



CLEAN WATER ACTION
CALIFORNIA



January 3, 2011

Regional Water Quality Control Board
Central Coast Region
895 Aerovista Place, Suite 101
San Luis Obispo, California 93401

RE: Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands

Dear Board Members:

We are submitting comments on behalf of Clean Water Action, California Rural Legal Assistance Foundation and the Community Water Center on the Central Coast Regional Board's proposed regulatory program for discharges from irrigated agriculture. Clean Water Action is a national advocacy group that works to improve water quality. Community Water Center, based in Visalia, works with low-income communities in Tulare, Kern and Kings County to help them gain access to safe and affordable drinking water. California Rural Legal Assistance Foundation works to improve the quality of life for California farm-workers through a holistic approach that addresses a range of social, health, and economic issues

Our organizations also serve as environmental and environmental justice stakeholders in a process to develop a similar program in the Central Valley. For that reason, we have been very interested in the development of the Central Coast regulatory program, in particular the recommendations for protecting and improving groundwater quality.

Our organizations are deeply concerned that the November 19, 2010, Draft Order revising the proposed Central Coast Region Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands (Conditional Waiver) has been substantially weakened from staff's February 2010 proposal and is no longer sufficient to protect and restore water quality. Further, the related Draft Subsequent Environmental Impact Report (SEIR) fails to analyze deficiencies in the November draft order or to compare it adequately with the February proposal. Specifically, the current proposal fails to identify or mitigate continuing polluted discharges to groundwater from most irrigated agriculture, and fails to analyze the related costs to human health of that failure, most notably through the creation of tiers that ignore existing areas of high nitrate contamination.

Need for effective program to protect Central Coast communities

Staff has done an effective job of describing the plight of Central Coast communities and rural residents who struggle to access safe and affordable drinking water due to increasing contamination from agricultural discharges. These communities pay the price of the Board's reluctance to enact a regulatory program that protects public health and the environment. The cost to these communities comes in the form of higher prices for safe tap water (if available), the inconvenience and cost of obtaining alternative supplies, and the health impacts of unsafe water supplies. Because these communities tend to be predominantly low-income communities of color, the lack of adequate protective regulation of community drinking water supplies is an environmental justice issue.

Support for February 2010 program

Our organizations strongly supported the February 2010 draft order, which complied with state and federal laws and would protect water quality. We urge the board to adopt the previous Draft Order.

The February order had many strengths, some of which remain in the current document. This includes the acknowledgement of the Water Board's unique responsibility for regulating groundwater quality; information and acknowledgement of the impact of agricultural discharges upon surface and ground water quality; the need to provide protection for domestic as well as public water supply wells; and support for the State Water Board's anti-degradation policy.

The most encouraging part of the February proposal that remain in this draft is the requirement for mitigation of the impact of agricultural pollution on local drinking water supplies. Currently, the costs of providing safe drinking water are borne mainly by the impacted communities, with taxpayers also providing funding through state and federal grant programs. We appreciate the continued inclusion of this provision, but are also concerned that the provisions of this program result in the protection and restoration of drinking water quality for these communities.

November Draft Order fails to protect groundwater quality

Unfortunately, the November 2010 revised draft proposal has removed or altered many essential provisions that garnered our support for the prior draft. A partial list of our concerns includes;

- Lack of specific targets or timely requirements for improvement of groundwater quality;
- A tiering system that fails to appropriately prioritize those operations with the greatest impact on water quality;

- Inadequate monitoring and enforcement to ensure that objectives are achieved.

Our main concern is that this regulatory program will not be sufficiently rigorous to result in measurable improvements to water quality in both the short-and long-term. We offer suggestions below on how this program may be made more effective.

I. Proposed tiering system fails to incorporate threats to groundwater quality

Our organizations support the use of a tiering system to ensure that enforcement efforts focus on those operations that present the greatest threat to water quality. Tiers should first and foremost ensure that requirements are focused on high priority areas where agriculture is contributing to exceedances of water quality objectives, and should also ensure compliance with Basin Plans by also prioritizing those areas where agriculture is contributing to significant degradation. In addition, the criteria used should be flexible enough that a discharger can be moved to a different tier if changing water quality conditions or enforcement warrant increased oversight.

Unfortunately, November Draft Order fails to create such a prioritization. The tiering criteria utterly ignores the impacts on groundwater that these regulations are meant to address, and are instead based upon references to specific pesticides and farm size. This model renders this tool useless for the purpose of directing or focusing a program that otherwise has the potential to improve water quality.

Staff has recorded the continuing and growing threat to communities dependent upon groundwater in the region, so the exclusion of groundwater in the tiering criteria is baffling. It means that Staff would not be ensured of sufficient data to monitor groundwater quality or be able to develop an enforcement plan and schedule to protect public health and drinking water. The failure to identify high-priority groundwater basins as part of the tiering system creates uncertainty for farmers who may not realize that their operations are located in a hydrologically vulnerable area. Finally, this perpetuates the board's historic deficiency in its enforcement of the Porter Cologne Act, which requires equal protection of both ground and surface water quality.

The reference to the specific pesticides chlorpyrifos and diazinon as ranking criteria is overly specific. It limits the flexibility of the Board to include a broad range of toxins as potential contaminating activities that might impact the status of an operation. This program is not a snapshot in time, but is meant to adapt to evolving conditions and new water quality threats. A more generic reference to pesticides or toxins would provide that flexibility.

Finally, the proposal to use farm size rather than threat to water quality as a tiering criteria undermines the entire program. Staff has reported that 98% of the farms under irrigated agriculture in the Central Coast region are less than 1000 acres. Under this program, they would be classified as Tier 1 with limited oversight, regardless of their contribution to nitrate contamination of groundwater. The ability of this program to achieve water quality objectives is severely compromised due to this requirement.

To address the severe shortcomings of the proposed tiering system, we recommend the following changes in the criteria:

- Add groundwater contamination to the criteria for tiering. We suggest the following;
 - Tier 1 – discharger does not discharge to groundwater or lies within a basin not impacted by contaminants associated with the operation;
 - Tier 2 – aquifer is impacted by contaminants associated with the discharger but at low levels (less than half the regulatory standard or water quality objective);
 - Tier 3 – aquifer is impacted by contamination associated with the discharger at levels at or above one-half of the drinking water standard or water quality objective
- Replace citations related to the use of chlorpyrifos or diazinon with “pesticides that are identified as exceeding water quality objectives or that have been identified as contributing to the degradation of receiving waters or of the underlying groundwater aquifer”;
- Remove criteria related to the size of an operation, rather than its contribution to water quality, when assigning to a specific tier.

II. Proposed requirements are inadequate to ensure improvement in water quality

We strongly approve of the requirements for Tier 3 dischargers, particularly the measures to control nutrients and meet a nutrient balance ratio target. Unfortunately, there is a large dropoff in requirements for Tier 2 growers, and an even greater dropoff for Tier 1 growers, ensuring that water quality will continue to degrade. The Order also lacks the flexibility needed to require additional measures from Tier 2 dischargers, or to move them to Tier 3 if conditions warrant.

We appreciate the general directive that “all dischargers must minimize nutrient discharges from fertilizer and nitrate loading to groundwater so receiving water bodies meet water quality standards and safe drinking water is provided.” Unfortunately, the limited groundwater protection requirements of the program ensure that this cannot happen. Only Tier 3 has requirements stringent enough to protect groundwater, and the program does not provide for increasing restrictions for Tier 1 or Tier 2 dischargers (or a change in the Tier under which the operation is classified) if groundwater monitoring shows continuing degradation.

We recommend that Tier 2 dischargers with potential to impact groundwater also be required to develop and submit certified INMPs as part of their Annual Compliance Document. In addition, if groundwater degradation continues in areas populated by Tier 1 or Tier 2 dischargers, these operations should be subject to greater regulation, either by moving them up to a higher tier, or by revoking the waiver and issuing a WDR.

III.No standards or time schedules are identified for achievement of groundwater objectives

Despite the Board's expressed commitment to improve drinking water quality for communities dependent upon groundwater, the draft order includes no specific targets for improvement of groundwater quality. Staff states that "in a separate but related effort regarding regulation of agricultural discharges, staff is evaluating and developing a time schedule for actions and to meet interim milestones that extends out to 2025." It is unknown whether this schedule will include groundwater or ensure full compliance with water quality objectives. Moreover, a fifteen year timeframe for full compliance with water quality objectives exceeds the timeframe for reasonable compliance that is used in other nonpoint source programs. The schedule referred to should be completed and included in this order for public review to ensure that this program has clear targets for meeting water quality objectives.

The waiver program currently in place also contains no requirements for improvement of groundwater quality- with the result that groundwater has not improved in the six years since its implementation. We are extremely concerned that the limited groundwater objectives included in this order will cause an additional delay, and that we will be having this same conversation five years from now.

IV. Monitoring requirements are not sufficient to ensure program's effectiveness at protecting groundwater

The shortcomings of the tiering system recommended by staff are evident in the requirements of the Monitoring and Reporting program. We agree that low-threat dischargers should be able to limit monitoring. Unfortunately, by including small operations that grow high-threat crops in Tier 1 and not basing tier assignments on threats to groundwater, this proposal permits a major pathway for continued groundwater degradation.

We do not agree that minimal monitoring requirements (once every five years) are sufficient for Tier 2 operations. Since Tier 2 operations should include those that pose a threat to water quality, more frequent monitoring is needed to identify water quality trends. If none is found in the five years of the initial waiver, the operation could potentially be reclassified as Tier 1.

V. Enforcement program is not sufficiently defined to ensure compliance

Finally, this order does not adequately define how it will be enforced. The staff report identifies a significant lack of compliance in enrollment and monitoring of the current program; it is unclear how they plan to improve in both areas and also oversee the implementation of this program using the same resources. The economic analysis cites an undefined gain in efficiencies and improved data collection and management as sufficient to provide the resources needed to run the program. A more detailed outline of the intended program and costs would be helpful.

In order to ensure that individual farms comply with the order and, in particular, implement the required management practices, we strongly recommend that the Board or its contractor commit to conducting a minimum number of conduct surprise inspections of at least 5% of growers annually, prioritizing Tier 2 and Tier 3 dischargers, and focusing on operations located in hydrologically vulnerable areas

VI Draft Subsequent Environmental Impact Report fails to analyze cumulative effects of the current proposal.

The analysis of the current draft proposal is inadequate because it assumes that the program as described will achieve water quality objectives. However, since the program exerts minimal oversight over operations under 1,000 acres, that assumption is not defensible. The analysis should look at the cumulative impact of the reduced requirements for smaller operations, particularly in those areas that already have contaminated groundwater basins.

In addition, this SEIR fails to analyze the health impact on communities that must rely upon groundwater that remains contaminated because the amended proposal fails to improve groundwater quality to a level that meets drinking water standards. Given this lack of regulation, the SEIR proposal must assume that water quality will not improve in the timeframe (as staff's 2025 schedule for compliance indicates) and may continue to degrade, and analyze those impacts.

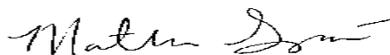
VII. Conclusion

Thank you for providing the opportunity to comment on the November Draft Order. If you have any questions about our recommendations, please feel free to contact us.

Sincerely,



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