



PARAMOUNT FARMING

December 02, 2013

VIA E-MAIL

Attn: Jelena Hartman
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670-6114
jhartman@waterboards.ca.gov

Re: Comments Regarding the proposed WDRs for the Western San Joaquin River Watershed

Dear Ms. Hartman and Members of the Board:

The Central Valley Regional Water Quality Control Board ("Board") recently released for public review the proposed Waste Discharge Requirements General Order for Growers Within the Western San Joaquin River Watershed That Are Members of the Third Party Group ("WSJ Order"). Paramount Land Company, LLC and Paramount Pomegranate Orchards, LLC ("Paramount") own property located along the northeastern border of the San Joaquin River, just upstream from the Mendota Pool and downstream from the historic Whitehouse Gauging Station, known as the New Columbia Ranch. Paramount Farming Company, as Paramount's representative, submits the below comments.

New Columbia Ranch Compliance and WSJ Order Boundaries:

To date, Paramount has met the requirements of the existing Irrigated Lands Regulatory Program ("ILRP") by enrolling all of its New Columbia Ranch irrigated acreage through the Westside San Joaquin River Watershed Coalition ("Westside Coalition"). It is efficient for Paramount to meet the ILRP compliance requirements for the whole of its New Columbia Ranch through enrollment in the Westside Coalition and Paramount wishes for this to continue under the WSJ Order. In its comment letter dated June 24, 2013 on the draft WDR for the Western San Joaquin River Watershed Paramount suggested specific language to be included in Finding 3 to properly include the full boundaries of the New Columbia Ranch in the description of the area covered by the WSJ Order. Additionally, Paramount commented on the boundaries of the Eastern Coalition in its comment letter dated July 17, 2012 on the tentative WDR for the Eastern San Joaquin River Watershed, stating that it desired to achieve regulatory compliance for the whole of its New Columbia Ranch through the Western Coalition. Although the Board did not incorporate the specific language suggestions made by Paramount in its above mentioned comment letters, the map in Figure 1 and attachments and appendixes to the WSJ Order properly include the full boundaries of the New Columbia Ranch and in its response to comment 14-1 on the ESJ Order, the Board reaffirmed the flexibility of the New Columbia Ranch to continue coverage under the Westside Coalition by stating, "The finding

provides that these growers would not be required to obtain coverage through two third-party groups to comply with the ILRP. Should the board approve the tentative Order, the commenter may choose to enroll all or some of its acreage under the tentative Order, or continue under the Westside Coalition, which is currently a recognized third party group operating pursuant to the Coalition Group Conditional Waiver (Resolution R5-2011-0032).”

Paramount appreciates the changes made in the WSJ Order and the response to comments on the ESJ Order and interprets these changes to allow full regulatory coverage of the New Columbia Ranch under the WSJ Order.

Need to Incorporate Recommendations of the Expert Panels:

Paramount has land throughout the Central Valley subject to various General Orders (“GO”) developed, or being developed, by the Board under the long-term Irrigated Lands Regulatory Program (“ILRP”). Although the Board has stressed the importance of its GO’s to have consistent language and regulatory requirements and to serve as a broad framework under which third parties in each of the GO areas can create, justify, implement and manage an individualized program, many aspects of the ILRP are under technical review by state level expert panels and due to the deadlines of the GO’s are forced to simultaneously be crafted by the third parties. For the Board to move forward with the requirements and deadlines in the GO’s, including the WSJ Order, is irresponsible until practical aspects of the ILRP have been finalized with input from the expert panels.

The California Department of Food and Agriculture (“CDFA”) has convened an Interagency Task Force on Nitrogen Tracking and Reporting Systems (“Taskforce”) whose purpose is to “determine appropriate nitrogen mass balance tracking and reporting systems in nitrate high risk areas...that would provide meaningful, high-quality data to help better understand groundwater quality” and the State Water Resources Control Board (“SWRCB”) is convening an expert panel (“Expert Panel” and together “Expert Panels”) to further analyze, “...many of the groundwater issues contested in the petitions” and “to conduct a more thorough analysis and to provide long-term recommendations that may be applied statewide,” including “indicators and methodologies for determining risk to surface and groundwater quality, the appropriate targets for measuring progress in lowering that risk, and the efficacy of groundwater and surface water discharge monitoring in evaluating practice effectiveness¹.”

CDFA and the SWRCB, the two leading state bodies on water quality and agriculture, have both recognized the need for scientific recommendations to develop and guide the ILRP. Recommendations from the Expert Panels are forthcoming and have the potential to significantly alter specific requirements of the ILRP. Finding 50 of the WSJ Order recognizes the Expert Panels’ processes however concludes that the deadlines “for preparation of a nitrogen management plan and associated reporting allow the board to make any necessary adjustments to this Order based on the findings and recommendations of the CDFA Task Force and the SWRCB Expert Panel and prior to the established compliance dates.”

Given the vast departure from the prior regulatory program and the high cost of addressing the additional infrastructure, data collection and staffing needs to implement the ILRP, growers deserve

¹ State Water Resources Control Board, “Draft Order in the Matter of Review of the Conditional Waste Discharge Requirements Order No. R3-2012-0011 for Discharges from Irrigated Lands. 2013.

some level of regulatory certainty before funding ILRP required activities. The Board has extended a few reporting deadlines at the grower level, but critical and costly deadlines for the template development, GAR and MPEP remain unchanged. At this time, the grower, who is responsible for compliance, cannot determine the regulatory or economic impacts of the GOs, including the WSJ Order, due to their broad nature and high likelihood of changes and will suffer large economic, administrative and technical burdens should the Expert Panel recommendations result in significant changes to the regulatory requirements of the GO.

The size, scope and impact of the new ILRP cannot be ignored. The Board in Finding 10 of Order No. R5-2013-0100 (“Individual Order”) estimates “the Central Valley Region has approximately 7,800,000 acres of cropland under irrigation and approximately 35,000 individuals and operations with “waste discharges from irrigated lands,” as defined in Attachment E to this Order. Currently, approximately 567,000 thousand acres are regulated under the Water Board’s General Order for Existing Milk Cow Dairies (R5-2007-0035) and most of the remaining acres will be enrolled under WDRs administered by a third-party group (third-party WDRs).”

It is unreasonable for the Board to expect 35,000 individual irrigated agricultural operations and the third parties formed to facilitate the ILRP compliance process to shoulder additional expenses to change reporting information, data collection methods and database management fields and requirements at a later date. Even a small change will have rippling effect that will lead to grower confusion and additional expenses. Paramount respectfully requests the Board to suspend all GO timelines to allow growers, with their third parties, to plan an efficient, cost effective manner of achieving regulatory compliance after the critical recommendations from the Expert Panels are incorporated into the ILRP requirements.

Additional Outreach and Practical and Universal Tracking and Reporting:

Paramount supports a regulatory program that incorporates sound science, but does not support beginning a costly endeavor, with no assurance the ILRP framework will not change. While the Expert Panel recommendations are being incorporated into the ILRP and GOs, the Board can make effective use of this “down time” to engage in meaningful communication with growers and third party representatives to explore data collection instructions, data management processes and data transfer methods that will help ensure data transmitted and received at the various levels or reporting (from the grower to the third party, from the third party to the Board and from the Board to the SWRCB) is consistent, reliable, verifiable and comparable.

Although various data elements have been discussed, to Paramount’s knowledge the method and management of the data has not been addressed. As stated above, for a program designed to capture and meaningfully assess data from approximately 35,000 individual sources², this needs to be well thought out with input from those providing the base data. For growers in more than one third party, or under more than one GO, and for the Board itself, this is especially important to ensure data collection methods and reporting are consistent among the third parties.

² “Waste Discharge Requirements General Order for Discharges from Irrigated Lands within the Central Valley Region for Dischargers Not Participating in a Third-Party Coalition, Order No. R5-2013-0100.” July 26, 2013.

From a practical standpoint consideration must be given as to how best to collect and manage data so individual growers can establish the best way to collect and report data, in many cases on multiple fields and across multiple third parties. A reporting and tracking system that ensures all relevant data (including variations of site specific conditions) is collected, reported and analyzed uniformly is critical to reduce the burden on growers, to ensure the data collected is scientifically justified and can be analyzed, synthesized and aggregated to determine current practices and site specific conditions that are both protective of groundwater and that may contribute to discharges and to ensure the ILRP achieves its goal of reducing nitrates in groundwater.

Distinction Between Surface and Groundwater Regulated Lands:

Although the ILRP now includes a groundwater component, not all growers are subject to the surface and groundwater components of the ILRP and this distinction should be clearly explained in the WSJ Order and other GO's. The grower requirements to achieve compliance with the surface water portion of the WSJ Order and the grower requirements to achieve compliance with the groundwater portion of the WSJ Order are different and must be better defined. The privacy of grower information must be retained to the greatest extent practicable. Information provided by the grower to the third party and subsequently to the Board and State Board, should be clearly defined. The current WSJ Order describes the surface and groundwater monitoring needs, however does not adequately define the data and reporting that is required by growers who are subject only to the groundwater requirements and the data and reporting required by growers subject to the surface and groundwater requirements of the ILRP. The GO's are a vast departure from the previous irrigated lands regulatory program and many growers will find themselves regulated for the first time. The Board must educate growers on the differences in the requirements for the surface water and groundwater portions of the program and it should be clearly stated in the WSJ Order and all GO's.

Unreasonable Regulation:

The Board's framework approach to the ILRP requirements lacks scientific support. The Board's action to adopt the WSJ Order constitutes an abuse of discretion as it failed to properly comply with CEQA by improperly relying on "Findings and Statement of Overriding Considerations" which are inadequate and not supported by substantial evidence. The Findings do not specifically assess how the benefits of the ILRP, including the WSJ Order, outweigh the significant and unavoidable environmental and economic impacts identified in the PEIR. The structure of the WSJ GO practically treats all irrigators as dischargers of waste by requiring growers or third parties to prove a negative; that a certain, current irrigation activity does not discharge waste. No research currently exists to quantify the amount of waste discharges, if any, of various crops and under various site specific conditions. To conduct such research, even through the MPEP process outlined in the WSJ Order, is a significant expense and does not outweigh the benefits. If such experiments are desired by the Board, the Board should identify and secure funding. Placing all economic and administrative burdens on growers, who are not proven to be the cause of nitrate groundwater issues, is unreasonable.

The importance of site specific conditions in determining a specific irrigation activities, potential, if any, to discharge waste that impacts beneficial uses and the cost benefit analysis of the ILRP are issues to be addressed by the Expert Panels. Without proper inclusion in the GOs of the assessment

and recommendations from the Expert Panels, the Board is continuing its abuse of discretion and denying those subject to the regulation the benefit of expert, scientific input into this important regulatory process.

Hold Interested Persons to the Same Standard as Growers and Third Parties:

Attachment B, Section IV.A.5. of the WSJ Order includes a revision which states, “An interested person may seek review by the Central Valley Water Board of the Executive Officer’s decision on the designation of high and low vulnerability areas associated with approval of the Groundwater Quality Assessment Report.”

The Board requires specific, scientific reporting and analysis to be conducted by the third party to fulfill the requirements of the GAR and to substantiate its recommendation for the designation of high and low vulnerability areas. The Executive Officer is then required to review, and if deemed compliant, support this decision. Generally allowing an interested person to “seek review” of the designation, without requiring a scientific analysis to support the basis of the review is unreasonable. To prevent abuse of this allowance at the expense of growers and third parties, any interested person seeking review of area designations, should be required to submit the same level of scientific analysis to the Executive Officer as is required by the third parties as part of the recommendation prior to the Executive Officer accepting the request. Additionally, the third parties covering the area should also be afforded a review and comment period on the request.

Requirements for Areas Pursuing a Basin Plan Amendment:

Paramount appreciates the additions in Finding 28, Section VIII.L. and Section V.D. of Attachment B of the WSJ Order recognizing certain irrigated lands are situated in areas whose water quality is such as to not support the current beneficial use designation and, therefore, are eligible to pursue a basin plan amendment. Finding 28 states, “It is reasonable, under circumstances described below, to delay the imposition of monitoring and reporting associated with high vulnerability areas in these circumstances. This Order allows, with Executive Officer approval, portions of the high vulnerability areas...to temporarily operate under reduced monitoring and reporting requirements...”

Section VIII.L. and Section V.D. of Attachment B of the WSJ Order further detail the process for pursuing a Basin Plan Amendment and the Basin Plan Amendment Workplan (BPAW) requirements. Although this is an improvement from subsequent drafts, the WSJ Order must recognize that if the third party presents analysis demonstrating that portions of the area covered under the BPAW do not have the potential to discharge waste for the beneficial uses remaining after the BPA, those certain areas are not subject to regulation under the ILRP. “Delaying the imposition of monitoring and reporting” and “temporarily operating under reduced monitoring and reporting requirements” does not address the fact that after a BPA, certain irrigated acreage may no longer have the potential to discharge waste that impacts beneficial uses and, under these circumstances, should not be regulated.

Paramount appreciates the opportunity to provide comments and encourages the Board to suspend all LRP and GO deadlines, until the Expert Panels’ recommendations can be used to inform a uniform, scientifically supported ILRP. Until the practical aspects of the ILRP are finalized, moving forward

with adoption of the WSJ Order and the ILRP schedule is irresponsible and only serves to burden growers with unnecessary expense.

If you have any questions, please contact Kimberly Brown or me at the contact information listed above.

Sincerely,

A handwritten signature in blue ink, appearing to read 'William D. Phillimore', with a stylized flourish extending to the right.

William D. Phillimore
Executive Vice President