALITY WATERS POLICY.

1. The Proposal to Authorize Degradation Admits That Implementation of the Proposed WDRs Will Continue to Degrade Water.

By proposing to abandon any effort to avoid degradation of high quality waters, Regional Board staff concedes that a program based on regional monitoring and third-party outreach to actual dischargers does not assure that waters will not be degraded. Because the Board cannot make the requisite findings to support a decision authorizing degradation, the WDRs as proposed will degrade high quality waters in violation of the High Quality Waters Policy.

Additionally, repeating the flaw in the existing renewed waiver that was rejected by the Sacramento Superior Court, the proposed WDRs again do not bother to link even the general management practice responses to degradation. Instead, in regard to both surface and ground water pollution, the proposed WDRs trigger the general management responses by the third party when objectives are exceeded or where the EO determines that “irrigated agriculture is causing or contributing to a trend of degradation of surface water that may threaten applicable Basin Plan beneficial uses.” Proposed WDRs, pp. 34. Moreover, even this possibility is made less likely by the very next provision which says the EO may relieve the third party of a SQMP or GQMP when members only meet the applicable water quality objectives and a management plan will not likely remedy the exceedance. *Id.*, p. 34. The proposed WDRs do not comply with the obvious flaw found by Judge Frawley that the requirements are not geared to address degradation, but rather exceedances of other water quality measures including the same objectives rejected by Judge Frawley and unidentified “trends” in degradation. Order, p. 19. The High Quality Waters Policy does not merely guard against adverse trends in degradation, but any degradation. Because once again the proposed WDRs blink in fully enforcing the Policy, the proposed WDRs suffer from the same error as that found by Judge Frawley for the renewed waiver.

In addition, the Court of Appeal also has rejected a similar process attempted in the general dairy WDRs leaving future potential compliance with the degradation restrictions to the Executive Officer at his/her discretion. Thus, in addressing the Regional Board’s contention in the General Dairy WDRs that water would not be degraded because the Executive Officer had authority to order additional monitoring, the Court of Appeal did not agree future action by the EO applying his/her discretion was, by itself, sufficient to prevent degradation. *Asociacion de Gente Unida por el Agua*, 210 Cal.App.4th at 1277. This was due, first, to the fact that such discretion was not applied to all dischargers governed by the general WDRs but “required only at the discretion of the executive officer.” *Id.* Second, the Court rejected open-ended discretion as a stand-in for assurances that degradation would not occur because “there are no mandatory standards governing the

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exercise of the executive officer's discretion." *Id.* Lastly, the Court rejected mere discretion by the EO, because it was triggered by monitoring that, by its nature, already established that degradation had occurred. *Id.* The same is true by the monitoring triggers included in the proposed WDRs, which await exceedances of objectives and "trends" in degradation before the EO may act and, even then, the EO may choose not to require even the broad management plans.

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For these reasons, the proposed WDRs allow degradation and, absent adequate findings by the Board authorizing degradation down to standards, no such degradation is allowed.

2. Monitoring Surface or Ground Waters Many Miles Downstream of Pollution Sources Will Neither Detect Nor Prevent Degradation or Upstream Exceedances of Water Quality Objectives.

Although Judge Frawley did not choose to rule on whether the regional monitoring stations that were implemented pursuant to the renewed waiver were sufficient to comply with the High Quality Waters Policy, he did state:

It also is questionable whether the Renewed Waiver is sufficient to comply with the Antidegradation Policy since it is not clear that the Board has an adequate means of identifying and taking actions against dischargers who are violating water quality objectives when water quality objectives are being exceeded, or of ensuring that BPTC is being implemented when high quality water is being degraded.

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Order, p. 19. The same inadequacies are present in the Proposed WDRs. The monitoring stations anticipated by the Proposed WDRs are essentially the same as those present pursuant to the renewed waiver. Those stations cannot and will not detect violations of water quality objectives or degradation more than a short distance upstream. McHenry Comments; Bond Comments. As a result, numerous upstream violations will go undetected. Even where the stations confirm a standard violation or serious degradation, the Board will not know which upstream farms are responsible. *Id.* Nor will a simple, yet-to-be-defined FER indicate whether or not BPTC is in place for every upstream farmer. The Board's reliance on regional monitoring in an effort to spare individual farmers the burden of making sure they are not degrading the State's waters will never be sufficient to detect pollution and degradation or violations of objectives occurring some significant distance upstream. As a result, the Proposed WDRs are inconsistent with the High Quality Waters Policy as well as Water Code § 13263(a) (WDRs "shall implement any relevant water quality control plans that have been adopted, and shall take into consideration the beneficial uses to be protected, [and] the water quality objectives reasonably required for that purpose,...").

In the past, Regional Board staff has admitted that general discharge requirements relying on regional monitoring will not produce monitoring able to detect violations of water quality standards for large expanses of upstream waters. Former Regional Board Program Manager for the Irrigated Lands Program, Bill Croyle, has testified that “main stem, downgradient monitoring ... is going to tell us a very limited amount of information with regards to what is going on upstream in the watershed.” Testimony of Bill Croyle (March 5, 2003) (AR2776).

Watershed- or regional-based monitoring cannot detect water quality levels miles upstream. Previous expert testimony from three former Regional Board staff and two other experts has been presented to the regional Board clarifying this basic point. Former Regional Board staff engineers and managers Steve Bond, Joanne Kip and Richard McHenry each testified both orally and in writing that the renewed regional monitoring scheme would not detect most of the site-specific or area-specific water quality problems occurring in the Central Valley. Comments of Steven Bond, PG, CEG, CHG (Sept. 27, 2010); Written Testimony of Steven Bond (April 7, 2011) (AR101869); Written Testimony of Richard McHenry (April 7, 2011) (AR101871); Written Testimony of Jo Anne Kipps (April 7, 2011) (AR101870); Oral Testimony of Steven Bond, Jo Anne Kipps & Richard McHenry (April 7, 2011) (AR3029.225-.232); Comments of G. Fred Lee, Ph.D. (Sept. 25, 2010) (AR101943, AR101949); Comments of Matt Hagemann (Sept. 10, 2010) (AR101829). As Mr. Bond, a certified geologist and hydrogeologist, explained in 2010 during the proceedings on the current waiver:

You asked if the downstream water quality of a complex watershed composed of multiple sub- watersheds, is a valid measure of the water quality in any or all of the individual sub-watersheds. My answer is no. While gross average conditions may be observed downstream, the conditions of individual upstream sub-watersheds will remain unknown. Between the downstream monitoring station and the various upstream watersheds, mixing and dilution occurs and the conditions at any upstream point are obscure to the downstream location.

Comments of Steven Bond, PG, CEG, CHG (Sept. 27, 2010). See also Written Testimony of Steven Bond (April 7, 2011) (AR101869) (“My professional opinion is that in a complex watershed composed of multiple sub- watersheds, water samples from distant downstream locations, such as most of the monitoring locations in this program, are not valid representations of the water quality in any or all of the individual sub-watersheds”); Oral Testimony of Steven Bond (April 7, 2011) (AR3029.227-3029.228). Mr. Bond has prepared additional testimony specific to the proposed WDRs and confirmed that the WDRs’ continuation of regional monitoring will not be sufficient to detect violations of objections and degradation any significant distance upstream. Bond Comments.

Richard McHenry, former supervisor of the Regional Board’s Sacramento Valley NPDES permitting unit, explained that regional impacts could be caused “by any number of

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upstream dischargers or circumstances, and cannot be directly linked to any specific discharge point” by sampling at a regional location. Oral Testimony of Richard McHenry (April 7, 2011) (AR3029.231). “Based on the regional monitoring that is being proposed, I cannot see any reasonable means of taking enforcement against individual dischargers to effectively protect water quality.” *Id.* Mr. McHenry has prepared additional testimony specific to the proposed WDRs describing the inadequacy of the WDRs’ continued regional monitoring to detect violations of objectives and degradation for most parts of the 582,000 acre WDR area.

Jo Anne Kipps, a 12-year veteran of the Regional Board’s waste discharge regulatory program, also noted during the renewed waiver proceeding that the waiver “relies on an inadequate regional monitoring scheme that cannot and will not provide information to this Board necessary to characterize current conditions, let alone, monitor the effectiveness of best management practices as these are implemented.” Oral Testimony of Jo Anne Kipps (April 7, 2011) (AR3029.230-.231). Dr. G. Fred Lee, Ph.D., provided a thorough explanation of the monitoring gap extended into the proposed WDRs:

In our previous comments we stressed the need for monitoring at the edge-of-the-field and in nearby state waters to define the worst-case impacts of toxic and other chemicals discharged from agricultural activities. In some waterbodies the worst case impacts could be detrimental to fish spawning/rearing areas that would not be detected by the current downstream at a single monitoring location as practiced in the current monitoring program. This type of monitoring is also essential to evaluate the effectiveness of management practices to control WQO violations in the states waters.

Comments of G. Fred Lee, Ph.D. (Sept. 25, 2010) (AR101943). Dr. Lee explained further:

The Lee and Jones-Lee April 13, 2007 comments focused on the unreliable approach that the staff had proposed for the basic monitoring approach of allowing the coalitions to satisfy the MRP requirements based on one grab sample per month at a downstream location. As Lee and Jones-Lee discuss; this monitoring approach cannot reliably provide the data needed to meet the MRP stated objective of detecting violations of CVRWQCB Basin Plan objective by agricultural runoff/discharges. Such a monitoring approach could readily fail to detect upstream adverse impacts of agricultural discharges that are not detected at downstream monitoring locations.

Id. (AR101949). Driving the point home even further, hydrogeologist Matt Hagemann commented during the waiver process that, “[b]ecause of the reliance on current management practices and because only regional monitoring is to be used, Alternative I [the Renewed Waiver] would not result in measureable improvement to water quality and

in fact foster further degradation of water quality.” Comments of Matt Hagemann (Sept. 10, 2010) (AR101829).

Likewise, Regional Board staff also explained during the waiver proceeding that,

If the selected ILRP alternative’s monitoring program is regional in nature (i.e., individual field effects on receiving waters are not monitored), it is not possible to determine whether and how much each operation is contributing to the problem— water quality assessment and feedback mechanisms are based on the watershed-scale for multiple sources. Therefore, the ILRP requires that operations that potentially contribute sources to the problem implement management practices designed to minimize their contribution.

Irrigated Lands Regulatory Program FEIR, p. 3.2-39 (March 2011) (AR237). Only if a specific farm opts to exclude itself from a coalition program would the Regional Board proceed to issue an order that assures that a particular farm would achieve water quality standards and comply with the Antidegradation Policy:

Agricultural operations that do not wish to participate in implementing practices under the ILRP have the option to file a report of waste discharge and obtain individual waste discharge requirements. These requirements would specify individual monitoring of effluent and/or receiving waters designed to ensure that the operations waste discharge does not cause or contribute to an exceedance of water quality objectives and that BPTC is implemented where there is degradation of a high quality water.

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Id. If the regional monitoring scheme of the Renewed Waiver or the Proposed WDRs were truly sufficient to protect receiving waters adjacent to non-coalition farms, no such site-specific WDRs would be necessary.

The significant divide between the Proposed WDRs’ regional monitoring locations and the miles of waterways and the hundreds of sources upstream of the monitoring locations is an example of the same faulty monitoring scheme recently rejected by the Court of Appeal in *Asociacion de Gente Unida por el Agua* as violating the antidegradation policy:

The crucial question of fact in this case is whether the monitoring system prescribed in the Order is adequate to ensure the Order’s directive that no further degradation of groundwater shall occur. Appellants point to evidence in the record indicating the Order’s monitoring method is inadequate. Regional Board cites no contrary evidence. Thus, there are no facts from which any court could determine the monitoring system is adequate to detect and prevent further groundwater degradation. The interpretation of the antidegradation policy and the Order are generally matters of law.

210 Cal.App.4th at 1267. Like the supply wells required to be monitored by the Regional Board in the general permit issued for dairy discharges that were located a significant distance from the source of the potential degradation (manure ponds), the Proposed WDRs' regional monitoring locations are "ineffective to accomplish the timely detection of a change in [water] quality." 210 Cal.App.4th at 1260. Like the vacated dairy WDRs, additional upstream monitoring of any sort is not required unless the regional, i.e. distant, monitoring sites already show an adverse impact. *Id.* The fact that follow-up management plans may be triggered does not cure the fact that the prescribed monitoring locations will not monitor localized areas that feel the full brunt of one or more irrigated land dischargers' pollution. Like the dairy WDRs, follow-up management plans by the coalition are only triggered after multiple violations of water quality objectives already are detected or a "trend" in degradation, far downstream of most sources. Like the dairy WDRs management plan triggers, that triggering event already establishes that water quality objectives are being violated and beneficial uses unreasonably affected. *See* 210 Cal.App.4th at 1276-77. Thus, whatever discretion the Regional Board staff may have to require or review management plans by the coalitions does not "ensure ... that no further degradation of [Central Valley waters] shall occur." *Id.*

A Regional Board order does not comply with the antidegradation policy where it relies on monitoring requirements that "are inadequate to detect ... degradation, much less prevent it." *Id.* at 1272-73. Like the monitoring locations in the dairy WDRs, expert testimony in the record for the renewed Waiver and now the Proposed WDRs discloses that regional monitoring locations far downstream from almost all of the irrigated lands' pollution sources "are not located in the proper areas to detect degradation," or violations of objectives and, even after a decade of implementation, have not shown pollution during that time for any localized areas upstream, even if those areas exceed standards. *Id.* at 1275. Because the Proposed WDRs' monitoring provisions "do[] not provide either an accurate or a timely indication of [water] degradation" or violations of objectives, the Regional Board cannot find, based on the weight of the evidence, that the Proposed WDRs comply with the antidegradation policy or Water Code § 13263(a) for all, indeed, the vast majority of waters it presumes to protect. *Id.*

E. The Proposed WDRs Do Not Comply With the Nonpoint Source Policy

The Proposed WDRs fail to comply with the Board's duty to comply with the Nonpoint Source Policy adopted by the State Board in 2004. Water Code § 13146, 13247; Policy For Implementation and Enforcement of the Nonpoint Source Pollution Control Program (May 20, 2004). The Nonpoint Source Policy includes five key elements with which any nonpoint source program adopted by a Regional Board must abide. "Prior to developing an NPS control implementation program or recognizing an implementation program developed by dischargers or third-parties as sufficient to meet RWQCB obligations to protect water quality, a RWQCB shall ensure that the program meets the

requirements of the five key structural elements....” Nonpoint Source Policy, p. 11. The Proposed WDRs are inconsistent with at least three of the five key elements.

1. The Proposed WDRs fail to rely on the weight of the evidence that the WDRs are consistent with Key Element 1 of the NPS Policy.

The Nonpoint Policy’s Key Element 1 states that “[a]n NPS control implementation program’s ultimate purpose shall be explicitly stated. Implementation programs must, at a minimum, address NPS [nonpoint source] pollution in a manner that achieves and maintains water quality objectives and beneficial uses, including any applicable antidegradation requirements.” Nonpoint Source Policy, pp. 11-12. “Before approving or endorsing a specific NPS pollution control implementation program, a RWQCB must determine that there is a high likelihood the implementation program will attain the RWQCB’s stated water quality objectives.” *Id.*, p.11.

An NPS control implementation program must be specific as to the water quality requirements it is designed to meet. For example, if the program relies upon dischargers’ use of MPs, there should be a strong correlation between the specific MPs implemented and the relevant water quality requirements. The program also should provide other information as required by the RWQCB, including but not limited to the identification of participant dischargers. The RWQCB must be able to ensure that all the significant sources of the NPS discharges of concern are addressed.

Id., p.12 (emphasis added).

Reviewing the current waiver, the Superior Court found that its general requirements were inconsistent with the High Quality Waters Policy, it also violated Key Element 1. Order, p. 20. Because the Proposed WDRs also run afoul of the Policy and do not assure compliance with objectives, they also are inconsistent with Key Element 1. As the Court explained:

Key Element 1 states that a nonpoint source control implementation program must, at a minimum, address nonpoint source pollution in a manner that achieves and maintains water quality objectives and beneficial uses, including any applicable antidegradation requirements. [citations omitted.] For the reasons described above, the Court finds that the Renewed Waiver is inconsistent with applicable antidegradation requirements. Accordingly, the Renewed Waiver is inconsistent with Key Element 1 of the Nonpoint Source Policy.

Order, p. 20.

As discussed above, the weight of the evidence does not demonstrate that the Proposed WDRs address irrigated lands discharges within the WDR area in a manner that achieves and maintains water quality objectives and beneficial uses and complies with the High Quality Waters Policy. The Regional Board does not and, depending on the contents of the FERs, may not know the “specific MPs [management practices] implemented” anywhere in the WDR area. *See supra*. Indeed, the FERs will not include any maps of the respective dischargers. This alone will render the FER largely an exercise in paperwork rather than a stepping-stone to effective management practices or water quality protection.

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Moreover, the regional-based water quality monitoring does not allow the Regional Board to correlate “the specific MPs implemented and the relevant water quality requirements.” Nonpoint Source Policy, p. 12. Only within a portion of the WDR area in which water quality standards are violated in the downstream waters will there be any effort by third-parties to correlate some MPs on some farms to those exceedances. Even in an impaired watershed, under the Proposed WDRs, the coalitions need not disclose to the Regional Board which specific farms and specific MPs on those farms are at issue. And because the water quality is only measured downstream in a given watershed or sub-watershed, numerous upstream waters that may be in violation of standards from irrigated lands discharges will go undetected, allowing for no correlation whatsoever with MPs. Thus, the Proposed WDRs do not come close to addressing all of the significant irrigated lands pollution sources in the WDR area, as required by Key Element 1.

2. The Proposed WDRs fail to rely on the weight of the evidence that the Proposed WDRs are consistent with Key Element 2 of the NPS Policy.

Key Element 2 of the NPS Policy provides that: “[a] nonpoint-source control implementation program must include a description of the management practices and other program elements that are expected to be implemented to ensure attainment of the implementation program’s stated purpose, the process to be used to select or develop management practices, and the process to be used to ensure and verify proper management practice implementation.” Nonpoint Source Policy, p. 12. “A RWQCB must be convinced there is a high likelihood the MP will be successful.” *Id.* “MPs must be tailored to a specific site and circumstances, and justification for the use of a particular category or type of MP must show that the MP has been successfully used in comparable circumstances. If an MP has not previously been used, documentation to substantiate its efficacy must be provided by the discharger.” *Id.*

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If the evidence available to the Regional Board demonstrates anything, it is the opposite of what Key Element 2 requires – the current MPs used by irrigated lands dischargers within the WDR area have been unsuccessful in preventing violations of water quality standards. The Regional Board assumes that every discharger in the WDR area has some sort of management practices in place. According to the record, a large percentage of rivers, streams and channels in the WDR area are impaired by pollutants discharged by irrigated lands. Bond Comment; McHenry Comment. The Sacramento Valley Water Quality

Coalition's regional monitoring, even with the benefit of commingling with other waters, confirm that large quantities of pollutants are violating water quality standards throughout the coalition area. *Id.* And, at least in those places where downstream violations have been detected, the coalition has surveyed for existing management practices and asked their members to perhaps employ additional management practices. However, there is no evidence, and certainly no "high likelihood," that more of the same management practices will achieve compliance with standards, either at the downstream monitoring sites and certainly not in the local receiving waters. Because there is effectively no monitoring of receiving waters adjacent to where the farms are discharging, the water quality standard violations occurring in those waters will remain undetected and the Regional Board will continue to proceed with no evidence demonstrating any likelihood that any current management practices will achieve standards in those waters. Even at the downstream monitoring sites, the record is clear that neither the Board nor the coalition can say whether the management practices will work.

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Nothing in the available evidence suggests that the Proposed WDRs' regional monitoring requirement can detect violations of water quality standards in all upstream waters or evaluate the effectiveness of BMPs to prevent such violations well upstream of the regional monitoring locations. By omitting any measurements of what is happening in local waters adjacent to discharge locations, the Proposed WDRs cannot evaluate whether management practices are "tailored to a specific site and circumstances." Nor is there any evidence upon which the Regional Board could determine that implemented management practices are "highly likely" to be successful and attain standards in those upstream waters. There is no evidence of any studies or data demonstrating the effectiveness of any management practices in the Central Valley to achieve discharges that comply with water quality standards. By avoiding any edge of field or BMP monitoring until some undefined moment at the EO's discretion in the indefinite future, the Proposed WDRs assures the continuation of this information gap.

3. The Proposed WDRs fail to rely on the weight of the evidence that the Proposed WDRs are consistent with Key Element 4 of the NPS Policy.

Key element 4 of the NPS Policy requires that "[a]n NPS pollution control implementation program must include sufficient feedback mechanisms so that the Regional Water Board, dischargers, and the public can determine whether the program is achieving its stated purpose, or whether additional or different management practices or other actions are required." Nonpoint Source Policy, p. 13. "In all cases the NPS control implementation program should describe the measures, protocols, and associated frequencies that will be used to verify the degree to which the MPs [management practices] are being properly implemented and are achieving the program's objectives, and/or to provide feedback for use in adaptive management." *Id.* "[I]f the program relies upon dischargers' use of MPs, there should be a strong correlation between the specific MPs implemented and the relevant water quality requirements." *Id.*, p. 12.

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The Superior Court ruled that the existing waiver failed to achieve Key Element 4 for failing to include sufficient feedback mechanisms to protect both groundwater and high quality waters. Order, p. 21. There are no confirmed feedback mechanisms in the WDRs either. No mechanisms exist to either detect or react to violations of water quality objectives many miles upstream of the coalition's relatively few monitoring stations. Every potential future action by a discharger is first qualified by action by the executive officer only after trends in monitoring (even a violation of a standard does not assure this trigger is met). Nor is it clear how many violations must accrue before there is a trend. Nor is there any effort yet for the board to determine what the existing water quality is and identify the high quality water that has been achieved any time in the past.

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As previously discussed, expert evidence shows that the Renewed Waivers regional monitoring requirements are indeed incapable of identifying the effectiveness of upstream management practices. Bond Comments; McHenry Comments. And the fact that, even after eight years of implementation, the Sacramento Valley Water Quality Coalition has not produced any information describing the locations of management practices actually in place in the coalition's area and the effectiveness of such practices, roundly demonstrates that the Proposed WDRs have no feedback mechanism to evaluate MPs, especially one designed to establish "a strong correlation between the specific MPs implemented and the relevant water quality requirements."

Nor do the truncated FERs proposed by the WDRs inform either the Regional Board or the public about the effectiveness of those management practices. No maps will certainly be provided of any specific farm and its discharges. The FERs will remain sequestered in the third-party's files unless and until the Regional Board staff chooses at its discretion to obtain a copy. Nor will those reports indicate any useful information about whether MPs are being properly implemented. Nonpoint Source Policy, p. 13. Thus, the Proposed WDRs do not contain feedback mechanisms by which either the Regional Board or the public could "determine whether the program is achieving its stated purpose, or whether additional or different management practices or other actions are required." *Id.*

F. Various Plans and Reports Identified As Subject Only to Review and Approval by the Executive Director Should Be Presented to the Regional Board for Review and Approval

The Proposed WDRs delegate considerable discretion to the Executive Director to review and approve third-parties and various plans. These include the initial approval of one or more third-parties to implement the WDRs (Proposed WDRs, p. 29 (¶ VIII.A), Sediment and Erosion Control Plans (*Id.*, p. 27 (¶ VII.C)), Nitrogen Management Plans (*Id.*, p. 27-28 ((¶ VII.D)), Surface Water Quality Management Plans ("SQMP") (*Id.*, p. 33 (¶ VIII.H.1), and Groundwater Quality Management Plans ("GQMP") (*Id.*). The Proposed WDRs also would authorize the Executive Officer to waive the preparation of a SQMP or GQMP. *Id.*, p. 34 ((¶ VIII.H.3). Each of these plans and approvals involve the election of waste discharge

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requirements and, as a result, cannot be delegated to the Executive Officer but must instead be reviewed and approved by the Regional Board itself.

Water Code § 13223(a) provides that “[e]ach regional board may delegate any of its powers and duties vested in it by this division to its executive officer excepting only the following: ... (2)the issuance, modification, or revocation of any ... waste discharge requirement....” Water Code § 13223(a)(2).

SQMPs and GQMPs plainly constitute waste discharge requirements. The Plans’ requirements including establishing time schedule, performance goals, and monitoring locations, which are the types of requirements included in WDRs. *See* Appendix MRP-1. In particular, there can be no dispute that time schedules are waste discharge requirements specifically identified by Section 13263(c): “The requirements may contain a time schedule, subject to revision in the discretion of the board.” *See also, e.g.* 33 U.S.C. § 1362(11) (in NPDES permits, WDRs also serve as effluent limitations which are defined as “any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents..., including schedules of compliance”). Because the SQMP and GQMP both propose to incorporate compliance schedules set forth in the WDRs, both of those plans constitute WDRs that cannot be delegated by the Board to the Executive Officer.

Because the SQMP and GQMP are both WDRs, any decision to waive those requirements also cannot be delegated to the Executive Officer. That proposed provision must be brought to the regional Board for action. *See* Proposed WDRs, p. 34 ((¶ VIII.H.3).

What sediment and erosion control measures may be applied and who may apply them is left to the as yet to be identified third party. (Proposed WDRs, pp. 26-27 (¶ VII.C)). This provision effectively delegates all WDRs associated with sediment discharges to the dischargers’ representative, subject only to the approval of the Executive officer. These sediment and erosion WDRs must be reviewed and approved or disapproved by the Regional Board. Water Code § 13223(a)(2).

The Nitrogen Management Plan and Nitrogen Management Plan Summary Report plainly include WDRs that cannot be delegated to the Executive Officer. These are the primary mechanisms relied upon by the Proposed WDRs to control nitrate discharges to groundwater. The WDRs do not bother to adopt a template, instead leaving that of the Executive Officer. The plans themselves ask the third party to self-regulate subject only to the approval of the executive Officer. These substantive discharge requirements must be reviewed and approved by the Regional Board using their public decision-making process.

Consistency with Water Code § 13223(a)(2) is not achieved by merely authorizing discretionary review by the Regional Board of Executive Officer decisions that cannot be delegated to the EO in the first place. Discretionary review that need not be exercised by the regional Board for any or no reason still improperly delegates the above WDR decisions

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to the Executive Officer. All of the above identified decisions must be made by the regional Board itself.

CONCLUSION

Why is staff in such a hurry to have the Board make a determination to allow degradation of water quality throughout the Watershed? In effect, staff is asking the Board to erase the high quality waters policy from the irrigated lands program coalition-by-coalition. If the Board agrees that, despite the absence of any information about where the high quality waters may be or any details about any particular discharger in this entire watershed, everyone in the watershed can degrade waters down to standards, then all future renewals of the WDRs will be relieved of having to deal with high quality waters. Such a wholesale retreat from the purpose and goals of the Policy is simply unprecedented. The Board should reject the WDRs and request staff to prepare WDRs that address each of the above comments and prevent, rather than embrace, degradation of water quality.

The following comments by Steve Bond, Richard McHenry and Bill Jennings are incorporated into this submittal, as are the three attached references. Again, thank you for this opportunity to comment on the proposed waste discharge requirements for discharges from irrigated lands within the Sacramento River Watershed area

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Jennings". The signature is written in a cursive, flowing style.

Bill Jennings
California Sportfishing Protection Alliance
California Water Impact Network



Date: 20 January 2014

From: Steve Bond

To: Michael Lozeau, Lozeau/Drury LLP
410 12th Street, Suite 250 Oakland, CA 94607
michael@lozeaudrury.com

Subject: Irrigated Lands Regulatory Program, Proposed Waste Discharge Requirements General Order For Growers Within The Sacramento River Watershed That Are Members Of The Third-Party Group, Surface Water Monitoring and Sampling, 2008 through 2011.

The proposed Waste Discharge Requirements lack a representative monitoring program and as a result is not protective of the beneficial uses within the Sacramento River Watershed.

Because the protection of the beneficial uses of waters of the State is a function of the ability to monitor those waters to determine their quality, it is absolutely imperative that a representative monitoring program be in place. Yet, the proposed permit fails to provide basic protections of water quality. Contrary to the claim of Finding 39 of the Order, the Order will not result in the implementation of best practicable treatment or control (BPTC) by those discharging to high quality waters because the Order lacks satisfactory monitoring requirements. Deficient monitoring requirements precludes representative characterization of receiving water quality. This in turn prevents identification of high quality waters. It also

A-1

A-2

restricts characterization of adversely impacted or impaired waters. Hence, protection of beneficial uses is made unfeasible if high quality waters cannot be identified.



A-2

Attachment A of the WDR's discuss the definition of 'high quality waters'. However, I have not found any documentation identifying high quality waters in the watershed covered under the subject WDR's.

The Sacramento River Watershed region includes 2,770 square miles of watershed and is drained more than 29,000 linear miles of water courses that are, or could be, affected by discharges of waste from irrigated lands (WDR Findings 12 and 13). In the most recent annual monitoring report (Sacramento Valley Water Quality Coalition Annual Monitoring Report - SVWQC AMR - 2011), the Coalition had a total of 24 monitoring stations. On average, that amounts to more than 100 square miles of land and more than 1200 linear miles of water course per single monitoring station. However sparsely distributed, the stations are not equally distributed. One station, PRPIT on the Pit River is used to represent well over a thousand square miles watershed. That is one sample point for a watershed greater than the size of the state of Rhode Island.

A-3

Monitoring only the major watercourse at the downstream-most position of any watershed, however vast, completely disregards the protection of the beneficial uses of all but the lowest elevations of these waterways.

A-4



Evaluating the effectiveness of a technology or a practice requires that the change in water quality attributable to the specific practice or technology be verified. To do that a reference sample from the point of discharge and then a comparison sample taken from the same location after the technology or practice is implemented must be collected and analyzed. In actual practice, multiple samples over range of operating conditions must be collected to verify positive changes. It is not reasonable to think that the effectiveness of a technology or practice can be known without verifying it by testing the discharge water. This requires monitoring at the edge of the field by collecting and testing the water samples before the discharge water is mixed and diluted. The inability to identify and characterize pollution at its source invalidates any effort to verify or evaluate the effectiveness of pollution treatment or control at the source.

Not only are the impacts to distant upstream waters unknown, it is not possible to evaluate the effectiveness of a farm's water treatment system or of its management practice (BMP) from a distant downstream monitoring location. Between the point of discharge and the point of sample collection, the discharge water is mixed and diluted. Other waters from natural and industrial sources of unknown quality and character such as other agricultural discharges alter and mask the defining character of the discharge water. Any changes in water quality due to a particular management practice at farm is concealed within this soup of natural waters and pollutants, thus the performance of the BMP is essentially unknowable. The point of discharge is the only representative monitoring

A-5



point for evaluating BMP performance.

The problem of determining the quality and character of distant upstream water conditions is made more difficult within a complex watershed composed of multiple sub-watersheds. In such cases like the Sacramento River Watershed region, each watershed must be individually evaluated and each discharge separately monitored. The downstream water quality is not representative of the conditions in the sub-watersheds or of any point of discharge from the edge of the field. Downstream water quality may, at best reflect the gross average conditions of the dominant flows into the watershed; it will not provide information about small tributary streams, lesser flows, or conditions close to points of the individual agricultural discharge. The downstream water quality is not a valid measure of the water quality in any or all of the individual sub-watersheds. Given only downstream monitoring data, the specific conditions of individual upstream sub-watersheds are not effectively monitored, sources of pollution remain hidden, best practicable treatment or control of pollutants is unfeasible, and the beneficial uses of the upstream waters are left unprotected.

The AMR's state that the first objective of the monitoring program is to "assess the impacts of waste discharges from irrigated lands to surface waters", (SVWQC AMR's Monitoring Objectives, 1). However, sampling and/or monitoring of points of discharge from irrigated agriculture are not documented in these reports. Only sample results from



distant downstream stations are reported. From these solitary, remote locations, hundreds of square miles of agricultural operations and thousands of miles of waterways are ineffectively observed and the effects of waste discharges scores of miles distant are improperly assessed.

For example, the monitoring station on the Pit River at Pittville Bridge (PRPIT) is used to monitor the discharge from 135 square miles of irrigated agriculture upstream of the station (Attachment A of the WDR's). The irrigated agricultural lands discharge into the Pit River watershed below Goose Lake. The area of this watershed is more than 1,500 square miles. This vast watershed is greater than the entire State of Rhode Island. Yet, a single station monitors discharges from less than ten percent of the watershed from scores of miles distant. The less than 10% discharge is mixed and diluted with the drainage from 'other' 90%. Downstream water quality will at best reflect only the gross average conditions of the dominant flows into the watershed, which are not the discharges of the irrigated agriculture. Significant variations in irrigated agricultural discharges will not be discernable above background variations. High quality waters will not be identified, nor will upstream impacts to water quality, and the effectiveness of wastewater BMP's will not be known.

The various AMR's document toxicity, and exceedances of numerical pollutant criteria at the downstream monitoring stations, yet they fail to characterize upstream water quality. The AMR's make no statements defining high quality waters, and make no statements regarding the



protection of beneficial uses of Waters of the State.

Given that under the proposed Order the discharges from irrigated agriculture are never directly measured, the existing stations, always distant points downstream, will never definitively identify the sources of pollution or characterize upstream water quality. Under the existing program and the proposed Order, the sources of pollution and impairment will likely remain undefined, and a matter only for speculation. The identification of high quality waters will not be possible for the reasons stated above.



Memorandum

21 January 2014

To: Michael Lozeau, esq., Bill Jennings

From: Richard McHenry, PE

Subject: Sacramento River Watershed, Proposed Waste Discharge Requirements (WDRs) Comments, Focused comments on Surface Water Sampling

The following are my findings and comments following review of the proposed waste discharge requirements (WDRs) General Order for growers within the Sacramento River Watershed. I also reviewed the available monitoring data, management plans, CEQA documents and supporting information for the proposed WDRs.

Findings and Facts

The Sacramento River Watershed has approximately 2.36 million acres of cropland under irrigation and approximately 15,000 growers with “waste discharges from irrigated lands”. Approximately 12,000 growers and 1,777,000 associated irrigated acres including managed wetlands will require regulatory coverage under the proposed WDRs. (WDR Finding 12) Small farming operations, comprising 61% of growers, account for approximately 4% of the total irrigated lands. (Information Sheet, p. 37) Therefore, the 61% of small growers irrigate approximately 71,000 acres, or an average of 7.8 acres each, while the 39% of large growers irrigate approximately 1,706,000 acres, or an average of 365 acres each.

The Sacramento River Watershed has approximately 29,000 linear miles of surface water courses that are, or could be, affected by discharges of waste from irrigated lands. (WDR Finding 13) Approximately 102 water bodies encompassing 2,600 linear miles of surface water courses have been listed as impaired pursuant to Clean Water Act section 303(d) within the third-party area. Agriculture is identified as the potential source of impairment for approximately 29 of the 303(d)-listed water bodies. (WDR Finding 16)

The water quality monitoring under the proposed WDR is “representative” in nature instead of and does not measure individual field discharge monitoring. (WDR Finding 23) It is argued that representative monitoring will allow the Board to determine whether wastewater bodies accepting discharges from numerous represented irrigated lands are meeting water quality objectives, to determine if existing high quality waters are being maintained, to determine whether farming practices are protective of water quality and representative monitoring provides a significant cost savings since all surface waters or all groundwater aquifers that receive irrigated agricultural discharges are not monitored. The proposed Order, (Finding 23) does admit that: *“there are limitations to representative monitoring’s effectiveness in determining individual sources of water quality problems, the effectiveness of management practices, and individual compliance with this Order’s requirements”*. Monitoring under traditional WDR’s and NPDES permits require monitoring of the wastewater discharge as well as the receiving water and/or groundwater. While the proposed WDR requires “representative” monitoring, it allows the Executive Officer to require

technical reports when monitoring or other available information is not sufficient to determine the effects of irrigated agricultural waste discharges to state waters.

In May 2004, the State Water Board adopted the Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program (NPS Policy). The purpose of the NPS Policy is to improve the state's ability to effectively manage NPS pollution and conform to the requirements of the Federal Clean Water Act and the Federal Coastal Zone Act Reauthorization Amendments of 1990. The NPS Policy requires, among other key elements, an NPS control implementation program's ultimate purpose to be explicitly stated. It also requires implementation programs to, at a minimum, address NPS pollution in a manner that achieves and maintains water quality objectives and beneficial uses, including any applicable antidegradation requirements.

Monitoring was performed at 38 sites. (SVWQC Management Plan, January 2009, Appendix A)

Fact Summary

The Sacramento River Watershed has approximately:

- 1.8 million acres of cropland under irrigation.
- 12,000 growers with waste discharges from irrigated lands.
- The area has approximately 29,000 linear miles of surface water courses.
- 102 water bodies, encompassing 2,600 linear miles of surface water courses have been listed as impaired pursuant to Clean Water Act section 303(d) within the third-party area.
- Monitoring is conducted at only 38 sites.

Comments

Clearly water bodies accepting discharges from numerous represented irrigated lands are not meeting water quality objectives and existing high quality waters are not being maintained as WDR Finding No 16 states that: *“Approximately 102 water bodies encompassing 2,600 linear miles of surface water courses have been listed as impaired pursuant to Clean Water Act section 303(d)7 within the third-party area. Approximately 29 of those water body listings identify the potential source of the impairment as agriculture, and the remaining water body listings identify an unknown source of impairment.”*

The Sacramento River Watershed 2012 *Water Quality Management Plan Progress Report*, is broken down into sub-watersheds and shows routine exceedance of water quality standards for: dissolved oxygen, pH, pesticides, pathogens, salinity, toxicity and trace metals. Clearly, water bodies accepting discharges from numerous represented irrigated lands are not meeting water quality objectives and existing high quality waters are not being maintained.

Since many of the water bodies in the area have been designated as impaired and sampling shows routine exceedences of water quality standards, the represented agricultural practices have been shown to be not protective of water quality.



2. Samples are collected at 38 Surface Water “Discharge Sites”. The region has approximately 1.8 million acres of cropland under irrigation and 12,000 growers with waste discharges from irrigated lands. It is assumed that of the approximately 12,000 farms, discharges of wastewater occur at more than one point on each farm. Sample collection at 38 “representative” surface water locations is not capable of determining if any single discharge is the cause of downstream water quality standard exceedance, stream impairment, or whether agricultural management practices are effective. In order to determine if any single wastewater discharge exceeds water quality standards, it would be necessary to sample that discrete discharge. To determine if any single discharge degrades water quality and causes degradation of the beneficial uses of the receiving stream, it would be necessary to sample both upstream and downstream of the individual point of discharge.

B-2

3. Samples are collected at 38 Surface Water “Discharge Sites”. The Sacramento River Watershed region has approximately 1.8 million acres of cropland under irrigation and 12,000 growers with waste discharges from irrigated lands surface water courses many of which have been listed as impaired pursuant to Clean Water Act section 303(d). One can only conclude that farm discharges may be many miles upstream from a “representative” sampling location and that interlying farm discharges would cause significant dilution to any pollutants discharged.

B-3

4. Sampling and toxicity test reporting for ceriodaphnia dubia, a water flea, shows only one end point, percent survival. This is an acute toxicity end point. Chronic toxicity testing would also include endpoints of growth and reproduction. Intermediate levels of pollutants, below acutely toxic levels, may cause sublethal toxic effects. Failure to analyze samples for sublethal effects precludes determination of compliance with the Basin Plan Water Quality objective for toxicity. It is also not possible to conclude any samples collected were not toxic since sublethal effects were apparently not analyzed.

B-4

5. Throughout the proposed WDRs and supporting documents, antidegradation and best practicable treatment and control of wastewater discharges is discussed. The proposed WDR contains no restriction on degradation of surface waters up to the point of meeting water quality standards. It is discussed throughout the mentioned documents that many of the streams in the area have been designated as impaired. The proposed WDR documents that the agricultural discharges routinely exceed water quality standards, which degrade the beneficial uses of the receiving streams. Individual discharges are not regulated under the proposed WDR. The Regional Board apparently has no knowledge of the water quality discharged from individual farms and there is no knowledge of any treatment or control at any individual farm. There is knowledge however that the combined agricultural discharges have and continue to significantly degrade water quality. It would seem impossible to state that best practicable treatment and control of a discharge is being provided when water quality has, and is, significantly degraded and there is no knowledge of what “treatment or control”, if any, is being provided at any individual farm. Domestic, commercial and industrial wastewater dischargers are required to adequately treat their wastes to meet water quality standards and meet end of pipe limitations

B-5



with strict monitoring of the actual discharge and receiving stream. It cannot possibly be in the interest of the people of California to have to trade the quality of their water for the interests of agriculture.



Conclusion

The region has approximately 1.8 million acres of cropland under irrigation and 12,000 growers with waste discharges from irrigated lands. It is assumed that of the approximately 12,000 farms, discharges of wastewater occur at more than one point on each farm. Sample collection at 38 “representative” surface water locations, far downstream, is not capable of determining if any single discharge is the cause of a downstream water quality standard exceedance, stream impairment, or whether agricultural management practices are effective. It is also not possible to determine if any individual wastewater Discharger is providing best practicable treatment and control of their discharge. In order to determine if any single wastewater discharge exceeds water quality standards, it would be necessary to sample that discrete discharge. To determine if any single discharge degrades water quality and causes degradation of the beneficial uses of the receiving stream, it would also be necessary to sample both upstream and downstream of the individual point of discharge.

Pollutants will generally be diluted or volatilize as they flow downstream. If the sampling locations are at extreme downstream locations, which they appear to be, it can reasonably be assumed that the waterways lying above the sampling location are of lower water quality. The lowest water quality would be immediately downstream of the point of discharge of the pollutant in question, which may be many miles upstream of the sampling location. The proposed WDR and the limited downstream sampling locations only allows the Regional Board to conclude that streams and waterways lying above the sampling location are of lower water quality with higher levels of toxicity and more pollutants exceeding water quality standards. The sampling as proposed, and as has been conducted, does not capture the worst case water quality conditions.

Memorandum

20 January 2014

To: Michael Lozeau
From: Bill Jennings

Subject: Is Site Specific Monitoring for Growers Within the Sacramento River Watershed That Are Members Of A Third Party Group Reasonable And Affordable?

Summary

Various water quality experts have commented that representative water quality monitoring at downstream locations cannot identify water quality violations at upstream locations or assess the effectiveness of implemented management measures and therefore is not protective of water quality. The Central Valley Regional Water Quality Control Board (Regional Board) claims that requiring individual discharge monitoring would be unreasonably cost prohibitive for farmers. I reviewed the proposed Waste Discharge Requirements (WDRs), monitoring and reporting program and information sheet, as well as the various reports submitted by the Sacramento Valley Water Quality Coalition to the Regional Board. I also reviewed the Technical Memorandum Concerning the Economic Analysis of the Irrigated Lands Regulatory Program from the Irrigated Lands Regulatory Program Environmental Impact Report (EIR). I further examined various reports prepared by county agricultural commissioners regarding the commodity values and the latest Statistical Abstract for California.

The value of agricultural production in the twenty counties comprising the San Sacramento Valley watershed is substantial. Farm net income in California was approximately 32.4% of gross income in the most recent Statistical Abstract (2008). The cost of monitoring/reporting/tracking in the proposed WDRs is \$4.90 per acre and represents approximately 4.6% of the total per acre cost of the order. The cost of a comprehensive individual monitoring program to determine compliance with water quality standards, the need for specific management measures or the effectiveness of implemented management measures for the 39% of large farming operations, that comprise 96% of irrigated acreage, would be approximately 24% of the projected cost of implementing management measures.

I could find no analysis or discussion in the economic review of the EIR or the proposed WDRs that supports or justifies a conclusion that requiring individual farmers to monitor their discharge to determine whether or not they are violating water quality standards or whether or not management practices are needed or if implemented management practices are effective would be an unreasonable financial burden.

Discussion

The Sacramento Valley watershed has approximately 1,777,000 irrigated acres, of which approximately 27,000 acres are regulated under the General Order for Existing Milk Cow Dairies and 556,000 acres are regulated under the Coalition Group Conditional Waiver through the California Rice Commission. WDR, p-4. There are approximately 12,000

growers that will require waste discharges under the proposed Order or other WDRs or conditional waivers. Id. Small farming operations, comprising 61% of growers, account for approximately 4% of the total irrigated lands. Attachment A - Information Sheet, p. 38.

A simple calculation reveals that the 69% of small growers irrigate approximately 34,920 acres, or an average of 9.7 acres each, while the 31% of large growers irrigate approximately 547,080 acres, or an average of 363.1 acres each.

The costs of the proposed Order are estimated to be approximately \$187 million or \$105.39 per acre annually and this is approximately \$8.52 per acre greater than present costs under the conditional waiver. Information Sheet, p. 61. The estimated potential costs per acre are broken down as \$1.22 for administration, \$2.24 for farm planning, \$4.90 for monitoring/reporting/tracking and \$97.02 for management practice implementation. Id, pp. 60,61.

The cost breakdown for water quality monitoring is estimated to be \$1,890 for one sample per year of basic parameters and detailed chemistry, including collection, analysis and management. Two complete sampling events would cost \$3,745 and five per year would cost \$9,310. Basic parameter sampling would cost approximately \$390 for one event per year or \$1,810 for five. Table 2-10, Surface and Groundwater Monitoring Cost Breakdown for Use in All Alternatives, Technical Memorandum Concerning the Economic Analysis of the Irrigated Lands Regulatory Program, p-2-19.

The costs of monitoring basic parameters plus detailed chemistry for a single discharge point five times per year for each of the 39% of large farms that average 363.1 acres and comprise 96% of irrigated acres in the coalition would cost \$9,310 or \$25.64 per acre. As noted above, the estimated costs of the implementation of management practices is estimated to cost \$97.02 per acre. In other words, under the proposed WDRs, the potential costs of management practice implementation is more than 3.78 times the cost of monitoring to determine whether or not the management practices are working or even if they are necessary at a particular site.

A fundamental problem of the proposed WDRs is that the monitoring program cannot determine if management measures on a particular farm or for a particular discharge are necessary or if implemented management measures are effective. Such an approach penalizes farmers who are in compliance, not discharging pollutants and who may not need to employ new management practices and rewards those who haven't complied, are violating water quality standards and who have failed to institute effective management practices.

Agriculture in the Sacramento Valley is a major industry. The 27,210 square mile watershed comprises all of Butte, Colusa, Plumas, Sacramento, Sutter, Tehama, Yolo and Yuba Counties and parts of Amador, El Dorado, Glenn, Lake, Lassen, Modoc, Napa, Nevada, Placer, Shasta, Sierra and Solano Counties. According to the annual reports by each County Agricultural Commissioner that must be submitted to the Department of Food and Agriculture in accordance with Section 2279 of the California Food and Agricultural Code,

the value of agricultural commodities produced in 2012 was: Butte (\$721,434 million); Colusa (\$711,592 million); Plumas (\$24,019 million [2011]); Sacramento (\$405,211); Sutter (\$527,004 million); Tehama (\$294,999 million); Yolo (\$645,766 million); Yuba (\$212,856 million); Amador (\$34,584 million); El Dorado (\$47,100 million); Glenn (\$697,030 million); Lake (\$84,842 million); Lassen (\$101,633 million); Napa (\$665,298 million); Nevada (\$16,897 million); Placer (\$73,197 million); Shasta (\$77,241 million); Sierra (\$8,184 million [2011]); and Solano (\$342,695 million) Counties respectively. I could not find Modoc County's recent crop reports. All of the counties reported increases of agricultural commodity production, many of them with record levels, with the exception of Yuba, Lassen and Nevada Counties, which reported slight declines from the previous year.

According to the most recently published California Statistical Abstract (2008), Butte, Colusa, Plumas, Sacramento, Sutter, Tehama, Yolo, Yuba, Amador, El Dorado, Glenn, Lake, Lassen, Modoc, Napa, Nevada, Placer, Shasta, Sierra and Solano Counties are the 19th, 20th, 51st, 25th, 24th, 31st, 23rd, 34th, 48th, 47th, 18th, 40th, 42nd, 38th, 21st, 54th, 43rd, 37th, 55th, 27th leading agricultural producers, respectively. Table G-14, California Statistical Abstract 2008, p-130.

The cash farm income in California was \$39.094 billion in 2007 and the net farm income that year was \$12.665 billion. Id, Table G-9 and Table G-12, pp-122 & 130. Consequently, net farm income was approximately 32.4% of gross income in 2007. Agriculture is not only a major industry but also a highly profitable industry in California.

The Technical Memorandum Concerning the Economic Analysis of the Irrigated Lands Regulatory Program, which was part of the draft Program Environmental Impact Report of the Waste Discharge Regulatory Program for Irrigated Lands within the Central Valley Region is not a comprehensive benefit/cost analysis. The analysis only examines the cost of monitoring, proposed alternatives and various management practices on agriculture. It does not evaluate the financial ability of various farmers to individually monitor their discharges or evaluate implemented management measures. It completely fails to disclose, analyze or discuss the costs of pollution from irrigated agriculture on the environment and society. These include increased water treatment costs; public health and environmental costs, including losses affecting public trust resources like ecosystem services, recreational and commercial fisheries, property values, esthetic enjoyment, etc. Further, ECONorthwest's An Economic Review of the Draft Irrigated Lands Regulatory Program Environmental Impact Report reviewed the Technical Memorandum and found it to be seriously flawed, containing "an incomplete, biased representation of the alternatives' overall costs" and that it "violated generally accepted standards of practice that apply to this type of economic analysis." ECONorthwest Report, p-2, 9.

In reviewing the proposed WDR's, monitoring plans and information sheet; I can find no information or discussion in any of the documents that justifies any conclusion that requiring individual farmers to monitor their discharges and adjacent receiving waters to determine whether or not they are violating water quality standards or whether or not management practices are needed or are effective is an unreasonable financial burden.

Indeed, requiring farmers to monitor and assess their discharges would not only be a giant and necessary step toward protecting water quality, it could also prove to be an economic benefit to many farmers in the long run because monitoring would reveal whether or not additional management practices are even needed for a specific location.