Comment Letters

Tentative Waste Discharge Requirements
Discharges from Irrigated Lands within the Central Valley Region for Dischargers not participating in a Third-Party Group

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Dobbas Family Ranch
Jim & Carol Dobbas
PO Box 7 Sattley, CA 96124

Letter 1

March 22, 2013

Dr. Karl Longley, Chair
Jennifer Moffitt, Vice Chair
Jon Costantino, Sandra Meraz, Carmen Ramirez & Robert Schneider, Board Members
Pamela Creedon, Executive Officer
Kenneth Landau, Assistant Executive Officer, Sacramento Office
Clint Snyder, Assistant Executive Officer, Redding Office
Adam Laputz, Irrigated Lands Regulatory Program

Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670
Sent via email: awlaputz@waterboards.ca.gov

Re: Comments on Waste Discharge Requirements General Order for Discharges from Irrigated Lands for Dischargers Not Participating in a Third-Party Group

Dear Board Chair, Board Members, and Board Staff:

As irrigators in the Upper Feather River Region operating a seasonal grazing ranch on native meadowlands at 5000 ft elevation, we echo many of the prior points submitted by the California Farm Bureau and our astute neighbors in Kern County at the opposite end of the Central Valley Region. We add the following unaddressed observation upon review of the Individual WDR:

Scope of Coverage Findings

> 2. The Board intends to issue general WDRs for geographic areas and/or commodities that will be administered by third-party groups. **This order will apply to Dischargers who fail to enroll** under applicable Board-adopted WDRs administered by a third-party or **who fail to meet the obligations** described in the applicable third-party administered WDRs. 1

While a punitive alternative, such as the proposed Tentative Individual WDR for "dischargers who fail," may be needed to address non-compliance by wayward individuals; the past Ag Waiver program and now the current WDR program, both "fail" to recognize or reward successful individual farm water quality projects implemented by growers throughout the Central Valley Region. Certainly growers who continue to take the lead in meeting the water quality requirements of the Porter Cologne Clean Water Act and the non-point source program lack a program track that acknowledges excellence rather than focus on failures. 2

Based on initial statements, draft documents, and the PEIR offered by the Regional Board and its Staff throughout the longterm program process, which appeared to acknowledge the need to identify and recognize low-vulnerability regions and low-threat agricultural practices for the longterm ILRP; we had anticipated an Individual WDR that would provide "successful" individual farm operations a cost-effective program alternative, perhaps through a model certification program. This type of program could be implemented at minimal cost to the State Water Board, the Regional Board and the fully compliant farmer or rancher, while ensuring that water quality is protected by these operations.

In lower-threat geographic areas and commodity practices, where ILRP monitoring results and other monitoring programs support a more tailored program, an individual option which recognizes the regional characteristics as well as advanced individual efforts and water quality successes has merit and warrants development by the Regional Board and its Staff.

Long overdue in this regulatory program is a track that recognizes and rewards individual farm operations which have implemented a large number of scientifically supported and documented water quality practices for their particular commodity, especially in geographic areas recognized as low-vulnerability regions where further increased regulatory burden has no ground to gain.

We concur with many of the comment points made by South Valley Farms, which shares points of reasonable concern for this purposely punitive-by-design Tentative Individual WDR. This type of Individual WDR serves to hold growers liable for problems in other regions, which they neither caused, nor currently contribute to, nor can they fix by sharing the same yoke; yet are put under a similar level of regulatory burden as the regions with documented risks.

With this Tentative Individual WDR, Central Valley Staff has successfully drafted an individual option which essentially corrals all farmers and ranchers back into an identical program management penlot.

We ask Mr. Longley as Board Chair and each Individual Board Member to challenge your staff to: 2
1. Review and disclose the fuzzy math and time study used to set costs to an Individual WDR, and more importantly;
2. Develop an Individual WDR that would serve as a program model for progressive growers in low threat regions who have implemented a maximum, or near maximum, number of beneficial management practices to protect water quality and can gain little, except needless added economic burden in our struggling rural agricultural communities, by further investments in program management overhead.

Recognition of successful or model individual dischargers by designing a program track such as a prototype water quality certification program is not out of the scope of the PEIR; yet remains undeveloped. The Pilot Program under the current Ag Waiver appears to come close as the third-party low-threat alternative, yet offers minimal benefit for actual cost incurred by its participants, even with a high level of water quality practices documentation and supportive water quality monitoring data. For this reason other low-threat areas have been reluctant to take on this option.

Additionally, in parallel, advancing third-party WDRs which offer only frequency of monitoring as the primary variable between high and low vulnerability areas, again, results in an inefficient, unwieldy, and economically crippling one size fits all regulatory program.

We encourage you to give credibility to a constructive common sense approach which recognizes, equally, the value of water quality and the imperative charge to sustain agriculture in California.

Respectfully,

Jim and Carol Dobbas
Dobbas Family Ranch

Letter 2

COUNTY OF KINGS
BOARD OF SUPERVISORS

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RICHARD VALLE – DISTRICT 2
AVENAL, CORCORAN, HOME GARDEN & KETTLEMAN CITY

DOUG VERBOON – DISTRICT 3
NORTH HANFORD, ISLAND DISTRICT & NORTH LEMOORE

TONY BARBA – DISTRICT 4
ARMONA & HANFORD

RICHARD FAGUNDES – DISTRICT 5
HANFORD & BURRIS PARK

April 9, 2013

Central Valley Regional Water Quality Control Board
Attn: Adam Laputz
11020 Sun Center Drive, No. 200
Rancho Cordova, CA 95670-6114
AWLaputz@waterboards.ca.gov

Re: ***County of Kings comments on the March 2013 Tentative Order: Central Valley Region Waste Discharge Requirements from Irrigated Lands***

Dear Mr. Laputz:

The Board of Supervisors for the County of Kings respectfully submits the following comments on tentative Order R5-2013-xxxx "Waste Discharge Requirements General Order Dischargers from Irrigated lands within the Central Valley Region for Dischargers Not Participating in a Third-Party Group" (hereinafter the "tentative order"). The County's three main concerns with regards to the tentative order are: (1) the cost of compliance, (2) the broadness of the tentative order, and (3) the lack of scientific analysis of both beneficial impacts from the tentative order and legacy issues with nitrates.

First, the estimated cost range for compliance with the tentative order would be cost prohibitive to the continuation of several farming operations in the Central Valley. Agriculture is the heart of the Central Valley and has vast impacts on the economy of the Central Valley and of the County of Kings in particular. According to the County of Kings 2035 General Plan over 90% of the County's land is devoted to agricultural use. (See 2035 General Plan, Pages I-3, LU-18.) Numerous small scale farming operations are prevalent throughout the County, who would be unduly burdened by the potential costs of compliance with the tentative order. Furthermore, the lower tentative costs are based on the assumption that local farmers have already implemented expensive infrastructure improvements. Farmers who have not already made these improvements face exponentially higher initial potential costs of compliance with the tentative order which could result in the fallowing of land and loss of jobs. 1

Second, the tentative order creates uncertainty as to the scope and requirements for implementation. For example, the tentative order is unclear as to where the high and low vulnerability areas are located within the Central Valley, what the criteria will be used for determination of vulnerability, and how often the designations will be changed. Furthermore, there are not any exceptions for small scale irrigators, i.e. persons who only operate onsite fruit stands, etc., for whom compliance with the tentative order is 2

economically infeasible. Finally, the tentative order does not appear to take into consideration that groundwater is fluid and determining the exact source and point of nitrate contamination from samples is difficult. Therefore, classification of areas based on vulnerability and increasing the compliance requirements for these areas would also be a difficult and subjective classification, potentially creating a disparity among agricultural operations. 2

Third, there is a lack of scientific analysis of the beneficial impacts from the tentative order and of the source of the initial nitrate concentration. The tentative order appears to be in response to the University of California, Davis study "Addressing Nitrate in California's Drinking Water with a Focus on Tulare Lake Basin and Salinas Valley Groundwater." While this study notes excess concentrations of nitrates in the Central Valley there is little consideration for when the nitrate contamination occurred. In order to remedy the nitrate concentration it is vital to determine the source and timing of contamination. While past farming practices may have contributed to problem, there are several other sources of contamination and current agricultural practices have greatly reduced the amount of nitrates in use, although such improvements will take years to be visible in tested groundwater. Determining the timing of the nitrate contamination is essential to solving the problem and ensuring that the tentative order will address the actual source of the contamination. Carbon dating nitrogen is a valid scientific tool for this purpose. (Please see P.S. Bleifuss, G.N. Hanson, and M.A.A. Schoonen, "Tracing Sources of Nitrate in the Long Island Aquifer System," http://www.geo.sunysb.edu/reports/bleifuss/.) Accordingly, we respectfully request that your Board engage in additional scientific studies, including the carbon dating of nitrates, before enacting the tentative order which would place potentially severe economic burdens on agriculture in the Valley without removing the nitrate contamination from groundwater. 3

Thank you for your consideration of these comments on the March 2013 tentative order.

Sincerely,

Doug Verboon

Doug Verboon
Chairman

SUPERIOR FRUIT RANCH INC.

Letter 3

4801 E. WHITMORE CERES, CALIFORNIA 95307 PHONE (209) 538-1166

CALIFORNIA REGIONAL WATER BOARD / Adam Laputz April 12, 2013

I am submitting some thoughts on behalf of Superior Fruit Ranch, Inc., a family farming operation of 107 years, in Ceres, County of Stanislaus.

I agree that the mandate to improve the states' water is a huge (and in many cases, necessary) undertaking, however, the tentative waste discharge requirements for both individuals and coalitions have many flaws.

The common goal is to find areas of mal constituent off-flows and ground water penetration and mitigate the causes.

- Concentration excesses have been established.
- Ideals and parameters have been set.
- Deadlines and fines for non-compliance have been noted...
  ...but a structured, well thought path has not (in my evaluation of the program) been laid out.

1

Fees vary greatly between the state's (Individual) and Coalition (Group) rates – using a 'one size fits all' strategy, even though different operators generate different methods and results – on unequal soils and topography. Coalitions have been granted approval without regard to any proven methods or results.

2

I believe the state must hire a third party analytical group, set up a grid-type sampling of like/kind soils and topography, set per acre fees based on initial start-up, test wells and lab fees, THEN design a thorough plan to mitigate 'hot spot' finds through research. Once established, best management practices on each type soil and topography can be produced and disseminated through county ag extension and trade services throughout the state as well as determine a 'real cost' assessment for future analytical costs on a case-by-case basis.

3

The state has additional needs to address in order to enhance the process:

- Increased surface water (reservoir) storage and access - to the tune of tens of thousands of acre feet – to lessen the use of ground-sourced water.
- Better accounting of city/municipal effluents into soils and waters.
- Stronger action against illegal dumping and drug waste.
- Long-term plans for access of secure water supplies for city, municipal, landscape, new agricultural and wildlife needs.

4

In short, to achieve the end result of 'improved waters', there must be a very wide-cast net, one which incorporates surface water retention, proper management practices of mal effluents, water management, a known and proven path for future needs and requirements, outreach and education on proven, practical methods as well as mitigation, enforcement and penalization procedures for gross polluters – or this action yields nothing.

I sincerely hope that your board will take some of these ideas to heart before proceeding in what may be viewed as a piecemeal, short-sighted tax on irrigated land owners and present a quality, well planned, holistic process that encompasses the needs and spirit of your mandate.

Thank you for your consideration.

S. Scott Long, General Manager, Superior Fruit Ranch, Inc.

Letter 4

From:	Elissa Callman
To:	Laputz, Adam@Waterboards
Cc:	Karkoski, Joe@Waterboards; Fregien, Susan@Waterboards; Dave Brent; Michael Malone; Bill Busath; Sherill Huun; Pravani Vandeyar; Dave Phillips; Gwaltney, Dan; butlervi@saccounty.net; Williamsf@saccounty.net; danm@cityofwestsacramento.org; Bonny Starr (bstarr@usamedia.tv); Lai, Hubert; ewhite@ebmud.com
Subject:	Comments from Sacramento River Source Water Protection Program on the Tentative Waste Discharge Requirements General Order for the Irrigated Lands Program for Dischargers not Participating in a Third-Party Group
Date:	Friday, April 19, 2013 12:06:27 PM

Dear Mr. Adam Laputz:

The Sacramento River Source Water Protection Program appreciates the opportunity to provide comments on the Tentative Waste Discharge Requirements General Order for the Irrigated Lands Program for Dischargers not Participating in a Third-Party Group (Individual WDRs). The Sacramento River Source Water Protection Program strives to protect the quality of the Sacramento River water supplies of the Cities of Sacramento and West Sacramento, Sacramento County Department of Water Resources, and East Bay Municipal Utility District for the current and future generations. We serve drinking water to more than 600,000 people in Northern California. We have been actively tracking the development of the Long Term Irrigated Lands Regulatory Program (ILRP) orders, because they have the potential to impact our source water quality.

We would like to thank Board staff for reviewing our previous comments on the proposed Order in January 2013 and revising the surface water monitoring from fecal coliform to *Escherichia coli* (*E. coli*) and adding flexibility for revising the list of pesticides to be monitored. We reviewed this Tentative Individual WDRs and associated Monitoring and Reporting Program (MRP) and have five comments related to the Order and its attachments. Two of these comments remain from our previous input and three are new comments directly addressing revisions or additions to the proposed Order.

Comment Number 1 – Groundwater Management Practices Exemption (MRP Attachment B, Section III B. Surface Water Monitoring, Table 1)

The MRP (Attachment B, Monitoring Program, Section III. B., Table 1, footnote c, page 5) appears to provide an exemption from required surface water pesticides monitoring for growers following California Department of Pesticide Regulation's (DPR's) runoff groundwater protection area management practices. These DPR management practices do not apply to all pesticides, rather only a select group of pesticides, in state-designated groundwater protection zones. Areas outside of these zones and pesticides not covered by these DPR regulations do not have oversight or enforcement of management practices. Even more significantly, these management practices were not designed to stop the transport of pesticides to surface water, or to address pesticides other than those impacting groundwater. For example, they do not address pesticides like pyrethroids that are transported to surface water via soil particles in surface water runoff. In addition, surface water may be at risk to pesticide contamination through additional pathways such as aerial overspray, aerial drift, and levee seepage. 1

We are very concerned with the use of groundwater protection measures as an exception to surface water monitoring requirements and request that Board staff review this exception and consider its removal. If this exception is retained, we would recommend Board staff to revise the current exception to clarify that it is limited to only groundwater protection areas and only to those pesticides where growers have pesticide application permits requiring the use of the DPR management practices. 1

Comment Number 2 – Selection of Pesticides Subject for Surface Water Monitoring (MRP Attachment B Sections III B Surface Water Monitoring and V Pesticides [Surface Water])

Pesticide monitoring is required under this order if a discharge (whether irrigation or storm water derived) occurs within 6 months of pesticide application. We appreciate that Board staff has modified this section to include language that allows the list of pesticides to be reviewed and updated as necessary. We request that Board staff expand the new text in Section V to describe how that review and update process will be implemented, i.e. what would trigger a review, what would be the timing of reviews, and would public input be included in the review and update process. Because this is a long-term order, we believe that it is important for this process to be available to the public. 2

Another important concern is that the pesticide list for water quality monitoring still does not include several of the pesticides of interest to drinking water beneficial use such as 2,4-D, 1,3-dichloropropene, methyl bromide, atrazine, and methamidophos. Each of these pesticides has significant agricultural usage in the Sacramento River Valley and has either a relatively low USEPA human health benchmark [[1]], drinking water Health Advisory level [[2]], or drinking water standard [[3],[4]]. There is very limited, if any, Conditional Waiver Program data for these constituents in the Sacramento Valley. We continue to recommend that the list be expanded to include these pesticides.

Comment 3 – Monitoring Frequency (MRP Attachment B Section III. A. General Monitoring Requirements)

Under Section A, Item 2 has been added which allows for a reduction in monitoring requirements if there have been three years with no exceedences. The petition may be granted in full or require annual certification of water quality management practices. We have strong concerns with this new item as it is currently written. Based on thiobencarb monitoring data from the Rice Pesticide Program it is clear that three years without an exceedence of a performance target does not mean that there is no future risk. Agricultural practice changes and pesticide formulation changes can very quickly cause impact to surface water quality. Three years is also an insufficient time period for evaluating whether a reduction will occur on a long-term basis, due to the range of flow and weather conditions that can contribute to water quality impacts. Moreover, the permit does not include consideration of trends—increasing concentration trends, even if they are below targets, can point to possible future concerns. We believe that a long-term reduction in monitoring should not be granted 3

in full unless the active ingredients are no longer being used in the area. Any monitoring reductions should include an assessment of not only water quality exceedences, but degrading trends as well. Any monitoring reductions should be accompanied by annual certifications related to the water quality management practices and should require a confirmation sample once every three years during the period of peak risk to surface water. 3

Comment Number 4 – Definitions (MRP Attachment B Section III B. Surface Water Monitoring)

Table 1 continues to not require surface water monitoring when discharge flows are "immeasurable" or not "measurable". We request that a clear definition of, or method for determining, measurability be provided. We remain concerned that there needs to be consistent implementation of this term since it determines whether surface water monitoring will be implemented or not. 4

Comment Number 5 – TOC Monitoring (MRP Attachment B Section III B. Surface Water Monitoring)

We appreciate that there will be direct monitoring of storm water and irrigation tailwater under this order which will provide the highest level of information available to assess the impact of the irrigation activities and effectiveness of best management practices. We have noted that the list of constituents required to be monitored in Table 2 is still missing a key indicator related to the drinking water beneficial use; total organic carbon (TOC) as measured in the water.

Agriculture is a known source of TOC to the water supply. TOC is a critical constituent in drinking water treatment. TOC interacts with oxidants like chlorine and ozone during treatment to form disinfection by-products, which are regulated in the treated water because they cause health risks. The Water Board currently requires TOC to be monitored in both discharge and ambient monitoring sites for large municipal stormwater systems and some industrial dischargers. There has been some monitoring of TOC as part of the Conditional Waiver Program, and the detects have been at levels of interest to drinking water[[5]]. The proposed Regional Board's Drinking Water Policy, once adopted, will specifically clarify that the existing narrative water quality objective for chemical constituents includes drinking water chemical constituents of concern, such as organic carbon. We believe that all irrigated lands program dischargers should be required to sample for TOC in the surface water runoff, and it should be added to Table 2 of the Individual Order with a frequency of D1 and D2. 5

Please do not hesitate to contact me if you have any questions on our comments or need additional information.

Sincerely,

Elissa Callman
Senior Engineer
City of Sacramento Dept. of Utilities
916-808-1424
ecallman@cityofsacramento.org

[1] USEPA Human Health Benchmarks for Pesticides;
http://iaspub.epa.gov/apex/pesticides/f?p=HHBP:home:1641119412947801
[2] USEPA 2012 Edition of the Drinking Water Standards and Health Advisories;
http://water.epa.gov/action/advisories/drinking/upload/dwstandards2012.pdf
[3] USEPA National Primary Drinking Water Regulations;
http://water.epa.gov/drink/contaminants/index.cfm
[4] California Department of Public Health Maximum Contaminant Levels;
http://www.cdph.ca.gov/certlic/drinkingwater/Pages/Chemicalcontaminants.aspx
[5] Sacramento River Watershed Sanitary Survey 2010 Update Report. Starr Consulting. December 2010. pp. 4-23 through 4-30.

Letter 5

April 22, 2013

Karl Longley
Chair, Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670

Re: Comments on final draft Waste Discharge Requirements for Individual Growers

Dear Mr. Longley,

As representatives of environmental and environmental justice communities located in the Central Valley and throughout California, our organizations have closely followed the development of the Water Board's development of Waste Discharge Requirements for Irrigated Agricultural Discharges. We are deeply troubled by the changes in the current draft order for Individual growers since the issuance of the draft we commented on in January of this year. Not only have the problems we pointed out at that time remained in the document, but significant changes have been made that make the order inadequate to effectively and efficiently monitor compliance with the requirements of the order. Our comments on those changes are similar to those provided in response to the April 15 Tulare Lake Basin draft order, which we have referenced and attached to this letter.

Need for the order

The Central Valley Regional Water Quality Control Board has an obligation under the Porter Cologne Water Quality Act to protect the waters of the state for current and future beneficial uses. This includes the water supplies for communities currently suffering from nitrate contamination, and those communities whose water supplies will be affected in the future if nitrate loading to groundwater is not reduced. 1

As the board correctly states, it will take decades to fully remediate contaminated groundwater basins. What is not stated is that improvements in nitrate contamination of shallow wells will

occur on a shorter timescale; in some areas of the valley, nitrate concentrations for shallow domestic wells varies seasonally.

So the Board has three obligations; to improve water supplies where possible in the short term; to limit the spread of existing contamination to current high quality waters; and to ensure long-term restoration of the aquifer. The Board's orders refer only to the long-term issue, ignoring the more pressing and potentially solvable short-term issues. 1

An order with strict timelines, monitoring and enforcement is required to meet these three obligations; this order falls short.

Obligations under the Human Right to Water Act

As stated in our April 15 comments on the Tulare Lake Basin draft order, newly added finding 27 is not sufficient to comply with the recently adopted statute. We've provided those comments as an addendum to this letter. 2

Draft order fails to comply with Anti-degradation policy.

This draft order contains the same or similar language that we have already petitioned the State Board to repeal. Our April 15 comments on the Tulare Lake Basin order summarize the comments that we have already provided through submission of the petition of the East San Joaquin River WDR (R5-2012-0116) filed on behalf of AGUA and other petitioners on January 7, 2013.

We recommend the following changes in response to new edits in the order in order to comply with the Water Boards' anti-degradation policy: 3

- In response to staff's decision to avoid the term "limited" degradation in the order, the Board should establish a maximum amount of degradation at a level below the full degradation to the water quality objective that is currently allowed;
- Page 18, general provisions: restore performance standards contained in the prior draft that management practices prevent pollution and nuisance, and achieve and maintain water quality objectives and beneficial uses

The Information Sheet (Attachment A, page 32) provides a justification of the order in protecting communities. "Because the Order prohibits degradation above a water quality objective and establishes surface water and groundwater monitoring programs to determine whether waste discharges are in compliance with the Order's receiving water limitations, local communities should not incur any additional treatment costs associated with the degradation authorized by this Order. In situations where water bodies are already above water quality objectives and communities are currently incurring treatment costs to use the degraded water, the requirements established by this Order will institute time schedules for reductions in irrigated agricultural sources to achieve the Order's receiving water limitations; therefore, this Order will, over time, work to reduce treatment costs of such communities". 3

As we have already stated in our petition and our April 15 comment letter, this order allows degradation above water quality standards for up to 10 years, and has language in place for that period to be extended. This allows the area of contamination to increase, as predicted in the UC Davis report, and provides no assurance that current or future water quality for communities be protected. Furthermore, to the extent that the order allows for further degradation, the Board must engage in an analysis to determine if further degradation is consistent with maximum benefit to the people of California.

Monitoring and reporting

We continue to have concerns about the amount and type of information that will be made available to the Board and/or the public. In the case of this order, please clarify whether and how the following documents will be reviewed by staff and made available to the public; 4

- Management Practices Evaluation Workplan (new in this draft) for growers in high vulnerability areas;
- Management Practices Evaluation Report
- Groundwater Exceedance Plans;

Language has been added to the MRP (Page 2, paragraph III.2) that allows the Executive Officer to reduce monitoring requirements after 3 years if no exceedances have been detected. This language should be expanded to include degradation. We recommend that the first sentence be expanded to read "….there are no exceedances, or if monitoring shows no trend of degradation for any monitored constituent." 5

The Management Practices Evaluation Report is not due until year 8 of the order, two years before compliance is required. Yet, the MRP language (page 14, IV.F.2) allows growers whose practices are shown to be insufficient through that reporting process to propose and implement new practices under a ***new timetable*** negotiated with the Executive Officer. There is no indication that this failure will trigger enforcement action, and it is unclear how, with this requirement, compliance can be achieved in the 10-year time frame required by the order. In fact, this provision seems like an endless loop that growers can exploit to avoid complying with water quality objectives. 6

We are glad to see that the MRP continues the reporting requirements for total nitrogen application and estimated crop need. As we have stated previously, this provides key information on the total nitrogen loading, something that the nitrogen ratio requirement in the coalition order fails to do.

Conclusion

We appreciate the opportunity to review this order and provide input. We urge the board to revise the final order to remedy the problems we've identified and ensure that it complies with existing law.

Sincerely,

Laurel Firestone
Co-Executive Director and Attorney at Law
Community Water Center

Jennifer Clary
Water Policy Analyst
Clean Water Action

Phoebe Seaton
California Rural Legal Assistance Foundation

Letter 6

CALIFORNIA FARM BUREAU FEDERATION
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Sent via E-Mail
AWLaputz@waterboards.ca.gov

April 22, 2013

Adam Laputz
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670-6114

Re: Comments on the Tentative WDR and MRP for Discharges from Irrigated Lands for Individual Growers

Dear Mr. Laputz:

The California Farm Bureau Federation ("Farm Bureau") is a non-governmental, non-profit, voluntary membership California corporation whose purpose is to protect and promote agricultural interests throughout the state of California and to find solutions to the problems of the farm, the farm home, and the rural community. Farm Bureau is California's largest farm organization, comprised of 53 county Farm Bureaus currently representing more than 74,000 agricultural, associate, and collegiate members in 56 counties. Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California's resources.

Farm Bureau appreciates the opportunity to provide comments on the Tentative Waste Discharge Requirements ("Tentative WDR") and Monitoring and Reporting Program ("MRP") for Discharges from Irrigated Lands for Individual Growers and respectfully presents the following remarks, many of which were previously raised by Farm Bureau in its comments on the Draft WDR.

General Order Page 1, Finding 1—Definition of "Waste"

The Tentative WDR seeks to regulate discharges of "waste" from irrigated lands. As referenced in the footnote to Finding 1, Attachment E defines the term "waste" to not only include the statutory definition found in Water Code section 13050(d), but also adds additional language to include the regulation of "earthen materials, inorganic materials, organic materials such as pesticides and biological materials" as wastes which "may directly impact beneficial uses or may impact water temperature, pH and dissolved oxygen." (Tentative WDR, Attachment E, p. 5.) No rationale is provided for the overly 1

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broad expansion of a statutorily defined term; as such, the term "waste" should be limited to its definition found in Water Code section 13050(d).

General Order Pages 8-9, Findings 27-31—Compliance with the California Environmental Quality Act

The Tentative WDR relies upon the environmental analysis conducted in the Program Environmental Impact Report ("PEIR") and concludes that "[a]lthough the Order is not identical to any of the PEIR alternatives, the Order is comprised entirely of elements of the PEIR's wide range of alternatives." (Tentative WDR, p. 8, ¶ 28.) Relying on such analysis, the Tentative WDR further concludes "the PEIR identified, disclosed, and analyzed the potential environmental impacts of the Order" and the "potential compliance activities undertaken by the regulated Dischargers…fall within the range of compliance activities identified and analyzed in the PEIR." (*Ibid.*) Notwithstanding pending actions challenging the adequacy of the PEIR, the Tentative WDR is not within the realm of alternatives analyzed within the PEIR, but rather goes beyond those alternatives as it includes provisions substantially different from elements in those alternatives, especially alternative 5. These new components do not represent merely a "variation" on the alternatives in the PEIR but rather are elements that were not thoroughly considered previously and are likely to result in the imposition of new burdens on irrigated agricultural operations that that would have a significant and cumulatively considerable impact on the environment. 2

Given the vastly new provisions in the Tentative WDR, such as provisions creating end-of-field discharge limitations as well as the farm management performance standards, not all potentially adverse environmental impacts of the Tentative WDR have been identified, disclosed, and analyzed in the PEIR. Thus, reliance on the PEIR for CEQA compliance is inappropriate.[1]

General Order Page 10, Finding 34—California Water Code Sections 13141 and 13241

Pursuant to the Water Code, the Regional Board is obligated to consider costs associated with the entire Long-Term Irrigated Lands Regulatory Program, as well as each individual general order, such as the Individual WDR. (Wat. Code, § 13141.) Finding 34 incorrectly states that Section 13141 "does not necessarily apply in a context where an agricultural water quality control program is being developed through waivers and waste discharge requirements. (Tentative WDR, p. 10, ¶ 34.) Nothing within Section 13141 provides such limitations. Rather, a proper reading of Section 13141 *requires* looking only at the plain meaning of the statutory language. (*Riverview Fire Protection Dist. v. Workers' Comp. Appeals Bd.* (1994) 23 Cal.App.4th 1120, 1126, ["we 3

[1] Farm Bureau also questions the Regional Board's authority to require mitigation measures within the Tentative WDR for farm level activities. Implementation of management practices at the farm level, which is the heart of the WDR, is not subject to a discretionary approval by the Regional Board. (See Pub. Resources Code, § 21080, CEQA generally applies only to discretionary projects.) Mitigation measures that cannot be legally imposed need not be proposed or analyzed. (CEQA Guidelines, § 15126.4(a)(5).)

first look to the plain meaning of the statutory language, then to its legislative history and finally to the reasonableness of a proposed construction."].) Upon examining the plain language of Section 13141, it does not state or imply that an estimation of costs is only required if an agricultural water quality control program is adopted into a Basin Plan. Rather, the plain and easily interpretable language states that "prior to implementation of *any* agricultural water quality control program, an estimate of the total cost of such a program, together with an identification of potential sources of financing, shall be indicated in any regional water quality control plan." (Wat. Code, § 13141.) Therefore, notwithstanding the fact that this agricultural water quality control program, the Long-Term Irrigated Lands Regulatory Program, is comprised of waste discharge requirements, the Regional Board is still statutorily obligated to conduct a cost estimation of the program at large and the individual WDRs. Given that this Tentative WDR proposes new costly regulatory components not previously analyzed during the environmental review stage, the Regional Board must analyze, evaluate, and estimate all of the costs of these new regulatory requirements. 3

General Order Page 15, Provisions II. A and B—Receiving Water Limitations

The use of "shall not cause *or contribute*" to an exceedance of applicable water quality objectives is overly expansive and creates an unreasonable standard that is undefined, ambiguous, and holds farmers and ranchers liable for even the smallest de minimus contribution. To remedy this, discharge limitations for both surface water and groundwater should be rewritten to state "wastes discharged shall not cause an exceedence of applicable water quality objectives in surface water [or the underlying groundwater], unreasonably affect applicable beneficial uses, or cause a condition of pollution or nuisance." 4

General Order Page 16, Provision III. A. 8—Settling Ponds, Basins, and Tailwater Recovery Systems

As currently written, Provision 8 requires the construction of settling ponds, basins, and tailwater recovery systems, thus dictating the manner in which individual growers minimize sediment and erosion. Given that the Water Code does not provide the Regional Board with the authority to mandate or dictate specific management and business practices to be undertaken by a landowner to reach the applicable discharge goal, (Wat. Code, § 13360(a)), it is recommended that Provision 8 be deleted or the words "where applicable" be added to the beginning of Provision 8. 5

General Order Page 20, Provision VI. B / MRP Page 14, Provision C—Farm Water Quality Plans

Farm Bureau is concerned about maintaining the confidential nature of the Farm Water Quality Plans ("FWQPs"), as information within these plans contains intellectual property, trade secrets, and proprietary information, much of which has no correlation or nexus to the Regional Board's authority to regulate water quality. Prior to any request for the entire FWQP to be submitted, the Regional Board must make a finding showing the necessity of the data and information required to be submitted and how such data is related to water quality. Even upon submittal, such information must remain 6

confidential. The Porter-Cologne Act explicitly provides protection to growers for intellectual property, trade secrets, and proprietary information that may be within a FWQP, monitoring report, or technical submittal:

> When requested by the person furnishing a report, **the portions of a report that might disclose trade secrets or secret processes may not be made available for inspection by the public but shall be made available to governmental agencies for use in making studies**. However, these portions of a report shall be available for use by the state or any state agency in judicial review or enforcement proceedings involving the person furnishing the report.

6

(Wat. Code, § 13267(b)(2), emphasis added.) Thus, the Regional Board must acknowledge that farm specific information, including pesticide application, nutrient management, irrigation practices, crop rotations, best management practices, etc., is intellectual property, trade secrets, and proprietary information that must remain confidential.

Thank you for the opportunity to provide our comments and concerns. We look forward to further involvement and discussion with the Regional Board on the Tentative Waste Discharge Requirements and Monitoring and Reporting Program for Discharges from Irrigated Lands for Individual Growers.

Very truly yours,

Kari E. Fisher
Associate Counsel

KEF:pkh

Letter 7

PARAMOUNT
FARMING COMPANY

April 22, 2013

VIA E-MAIL TO:

Attn: Adam Laputz

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

Dr. Karl Longley, Chair
Jennifer Moffitt, Vice Chair
Sandra Meraz, Board Member
Jon Costantino, Board Member
Carmen Ramirez, Board Member
Robert Schneider, Board Member
Pamela Creedon, Executive Officer
Clay Rodgers, Assistant Executive Officer
Central Valley Regional Water Quality Control Board

Re: Comments re tentative "Waste Discharge Requirements General Order for Discharges from Irrigated Lands Within the Central Valley Region for Dischargers not Participating in a Third-Party Group" (March 2013)

Dear Board Chair, Vice Chair, Members, Ms. Creedon, Mr. Rogers and Mr. Laputz:

The Central Valley Regional Water Quality Control Board ("Regional Board") recently released for review the tentative Waste Discharge Requirements General Order for Dischargers from Irrigated Lands Within the Central Valley Region for Dischargers not Participating in a Third Party Group ("Tentative Individual Order"). The below comments on the Tentative Individual Order are submitted on behalf of Paramount Farming Company and Paramount Citrus and their related entities ("Paramount"). Paramount is a grower and processor of almonds, pistachios, pomegranates, and citrus.

Paramount has devoted significant time and resources to engage in the development of the various general orders making up the proposed Long-Term Irrigated Lands Regulatory Program ("ILRP") and opposes the ILRP as currently structured. Paramount and others have tirelessly

tried to engage the Regional Board throughout the ILRP development process, both within, and outside, the formal comment process, including presentation of regulatory alternatives that are supported by sound science, consider economic feasibility and account for site specific variations. Regrettably, to date, the Regional Board has not responded. The ILRP regulatory framework, including the requirements in the Tentative Individual Order, has gone largely unchanged throughout the development process and as proposed could devastate the agricultural economy of the Central Valley without achieving the Regional Board goal of protecting and preserving groundwater. Paramount opposes the current ILRP as it assumes all irrigators are dischargers, is unnecessarily costly, fails to meet the "reasonable" standard of Water Code Section 13241, has lacked a meaningful stakeholder process and has ignored considerations of alternatives presented throughout the process. Paramount feels the Regional Board's "rush to regulate" has merely been a deadline driven process to apply a standardized and ineffective administrative burden on landowners with no measurable benefit to groundwater quality. 1 2 3

For sake of brevity, Paramount incorporate by reference the comments submitted by the Kern River Watershed Coalition Authority ("KRWCA") and the Southern San Joaquin Valley Water Quality Coalition ("SSJWQC") on the tentative Waste Discharge Requirements General Order for Growers within the Tulare Lake Basin Area that are Members of a Third Party Group which provide detailed technical background and research supporting the above topics. Additionally, Paramount incorporates its previous comments submitted on the Eastside Order, the TLB Order and the Individual Order as no substantive changes have been made to the underlying ILRP. We do however feel it is necessary to reiterate key comments that apply to the ILRP as a whole and specifically the Tentative Individual Order as at this time it is unclear if the Regional Board will develop reasonable, scientifically justified and collaboratively reached "Third Party" administered orders for the various areas in which Paramount is a grower and landowner.

The ILRP should properly evaluate the cost and benefits of the reporting and monitoring requirements, assess potential alternatives, define and account for baseline conditions by specific geographic areas and provide measurable goals for each level of regulation, that if obtained, result in a defined, decreased level of future reporting and monitoring. This should include excluding lands from regulation that overly unusable groundwater. Such a program would incentivize action where needed without burdening growers whose practices are already protective of groundwater or who do not have a "potential to discharge." 4 1

In many instances the requirements set forth in the Tentative Individual Order are more cumbersome than those in the Third Party Orders. The more onerous requirements in the Draft Individual Order appear to be nothing more than the Regional Board's attempt to force growers into a third party to ease its administrative burden. Section 34 of the Tentative Individual Order estimates the annual per acre cost at $179.31, which includes monitoring and implementation and management practices. Based on detailed cost estimates provided to the Regional Board by the KRWCA, the $179.31 annual per acre cost is drastically understated. It is important to note, that a $179.31 per acre annual cost, which we believe is inaccurate, exceeds many growers total current annual water costs and cannot be absorbed without significant and detrimental economic impacts. The Regional Board is bound by Water Code section 13267(b)(1), which is sited in Finding 19 and states in part, "*The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written* 2

explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports."

Finding 20 states, "Technical reports are necessary to evaluate Discharger compliance with the terms and conditions of this Order and to assure protection of waters of the state," however no technical support or cost benefit analysis to support this position is provided. Merely stating the reports are necessary does not support the need. 2

In contrast, Finding 18 recognizes the need to evaluate unique site conditions stating, "Whether an individual discharge of waste from irrigated lands may affect the quality of the waters of the state depends on the quantity of the discharge, quantity of the waste, the quality of the waste, the extent of treatment, soil characteristics, distance to surface water, depth to groundwater, crop type, management practices and other site-specific factors."

The management practices and the associated regulatory reporting requirements, including the MPEW, FWQP, NMP and GWEP in the Tentative Individual Order, should include recognition of site specific conditions that create little or no ability to discharge to groundwater. For these areas, the burden of the cost of reporting does NOT bear a reasonable relationship to the need for the report and is unreasonable. The Regional Board and its staff, have been presented on several occasions with a formal proposal for designating and assessing specific site's "potential to discharge" through the use of a Nitrogen Hazard Index ("NHI"), which is scientifically supportive and cost effective. Rather than burden individual landowners with costly monitoring and reporting, pursuing an approach like the NHI can easily and economically assesses a specific site's potential to discharge. The Regional Board committed to review the NHI proposal and other research submitted by the KRWCA, the SSJWQC and various members, including Paramount, however to date, the Regional Board has provided no response or feedback. The impact the ILRP will have on the agricultural economy deserves the attention and engagement of the Regional Board to consider alternatives and collaborate with growers and local agencies who manage groundwater and understand site specific conditions. Any other approach is only a "rush to regulate." 1

The Tentative Individual Order was prepared based on the Regional Board's certification of a "Final Program Environmental Impact Report for the Long-Term Irrigated Land Regulatory Program" (Resolution No. R5-2011-0017) ("PEIR") which was challenged in court alleging, among other things, that the PEIR violates CEQA (Sacramento County Superior Court, Case Number 34-2012-80001186 [Consolidated Case Number RG12632180]). A Tentative Ruling on March 28, 2013 by the Honorable Judge Timothy M. Frawley stated the PEIR violated CEQA and commanded the Board to, "set aside its certification of the PEIR, and to prepare, circulate, and certify a legally adequate EIR (consistent with this ruling) before proceeding with any additional project approvals." 5

Although the Court has not yet issued a final ruling, the Judge gave no indication that he was going to change his opinion. It is suggested the Regional Board delay approval of the Tentative Individual Order, at least until the completion of the new EIR, and use this time to work cooperatively towards two goals; 1) designing a reasonable and cost effective reporting program that accounts for site specific considerations and 2) assessing and selecting methods to address

drinking water quality issues. We do not believe these two goals can be achieved merely through the on-farm regulations presented in the current general orders.

Paramount supports meaningful, cost effective and collaborative solutions, including, when appropriate, regulation, however opposes the Tentative Individual Order and the current framework being forwarded by the Regional Board in the ILRP process. We ask that you delay adoption of the Tentative Individual Order and other general orders associated with the ILRP, and pursue review of the technical work presented to the Regional Board by the KRWCA, its various constituents and others. Paramount reserves the right to provide further comments on the Tentative Individual Order, pending the outcome of any revisions of the PEIR that is ordered by the Court.

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

Sincerely,

Kimberly M. Brown
Resource Manager

page 1

Letter 8

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Comments on ILRP for Individual Growers

Bud Hoekstra

Costs of Compliance: Farms pollute, and some farms pollute more than others. The ILRP is not built on a strict principle of polluter-pays. The choice of BMP's is an economic decision that the individual farmer makes, and a BMP that costs more will be used less among farmers. The result will be that the cleaner farms pay more for compliance than the polluting farms. If we could measure the environmental degradation of farming operations, we might find that farm A pollutes half of what farm B pollutes, but the cost of compliance conceivably will be the same for both farms. There's no economic incentive to take an extra step. Farmers are not paid for clean water. 1

Incentives; The EPA envisioned regulation through adaptive management: measures + practices. Monitoring was cybernetic, intended to check up on BMP"s to assure that a suite of BMP's actually do work. Under the ILRP, monitoring is forensic, bent on finding exceedances and holding violators' fingers to the flames of regulation. The stated goal of ILRP design was two-fold – minimize the discharge and provide incentives that minimize the discharge. BMP's minimize the discharge, and the ILRP necessarily has to incentivize the best practices, to meet everyone's expectations. I find no incentives, and upon modeling the regulatory program for theoretical organic farms, I see potential disincentives. The cleaner the farm, the greater the cost. 7 CFR 205 recognizes organic farming as a set of "practices …[that] maintain or improve … water quality." If that's true, as the law states, incentives would favor the principles of organic practice. 2

"Incentive regulation" is an unfulfilled promise of the ILRP. I see no incentives. But the idea tantalizes, because incentives can make minimal discharges the reality on the farm. Otherwise, the ILRP is a Don't-cross-the-line type of regulation that allows farmers to stand with their toes to the line and their heels dug in. In the EPA's vision of things, farmers are held accountable for wastes; the ILRP doesn't go that far and merely holds them accountable for exceedances. The failure to furnish incentives is a huge deficit and demerit.

Uninformed staff: The problem that once haunted the waiver ILRP may also come to haunt the WDR ILRP, namely, uninformed staff. Speaking from experience, I can recount my trials and tribulations. The US EPA published a bulletin: ASSESSMENT AND MANAGEMENT OF TOXICS IN THE WATERSHED that listed priority pollutants:

*Contaminated sediments

*Pathogens

*Mercury

*Disinfection by-products

*Pesticides

*MTBE

*Metals

*Endocrine disrupting chemicals

*Synthetic organic chemicals

*Perchlorates

*Nitrites/nitrates

When I did up my NOI, I considered these "main contributors of contamination" and most of them fell in a nonuse category. Those that were incidental to or a part of my operations, I could identify BMP's for their control and management. Pathogens – I used aged or composted manure, and I tilled the manure under to control pathogens. I used horse manure rather than chicken or hog manure to reduce the amounts of nitrates in the application. Mandatory cover crops reduced sedimentation. The one priority pollutant that defied my planning was endocrine-disrupting chemicals. These are found in manures, and I had no BMP's for controlling them - nor had I not assessed them or even understood the problem. So I filed an NOI and I made the suggestion that I test for EDC's, namely estrogens, because of undigested phytoestrogens, steroid estrogens and intestinal exudates in manure. In my description of the farm's history, I also noted that a doper community had run my farm before me, and that meth was their cash crop. Meth is manufacture, and manufacture's pollution is point-source. Nonetheless, I got an NOA from the water board staff rejecting EDC's while strapping me with the burden of testing for meth wastes and toxic litter. I presumed that toxic litter was another synonym for meth wastes, but what neither is, is a main contributor to agricultural pollution. 2

In the EPA's scheme of regulation, farms would have targeted their inputs and discharges with BMP's. The ILRP was more like a loose cannon, aiming at inputs and incidentals all the same. The WDR orders are certainly an improvement over the waiver orders in that regard, but the orders skim over the full range of agricultural chemicals that pollute.

<u>Bad science;</u> Atrazine is a bad-guy pesticide, and volume-wise, it's the most common pesticide found on U.S. farms. 40% of U.S. wells are contaminated with it, and Kolpin's study of EDC's emanating from an Iowa watershed found atrazine in surface runoff. So why, when triazines are known to contaminate runoff and groundwater, do the Individual Grower WDR's target simazine in surface and ground water, but atrazine only in ground water? Why pretend that simazine is the only threat when both triazines are equal contributors when applied in equal measures. Why does the ILRP split hairs – simazine, atrazine, etc – rather than lump all the triazines at 3

once into a single category or group? Why does the ILRP lump manures together, when 5 pounds of chicken manure contain the same nitrogen as 100 pounds of horse manure. Toxicologically, the triazines are functionally the same discharges; chemically, manures differ in composition by animal, and the differences are significant. Yet, the ILRP magnifies the distinctions of the one and blurs the distinctions of the other, contrary to good science..

A car with no brakes doesn't belong on the road. A car sputtering along needs a tune-up, but the car itself is still road-worthy, as it bumps along down the road. Atrazine is a manmade chemical that doesn't belong on the road. It doesn't belong in the natural order of things. Nitrates are natural, and they belong on the farm – but their cycle needs tuning. The ILRP treats closed-loop and open-loop inputs alike, as if there were no difference between an unbalanced cycle that's supposed to be functional and a manmade chemical that is alien to the natural world. 3

The health of the soil has been defined as the capacity to function without interventions. Interventions make discharges. Balancing cycles to achieve a state of health is a management measure.

Bad focus: BMP's will clean water; monitoring won't. Both monitoring and BMP's are regulatory burdens. The ILRP promised incentives but didn't deliver on that golden promise. Incentives take the place of educating farmers. The ILRP can educate farmers in the use of BMP's or the ILRP can incentivize the use of BMP's. The ILRP does neither. Rewarding non-pollution should be the regulatory goal. Someday clean water will be the most important farm product from farms of the future. The ILRP plods rather than prods in that ineluctable direction. What is needed to spiff up the ILRP are powerful incentives that transform the conventional landscape of the farm into something as discharge-free as possible. 2

Conclusion: I don't see the Individual Grower order doing its intended job – minimize the waste discharge of farm pollution without BMP-scaled incentives.

Bud Hoekstra

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