

# **SAN JOAQUIN VALLEY DRAINAGE AUTHORITY**

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July 15, 2013

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

Re: Comments of Westside San Joaquin River Watershed Coalition on Draft 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 Draft 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. As part of the strategy we have asked for the Draft Order to utilize specific dates, rather than some fixed time period after the Notice of Applicability issues. These dates were originally predicated upon the CVWB taking up the WSJR order in December 2013. We understand that the CVWB now expects this Order to come up at its January, 2014 meeting. As 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, we understand that between this administrative draft and the issuance of a proposed Order, Staff will be re-examining provisions addressed in the May 21, 2013, decision of Judge Timothy M. Frawley in Sacramento Superior Court Case Number: 34-2012-80001186 (Consolidated Case Number: RG12632180). While we think that the bulk of the decision's requirements have been addressed in the Draft Order, it is important that the CVWB review the existing information and make revisions to clarify how the Proposed Order meets those judicial requirements. In particular, we expect to see some revision of the Attachment C and D Mitigation Measures and all related provisions to reflect that nothing in the Order requires a Member to undertake additional CEQA review. This was the Regional Board's position in the supplemental briefing and argument of the above litigation and was critical to the Court's ruling.

Third, and as an overarching comment, this new program is groundbreaking and extremely burdensome. Simply put, farmers are going to be overwhelmed by the new and additional requirements in the Draft Order, even with the assistance of the most active and diligent third party groups. Putting farmers out of business (Attachment D, page 16) in order to prevent their use of California's precious water resource would not be the mark of a successful program, and we urge the Board and its staff to be cognizant of the difficulty faced by the regulated parties and realistic as they weigh in on the ongoing development and enforcement elements of the Irrigated Lands Program.

#### COMMENTS ON ORDER

Finding 3, Pages 3-4: In addition to the described districts and refuges, individual landowners/operators outside of any organized district are Members of the WWC and should be included in the basin description. Their parcels are included in the boundaries shown in Figure 1. Recommend change at the end of the first sentence on page 4: "plus additional parcels not within any organized district boundary included on the WWC membership list and depicted on Figure 1."

Section VII A.2, Pages 25-26: We request that the deadline for growers within WWC boundaries that are not currently members to become members be extended to June 30, 2014. That will allow the WWC to confirm membership and include the new members on its membership list submitted on July 31, without a separate update of the membership list.

Section VII A.3, Page 26: If the change for Section A. 2 is made, the period in section VII A.3 would commence July 1, 2014.

Section V 3, Page 24: If the change for Section VII A. 2 is made, the period in Sections V 3 would end June 30, 2014.

Section V 4, Page 24: If the change for Section VII A. 2 is made, the period in sections V 4 would commence July 1, 2014.

Section VII B.2, Page 27: We request that the Executive Officer be given the ability to reduce the frequency of updates and submissions of Farm Evaluations after submission of three annual Farm Evaluations instead of the current proposed flexibility to allow reduced frequency after the submission of four Farm Evaluations. We believe that in some cases three years worth of Farm

Evaluation may be sufficient to demonstrate that year to year changes in Farm Evaluation updates 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 VII D.1.b., Page 28: Again, due to the slight delay in the Board anticipated adoption date and the fact that growers will be more certain of their crop rotation by mid April, we request that the submittal dates be deferred by 45 days, so that the initial submittal would be 15 April 2015, the first certified plan and first Nitrogen Management Plan Summary Report would be 15 April 2016, and then required updates on 15 April annually thereafter.

Section VII D, Page 29: We request that the Executive Officer be given the ability to reduce the frequency of submissions of Nitrogen Management Plan Summary Reports after submission of three annual summary reports instead of the current proposed flexibility to allow reduced frequency after the submission of four summary reports. We believe that in some cases three years worth of Nitrogen Management Plan Summary Reports may be sufficient to demonstrate that year to year changes in summary reports are minimal. Specifically, the March 1, 2018 date should be changes to March 1, 2017. This change would grant the Executive Officer flexibility but would not change the requirement for Executive Officer approval.

Section VIII C, Page 31: The WWC has approximately 112,000 acres of wetland and upland areas as members. The templates for these areas will need to be somewhat different than the approved templates that are cited. It will be necessary to develop alternate templates that are applicable to these areas.

#### COMMENTS ON ATTACHMENT A, INFORMATION SHEET

Attachment A, Page 4, revise heading to read, “Generalized Description of the Western San Joaquin Watershed Area,” and add to footnote 4: Updated data and information specific to the Watershed will be developed through reports submitted pursuant to the Draft Order, including but not limited to, the Groundwater Assessment Report.

Attachment A, Page 4, final paragraph: The listed drainages within the Watershed should not include the San Luis Drain, which is not subject to the Draft Order.

Attachment A, Page 5, first partial paragraph: The final sentence should read: “Water is also imported into portions of the Watershed from the San Joaquin River at Mendota Pool and various other points of diversion, as well as from the Kings River.

Attachment A, Page 16, final paragraph: The bare statement “The burden of the SQMP, including costs, is reasonable” is an unsupported conclusion. The WWC disputes the Board’s conclusion in the Draft 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. See General Comments, final paragraph. At a minimum the Draft Order should provide an explanation of its conclusion, such as citing to Table 22, if that is the basis. Furthermore, while watershed monitoring may be more economical than individual monitoring, the Board cannot know what the costs of implementation in the WSJR Watershed will be, in particular when, as

explained in the paragraph, the demands on farmers will ratchet up if “necessary” improvements are not made, even if implementation of the best efforts are not sufficient to reach the stringent requirements.

Attachment A, Page 22, second complete paragraph: See above comment on Page 16 regarding asserting that the burden of the GQMP is reasonable.

Attachment A, Page 22, Second paragraph under “Farm Evaluations”: See Comment on Draft Order Section VII B.1.a. and b.

Attachment A, Page 28, 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.

Attachment A, Page 32, Mitigation Measures: To be consistent with Judge Frawley’s decision, add: “However, where a Member’s activity is not otherwise subject to CEQA, this Order does not purport to make such activity subject to CEQA.”

#### COMMENTS ON ATTACHMENT B, MONITORING AND REPORTING PROGRAM

Attachment B, Page 3 – III.A. Surface Water Monitoring Sites.

The first paragraph lists sites as either (a) Discharge Sites; (b) Source Water Sites; or (c) Special Project Sites. The monitoring program only contains Discharge or Source water sites – Special Project is a reference to the constituents monitored and may apply to both discharge and source water sites. Although this fact is clarified in III.A.3 (page 4), it would be good to reword this section to more accurately describe the site designations.

Attachment B, Page 8 - Table 2.

Sediment Toxicity: The table indicates that sediment toxicity tests will be performed during assessment and rain events – this could be misinterpreted. Sediment toxicity testing is performed at the beginning of the irrigation season (typically March) and the beginning of the non-irrigation season (typically September). Further, piped drains (such as Marshall Road Drain) are not tested for sediment toxicity as they have no relevant sediment habitat and are inaccessible for sampling. A footnote should be added to clarify this.

Pesticides & Sediment Parameters: Percent Solids should be added to this list as “As Rqd”. This data is useful in evaluating the toxic units for individual detected pesticides.

Attachment B, Page 10 – III.C.4.b. Sediment Toxicity.

As noted earlier, statement indicating that piped drains are not tested for sediment toxicity should be added to this section.

Attachment B, Page 11 – III.D – Field Data Template (Required).

The field data sheet is approximately similar to what the WWC is currently using. The data sheet include qualitative observations such as weather (Sky Code), 24 hour precipitation, water odor/color, and others, which are logged but not currently entered into the database nor are reported in any way other than as noted in the original field sheets. There is little value to this data, and since the WWC modified the field sheet (2008) to include this type of data, it has never been used. In the new program, this data will need to be entered, summarized, and transmitted to the Regional Board in an Electronic Data Deliverable. Although not a large use of resources, it is of questionable value.

Attachment B, Page 20 – IV.E.4. Table 3

Table 3 requires the measurement of Dissolved Oxygen (DO) for groundwater. This is a field parameter and its inclusion does not have a significant cost factor. However there are surface water quality criteria for DO. Since DO has no environmental relevance in groundwater, it should be made clear that DO reading from groundwater measurements will not be compared to the surface water quality criteria to determine exceedances.

Attachment B, Page 26 – VIII. QAPP

Paragraph 2 notes that the WWC submitted a QAPP in 2008. A revised (final draft) QAPP was submitted in May 2013.

#### COMMENTS ON ATTACHMENT C, CEQA MITIGATION MEASURES

Attachment C, Page 1: Attachment C should be retitled “MITIGATION MEASURES WHERE CEQA IS REQUIRED.” See General Comment 2.

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

Attachment D, 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.

Attachment 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. The Draft Order should be modified where it requires “further CEQA review” in its proposed mitigation on pages 21 (Cultural Resources); 23 (Vegetation and Wildlife); and 24 (Fisheries) unless review under CEQA is otherwise required by law.

## CONCLUDING COMMENTS

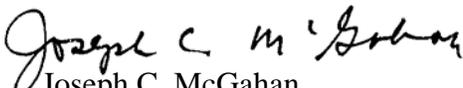
According to the Information Sheet (Attachment A) the goals of the Long Term Irrigated Lands Regulatory Program are to (1) Restore and/or maintain the highest reasonable quality of state waters considering all the demands being placed on the water; (2) minimize waste discharge from irrigated agricultural 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 recognizes 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 Water Board 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 Workshop to be held on July 30. We look forward to seeing you in Los Banos.

Very truly yours,

  
Joseph C. McGahan  
Watershed Coordinator