



California Regional Water Quality Control Board
Central Coast Region
Enforcement Unit



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Edmund G. Brown Jr.
Governor

MEMORANDUM

TO: Central Coast Water Board

FROM: 
Harvey Packard, Enforcement Coordinator

DATE: March 9, 2011

The California Farm Bureau submitted the *Alternative Proposal for the Regulation of Discharges from Irrigated Agricultural Lands* on behalf of seven County Farm Bureaus and numerous additional entities on December 3, 2010 (hereafter called the Farm Bureau Proposal). Central Coast Water Board staff asked the State Water Board's Office of Enforcement to review the Farm Bureau Proposal and provide its opinion on this question:

Does the Farm Bureau Proposal allow the Water Board to determine growers' compliance (either individually or collectively) with the basic requirement that their waste discharges not cause or contribute to exceedances of water quality standards?

As discussed below, the Farm Bureau Proposal does not allow the Water Board to determine compliance with the basic requirement that waste discharges not cause or contribute to exceedances of water quality standards. The Farm Bureau Proposal is not implementable or enforceable for several reasons as discussed below.

Discussion

Determining compliance with water quality objectives requires collection of water quality data. Implementation of management practices is necessary to protect water quality, but not sufficient to verify compliance with standards. This discussion will therefore concentrate on water quality data collection and not on management practice implementation.

The Farm Bureau Proposal contains several provisions regarding collection of water quality data:

- Paragraph B.5.e discusses SMART sampling as part of the Farm Plan, stating, "This Plan may include, but is not required to include, on farm verification sampling of surface irrigation water run-off to assist an individual grower to

understand potential contributions to water quality impairments. Individual on-farm sampling (e.g., SMART Sampling to establish a baseline of farm practices, to determine effectiveness of individual farm measures, etc.) is a voluntary management practice.”

- “Surface water quality monitoring shall be conducted in receiving waters with sufficient frequency and at a sufficient number of locations to a) characterize water quality conditions and b) understand long-term water quality trends.” It requires surface water sampling by either individual farmers or by a cooperative monitoring program.
- Dischargers must conduct annual groundwater sampling of one primary groundwater well on their operation for nitrate, TDS or EC, and pH. Groundwater sampling must be conducted in the same month each year, as determined by the grower. All results are to be kept in the Farm Plan.
- High-risk growers must either join a coalition or sample their own on-farm tailwater and storm water discharges. Coalition participants are subject to additional management practices and audits. Coalition participants are encouraged to perform SMART sampling.

The Farm Bureau Proposal does not require monitoring to measure the effectiveness of on-farm management practices or pollutant load reduction. The Farm Bureau Proposal does not require individual or operation-level monitoring, but indicates it is optional for all growers, even for “high risk” operations, and all individual farm or operation data, if any such data are voluntarily collected, would be kept confidential. This would put the Water Board in an untenable regulatory position.

No results of on-farm, individual sampling required or suggested by the Farm Bureau Proposal will be reported to the Regional Board, but are to be documented in the Farm Plan. So the only water quality data submitted to the Water Board will be ambient data in annual reports submitted by cooperative monitoring programs (except for data submitted by enrollees who choose not to participate in a cooperative monitoring program).

Cooperative ambient monitoring data may provide information regarding general conditions of sampled water bodies and whether they meet water quality standards. But without farm-specific data, the Water Board will not be able to determine the effectiveness of management practices or whether individual enrollees are able to operate without causing or contributing to exceedances of water quality standards.

In addition, in areas where collective monitoring identifies problem areas, the Farm Bureau Proposal’s aggregated data submittal methods will make identifying the farms causing the problems very difficult or impossible.

The Farm Bureau Proposal also proposes the use of coalitions to implement the regulatory program. The use of an industry organization to help implement a program and comply with water quality standards is not an issue per se; however, such an organization cannot be a responsible party or obscure the individual operator and

landowner as responsible parties. The 2004 Non Point Source Implementation and Enforcement Policy (2004 NPS Policy) emphasizes this point. The 2004 NPS Policy requires that individual dischargers, including both landowners and operators, bear ultimate responsibility for complying with a regional board's water quality requirements and orders. Any Water Board enforcement actions taken will be taken against non-compliant individual dischargers, not third parties. Therefore, any regulatory order issued by the Water Board must hold individual dischargers responsible for compliance. The 2004 NPS Policy is summarized here:

http://www.swrcb.ca.gov/water_issues/programs/nps/docs/npsfactsheet.pdf

The Farm Bureau Proposal would also place many requirements on the Regional Board. This approach is inappropriate for any regulatory requirements order.

Conclusion

The Farm Bureau Proposal is not implementable or enforceable as a regulatory program for several reasons, including the lack of requirements for individual discharger monitoring, management measure effectiveness monitoring, and public reporting to the Water Board. Cooperative monitoring results described in the Farm Bureau Proposal will allow the Water Board to assess ambient water quality on a wide scale, which is already being done. However, the sampling and reporting contemplated by the Farm Bureau Proposal will not provide information that will allow the Water Board to determine compliance with water quality standards on the scale of individual farms, and does not comply with the 2004 NPS implementation Policy.

The use of coalitions as described in the Farm Bureau Proposal does not comply with the 2004 NPS Policy because the coalitions would obscure the responsible party and prevent the Water Board from taking appropriate enforcement action when necessary.

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