STOEL RIVES LLP
ATTORNEYS AT LAW

500 Capitol Mall, Suite 1600
Sacramento, California 95814
main 916 447 0700
fax 916 447 4781
www.stoel.com

LOREN J. HARLOW
Direct (916) 319-4753
ljharlow@stoel.com

June 22, 2012

VIA EMAIL

Mr. David Sholes
Senior Engineering Geologist
California Regional Water Quality Control Board
Central Valley Region
1685 E. Street
Fresno, California 93706

RE: Tulare Lake Basin Water Storage District

Dear Mr. Sholes:

On behalf of the Tulare Lake Basin Water Storage District (TLBWSD) and pursuant to your direction at the Southern San Joaquin Valley Water Quality Coalition (SSJVWQC) meeting on June 19, 2012, we are providing comments on Attachment A, Information Sheet, for the proposed General Order for the Irrigated Lands Regulatory Program. Due to limited amount of time for providing comments, we reserve the right to provide additional substantive comments when the General Order is issued for public comments. The following are areas we believe need additional clarification.

1. **Constructed Conveyance Facilities.**

At page 7, the Information Sheet references that the Draft Order's MRP requirement to develop a Surface Water Monitoring Plan which will utilize five different but interrelated types of surface water monitoring sites. Some of these monitoring sites are carryovers from the previous conditional waiver program and some, such as ephemeral sites, are listed as new.

The discussion continues to address the types of waters that would be included. Item 4 specifically references: "Constructed conveyance structures (e.g., Friant-Kern Canal, Homeland Canal, Lakeside Ditch and Westside Canal) which are used to move irrigation waters throughout the region".

The issue of constructed conveyance facilities was the topic of discussion on multiple occasions during the Coalition/Staff meetings. We believe that the statement in Item 4 is overbroad and

Alaska California Idaho
Minnesota Oregon Utah Washington

could conceivably cover constructed on-farm distribution facilities in the Tulare Lake Bed. Our understanding is that on-farm constructed irrigation water facilities without a return to surface waters would not be covered under the surface water monitoring program.

The distributions facilities at issue are within the lands of the former Tulare Lake Bed. The facilities that exist are manmade on-farm systems that are used to deliver and re-circulate irrigation water. These facilities are managed to preclude vegetative growth and do not have return flows to waters of the State. Additionally, these systems are contained within private land holdings and do not have public access. An example of over breadth in Item 4 regarding constructed conveyance facilities is the listing of the Homeland Canal. Homeland Canal is clearly a part of the delivery and recirculation system within the Lake Bed.

Additional examples that maybe included within Item 4 are the Kings and the Tule Rivers as depicted in Figure 1 of the Information Sheet. Both of these systems are irrigation water distribution facilities that serve growers in the Lake Bed. These distribution facilities are not remnants of river channels that once fed the Tulare Lake; they are manmade ditches used to receive and distribute comingled waters (irrigation tail water, well water, etc,) in the Lake Bed. In fact, the existing Basin Plan recognizes this distinction and does not list any surface waters as having identified surface water beneficial uses in the Lake Bed. A potential source of confusion may be the inappropriate application of the Department of Conservation Farmland Mapping and Monitoring System as a data source (Figure 1). The Department of Conservation maps incorrectly label manmade canals/ditches as "rivers".

These three specific examples demonstrate that this overbroad statement could result in inappropriate and needless monitoring. The statement in Item 4 needs to be narrowed such that it does not have the unintended consequence of including all distribution facilities that are in fact on-farm systems.

2. **Farm Water Quality Management Standards.**

At page 32, the Information Sheet addresses on-farm management practices that all members must achieve. The identified practices are as follows:

a. minimize waste discharge offsite in surface water,
b. minimize or eliminate the discharge of sediment above natural background levels,
c. minimize percolation of waste to groundwater,
d. minimize excess nutrient application relative to predicted crop need,

e. prevent pollution and nuisance,
f. achieve and maintain water quality objectives and beneficial uses, and
g. protect wellheads from surface water intrusion.

As discussed in the above Comment 1, the on-farm distribution facilities in the Tulare Lake Bed are used exclusively for agricultural beneficial use. The facilities are used for both the delivery and recirculation of irrigation water. The characterization of these facilities as surface waters and application of some of these management practices could render their use impracticable or impossible.

The fact sheet needs clarification to reflect the unique characteristics of irrigated agriculture in the Tulare Lake Bed to ensure that the General Order accomplishes its goal of improving water quality.

3. **Special Monitoring.**

At page 21, ¶ 2, the Information Sheet indicates that the Executive Officer may require special studies where regional monitoring is ineffective in determining potential sources of water quality problems. This statement is directly related Section III C. 6 of the General Order where it is stated that under CWC 13267 that the Executive Officer may require the Coalition to perform special monitoring or studies.

The SSJVWQC is not a "discharger" but a Coalition formed to assist members in complying with the proposed General Order. The Executive Officer has the ability to issue CWC 13267 Orders directly to members of the Coalition; however, this section is not directly applicable to the Coalition. It is applicable only to the extent that the Coalition agrees to take on those responsibilities.

This reference in the Information Sheet and General Order regarding CWC 13267 should be removed. To the extent the Coalition has developed water quality management plans and the need for field studies or monitoring is required; it should be at the direction of the Coalition not the Executive Officer.

4. **Trigger Limits/Narrative Objectives.**

At page 22, ¶3, and preceding sections, the Information Sheet describes the Basin Plan implementation procedure for deriving numerical limitations from narrative water quality

objectives. The Information Sheet describes a process where numerical water quality objectives are not available; e.g., pesticides, the Board staff will consult with other Agencies and the Coalition to develop trigger limits. This is an appropriate procedure for determining trigger limits.

However, this paragraph indicates that the trigger limits will be considered the effective level to implement narrative objectives. This section should be clarified to reflect that this is staff guidance and that only the Board can adopt enforceable numerical water quality objectives.

If you have any questions, please contact me.

Very truly yours,

Loren J. Harlow

LJH:mrd

cc: Mr. Clay Rodgers, AEO. Regional Board
Mr. Mark Gilkey, TLBWSD