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

6 August 2012

Mr. Joe Karkoski, Supervising WRCE
Mr. Adam Laputz, Sr. WRCE
Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6144

VIA: Electronic Submission
Hardcopy if Requested

RE: Waste Discharge Requirements General Order For Growers Within the Eastern San Joaquin River Watershed That Are Members of The Third-Party Group

Dear Messrs. Karkoski and Laputz,

The California Sportfishing Protection Alliance and the California Water Impact Network (collectively, CSPA) has reviewed the proposed Waste Discharge Requirements (WDRs) for growers within the Eastern San Joaquin River Watershed that are members of the Third Party Group and submits the following comments.

Over the last decade, CSPA has submitted hundreds if not thousands of pages of comments, reports and testimony regarding measures that would be both reasonable to implement and protective of the environment for the Irrigated Lands Program. After reviewing the proposed Waste Discharge Requirements, information sheet, the monitoring and reporting program and the CEQA findings, we have little to add, as there is little new. The proposed Order fails to protect surface and groundwater and violates explicit requirements in Porter-Cologne, the state's Nonpoint Source Policy, antidegradation requirements and CEQA. Simply placing waiver conditions or selective components of the Long-Term Irrigated Lands Regulatory Program under the cover of WDRs in order to eliminate requirements to revisit waivers every five years does nothing to protect water quality.

Accordingly, we incorporate by reference and submit as our comments on the presently proposed Order, CSPA's: 27 September 2010 comments and exhibits on the Draft Irrigated Lands Regulatory Program Environmental Impact Report and Irrigated Lands Regulatory Program Long-Term Program Development Staff Report; 21 March 2011 comments on the Recommended Irrigated Lands Regulatory Program Framework; 11 July 2011 Petition To Review California Regional Water Quality Control Board, Central Valley Region's Resolution No. R5-2011-0032 and No. R5-2011-0017 and 25 May 2012 Petition for Peremptory Writ of Mandate and Complaint for Declaratory and Injunctive Relief. Each of the comments made regarding the deficiencies in the previous waiver, Long-Term Irrigated Lands Regulatory Program and accompanying CEQA documents are applicable to the presently proposed WDRs.

These specially include, but are not limited to, the WDR's inconsistency with Porter-Cologne, the Antidegradation Policy, Non-point Source Control Policy and CEQA.

We again reiterate two points:

First, it is impossible to implement an effective, protective or legally adequate regulatory program where the Regional Board does not know the owner/operator or location of specific discharge points, the constituents discharged, whether the owner/operator has implemented specific control measures to reduce or eliminate pollution or if any specific implemented measures are effective. Every other regulatory program protecting water quality administered by the Regional Board requires a discharger to identify the discharge points, the constituents and concentrations discharged, measures implemented to control pollution and the results of implemented measures. The general orders regulating construction and industrial stormwater runoff are illustrative. The General Industrial Stormwater Permit regulates some 1,890 industrial facilities from mom-and-pop welding shops, junkyards and recycling facilities to major factories. The General Construction Stormwater Permit regulates some 2,470 construction sites (5,500 prior to the economic downturn).

Both of these programs have been successful, despite the Regional Board having only about 10% of the staff it has identified as necessary to adequately implement the program. Implemented management measures or BMPs are obvious. Pollution prevention plans are required. Board staff and the general public can easily review the annual reports to determine if water quality standards are being violated and whether management measures and Best Practicable Treatment and Control have been implemented or are effective. Recalcitrant parties are easily identified and are required to provide reports of additional measures implemented to reduce pollution. And, more importantly, improved compliance is obvious and documented. Contrast this with the Irrigated Lands Program that, after a decade, cannot identify any specific implemented management measures and is unable to quantify or document any progress toward improving water quality, other than a few occasional isolated enforcement actions undertaken when the program is up for review. Aggregate or summarized information provided by third parties cannot substitute for specific information on specific activities that violate water quality standards and impair waterways or specific measures implemented to reduce pollution. Indeed, the program could not have been better designed if its original intent had been to create a bureaucratic Taj Mahal that rewards bad actors and penalizes farmers attempting to do the right thing.

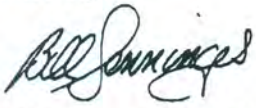
Second, it is impossible to protect water quality through a surface water monitoring program predicated upon a very few ambient monitoring sites far removed from actual points of discharge. For example, the Eastside San Joaquin Coalition is comprised of six zones comprising 987,058 irrigated acres. There is only one core monitoring site in each of the six zones where monitoring is conducted in any given year. Consequently, each core monitoring site in zones one through six annually monitors collected drainage from 134,304; 164,633; 88,617; 121,746; 142,686 and 334,069 irrigated acres, respectively. Zones one through six also contain 3, 8, 2, 7, 3 and 3 represented monitoring sites, respectively. Consequently, each represented monitoring site monitors collected drainage from 44,768; 20,579; 44,392; 17,392; 47,562; and 111,356 irrigated acres, respectively. Combining core and represented monitoring sites reveals

that each monitoring point in the six zones is expected to evaluate collected drainage from 33,576; 18,293; 29,544; 15,218; 35,715 and 83,767 acres, respectively. A water sample collected once a month represents approximately 0.1% of stream flow. Water quality standards for toxic pollutants, by definition, cause impairment if they're exceeded more than once in three years. The quality of water, compliance with water quality standards or the sources of pollution cannot be determined by collecting samples, perhaps 20 to 40 miles from a discharge point and analyzing 0.1% of streamflow draining 15,218 to 83,767 irrigated acres. This is especially true for constituents that are toxic in low parts-per-billion and that frequently occur as intermittent "pulse" flows. Discharger specific or, at a minimum, a statistically significant sampling of specific discharges is fundamental to providing the information necessary to adequately regulate specific sources of pollution that collectively comprise the largest identified source of pollution to Central Valley waterways.

Unfortunately, this latest iteration of regulatory requirements for irrigated agriculture continues a faith-based voluntary program that hides the identity of actual dischargers, the pollutants discharged, measures implemented to reduce or eliminate pollution or whether those measures are effective. It is predicated upon farmers snitching out their neighbors. This approach has failed in the past and will continue to fail in the future.

Thank you for considering these comments. If you have questions or require clarification, please don't hesitate to contact us.

Sincerely,



Bill Jennings, Executive Director
California Sportfishing Protection Alliance

Attachments