

SAN JOAQUIN VALLEY DRAINAGE AUTHORITY

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December 2, 2013

Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, #200
Rancho Cordova, CA95670-6114
Attn: Jelena Hartman

Re: Comments of Westside San Joaquin River Watershed Coalition on Proposed Waste Discharge Requirements for discharges from irrigated lands within the Western San Joaquin River Watershed

Dear Members of the Central Valley Water Board and Staff:

The Westside San Joaquin River Watershed Coalition (WWC) is organized within the San Joaquin Valley Drainage Authority (SJVDA), a California joint powers agency comprised of nine local public agencies, to act as a watershed coalition under the Regional Board's Irrigated Lands Regulatory Program (ILRP). It is governed by a Steering Committee appointed by the member agencies, which meets jointly with the SJVDA Board of Directors, in regular open public meetings. Individual WWC Members have joined the WWC through memoranda of agreement and can participate at all meetings, as well as through contacts with staff. The WWC expects to provide Notice of Intent to become the third party entity under the above Proposed Order. The WWC submits the following written comments.

GENERAL COMMENTS

First, we appreciate the efforts of Central Valley Water Board (CVWB) Staff in working with us to craft an order that takes into account our implementation strategy by setting up timelines for certain requirements that we anticipate will streamline our efforts and to take into account, to the extent possible, the demands of the farming season for compliance by individual Members. For example, we have requested a longer period for submittal of Notice of Confirmation but have combined that date with the first required Farm Evaluation Plan on December 15, 2014, so that the third party may conduct maximum outreach and obtain maximum participation, in part because the deadline is timed to be outside the height of farming operations. . Unfortunately, some of the language inserted in the Proposed Order changes without explanation wording in the administrative draft that had been carefully crafted to achieve our implementation strategy. We are outlining those points in the specific comments below. As part of the strategy, we also have asked for the Proposed Order to utilize specific dates, rather than some fixed time period after the Notice of Applicability issues. We also appreciate the staff working with us on timelines now set out in Table 1 of the Proposed Order. We understand that the CVWB now expects this Order to come up at its January, 2014 meeting. In the event that the date for the CVWB's consideration changes, hard dates within the order will need to be adjusted in consultation with

the WWC to make certain that they continue to carry out the originally discussed performance timelines and allow appropriate windows for completion of required actions.

Second, the WWC does not agree with each and every finding, characterization of water quality conditions, statements regarding technical information, assessment of effects, economic information or any other assertions set forth in the Proposed Order or its supporting documents, and our failure to specifically comment does not signify any such agreement. Objections have already been raised through comments from ourselves and numerous other parties as well as through ongoing litigation on the program and its environmental documents, and we hereby reserve our right to pursue such objections, whether or not we have specifically so commented on this Proposed Order. We specifically incorporate by reference comments on the PEIR filed on our behalf by Somach, Simmons & Dunn on September 27, 2010, as well as those of the San Joaquin River Exchange Contractors Water Authority filed the same date, which are in your files.

Third, and as an overarching comment, as we continue to review the detailed technical requirements outlined in the Proposed Order, it is clear that this new program is groundbreaking, overly ambitious and extremely burdensome for both the Third Party and the individual Members. Simply put, farmers are going to be overwhelmed by the new and additional requirements in the Proposed Order, even with the assistance of the most active and diligent third party groups. One aspect of the program is that the CVWB now seeks to enforce water quality requirements adopted in the past that did not carefully take into account the effect of objectives extrapolated to implementation on every acre of land in the Central Valley. We urge the Board and its staff to be cognizant of the difficulty faced by the regulated parties and in particular, that they be realistic and flexible as they weigh in on the efforts of the WWC and its Members. The Board should refrain from demanding unnecessary or unachievable actions. Most particularly, putting farmers out of business (Attachment D, paragraph II.C.6. pages 16 and 17) in order to preclude any effects whatsoever from their use of California's precious water resource would not be the mark of a successful program. We continue to strenuously object to the analysis indicating that such effect of the program is acceptable.

SPECIFIC COMMENTS ON ORDER

Section IV.C.7, page 24: The timing in this paragraph is problematic. The WWC had suggested timing changes regarding the Notice of Confirmation and Farm Evaluation Plan to streamline the outreach process for completing these two requirements. That language has been changed, without explanation, between the administrative draft order and the Proposed Order and is no longer consistent with our process. We therefore request that the wording be revised to read "The Third Party will provide a notice of the requirements and process to complete NOC forms and Farm Evaluation Plan to Members within 30 days of receiving an NOA from the Central Valley Water Board." This is consistent with Table 1, which indicates that the NOC will not be due until December 15, 2014. In addition Section VIII.C. page 32 of the Proposed Order allows for a requested change in the FEP within 30 days of the issuance of the NOA. It makes more sense for our proposed implementation to provide a description of the NOC and FEP process within 30 days and delay sending the actual forms to a later date when the FEP form is final and we have initiated outreach on the NOC.

Section IV.C.11, page 25: This paragraph requires the Third Party to “ensure” that Members have provided “their required portion of the State Water Board Fees.” This is a burdensome administrative requirement that does not fit well with the WWC’s organization. The WWC is organized so that in some cases overlying districts pay the ongoing fees, including the State Water Board fees, from general revenues or rates collected from the water users; they do not invoice Members specifically for these fees. In addition, there are instances when the WWC works with both Districts and individual Members to accommodate cash flow issues. The WWC has regularly paid the State Water Board fees and is committed to continue to make those payments. Both the WWC and the CVWB have multiple mechanisms besides payment of fees to determine whether or not the Members are participating appropriately. For these reasons, we request that the final sentence added to this section be removed.

Section V.4., page 25: The Proposed order requires that the WWC provide notice that a discharger who is not currently a member of the WWC has become a Member before approval by the CVWB. We had previously requested the wording in the administrative draft order that we ask you to restore, requiring the WWC to notify the CVWB of its intent to accept the Member once approved by the CVWB. Having to admit Members before knowing whether the CVWB will approve participation creates a series of administrative burdens, such as tracking the status of CVWB action, having to develop procedures to omit members from WWC rolls and any reports, and incurring accounting costs re: depositing, tracking and refunding substantial back fees that will be required for many new memberships. The opportunities for inadvertent errors and cost can easily be avoided and the CVWB’s purpose served if the WWC provides the CVWB with notice that the party will be accepted as a Member after the CVWB has acted, without having to enroll the party before that action.

Section VII.D.1.a and b, page 30: To be consistent with other dates in the proposed order the update required in the final sentence of each of these subsections should be 15 April annually thereafter instead of March 1.

Section VII D.1.c, page 30: We request that the Executive Officer be given the flexibility to reduce the frequency of submissions of Nitrogen Management Plan Summary Reports after submission of three annual summary reports instead of the current proposal to require four summary reports before the Executive Officer can have any discretion. We believe that in some cases three years’ worth of Nitrogen Management Plan Summary Reports will be sufficient to demonstrate that year to year changes in summary reports are minimal. Specifically, the March 1, 2018, date should be changed to March 1, 2017. This change would grant the Executive Officer flexibility but would not change the requirement for Executive Officer approval

Section VIII. A. 6. page 32: We understand that this language may have been added at the request of parties in watersheds where it is anticipated that there will be multiple Third Party Entities. We are unaware of any such entity in the Westside San Joaquin River Watershed. And while the added language purports to allow the new entity to seek an NOA after an NOA has already been awarded to a Third Party Entity, there is no explanation of how changes would be implemented. In contrast, Section I.2 on page 20 of the Proposed Order states that “A third-party group receiving an NOA under this Order is responsible for all third-party group requirements within the geographic area identified in its NOA.” What happens to monitoring data and records for the severed area? What if there are objections? What if the split harms the funding

commitments of Members in the original Third Party? How will the transition be accomplished? Just allowing the existing Third Party Group to comment on the application of a new entity is insufficient to address all of these issues. On the other hand, language tying the new entity's performance to the original schedule issued to the first Third Party Group seems to preclude such entities unless they are already formed and ready to go in close time proximity to the first-issued NOA. Overall, the process and the implications of the addition of a new entity third party group as crafted in this Proposed Order does not appear to be well thought out. While it may be sufficient for a watershed where sub-watersheds have already been organized and may have been coordinating for some time, that is not the case for the Western San Joaquin watershed. We recommend that this sub-section 6 be deleted from the Order applicable to the Westside San Joaquin watershed.

Section VIII. L, page 38: We appreciate that the Proposed Order very generally acknowledges the existing mismatch between Basin Plan designated uses and reality on page 38 of the Proposed Order regarding the potential for a basin plan amendment. However, requiring that a Basin Plan Amendment be sought within 4 months of the GAR is wholly unrealistic, since as the CVWB is aware, the costs are enormous and the work extremely complex, yet the Third Party Group will just barely have the approved, compiled groundwater information. Also, the San Joaquin Valley Drainage Authority is an active participant in the CV-SALTS process. CV-SALTS recognizes the overwhelming problems of salinity management in the Central Valley and expects to propose a basin plan amendment to address salts that is workable, including potential mechanisms to accommodate objectives with actual uses, as well as consideration of naturally occurring conditions. We assume that the Irrigated Lands Regulatory Program will be modified to accommodate and incorporate any such basin plan amendment. To facilitate this process, avoid the requirement for enormous duplicated effort and expense where there may be overlapping processes, and to grant much-needed flexibility and realism, VIII. L. should not set a 4-month deadline for seeking a basin plan amendment.

COMMENTS ON ATTACHMENT A, INFORMATION SHEET

Section VI.A.2, page 17, next to last paragraph: The support provided for the statement "The burden of the SQMP, including costs, is reasonable" is wholly inadequate. There must be consideration of the burden imposed on the regulated parties, not merely the ease for the CVWB. The WWC therefore disputes the Board's conclusion in the Proposed Order, and this assertion is certainly offensive to the regulated parties, some of whom the Board has predicted will go out of business due to those burdens. Furthermore, while watershed monitoring may be more economical than individual monitoring, the Board cannot know what the costs of implementation in the Western San Joaquin River Watershed will be, in particular when, as explained in the final paragraph on page 17, the demands on farmers will ratchet up to individual reporting if "necessary" improvements are not made, even if implementation of the best efforts are not sufficient to reach the stringent requirements.

Section VI.B.6, page 23, fourth paragraph: See above comment regarding asserting that the burden of the GQMP is reasonable.

Section XI.A. page 33, final paragraph: The WWC does not agree that CVWB staff may simply pick "trigger limits" that are valid numeric interpretations of applicable narrative objectives after

receiving comment from “interested parties.” This remains an unresolved issue that had been addressed by the Technical Information Committee in the past. Such values must be scientifically justified and satisfy legal requirements for establishing enforceable water quality objectives or else they remain targets, not enforceable numeric criteria.

Section XIII, Mitigation Measures, page 36: We remain terribly concerned about the CEQA Mitigation approach contained in the Proposed Order. Our comments on the problems with the conceptualization of the PEIR and its mitigation measures and those of our Member, San Joaquin River Exchange Contractors Water Authority, both dated September 27, 2010, are in your files, and we incorporate them herein by reference. We think the proposal to impose mitigation requirements on individual Members is not warranted, will cause huge and unnecessary uncertainty and controversy and create an enormous compliance hurdle for the Third Party Group to administer. Further, the changes in the Proposed Order which attempt to remedy the deficiencies noted by Judge Frawley are unduly harsh.

COMMENTS ON ATTACHMENT B, MONITORING AND REPORTING PROGRAM

Section IV.D.1., Part 1. Work Plan Approach, page 18:

The workplan must include a scientifically sound approach to evaluating the effective of management practices on groundwater quality. The workplan must include a mass balance and conceptual model of the transport, storage, and degradation/chemical transformation mechanisms for the constituents of concern or equivalent method approved by the Executive Officer must be provided.

To the knowledge of the Westside Coalition, the tools and data needed to produce a mass balance and conceptual model do not exist. The hydrogeology of the westside of the San Joaquin Valley is varied and complicated without a comprehensive data set. The development of a model sufficiently sophisticated to predict a mass balance and fate of constituents of concern is an enormous task that is beyond the resources of the WWC. The Westside Coalition will make use of available data to develop the required conceptual model, but it will likely not be predictive or capable of calculating an accurate mass balance.

Section V.B., Report Component (19) – Summary of Reported Nitrogen Data, page 24:

The third-party shall aggregate information from Members’ Nitrogen Management Plan Summary Reports to characterize the input, uptake, and loss of nitrogen fertilizer applications by specific crops in the Western San Joaquin River Watershed. The third-party’s assessment of Nitrogen Management Plan information must include, at a minimum, comparisons of farms with the same crops, similar soil conditions, and similar practices (e.g., irrigation management). At a minimum, the statistical summary of nitrogen consumption ratios by crop or other equivalent reporting units and the estimated nitrogen consumed for the different crop types and soil conditions will describe the range percentiles (10th, 25th, 50th, 75th, 90th) and any outliers. A box and whisker plot or equivalent tabular or graphical presentation of the data approved by the Executive Officer may be used. The nitrogen consumption ratio is the ratio of total nitrogen available for crop uptake (from sources including, but not limited to, fertilizers, manures, composts, nitrates in irrigation supply water and soil) to the estimated crop consumption of nitrogen. The summary of nitrogen management data must include a quality assessment of the

collected information by township (e.g. missing data, potentially incorrect/inaccurate reporting), and a description of corrective actions to be taken regarding any deficiencies in the quality of data submitted, if such deficiencies were identified. The third-party will also provide an aggregate of the data submitted by its Members that were used to develop this summary in an electronic format, compatible with ArcGIS, identified to at least the township level.

The WWC recognizes that a summary of nitrogen application and consumption data is important to understanding potential impacts to groundwater. However this component, as described, is extremely burdensome, excessively complicated, and likely overestimates the quality (and timeliness) of data received.

Section V.B., Report Component (20) – Summary of Management Practice Information, page 24:

In addition to summarizing and aggregating the information collected, the third-party will provide the individual data records used to develop this summary in an electronic format, compatible with ArcGIS, identified to at least the township level.

The foundation of the WWC is a sense of mutual trust between the coalition and the growers it represents. This report component requires the Coalition to divulge individual data that will undermine that trust. Given that the Coalition is already required to summarize the management practice information, this additional requirement to supply individual data records does not serve any purpose.

COMMENTS ON ATTACHMENT C, CEQA MITIGATION MEASURES

Page 1: Attachment C should be retitled “MITIGATION MEASURES” to clarify that individual Members are not subject to CEQA, as noted by Judge Frawley. Also see Comment on Attachment A, Section XIII.

COMMENTS ON ATTACHMENT D: FINDINGS OF FACT AND STATEMENT OF OVERRIDING CONSIDERATIONS

Section II.C.6., page 16 Agriculture Resources, *Impact AG-1*: The second sentence in the finding states without any supporting information: “. . . , specific considerations make mitigation and alternatives infeasible” to putting agricultural lands out of business. If the Irrigated Lands Regulatory Program being implemented through this program requires Best Practicable Treatment or Control or reasonable Best Efforts, and such efforts are insufficient to meet water quality objectives, particularly in an already degraded water body, then there should be some feasible mitigation or alternatives, such as allowing time for a basin plan amendment, de-designation of uses not actually made of the water body, etc.

Section II.D, pages 20-24, Mitigation Measures: Judge Frawley has ruled that the CVWB must clarify that it does not require additional CEQA compliance as “mitigation” for private action unless CEQA compliance is otherwise required, such as in order to obtain a permit. However, the change in the Proposed Order to address this reality is continued insistence on mitigation measures accompanied by the unnecessarily harsh determination that a grower that cannot avoid an adverse effect is not authorized to be covered and must seek a separate WDR. It is not clear

that this solves the problem under CEQA for the Board or that it provides a mechanism for the ex-Members. At a minimum, there is no need incorporate such a draconian cure into the Order.

CONCLUDING COMMENTS

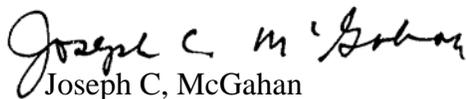
The goals of the Long Term Irrigated Lands Regulatory Program are to (1) Restore and/or maintain the highest reasonable quality of state waters considering all the demands being placed on the water; (2) minimize waste discharge from irrigated agricultural lands that could degrade the quality of state waters; (3) maintain the economic viability of agriculture in California's Central Valley; and (4) ensure that irrigated agricultural discharges do not impair access by Central Valley communities and residents to safe and reliable drinking water. Each of these goals is important, including maintaining the economic viability of Central Valley agriculture.

In order for the Regional Board to maintain agriculture's economic viability it is essential that it recognize a key reality facing Central Valley growers. Agricultural commodities are traded in a global market. Central Valley farmers cannot pass on the costs of this new regulatory program to consumers. Central Valley farmers are being required to absorb the costs of CVWB regulation as well as the regulations of many other state agencies. Regulatory costs incurred by Central Valley farmers far exceed those of farmers in other states and certainly other countries. However all farmers must sell their crops in the same markets.

The revised Irrigated Lands Regulatory Program is the first effort to address groundwater quality in relationship to irrigated agriculture. Its scope is enormous and unprecedented. Point source regulations were adopted before non-point source regulation for the good reason that point source problems were much simpler to address. Even so, it took decades to develop the current point source regulatory structure. Given the complexities and corresponding expense of addressing non-point source agricultural discharges and the fact that growers must compete in a global market, it is imperative that the requirements are imposed with an understanding of the practical realities faced by the growers. In order to meet all the goals of the program, the Irrigated Lands Regulatory Program must be efficient and readily implementable by the growers farming the land. There must be time allowed to adapt farming practices, as well as flexibility in a new program to make adjustments over time to insure that that the regulatory burden is as light as possible. Non-agricultural non-point sources must also be addressed programmatically, rather than requiring agriculture to "prove" it is not the source of every issue. If these pragmatic factors are not applied, not only will the program fail to meet the goal of maintaining agricultural viability, it will also fail to meet the goals of maintaining and improving water quality.

We appreciate your consideration of these written comments and reserve the right to present any additional comments during the Hearing to be held on January 9, 2014. We look forward to seeing you in Los Banos.

Very truly yours,



Joseph C. McGahan
Watershed Coordinator