

Regional Water Quality Control Board
Central Valley Region

Response to Written Comments for
Tentative Waste Discharge Requirements General Order
for Growers Within the Western Tulare Lake Basin Area
that are Members of a Third-Party Group

This document contains the responses to written comments received from interested parties regarding the proposed tentative Waste Discharge Requirements General Order for Growers Within the Western Tulare Lake Basin Area (WTLBA) that are Members of a Third-Party Group (Tentative Order). The Tentative Order was circulated for 35 days for public comment, ending on 2 December 2013. Written comments were received during this comment period from the following:

- A. Gutierrez, Jose – Westlands Water District, 2 December 2013
- B. Fisher, Kari E. – California Farm Bureau Federation, 2 December 2013

In its notices to interested persons, board staff has explained that, while written responses to comments on the tentative Order would be provided, written responses to comments on the draft Order would not. One commenter expressed the intent that their comments on the draft Order are to be incorporated into comments on the tentative Order. The commenter did not provide any specific discussion of which comments in their previous letter had not been adequately addressed in the modifications from the draft to tentative Order or addressed in a previous response to comments. Furthermore, the tentative Order has been modified from the draft Order; therefore board staff considers it a new document, different from the draft Order. Despite being aware that written responses would only be provided in response to comments on the tentative Order, the commenter did not identify which of their previous comments were still germane to the tentative Order or were inadequately addressed in previous comments. The board staff is not legally required to ascertain whether comments on prior drafts are still of concern to the commenter or are germane to the tentative Order. Nor is it reasonable to expect that the staff would go through such an exercise. In light of the above, this response to comments does not include written responses to comments on the previous draft Order.

The written comments on the Tentative Order are summarized below, followed by Central Valley Water Board staff responses.

Comment Letter A: Gutierrez, Jose – Westlands Water District, 2 December 2013

Comment A.1: Costs and beneficial use of groundwater in the unconfined aquifer

The commenter states that many of the provisions in the Tentative Order will prove too costly and would be overly burdensome to growers, and would result in no benefit to the unconfined aquifer.

Response A.1:

Board staff considered the estimated costs to implement the Tentative Order while acknowledging the wide range of farming practices used within the approximately 528,000 acres of irrigated lands within the WTLBA. The average costs provided in the Tentative Order are estimates for the entire area only, and do not reflect any single farm's expected actual cost. The criteria considered when developing the average costs for the Tentative Order are explained in Attachment A of the Tentative Order and have been discussed at previous Board workshops. Board staff considers these costs appropriate as implementation of the Tentative Order will ensure that current practices do not create future water quality problems that would prove more difficult and costly to address. The costs of monitoring and reporting are modest compared to an individualized regulatory approach that would require site specific monitoring and reporting. The costs are reasonable given the board's need to determine whether the practices employed on irrigated lands are protective of groundwater and surface water quality.

As discussed in Finding 29 of the Tentative Order, Board staff recognizes that some areas within the WTLBA overlie areas of shallow unconfined groundwater containing naturally occurring constituents, including salts, that may exceed water quality objectives for specific beneficial use designations. However, the Basin Plan does not authorize the Board to permit discharges that cause or contribute to an exceedance of water quality objectives or unreasonably affect the designated beneficial uses of water of the state. To address this issue, the Tentative Order allows the third-party to delay monitoring and reporting associated with high vulnerability areas in circumstances where groundwater quality likely would qualify for de-designation under the Basin Plan and the third-party is pursuing a basin plan amendment to address the appropriateness of the designated beneficial use.

Additionally, preferential pathways such as improperly sealed or protected wells, wells without backflow prevention, and/or downward vertical gradients¹ can provide pathways to the deeper confined and/or semi-confined zones that may result in the discharge of irrigated agricultural wastes to waters that are being used for their designated beneficial uses.

Comment A.2: Finding 12, small farms

The commenter suggests that Finding 12 be revised to indicate that there are a few small farms within the WTLBA.

Response A.2:

The finding has been modified to indicate that there are some farms within the WTLBA that meet the criteria to be defined as a small farm under the Tentative Order.

Comment A.3: Finding 17, designated beneficial uses of groundwater

The commenter suggests removing language regarding the designated beneficial use of groundwater as a drinking water supply and language regarding the water quality objective for nitrate. The commenter proposes that the following language be used instead:

¹ Preferential pumping from the lower aquifer has often created a significant difference in head between the two aquifers, inducing a downward vertical gradient between the upper and lower aquifers (Gilliom, et al, 1989). This difference in vertical head facilitates the downward migration of near-surface waters to the lower portions of the unconfined aquifer and the confined aquifer.

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“Groundwater in the Western Tulare Lake Basin Area is not suitable for drinking water purposes and the cost of treatment is prohibitive. Therefore, all public drinking water in the Western Tulare Lake Basin area is treated surface water. The Westlands Water District supplies all municipal and industrial water users with an allocation of surface water that the user treats, by various methods approved by the State to water quality standards suitable for drinking purposes.”

Response A.3:

Board staff does not agree with the proposed change to Finding 17. Although Westlands Water District may provide much of the supply water for municipal and industrial users within the WTLBA, the Tulare Lake Basin Plan lists Municipal and Domestic Supply as a designated beneficial use for groundwater within the WTLBA. Removal of a designated beneficial use must be done through a Basin Plan amendment. Where a designated beneficial use may not be appropriate due to salts or nitrate, the Tentative Order provides a procedure for allowing the third-party to delay monitoring and reporting while working with CV-SALTS to complete a basin plan amendment to modify the beneficial uses of that water.

Comment A.4: Finding 25, drainage

The commenter suggests that the following sentence be added to Finding 25 of the Tentative Order:

“The farming operations in the Western Tulare Lake Basin area have no drainage service as the United States Bureau of Reclamation has neglected to provide it as contractually obligated.”

Response A.4:

Board staff understands that the United States Bureau of Reclamation and Westlands Water District have had a long history regarding drainage issues; however, it is not necessary or appropriate to characterize that history in order to frame the objectives of the Tentative Order.

Comment A.5: Section III.B, Groundwater Limitations

The commenter proposes that the following language be added to Section III.B of the Tentative Order:

“2. Shallow groundwaters in certain areas of the Western Tulare Lake Basin area have been well documented to be inherently highly saline and no amount of regulation will appreciably benefit the quality of those waters. Discharges from Members operations will continue to impact these groundwaters until such time as a workable drainage solution can be established”.

Response A.5:

Staff has not added the proposed language to the tentative Order. Finding 29 of the tentative Order recognizes that some areas within the WTLBA overlie areas of shallow unconfined groundwater containing naturally occurring constituents, including salts, that may exceed water quality objectives for specific beneficial use designations. As discussed in staff response A.1 above, the Basin Plan does not authorize the Board to permit the discharge of wastes that cause or contribute to an exceedance of water quality objectives or unreasonably affect the designated beneficial uses of water of the state. The removal of the designated beneficial use of

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municipal and domestic supply from shallow unconfined groundwater within the WTLBA must be done through a Basin Plan amendment.

Comment A.6: Section VII.D, Nitrogen Management Plan

The commenter proposes that all existing language in Section VII.D Nitrogen Management Plan of the Tentative Order be removed and replaced with the following language:

“Members within the Western Tulare Lake Basin area are using nutrient experts to tailor their fertilizer applications to the least amount practical and as groundwater in this area is not being consumed by the public for drinking water purposes, the consumption of nitrates is not an area of concern. The Nitrogen Management Plan will consist of the documentation currently in use between the Member and their nutrient suppliers and nutrient experts. This documentation shall be maintained at the Members farming operations headquarters or primary place of business. The Member must provide the nutrient documentation, if requested or, should board staff or an authorized representative conduct an inspection of the Member’s irrigated agricultural operation.”

Response A.6:

Board staff does not agree that the nitrogen management planning requirements in Section VII.D Tentative Order should be removed and replaced with the proposed language. This change would effectively eliminate the requirement for growers to submit nitrogen management data to the third-party group. Nitrogen management planning is an efficient farming practice as well as a management practice that should help growers meet the requirements to minimize nutrient application relative to crop consumption; further, nitrogen management is considered to be best practicable treatment or control for discharges of nitrogen from cropland. Board staff agrees that many farming operations within the WTLBA implement nutrient management practices; however, there has been no comprehensive reporting of this nutrient management planning and the degree of implementation of these practices is unclear. As many growers within the WTLBA are currently practicing nutrient management planning and the growers will be provided with Nitrogen Management Plan Templates, the efforts for growers to report this data to the third-party should be minimal. The Tentative Order provides the third-party with an opportunity to propose changes to the Nitrogen Management Plan templates before implementing them in their area.

Comment A.7: Section VIII.D.1 and Section VIII.D.2, Groundwater Quality Assessment Report and the Management Practice Evaluation Program

The commenter proposes the required elements for the Groundwater Quality Assessment Report (GAR) in Section VIII.D.1.b through VIII.D.1.e of the Tentative Order be removed and replaced with the following:

- “b. Identify the areas where the groundwater is inherently saline and can have no practical beneficial use and would be in the public’s best interest to continue to allow the current impacts of irrigated agriculture until such time as a workable drainage solution can be instituted,*
- c. Establish crop/commodity specific BMP’s and BPTC’s for the entire Western Tulare Lake Basin area to be instituted in the Management Practice Implementation Program,*
- d. Establish the on-farm costs required for Members to fully implement the BMP’s and BPTC’s”*

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The commenter also proposes that the Management Practice Evaluation Program (MPEP) be replaced by a Management Practice Implementation Program. The proposed Management Practice Implementation Program would establish a schedule for growers within the WTLBA to implement the management practices identified to be protective through the GAR (based on the commenter's proposed changes to the GAR). The proposed revision would remove almost all existing language under Section VIII.D.2 of the Tentative Order and replace it with the following:

“Most Members within the Western Tulare Lake Basin area are currently using the BMP’s and BPTC’s identified in the GAR, and the stated purpose of the MPIP is to fully implement those BMP’s and BPTC’s. The Third-party will use a five (5) year “phased-in” approach (1/5 of full costs per year) for the full implementation that will be indexed to the annually published Central Valley Project (CVP) surface water allocation for the Members in the Western Tulare Lake Basin area. On any given year, the Member will be required to fund all or a portion of the costs associated with the BMP’s and BPTC’s for their operation based upon the CVP allocation; the CVP indexed schedule is as follows:

- *0-20% CVP allocation requires no BMP or BPTC expenditure that year,*
- *21-40% CVP allocation requires one-third (1/4) of that year’s expenditure,*
- *40-60% CVP allocation requires one-half (1/2) of that year’s expenditure,*
- *61-80% CVP allocation requires three-quarters (3/4) of that year’s expenditure,*
- *81-100% CVP allocation requires all of that year’s expenditure.*

Any outstanding funding, after the 5 year phase-in will be made up in subsequent year(s) using the above CVP allocation index.”

Response A.7:

As discussed in staff response A.1 above, the Basin Plan does not authorize the Board to permit the discharge of wastes that cause or contribute to an exceedance of water quality objectives or unreasonably affect the designated beneficial uses of water of the state. The removal of the designated beneficial use of municipal and domestic supply from shallow unconfined groundwater within the WTLBA must be done through a Basin Plan amendment. The Tentative Order provides a process for the third-party group to address issues related to designated beneficial uses that may not be appropriate.

The proposed revisions to the GAR and the Management Practices Evaluation Program would fundamentally alter their purposes and what would be achieved by their completion. As stated in the Information Sheet, “the general purpose of the GAR is to analyze existing monitoring data and provide the foundation for designing the Management Practices Evaluation Program and the Groundwater Quality Trend Monitoring Program, as well as identifying high vulnerability groundwater areas where a groundwater quality management plan must be developed and implemented.” The purpose of the MPEP is to identify whether existing site-specific and/or commodity-specific agricultural management practices are protective of groundwater quality in the high vulnerability areas and to assess the effectiveness of any newly implemented management practices instituted to improve groundwater quality.

The proposal would short circuit these deliberate and specific evaluation processes by exempting the third party from the GAR requirements found in the Monitoring and Reporting

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Program, at Section IV, and having the third party identify crop/commodity specific BMPs to be instituted without providing any criteria on how these BMPs will be determined. While the commenter may share staff's ultimate goal of identifying site-specific or commodity specific management practices, the proposal's lack of detail provides no assurance that the goal will be reached, or that the management practices ultimately identified by the third party will be protective of water quality. Board staff believes that the steps required by the GAR and the MPEP constitute the necessary foundation to identifying management practices that will be protective of water quality.

This process is also a component relied upon to propose a finding that the tentative Order will result in the implementation of BPTC. (See Information Sheet, under section entitled "Statement of policy with respect to maintaining high quality waters in California (State Water Board Resolution 68-16).") Eliminating these requirements would undermine the proposed finding. Accordingly, the tentative Order does not include the revisions proposed by the commenter.

Comment A.8: Section VIII.I, Surface Water/Groundwater Quality Management Plans

The commenter proposes the removal of Surface Water Quality Management Plans (SQMP) and Groundwater Quality Management Plans (GQMP) from the Tentative Order. The commenter contends that all growers in the WTLBA will be required to institute BMP's and BPTC's and therefore any exceedances would be attributed to applicator error or failure to follow EPA labeling requirements. The commenter proposes to implement an outreach program to educate growers and applicators involved in an exceedance.

Response A.8:

For reasons similar to those expressed in response to comment A.7, Board staff does not agree that the proposed removal SQMP/GQMPs is appropriate. First and foremost, the comment assumes that the management practices required by the commenter's proposed Management Practice Implementation Program is appropriate and will represent the best practicable treatment or control. However, as mentioned in response to comment A.7, it is not appropriate to short circuit the rigorous evaluation process prescribed by the tentative Order to identify management practices are protective of groundwater quality. Further, the Board's finding regarding BPTC relies in part on these to be determined management practices. It is not appropriate to replace that deliberate process with an undefined requirement to identify best management practices and BPTC.

The Board's findings regarding implementation of BPTC would be further undermined by the suggestion to remove SQMPs and GQMPs from the Order's requirements. The management plan requirements are another important component of BPTC as identified in the Information Sheet. (See Information Sheet, under section entitled "Statement of policy with respect to maintaining high quality waters in California (State Water Board Resolution 68-16).") As stated in the Information Sheet, "This Order, therefore, establishes a set of performance standards that must be achieved and an iterative planning approach that will lead to implementation of BPTC/best efforts. The iterative planning approach will be implemented as two distinct processes, 1) establishment of a baseline set of universal farm water quality management performance standards combined with upfront evaluation, planning and implementation of management practices to attain those goals, and 2) additional planning and implementation measures where degradation trends are observed that threaten to impair a beneficial use or where beneficial uses are impaired (i.e., water quality objectives are not being met). Taken together, these processes are considered BPTC/best efforts." The commenter's proposal would

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inappropriately remove the Board's additional step of requiring additional planning and implementation measures where degradation trends are observed that threaten to impair a beneficial use.

In summary, if the Board staff abandoned the SQMP\GQMP provisions as specifically requested by the commenter, its proposed findings regarding its compliance with the State Antidegradation Policy would be undermined. The tentative Order does not include the requested changes.

Comment A.9: WTLBA upper watershed

The commenter proposes that the following language be added to Section XI.2 of the Tentative Order:

“Any SWRCB fees attributable to individual Members outside the boundaries of the Westlands Water District and the Pleasant Valley Water District, the Regional Board shall directly invoice those individual Members; the named Districts do not have statutory or regulatory authority to invoice and demand payment from individuals outside their jurisdictions.”

Response A.9:

This Tentative Order is a General Order, intended to provide all growers in a specific geographic area the opportunity to fulfill their regulatory obligations through membership in a third-party group. It is important that the third-party groups are structured to accommodate these growers if needed. There is a potential that additional cropland exists, or will exist, outside of the Westlands Water District or Pleasant Valley service areas but within the area covered by the Tentative Order. One of the application requirements for a third party is to provide a reasonable proposal for its boundaries of coverage. Since it is anticipated that a reasonable proposal would provide the opportunity for these growers to join, staff does not support the proposed language, which would seem to condone or even encourage less-inclusive third party boundaries.

Comment Letter B: Fisher, Kari E. – California Farm Bureau Federation, 2 December 2013

Comment B.1: Similarities between WTLBA Tentative Order and other Long-Term ILRP WDRs

The commenter argues that the Tentative Order is a duplication of previously adopted Long-term ILRP WDR's with only minor revisions. The commenter contends that each coalition unique geographic characteristics and that each Long-term ILRP WDR should be individually drafted specific to the region it regulates.

Response B.1:

Board staff acknowledges similarities between the WTLBA Tentative Order and other waste discharge requirements (WDRs) within the Long-term ILRP. The similarities in structure are purposeful, since these WDRs deal with discharges from irrigated lands to groundwater and surface water. It is appropriate for the general approach and regulatory structure for addressing similar discharges to be similar. The general approach of monitoring surface water and groundwater quality, conducting studies to determine whether practices are protective of groundwater quality, and reporting on key aspects of management practice implementation are fundamental to determining whether Members of the third-party are in compliance with the Tentative Order's requirements. The WTLBA Tentative Order and other Long-term ILRP WDR's have a structure that includes treating high vulnerability areas and low vulnerability areas

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differently (more reporting and monitoring requirements are associated with high vulnerability areas).

While there are similarities between the Orders, there are key differences as well. For example, the surface water monitoring program is different in the WTLBA Tentative Order than in other Long-term ILRP WDRs. In addition, the reports provided by the third-party (e.g., the Groundwater Quality Assessment Report or GAR) will be based on the area-specific conditions, which in turn, will drive the regulatory approach (e.g., identification of the high vulnerability areas where growers need to submit nitrogen management plan summary reports).

The templates to be developed by the water quality coalitions and commodity groups for required reports are an example of a similarity that will benefit all growers by simplifying reporting requirements. There are also provisions in the Tentative Order that provide an opportunity for the third-party to submit comments on the templates regarding any changes that should be made to reflect the unique conditions in the area.

While the general structure of the WTLBA Tentative Order is similar to other orders within the Long-term ILRP, the tentative Order contains considerable flexibility with respect to how the third party may take local conditions into account when implementing the Order's provisions. For instance, how and where groundwater monitoring is implemented will be decided after the third-party group prepares the Groundwater Quality Assessment Report and proposes high and low vulnerability areas. Board staff does not agree that additional findings regarding the hydrogeology of the WTLBA are needed. The commenter did not provide any additional hydrogeologic information, data, or references that could be used to add additional findings to the Tentative Order, nor did the commenter specifically identify areas where the hydrogeologic description was insufficient. Further discussion regarding the hydrogeology of the WTLBA may be found in the Information Sheet to the Tentative Order (Attachment A).

Comment B.2: Definition of waste

The commenter contends that the Tentative Order's definition of waste is an overly broad expansion of a statutorily defined term and the term waste should be limited to its definition found in §13050(d) of the California Water Code.

Response B.2:

Section 13050(d) of the Water Code specifies that "'waste' includes sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for purposes of, disposal." The definition of waste in the Tentative Order repeats this language word for word and also provides a citation to the Water Code §13050(d). For clarity purposes, the Tentative Order also provides examples of wastes that fall under the definition of waste in §13050(d). The commenters have not provided any evidence that the "wastes" potentially discharged from irrigated lands described in the Tentative Order would not fall within the Water Code §13050(d) definition of waste. All of the examples provided in the Tentative Order's definition of waste are in liquid, solid, or gaseous form and could be discharged as a direct result of crop production, livestock production (i.e., irrigated pasture), or wetland management (i.e., the human "production" or creation of wetland habitat), which are all activities of human origin.

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Comment B.3: Irrigation conveyance structures

The commenter believes that the language in Finding 5 of the Tentative Order is should be revised to include specific provisions limiting regulation of water traveling within on-farm and between farm conveyance structures.

Response B.3:

The Tentative Order does not exempt water in conveyance structures that are operated by multiple Members or run through or along multiple Members properties and such an exemption is not intended or described by Finding 5. A discharge of waste by a Member into a channel that is used by other Members may result in a negative impact on the beneficial uses of that water for those other Members, or on other designated beneficial uses. It is important to note that water in constructed conveyances can have beneficial uses beyond those associated with the intended use of the conveyance structure.

Once the water and any wastes associated with it are out of the control of the Member or not being beneficially used by the crop, it is consistent with Porter-Cologne and appropriate for the board to subject that waste discharge to the requirements of the Order.

Comment B.4: Compliance with the California Environmental Quality Act (CEQA)

The Tentative Order is not sufficiently within the range of the Program Environmental Impact Report (PEIR) because it includes provisions substantially different from elements in the PEIR alternatives, such as end-of-field discharge limitations, farm management performance standards, and associated costs. The commenter believes that reliance of the PEIR for CEQA compliance is inappropriate.

Response B.4:

As described in the Information Sheet to the Tentative Order (Attachment A), the requirements of the Order include regulatory elements that are also contained in the six alternatives analyzed in the PEIR; therefore, Staff believes that the Tentative Order is sufficiently within the range of alternatives evaluated in the PEIR.

As a preliminary matter, Board staff disputes the commenter's contention that the tentative Order's receiving water limitations would establish water quality objectives as "end-of-field" discharge limitations. The Tentative Order does not include "discharge limitations," but includes "receiving water limitations." The limitations establish that discharge from the field must not cause or contribute to exceedance of water quality objectives in receiving waters, unreasonably affect applicable beneficial uses, or cause or contribute to a condition of pollution or nuisance. For example, consider a field discharging directly to a surface water body. If the field's discharge contains waste at a level greater than a water quality objective, but the surface water receiving the waste remains below the water quality objective, the limitation is not violated. However, if the same discharge causes the receiving water to exceed a water quality objective, the receiving water limitation would be violated. Similarly, if the same discharge is above water quality objectives and the receiving water is above objectives, that discharge is contributing to an exceedance of the water quality objective and, therefore would be violating the receiving

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water limitation. In the scenario where the waste discharge is below the water quality objective and the receiving water exceeds objectives, the receiving water limitation would not be violated.²

The potential environmental effects of implementation of receiving water limitations in the ILRP have been evaluated in the PEIR. Regulatory requirements for Alternative 5 of the PEIR, on which the tentative Order is based, include the requirement that Dischargers prevent nuisance conditions and/or exceedance of water quality objectives in state waters associated with waste discharge from their irrigated agricultural lands.³ This requirement is similar to the tentative Order's receiving water limitations.

Even assuming, for the sake of argument, that the receiving water limitations were not already analyzed in the PEIR, the commenter still has not demonstrated that reliance on the PEIR is improper. A public agency may rely on a program EIR for CEQA compliance, for subsequent program activities if it "finds pursuant to Section 15162, no new effects could occur or no new mitigation measures would be required." CEQA Guidelines § 15168(c). Board staff has proposed the required finding in Attachment D of the tentative Order. The commenter provides the general concern that environmental impacts have not been adequately addressed, but provides no substantive information on why it disagrees with the proposed finding (e.g. the types of unaddressed impacts or additional mitigation measures that may be necessary).

The remaining concern that the tentative Order's farm management performance standards would apply requirements not analyzed in the PEIR, potentially leading to additional environmental impacts, is also unfounded. The commenter does not provide justification or examples supporting the claim that farm management performance standards are outside of the scope of the PEIR and that costs associated with farm management performance standards were not considered during the economic analysis portion of the PEIR.

Even assuming, for the sake of argument, that the performance standards were not already analyzed in the PEIR, the commenter still has not demonstrated that reliance on the PEIR is improper. A public agency may rely on a program EIR for CEQA compliance, for subsequent program activities if it "finds pursuant to Section 15162, no new effects could occur or no new mitigation measures would be required." CEQA Guidelines § 15168(c). Board staff has proposed the required finding in Attachment D of the tentative Order, along with a listing of potential environmental impacts, the written findings regarding those impacts consistent with CEQA Guidelines, and the explanation for each finding. The commenter provides the general concern that environmental impacts have not been adequately addressed, but provides no substantive information on why it disagrees with the proposed finding (e.g. the types of unaddressed impacts or additional mitigation measures that may be necessary).

The commenter also provides the concern that the board does not have the authority to require certain CEQA mitigation measures under the tentative Order. These very mitigation measures are identified in the PEIR and were unsuccessfully challenged on the same grounds in Sacramento Superior Court. On 21 May 2013, the Superior Court issued a final ruling that rejected the claim that the identified mitigation measures were legally deficient, on the

² Note that this scenario could be more complicated for certain cases, such as a bioaccumulative substance, for which the concentration of the discharge may not be as important in determining whether beneficial uses are protected as the mass discharged

³ PEIR, page 3-28.

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stipulation that “additional CEQA review” means that “if a future discretionary approval by the Board would require additional CEQA review, such review will be undertaken.” The tentative Order relies on those lawful mitigation measures, which have been clarified consistent with the final ruling. The Board staff continues to rely on the PEIR’s mitigation measures, absent a final court ruling that they are legally deficient. *Kriebel v. City Council* (1980) 112 Cal.App.3d 693, 702.

Comment B.5: California Water Code Section 13141 and 13241

Section 13141 of the California Water Code states in part 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*”. The commenter states that Finding 41 incorrectly concludes that a new cost analysis is unnecessary given that the Basin Plan includes an estimate of potential costs and sources of financing for the Long-term ILRP. The commenter contends that the Tentative Order proposes new costly regulatory components not previously analyzed during the environmental review or when adopted in the Basin Plan.

Response B.5:

Board staff disagree that the Tentative Order proposes new regulatory components that were not considered during the environmental review. The economic analyses completed within the PEIR and subsequent incorporation of these cost estimates into the Basin Plan sufficiently addresses §13141 and §13241 of the California Water Code.

The State Water Board recently concluded that Water Code §13141 is “applicable only to an agricultural water quality control plan that is adopted within a water quality control plan.”⁴ Since the agricultural water quality control plan was adopted within waste discharge requirements as opposed to the Board’s Basin Plan, the Board could not have violated Water Code §13141 here, as the statute is not applicable.

Nevertheless, the Central Valley Water Board prepared a cost estimate for the long-term irrigated lands regulatory program, and added it to its Basin Plans prior to implementation of this Order. The State Water Resources Control Board approved these Basin Plan amendments on 17 July 2012. To estimate costs for the tentative Order, the Board staff used the same study used to develop the Basin Plan amendments and supplemented the study based on the tentative Order’s requirements. Finally, Board staff has confirmed that the estimated costs of the Order fall within the range included in the Basin Plan estimate. Adoption of the tentative Order would not violate Water Code §13141.

In addition, the Information Sheet includes a discussion of how costs were considered (see Section XV) and how those costs were derived from costs associated with elements of the PEIR alternatives. No further cost analysis is required by Water Code §13241 and no evidence has been provided to demonstrate where the cost estimates are deficient.

Comment B.6: Coordination and cooperation with other agencies

The commenter recommends adding the following as an additional finding under the Coordination and Cooperation With Other Agencies section of the Tentative Order:

⁴ See State Water Board Order WQ 2013-0101, *In the Matter of the Review of Conditional Waiver of Waste Discharge Requirements Order No. R3-2012-0001*, at p. 15

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“The United States Department of Agriculture Natural Resources Conservation Service (NRCS) administers a number of programs related to water quality. NRCS can provide technical assistance to growers and has identified practices that are protective of the environment and are feasible in an agricultural setting. The NRCS Environmental Quality Incentives Program (EQIP) provides cost share assistance for management practice installation. The NRCS has also provided assistance with research of management practice effectiveness. The third-party and its Members are encouraged to utilize the information and resources available through the NRCS to meet the requirements of this Order.”

Additionally, the commenter requests that nitrogen management plan deadlines be modified to allow for the incorporation of future recommendations from Task Force discussed in Finding 51 of the Tentative Order.

Response B.6:

The proposed finding regarding NRCS has been added to the WTLBA Tentative Order.

The deadlines for preparation of a nitrogen management plan and associated reporting have been established to allow the board to make any necessary adjustments to the Tentative Order based on the finding and recommendations of the California Department of Food and Agriculture (CDFA) Task Force and the State Water Resources Control Board (SWRCB) Expert panel prior to the established compliance dates. The commenter does not specifically identify how the existing deadlines would inhibit the integration of the CDFA Task Force findings or recommend an alternative deadline.

Comment B.7: 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. The commenter proposes the removal of the words “or contribute to” from Provisions III.A and III.B of the Tentative Order.

Response B.7:

As stated above, the Tentative Order does not include discharge limitations (see Response B.4 above). In light of the discussion in Response B.4, board staff disagree that the receiving water limitations make irrigated agriculture accountable for de-minimus discharges. Only discharges causing or contributing to the exceedance of the objective would be in violation of the receiving water limitation. De-minimus discharges (e.g., below water quality objectives) can actually improve receiving water quality for the constituent of concern.

Comment B.8: Nitrogen Management Plans

Rather than requiring all growers to prepare a nitrogen management plan, the Tentative Order should be revised to allow growers that are not located within designated high vulnerability areas flexibility in the nitrogen management planning requirements.

Response B.8:

Board staff disagrees that nitrogen management planning requirements should be reduced for growers outside high vulnerability areas. Low vulnerability areas are not “no vulnerability” areas.

Tentative Waste Discharge Requirements General Order for Growers within the Western Tulare Lake Basin Area that are Members of a Third-Party Group

The potential to discharge waste that could affect groundwater from irrigated agricultural operations exists in these areas even if physical or hydrologic site conditions do not warrant a high vulnerability designation. The impacts from irrigated agricultural application of nitrogen need to be addressed in all areas of the Tentative Order regardless of groundwater vulnerability designation. Nitrogen management planning is an efficient farming practice as well as a management practice that should help growers meet the requirement to minimize excess nutrient application relative to crop consumption. The Nitrogen Management Plan is kept on-site and Members in low vulnerability areas do not have to submit a Nitrogen Management Plan Summary Report to the third-party.

Comment B.9: Templates

The commenter states in part that although it understands the rationale for requiring standardized information, the templates utilized by that coalition should also be individually developed and tailored, rather than duplications of previously prepared orders and templates. The commenter proposes inclusion of language from the tentative Western San Joaquin River Watershed WDR that would allow each coalition to modify previously developed templates in Tentative Order to address coalition-specific issues.

Response B.9:

Because the template language proposed by the commenter is identical to the language in the tentative Order, no change is necessary. The Tentative Order provides the third-party with an opportunity to propose changes to the templates before implementing them in their area. The existing agricultural coalitions (including the Westlands Stormwater Coalition), commodity groups, agricultural technical services providers, and interested parties are participating in the development of the Farm Evaluation, Nitrogen Management Plan, Nitrogen Plan Management Summary Report, and Sediment and Erosion Plan templates.

Comment B.10: Basin Plan Amendment Workplan

The commenter appreciates the inclusion of a process for the third-party to pursue a basin plan amendment to address the appropriateness of a beneficial use designation.

Response B.10:

The commenter is supportive of the provision. No further response is required.

Comment B.11: Toxicity testing

As currently drafted, the Tentative Monitoring and Reporting Program (MRP) language could be interpreted that both acute and chronic toxicity testing is required for all toxicity tests. The commenter recommends adding a footnote to section III.B.3 of the MRP to specify that the use of chronic testing is appropriate only for toxicity testing for *Selenastrum capricornutum*.

Response B.11:

Board staff disagree with the commenter that the language could be interpreted that both acute and chronic toxicity testing is required for all toxicity tests and does not believe that the proposed footnote would provide further clarification. The Tentative MRP clearly states that “testing for *Ceriodaphnia dubia* and *Pimephales promelas* shall follow the USEPA acute toxicity testing methods” and “testing for *Selenastrum capricornutum* shall follow the USEPA short-term chronic toxicity.”

Comment B.12: Submission of individual data records

The commenter questions the need for third-parties to submit individual data records used to develop the management practice summary submitted by the third-party group and suggests this section requirement be removed.

Response B.12:

Board staff disagrees with the commenter that no purpose is served in providing the board with individual data records of management practices information. The data are needed to verify that growers are implementing relevant management practices to protect water quality. Submittal of farm evaluations will provide information on individual grower implementation of practices to protect water quality, in lieu of water quality sampling of individual farming operations. Further discussion of the basis for this requirement can be found in the Information Sheet in the section "Spatial Resolution of Nitrogen Management Plan and Farm Evaluation Information".