



## Westlands Water District

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July 15, 2013

Regional Water Quality Control Board  
David Sholes, Senior Engineering Geologist  
1685 "E" Street  
Fresno, CA 93706

RE: Comments on Administrative Draft: Waste Discharge Requirements General Order for  
Western Tulare Lake Basin Area

Dear Mr. Sholes:

The Westlands Water District (Westlands) is providing the following comments on the Administrative Draft: Waste Discharge Requirements General Order for Western Tulare Lake Basin Area.

First, we commend you and your staff on your efforts to help craft Waste Discharge Requirements (WDR) that reflect the true nature of the hydrological and geological conditions in the Western Tulare Lake Basin; namely, the highly saline waters present in much of the unconfined aquifer, to wit' in paragraph 28 of the Findings section:

*The board recognizes that some areas within the Western Tulare Lake Basin Area overlie groundwater containing naturally occurring constituents, including salts, that may exceed water quality objectives for specific beneficial use designations. In such cases, the use may be unattainable, even in the absence of any waste discharge, and de-designation or modification of the designated use may be appropriate. It is reasonable, under circumstances described below, to delay the imposition of monitoring and reporting associated with high vulnerability areas in these circumstances. This Order allows, with Executive Officer approval, portions of the high vulnerability areas identified within the Groundwater Quality Assessment Report (GAR) to temporarily operate under reduced monitoring and reporting requirements when 1) a third-party, board, or other group is actively pursuing a basin plan amendment to de-designate or modify the beneficial use; and 2) the third-party provides the required information indicating that it is reasonably likely that the beneficial use is not appropriate in the area of the proposed de-designation.*

Westlands appreciates the willingness to delay the imposition of the intense monitoring and reporting required in that "high vulnerability" area until a more suitable mechanism is in place that provides a reasonable solution to, both, the Regional Board and our Growers.

Nonetheless, we have some reservations about some of the provisions of the WDR that we strongly believe would prove too costly and overly burdensome to our Growers. Throughout the process of crafting the suite of General Orders that form the foundation of the Long-term

Irrigated Lands Regulatory Program (LTILRP), an over-arching theme from the Regional Board has been the need to “maintain consistency in the general regulatory approach<sup>1</sup>.” While we do not dismiss regulatory consistency outright, the “regulatory consistency” emphasis has formed a “one size fits all” approach to regulating under the LTILRP. This approach is driven by the nitrate issue in drinking water on the east side of the San Joaquin Valley. Though important, this issue has overly influenced the WDR for the Western Tulare Lake Basin Area which does not have the same nitrate problems associated with drinking water. Very little groundwater in this area is used for drinking purposes. We would like to see a more robust set of Findings that would reflect the known and documented specifics of the groundwater in the Western Tulare Lake Basin Area. We would be pleased to sit down with you and your staff to discuss these specifics for inclusion in the WDR.

We believe the costs associated with the LTILRP identified in Attachment “A<sup>2</sup>” place an undue burden on Growers who have been deemed to be polluters before any data has been collected to verify that assumption. In several venues over the last few years, the Regional Board’s Executive Officer has justified the LTILRP costs based on the Regional Board’s need to collect data to see “if” a Grower is operating in a way that is not protective of Waters of the State. Again, we believe this thinking is driven by the negative impact to the Regional Board over the nitrate issue in the eastern Tulare Lake Basin Area. Western Tulare Lake Basin Growers are being made to comply with an extremely costly program in order to maintain consistency in the regulatory approach. Part of the matrix for the cost to a Grower is the need for the Regional Board to have the Grower produce a Farm Plan, Sediment and Erosion Control Plan, and a Nutrient Management Plan. These reports and documents demand data and information that exceeds the Regional Board’s need to have a potential discharger provide a Report of Waste Discharge as codified in California Water Code §13260(3)(c).

Lastly, the WDR describes the Western Tulare Lake Basin Area as encompassing the upper watershed up to the crest of the Coast Range<sup>3</sup>. If irrigated agriculture is in existence there, and if Westlands were to become the Third-party representative, then Westlands would become the de-facto agent for the Regional Board as it pertains to collecting the State Water Resources Control Board’s (SWRCB) administrative fee. The WDR says in part in paragraph 40 of the Findings section:

*The cost estimates include estimated fees the third-party may charge to prepare the required reports and conduct the required monitoring, as well as annual permit fees that are charged to permitted dischargers for permit coverage. In accordance with the State Water Board’s Fee Regulations, the current annual permit fee charged to members covered by this Order is \$0.56/acre.*

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<sup>1</sup> See Attachment “A” Information Sheet; page 3; paragraph 3.

<sup>2</sup> Page 42; table 3.

<sup>3</sup> Page 1; paragraph 3.

Currently, Westlands collects this fee from its Growers and passes it through to the SWRCB. It is in the best interests of our Growers for Westlands to perform this service and we have in place policies and procedures that allow us to collect these fees. In the case of the Pleasant Valley Water District, many of its Growers are also farming in Westlands and it is an easy nexus for the fee collection. However, Westlands does not have any authority to collect fees from someone outside of Westlands' current sphere of influence and the District does not wish to become involved with matters that are the exclusive purview of the Regional Board.

We appreciate the opportunity to address these comments with you and I look forward to helping you and your staff to craft a WDR that will benefit the Growers of the Western Tulare Lake Basin Area and the resources protected by the Regional Board as well.

Best Regards,

A handwritten signature in black ink, appearing to read "Jose Gutierrez", with a long horizontal flourish extending to the right.

Jose Gutierrez, P.E.

Deputy General Manager - Resources