



# CALIFORNIA FARM BUREAU FEDERATION

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July 15, 2013

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

***Re: Comments on the Western San Joaquin River Watershed Draft WDRs/MRP for Discharges from Irrigated Lands***

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 Western San Joaquin River Watershed Draft Waste Discharge Requirements (“Draft WDR”) and Monitoring and Reporting Program (“MRP”) for Discharges from Irrigated Lands and respectfully presents the following remarks.

Upon reviewing the Western San Joaquin River Watershed Draft WDR as well as the previously adopted Eastern San Joaquin River Watershed WDR and the tentative Tulare Lake Basin Tentative WDR, Farm Bureau is concerned that the general orders are not being individually developed and tailored, but rather are duplications of previously prepared orders. Each coalition represents unique geographic characteristics, including, but not limited, to rainfall, hydrology, drainage, commodities grown, and topography. Given all of these vast differences, each general order should be individually drafted specific to the region it regulates.

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**General Order Page 3, Finding 1—Definition of “Waste”**

The Draft 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.” (Draft WDR, Attachment E, p. 6.) No rationale is provided for the overly 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 Page 4, Finding 5—Regulation of Water Quality**

The Draft WDR amends the scope of regulatory coverage by deleting specific provisions limiting the regulation of water traveling through particular structures. (Draft WDR, p. 4.) The current scope of coverage causes concern regarding the regulation of on-farm conveyances and between-farm conveyances, causing potential ambiguity regarding the point of demarcation for regulation. In order to provide clarity, Finding 5 should be revised.<sup>1</sup>

**General Order Pages 11-12, Findings 32-36—Compliance with the California Environmental Quality Act**

The Draft 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.” (Draft WDR, pp. 11-12, ¶¶ 33-34.) Relying on such analysis, the Draft 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.” (*Id.* at ¶ 33.) The Draft 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 alternatives 3 through 5. These new components, such as provisions creating end-of-field discharge limitations as well as the farm management performance standards, 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. Thus, reliance on the PEIR for CEQA compliance is inappropriate.<sup>2</sup>

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<sup>1</sup> Finding 5 could be potentially revised to state: “This Order is not intended to regulate water in agricultural fields, including, but not limited to, furrows, beds, checks, and ancillary structures, contained on private lands associated with agricultural operations. This Order is not intended to address the lawful application of soil amendments, fertilizers, or pesticides to land.”

<sup>2</sup> Farm Bureau also questions the Regional Board’s authority to require mitigation measures within the Draft WDR for farm level activities. Implementation of management practices at the

**General Order Pages 13-14, Finding 39-40—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 Western Tulare Lake Basin Area WDR. (Wat. Code, § 13141.) Finding 39 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. (Draft WDR, p. 13, ¶ 39.) 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 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 straightforward 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 Draft WDR. Given that this Draft 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.

**General Order Page 19, Provisions III. A and III. B—Discharge 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. Accordingly, discharge limitations for both surface water and groundwater should be rewritten to state “wastes discharged from Member operations shall not cause an exceedance 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.”

**General Order Page 21, Provision IV. B. 7—Nitrogen Management Plans**

Provision 7 requires all members to prepare and implement an annual nitrogen management plan. Such plans should analyze “nitrogen” application rather than

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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).)

“nutrient” application. (Draft WDR, p. 21, ¶ 7; see also Attachment A, Information Sheet, p. 23 stating “the Order requires that Members implement practices that minimize excess **nitrogen** application relative to crop need” (emphasis added).) As seen in previous drafts, only members in high vulnerable areas where nitrate is a constituent of concern were required to prepare annual nitrogen budgets and management plans. Rather than requiring all members to prepare nitrogen budgets and plans, as Provision 7 is currently written, the Draft WDR should be revised to allow flexibility in the requirements for those areas that have no or a lower propensity to impact water quality.

**General Order Pages 26-28, Provisions B, C, and D, Page 31, Templates—Template Requirements for Farm Evaluations, Nitrogen Management Plans, Nitrogen Management Plan Summary Reports, and Sediment and Erosion Control Plans**

The Draft WDR requires all coalitions and commodity groups to use the templates provided by the Regional Board. (Draft WDR, p. 31.) Although Farm Bureau understands the rationale for requiring standardized information, the Regional Board must allow for flexibility and variability depending on the geographic area, the commodities grown, known water quality impairments, the propensity to impact water quality, and the size and scale of farming operations. Just as each WDR should be individually drafted specific to the region it regulates, the templates utilized by that coalition should also be individually developed and tailored, rather than duplications of previously prepared orders and templates. In the alternative, the Regional Board should allow each coalition to modify previously developed templates in order to address coalition-specific issues. Such tailoring will allow the Regional Board to obtain the most relevant information specific to the area being regulated while also allowing growers to minimize costs.

**Attachment A, Information Sheet, Pages 24-25—Spatial Resolution of Nitrogen Management Plans**

As currently drafted, Farm Bureau supports Nitrogen Management Plan Summary Reporting to the Regional Board at the township level. Reporting at the township level allows coalition groups to properly compare crop data, evaluate nitrogen management trends, and manage the data in an efficient and effective manner. The comparison of data at the field level, with or without the identification of a member’s parcel, is not supported and would not result in an efficient use of resources or the ability to assess and evaluate trends.

**Attachment B, MRP, Pages 9-10, Provision III. B. 3—Toxicity Testing**

As currently drafted, the Draft MRP suggests that both acute and chronic toxicity testing is required for all toxicity tests. (See Draft Attachment B, MRP, p. 9, footnotes 5 and 6 stating that chronic and acute toxicity testing should be completed in accordance with USEPA testing methods.) As stated in Farm Bureau’s previous comments on the Eastern San Joaquin Administrative and Tentative WDR drafts, all MRPs for the Irrigated Lands Regulatory Program should only require acute toxicity testing. Since the inception of the Irrigated Lands Regulatory Program, surface water monitoring has

Letter to Adam Laputz  
Comments on the Western San Joaquin River Watershed Draft WDRs/MRP  
July 15, 2013  
Page 5

occurred and has utilized acute aquatic toxicity testing. Given that the MRP contains no evidence to indicate that acute testing is no longer adequate, and since chronic testing is more costly, thus triggering the need for a new economic analysis of impacts, Farm Bureau respectfully requests that requirements for "chronic" testing be removed from the WDR, footnote 6 deleted in its entirety, and the continuation of the existing surface water acute toxicity testing be added in its place.

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 Western San Joaquin River Watershed WDR and MRP for Discharges from Irrigated Lands.

Very truly yours,



Kari E. Fisher  
Associate Counsel

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