



CALIFORNIA FARM BUREAU FEDERATION

OFFICE OF THE GENERAL COUNSEL

2300 RIVER PLAZA DRIVE, SACRAMENTO, CA 95833-3293 • PHONE (916) 561-5665 • FAX (916) 561-5691

Sent via E-Mail

cjimmerson@waterboards.ca.gov

January 17, 2014

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

Re: *Comments on the San Joaquin County and Delta Tentative WDRs/MRP for Discharges from Irrigated Lands*

Dear Mr. Jimmerson:

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 nearly 78,000 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 draft of the San Joaquin County and Delta Waste Discharge Requirements and Monitoring and Reporting Program (collectively “Tentative WDR”) for Discharges from Irrigated Lands and respectfully presents the following remarks. Many of the comments raised in Farm Bureau’s previous letter, dated September 13, 2013, are still pertinent, and are incorporated and reiterated herein.

Upon reviewing the San Joaquin County and Delta Tentative WDR, as well as the previously adopted Eastern San Joaquin River Watershed WDR and the Tulare Lake Basin Tentative WDR, Farm Bureau remains concerned that the general orders are not being individually developed and tailored, but rather are duplications of previously prepared orders with *minor* revisions. 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

NANCY N. McDONOUGH, GENERAL COUNSEL

ASSOCIATE COUNSEL:

CARL G. BORDEN • KAREN NORENE MILLS • CHRISTIAN C. SCHEURING • KARI E. FISHER • JACK L. RICE

individually drafted specific to the region it regulates in order to properly reflect the unique circumstances of the area.

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. 6.) No rationale is provided within the WDR 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). To provide clarity and conformance with Water Code section 13050(d), Farm Bureau offers revising the second sentence of the definition of “waste” to read (additions are underlined):

“Potential examples of wastes from irrigated lands that may conform to this definition include, but are not limited to, earthen materials (such as soil, silt, sand, clay, rock), inorganic materials (such as metals, salts, boron, selenium, potassium, nitrogen, phosphorus), organic materials such as pesticides, and biological materials, such as pathogenic organisms.”

General Order Page 2, Finding 5—Regulation of Water Quality

The Tentative WDR amends the scope of regulatory coverage from the previous conditional waiver by deleting specific provisions limiting the regulation of water traveling through particular structures. (Tentative WDR, p. 2.) 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; as currently written, the regulation could be read to regulate any water that leaves the root zone whether or not it reaches saturated groundwater. In order to provide clarity, Finding 5 should be revised.¹

¹ 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.” Additionally or in the alternative, the following phrase, “from which there are discharges of waste that could affect the quality of any waters of the state,” could be added to Finding 5 to clarify that the WDR is not regulating water that moves past the root zone when there is no threat to waters of the state or that the movement of water below the root zone is a de facto discharge of waste.

General Order Page 10, Findings 33-37—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. 10, ¶ 34, *see also id.* at ¶ 35.) 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.” (*Id.* at ¶ 34.) The Tentative WDR, or its estimated costs, are 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, in addition to the associated costs, 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 would have a significant and cumulatively considerable impact on the environment. Thus, reliance on the PEIR for CEQA compliance is inappropriate.² In order to comply with CEQA, the Regional Board should prepare a supplemental EIR that analyzes the new elements along with revised cost estimates.

General Order Pages 11-13, Finding 40-41—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 San Joaquin County and Delta WDR. (Wat. Code, § 13141.) Finding 40 incorrectly concludes that any new cost analysis is unnecessary given that “the Basin Plan includes an estimate of potential costs and sources of financing for the *long-term irrigated lands program*.” (Tentative WDR, p. 11, ¶ 40, emphasis added.) Although the Basin Plan was amended to include costs associated with the *long-term irrigated lands program*, the Basin Plan Amendment did not include specific costs associated with the San Joaquin County and Delta WDR as it was not in existence at the time nor were the specific program requirements analyzed (such as the templates and individual reporting summarized by the third-party). The templates, as well as the instructions as to how frequently these reports must be completed and compiled, were not available when the cost study was performed and could not have been

² 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).)

accounted for in that study. Given that this Tentative WDR proposes new costly regulatory components not previously analyzed during the environmental review stage or when adopted in the Basin Plan, the Regional Board must analyze, evaluate, and estimate all of the costs of these new regulatory requirements.

General Order Page 15, Provision 51—Nitrogen Management and Control

Farm Bureau appreciates the acknowledgement of the assessment of nitrogen management and control currently underway by the California Department of Food and Agriculture’s Task Force, as well as the soon to be convened State Water Resources Control Board’s Expert Panel. Given the assessments and recommendations to be made by both processes to determine appropriate nitrogen tracking and reporting systems and management practices, adjusting the nitrogen management plan deadlines to allow for the incorporation of future recommendations is both appropriate and appreciated.

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, a qualifier should be added before “contribute” or the 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.” Such proposed revisions will not impact the Regional Board’s program, but will provide regulatory clarity.

General Order Page 21, Provision IV. B. 8—Nitrogen Management Plans

Provision IV. B. 8 requires all members to prepare and implement an annual nitrogen management plan. Such plans should analyze “nitrogen” application rather than “nutrient” application. (Tentative WDR, p. 21, ¶ 8; see also Attachment A, Information Sheet, p. 36 stating “the Order requires that Members implement practices that minimize excess **nitrogen** application relative to crop need” (emphasis added).) As seen in previous drafts for other WDRs, 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 8 is currently written, the Tentative 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 Page 23, Provision IV. C. 9—Membership (Participant) List

Farm Bureau joins the concerns raised by San Joaquin County and Delta Water Quality Coalition regarding reporting members who are not in good standing, thus placing the Coalition in the role as the enforcer. (See Comment Letter submitted by the San Joaquin County and Delta Water Quality Coalition dated January 17, 2014.)

General Order Page 31, Provision VIII. C—Template Requirements for Farm Evaluations, Nitrogen Management Plans, and Sediment and Erosion Control Plans; Attachment A, Information Sheet, VII. D, p. 39

The Tentative WDR deletes the ability of the Coalition to provide modified templates and replaces it with the ability to solely provide comments. (Tentative WDR, p. 31; see also Attachment A, p. 39.) 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. 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. Farm Bureau respectfully requests that the language in the previous Draft WDR allowing for modifications be reinstated and the last two sentences in section VII. D of Attachment A be deleted.

Attachment A, Information Sheet, Page 37—Spatial Resolution of Nitrogen Management Plan and Farm Evaluation Information; Attachment B, MRP, Page 26, Reporting Components 18 and 19

Reporting Components 18 and 19 outline the process in which a third-party will collect data from members and report the data to the Regional Board at the township level. As currently drafted, Farm Bureau supports the reporting 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.

Reporting Component 19—Summary of Management Practice Information further requires a third-party to provide the individual data records to the Regional Board in addition to aggregating and summarizing information collected in the Farm Evaluations. (Attachment B, p. 23.) No explanation is provided in the MRP or WDR to support the necessity of needing the individual data records. Rather, the summary of management practices provided by the third-party will be more meaningful than the individual data records and will include the appropriate analysis needed by the Regional Board. Thus, Farm Bureau questions the need for third-parties to submit individual data records and suggests this addition to the management practices information reporting component be removed.

Attachment B, MRP, Pages 11-13, Provision III. C. 4—Toxicity Testing

As currently drafted, the Tentative MRP's language could be interpreted that both acute and chronic toxicity testing is required for all toxicity tests. (See Tentative Attachment B, MRP, pp. 11-13, footnotes 6 and 7 stating that chronic and acute toxicity testing should be completed in accordance with U.S. EPA testing methods.) Since the

Letter to Chris Jimmerson

Comments on the San Joaquin County and Delta Tentative WDRs/MRP

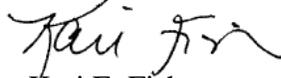
January 17, 2014

Page 6

inception of the Irrigated Lands Regulatory Program, surface water monitoring has occurred and has utilized acute aquatic toxicity testing, with no evidence of any shortcomings. If there is no U.S EPA acute toxicity testing method of *Selenastrum capricornutum*, Farm Bureau recommends adding language to footnote 7 to specify that the use of chronic testing is appropriate *only* in this circumstance.

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 San Joaquin County and Delta WDR and MRP for Discharges from Irrigated Lands.

Very truly yours,



Kari E. Fisher

Associate Counsel

KEF:pkh