

COMMENTS/RESPONSE TO COMMENTS

Draft Conditional Waiver of Waste Discharge Requirements (“CWAD”, or “Order”) for Agricultural Operations in the Watersheds of the San Jacinto River and its Tributaries, Canyon Lake and Lake Elsinore and their Tributaries, Collectively, “The San Jacinto River Watershed”, Riverside County, Order No. R8-2016-0003 and Draft Mitigated Negative Declaration

Responses to Comments re Tentative Order No. R8-2016-0003/Draft Mitigated Negative Declaration - June 9, 2016

As of the date this document was distributed (June 8, 2016), written comments had been received from:

- A. Western Riverside County Agriculture Coalition (WRCAC)**
- B. Riverside County Farm Bureau**
- C. Inland Empire Disposal Association**
- D. California Farm Bureau Association**

The comments are attached to this document. The comments are summarized below, followed by Board staff's responses.

A. Western Riverside County Agricultural Coalition (WRCAC)

(Note: WRCAC provided comments on the April 22, 2016 draft Order; the comments were inserted on the draft Order itself. (The page references below are based on the WRCAC annotated draft Order.) No comments on the draft Mitigated Negative Declaration (MND) were submitted. Board staff and WRCAC had an extensive discussion about the comments on the draft Order; revisions to the draft Order were made based on that discussion and consideration of the written comments.)

1. **WRCAC GENERAL COMMENT m1 and K2, Page 1:** Reference to the East San Joaquin draft Order by the State Water Resources Control Board should be deleted. The CWAD should address the recommendations in comment K2, specifically, that the draft CWAD should include information concerning the value of the agriculture industry in the San Jacinto watershed, the dedication of the industry to the protection of natural resources, the complexity of agricultural water quality impacts and a commitment to preserve the economic viability of agriculture.

WRCAC questions agricultural operators' ability to comply with the requirements of the draft CWAD without a completed, revised TMDL [*the presumed reference is to the Lake Elsinore and Canyon Lake Nutrient TMDLs, which WRCAC has helped and continues to help implement*] or an approved compliance metric. The Board has not provided a means to evaluate what reasonable actions could be made to bring agricultural operations into compliance.

WRCAC also questions the ability of individual agricultural operators to comply with the CWAD requirements, given their complexity.

The existing San Joaquin groundwater nitrate concentrations are at higher levels and therefore pose a more imminent threat than the San Jacinto conditions.

Response:

While Board staff believes that WRCAC mistakes the nature and purpose of the proposed CWAD finding re the East San Joaquin Order (Finding No. 91), we believe that the finding is not necessary and would needlessly burden the CWAD with a contentious issue. Therefore, the proposed Finding No. 91 has been removed from the revised draft Order.

Regarding the request to include information in the CWAD regarding the value of agriculture and the commitment of the agricultural community to the protection of natural resources, Board staff believes that such information is not necessary to support the CWAD. An informational item will be presented by WRCAC and WRCAC technical consultants at the June 10, 2016 Regional Board meeting to present this type of information to the Board and the public.

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As described further below, the CWAD was drafted with both the novelty (to most of the agricultural community) and complexity of its requirements in mind. While the economic importance of agriculture in the San Jacinto watershed is acknowledged, the CWAD must specify the requirements necessary to implement the Basin Plan. Economic considerations are taken into account in the CWAD to the extent feasible and appropriate by means of the flexible, adaptive management approach it employs.

The draft CWAD identifies the requirements that must be met to implement the Basin Plan, but does not, and cannot, prescribe the method or manner of compliance. Rather, as discussed at length with WRCAC representatives, including the authors of the WRCAC comments, the draft CWAD employs a flexible, adaptive management approach whereby the enrolled dischargers, *individually or as a member of a Coalition Group*, are to propose plans and schedules to achieve compliance. Those proposed plans and schedules, which may need to be modified based on discussion with Regional Board staff, would be implemented upon Regional Board approval.

In drafting the CWAD, Board staff recognized that the CWAD would impose regulatory requirements on agricultural operations (other than dairies) in the Santa Ana Region for the first time. Accordingly, the draft CWAD takes a flexible, adaptive management approach. It is expected that as implementation of approved plans and schedules proceeds, these plans/schedules will be reviewed and likely revised based on efficacy evaluations, monitoring results and other information. Board staff believes that this is a practicable and reasonable approach to improve water quality and achieve compliance with the Basin Plan and the CWAD.

The draft CWAD recognizes that the Lake Elsinore and Canyon Lake Nutrient TMDLs, which include load allocations and other requirements applicable to agricultural operators in the San Jacinto watershed, need to be reconsidered based on the data and information that has accrued since the TMDLs were adopted by the Regional Board in 2004. The draft CWAD provides for the submittal of agricultural nutrient management plans within a time certain of the submittal of draft TMDL revisions recommendations, but no later than April, 2017.

As noted above, the draft CWAD enables agricultural dischargers to comply with the CWAD either individually or as a member of a Coalition Group. The cost and other resource efficiencies of collective action through a Coalition Group are well recognized. However, no Coalition Group has as yet been formed in the San Jacinto watershed. While the draft CWAD provides clear incentive for the formation of one or more coalition groups, the Board cannot dictate that any individual discharger must participate in such a group, if and when formed. Therefore, it is necessary to include requirements for individual dischargers, as well as requirements that pertain to Coalition Groups. Again, Board staff recognizes the complexity of the new requirements that would be imposed by the CWAD; the CWAD has been drafted to provide a flexible, adaptive management approach that is reasonable and effective.

Board staff acknowledges the significant issue of high groundwater nitrate concentrations in the San Joaquin Valley. However, this is not a basis for establishing appropriate requirements in the

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CWAD to address the groundwater impacts of agricultural discharges in the San Jacinto watershed. According to the Basin Plan, only one Ground water Management Zone (GMZ), the San Jacinto Upper Pressure Zone, has assimilative capacity for TDS and nitrates. (This assimilative capacity is provided as the result of the implementation of “maximum benefit” objectives and a maximum benefit nitrogen and TDS program by certain parties; the assimilative capacity is to be allocated, if at all, only to those responsible parties.) This means that the TDS and nitrogen objectives for all other GMZs in the watershed are being exceeded. The draft CWAD includes requirements to address these circumstances, in accordance with the Basin Plan.

- 2. WRCAC Comments a3, m4, FJ5 and K6, re Finding No. 14, Page 5:** These four comments provide recommendations regarding the definition of a Coalition Group. The intent of the comments is to assure that it is clear that liability for compliance with the CWAD rests with individual dischargers and not the Coalition Group or Coalition Group administrator, should the individual discharger become a member of such a group.

Response: Based on consideration of the comments and discussion with WRCAC, the language in this Finding has been revised accordingly in the revised draft CWAD.

- 3. WRCAC Comment m7, re Finding No. 78, Page 17:** Notes that the date for discharger enrollment needs to be modified to reflect the delay in consideration of adoption of the CWAD

Response: This and other dates specified in the Order that are contingent on the date of adoption of the CWAD have been modified in light of the delays in consideration of the Order.

- 4. WRCAC Comment FJ8, re Finding No. 78, Page 17:** Refers to a prior comment (#2, above) concerning the definition of a Coalition Group.

Response: See response to comment #2, above.

- 5. WRCAC Comment m9, re Finding No. 87, Page 18:** WRCAC believes that Finding No. 87, regarding the consideration of costs to comply with the CWAD, should be expanded to include potential funding sources available to offset costs and to identify the economic impacts of the CWAD.

Response: In adopting waste discharge requirements or a conditional waiver thereof, the Regional Board is not required to conduct an economic analysis. Based on discussion of this matter with WRCAC, this Finding has been deleted from the revised draft CWAD.

- 6. WRCAC Comments K10, m11, a12, K13, FJ14, a15, m16, FJ17, FJ18, a19, a20, and m21, re Finding No. 91, Pages 19 - 21:** These comments relate to the proposed inclusion of Finding No. 91, regarding the State Board’s draft East San Joaquin order on waste discharge requirements adopted by the Central Valley Regional Board. The conclusory

recommendations is that the Finding should be deleted, given that it speaks to a draft Order. See also Comment #1.

Response: See response to comment #1. The draft Finding has been removed.

7. **WRCAC Comment FJ14, re antidegradation groundwater quality objectives (included as part of comment on Finding No. 91), p. 20:** “The antidegradation objectives in the Santa Ana Basin Plan are based on historic long-term averages. So by definition, half of the observations were above the established objective. Furthermore, the averages consider all sectors contributing to groundwater TDS and nitrate levels (some at higher levels and some at lower levels), but the objectives expect all sectors to discharge at what presumably half of them never met in the first place. In other words, agricultural land is held to the same standard as forested land. This might be a fair approach if the objective were not based on an average of the long-term observations across each GMZ. But the current approach simply sets up the land uses that discharge at higher levels to fail”.

Response: The CWAD does not establish groundwater quality objectives but, rather, must implement them. With one exception, all groundwater management zones (GMZs) in the San Jacinto watershed lack assimilative capacity for nitrogen and Total Dissolved Solids, i.e., the nitrogen and TDS quality in these GMZs are being exceeded. This means that ALL discharges to these GMZs must be held to the GMZ objectives, unless acceptable offset plans approved by the Regional Board are implemented. The draft CWAD properly implements the Basin Plan objectives.

8. **WRCAC Comment a22, re B. ENROLLMENT, AUTHORIZATION TO DISCHARGE, AND TERMINATION OF ENROLLMENT , #2, Page 22:** Requests information about how Regional Board staff will rectify agricultural operators who move to different parcels every year, and how the NOI Form will address these moves.

Response: A discharger will be required to file an NOI for every parcel they farm. If this changes on an annual basis, then a new NOI will need to be submitted for a new parcel, and a NOT submitted to terminate the coverage on previous parcels.

9. **WRCAC Comment a23, re B. ENROLLMENT, AUTHORIZATION TO DISCHARGE, AND TERMINATION OF ENROLLMENT, # 2.d., Page 22:** Recommends the inclusion of a box in the NOI for indicating enrollment in a coalition group.

Response: Noted and agreed.

10. **WRCAC Comments FJ24 and a25, re B. ENROLLMENT, AUTHORIZATION TO DISCHARGE, AND TERMINATION OF ENROLLMENT, #2.e., Page 22:** Comments note that NOI requirement 2.e on Page 22 is not necessary, because the Board would already have this information when the Coalition Administrator is approved.

Response: Comment noted. No changes recommended. Including the submittal of this information on the NOI confirms that the enrollee is aware of the Administrator and the Administrator's contact information.

11. WRCAC Comment a26, re B. ENROLLMENT, AUTHORIZATION TO DISCHARGE, AND TERMINATION OF ENROLLMENT, #2.f., Page 22: Recommends that recycled water (as a source of water) be added to the list in NOI Item 2.f.

Response: Information regarding source(s) of water has been added to Item 2, j. This provides for the submittal of information regarding recycled water use.

12. WRCAC Comment a27, re B. ENROLLMENT, AUTHORIZATION TO DISCHARGE, AND TERMINATION OF ENROLLMENT, #2.o., Page 23: This comment is unclear. Appears to state that this item should specify whether or not backflow prevention devices and presence of abandoned wells should be reported.

Response: Abandoned wells and the use of backflow prevention devices need to be reported, as specified in this item. The intent is to assure that appropriate measures are in place to prevent reclaimed water and agricultural waste discharges from migrating via an abandoned well or inadequate backflow prevention. No change in the language is necessary.

13. WRCAC Comment a28, re C. RESPONSIBILITIES OF ENROLLED DISCHARGERS, #4, Page 24: Suggests an editorial change to include the phrase "management of". we add "management of" to the second to the last sentence, before "irrigation practices"

Response: The subject sentence now reads: "BMP implementation, evaluation and modification shall address irrigation practices, if any, *and their management*" (italics added). Since the management of irrigation practices is already addressed by this language, no revision to the language is necessary or proposed. .

14. WRCAC Comment a29, re C. RESPONSIBILITIES OF ENROLLED DISCHARGERS, #4, Page 25: Recommends that the language in the last sentence of this Provision be modified to add "be in compliance with the Basin Plan objectives established for the parcel location for the enrolled owner/operator", and to delete the remainder of the sentence because "as the permit matures the implementation of monitoring data such as described here will be worked out."

Response: Board staff does not believe that the language changes proposed are meaningful or appropriate. The intent of this language is to identify information necessary to evaluate the efficacy of nutrient-related BMPs, not to require that BMPs comply with water quality objectives. BMPs are intended to control pollutants in waste discharges so as to assure that the discharges do not cause or contribute to violations of water quality objectives, not to meet water quality

objectives themselves. Water quality objectives are not established for a specific parcel location or for a specific enrolled operator, as the recommended language appears to suggest. Board staff recognizes that as the CWAD is implemented, both BMPs and evaluation monitoring will likely be modified. The current language allows this possibility. However, it is appropriate to cite now the expectations for evaluation of nutrient BMP efficacy evaluations.

15. WRCAC Comment m30 and K31, re C. RESPONSIBILITIES OF ENROLLED DISCHARGERS, #4, Page 25: These comments reiterate prior comments (see comment #1)

Response: Please see response to comment #1.

16. WRCAC Comment a32, re C. RESPONSIBILITIES OF ENROLLED DISCHARGERS, #10, Page 26: Recommends that the following sentence below be deleted because it is redundant: “The AgNMP may include a WQTP (C.3 above) and where necessary, must include a proposed TDS and nitrogen offset program(s)”.

Response: Comment noted. The provision referenced has been corrected to C. 5., rather than c.3. Board staff respectfully disagrees that there is redundancy. Provision C.5. allows dischargers to participate in a Water Quality Trading Program (WQTP); Provision C. 10 provides, in pertinent part, that a WQTP may be included in a proposed Agricultural Nutrient Management Plan (AgNMP). No changes are necessary or proposed.

17. WRCAC Comment m33, re E.DISCHARGE CHARACTERIZATION AND WATER QUALITY MONITORING PROGRAM, #2, Page 28: Comment asks where the money to do the WQMPP is coming from. States it will take a year to set up funding source through any coalition to do anything.

Response: Comment noted. It is not the Board’s responsibility to identify sources of funding to meet the requirements of the CWAD. That said, Board staff proposes to extend the date for enrollment in the CWAD to no later than six months from the date of adoption of the CWAD. The intent is to provide time for the formation of a coalition before requisite submittals are due.

18. WRCAC Comment m34 and FJ35, re G. GENERAL CONDITIONS AND OTHER REPORTING, #4.b., Page 33: Comment states that: “WRCAC would still need to provide list of WRCAC TMDL stakeholders in compliance for each cycle - but this is not annual it is per cycle. Comment fj35 questions to whom this requirement applies.

Response: Comments noted: Based on discussion with WRCAC, this text has been modified to read as follows: “b. The list of dischargers who have paid their apportioned TMDL implementation fees shall be submitted by WRCAC within 30 days after the payment deadline”.

19. WRCAC Comment FJ36, re I. DISCHARGE PROHIBITIONS, #9, Page 35: This comment refers to prior comments regarding antidegradation groundwater quality objectives. See #7, above.

Response: See response to #7, above.

20. WRCAC Comment a37, re K. RECEIVING WATER LIMITATIONS, #1, Page 38: Requests that the last phrase “to unreasonable adverse impacts on surface waters beneficial uses, or to conditions of pollution or nuisance” be deleted.

Response: Comment noted. No rationale for this recommendation was provided. This limitation, as written is appropriate to assure that the Basin Plan and applicable provisions of the California Water Code are met. No changes recommended. .

21. WRCAC Comment a38, Page 38: Need to change the adoption date for the CWAD.

Response: Comment noted. The date will be changed appropriately.

B. COMMENTS FROM THE RIVERSIDE COUNTY FARM BUREAU (RCFB)

(Note: RCFB provided (undated) comments on the April 22, 2016 draft CWAD. Board staff discussed these comments with RCFB staff and requested additional information concerning the legal basis for the assertion that the information that would be required to be submitted by the CWAD is and should be maintained as confidential/proprietary (see **General Comments, below**).

In an e-mail message to Joanne Schneider on June 6, 2016, Kari Fisher, Associate Counsel for the California Farm Bureau Federation, provided additional comments and recommendations. Specifically, Ms. Fisher questioned whether certain components of the eNOI submittal could be made confidential for members of a Coalition Group. Ms. Fisher provided the specific example of the Central Valley RWQCB’s irrigated regulatory program.)

Specific Comments:

1. RCFB COMMENT, re “Provision” 54, Page 10: “What will be considered appropriate characterization of waste discharges as well as appropriate efficacy?”

Response: First, here and in subsequent comments below (2, 3, 4 and 5), RCFB refers to provisions of the WDR. In fact, these are Findings in the draft Conditional Waiver of Waste Discharge Requirements (CWAD). Board staff has added quotations to the term “Provision” in describing these comments to note this distinction.

The draft CWAD requires the submittal of specific information as part of the Notice of Intent (NOI) that must be completed by eligible dischargers to enroll in the CWAD. See B.

ENROLLMENT, AUTHORIZATION TO DISCHARGE, AND TERMINATION OF ENROLLMENT, #3. The list shown here is designed, in part, to elicit information about the nature and quality of waste discharges. Further, E. DISCHARGE CHARACTERIZATION AND WATER QUALITY MONITORING PROGRAM PLAN AND REPORTING, #1 includes a list of information to be submitted as part of the site-specific characterization of agricultural discharges.

The draft CWAD requires that dischargers submit a proposed water quality monitoring program plan (WQMPP) that is designed, in part, to assess the effects of discharges on receiving waters and the efficacy of BMPs. (See E. DISCHARGE CHARACTERIZATION AND WATER QUALITY MONITORING PROGRAM PLAN AND REPORTING, #3). Board staff will review the proposed WQMPP to determine its adequacy and to identify the need for modification. Once approved by the Regional Board, the WQMPP is to be implemented.

2. RCFB COMMENT, re “Provisions” 61 and 62, Page 12: “With regard to AgNMPs, is there a template AgNMP or are there specific parameters the Regional Board will require within these plans?”

Response: The Board does not have a template AgNMP. WRCAC has prepared a draft AgNMP that addresses compliance with the Lake Elsinore and Canyon Lake Nutrient TMDLs. Implementation of TMDL-related tasks is a requirement of the draft CWAD. Scott Brothers Dairies has also prepared an AgNMP that staff believes is a good example that addresses some of the requirements of the CWAD. Each farm parcel, or group of similar operations, may have similar discharges and BMPs, so a group effort could be used to meet this AgNMP requirement, provided that the dischargers are members of an established Coalition Group.

3. RCFB COMMENT, Page 12, “Provision” 61: “Is there a template BMP reporting program or are there specific parameters the Regional Board will require within these plans? Or is the BMP reporting program report just a subset of the AGNMP?”

Response: The Board does not have a template BMP reporting program. However, other dischargers are also required to report on their BMPs, including Confined Animal Feeding Operations (CAFOs, mostly dairies) and their reports may serve as a template. The reporting program for BMPs can be a subset of the AgNMP.

4. RCFB COMMENT, Page Nos. 14-15, “Provision” 70: “Provision 61 requires AgNMPs to be developed by individuals or a Coalition Group. However, “Provision” 70 concludes that if “Agricultural operators...who are not members of WRCAC will be required to develop and implement an individual AgNMP.” These two “provisions” seem to be in conflict regarding a Coalition Group’s ability to develop and AgNMP for its members within the San Jacinto Watershed.

Response: The last sentence in Finding 70 has been modified to state that “Agricultural operators enrolled in this Order who are not members of WRCAC *or a Coalition Group*” (italics added) will be required to develop and implement...an individual AgNMP.” This is intended to resolve any conflict.

- 5. RCFB COMMENT, Page No. 19, “Provision” 91:** “This “Provision” was added in response to the State Water Board’s release of the draft East San Joaquin WDR Order which is precedential on all Regional Boards. However, the Draft ESJ Order is...a draft order. ...Thus, it is premature to rely upon any component within the Draft Order as nothing is precedential until it has been adopted by the State Water Board....Revisions to provisions C.4 (Pages 24-25) and C.10 (page 26) were likely added in response to the ESJ Order”.

Response: Finding 91 has been deleted in the revised draft Order. See also response to A.1., above. Revisions to the draft Order, C. RESPONSIBILITIES OF ENROLLED DISCHARGERS, # 4 and 10, were made based on Board staff’s recognition that it would be appropriate to require explicitly the submittal of information concerning nutrient-related BMPs and their efficacy, and the implementation and management of BMP practices.

- 6. RCFB COMMENT, Page 37, Provision 57 (sic) [correct reference to is Provision J.7]:** “Under the Inspection and Entry provision, it states that Water Code section 13267© mandates that a Discharger must allow the Regional Board to conduct certain activities. Water Code section 13267(c) does not mandate a landowner to allow entry. Rather, if a landowner does not give consent, the Regional Board must obtain a warrant. ...In light of the actual requirements in the statute, Provision 7 should be revised to correctly reflect the law.” RCFB provides example language.

Response: While Board staff believes that the RCFB mis-reads the language in the Provision, which begins with the caveat, “To the extent required by Water Code section 13267”, Board staff has modified the proposed language in the revised draft Order to address this concern.

General Comments:

- 7. Public Notice and Comment:** The first General Comment states that there was not sufficient public notice for this latest draft of the CWAD and that the Lyris list procedure typically employed was not utilized in this case.

Response: Consideration of adoption of the CWAD (and draft Mitigated Negative Declaration) was postponed from the April 22, 2016 Regional Board meeting to ensure adequate public notification using the Lyris lists pertinent both to the CWAD and Board meetings, an extensive list of potentially affected dischargers, and publication of the public hearing notice for the July 22, 2016 hearing in a paper of wide circulation in the project area.

- 8. Reliance on other Region’s Irrigated Lands Programs:** “Documents on the Regional Board’s website have been pulled directly from the Central Coast Regional Board’s Ag Order, such as the NOI form. This Ag Order is currently in active litigation....Given that the CWAD includes adopted TMDLs, it may be beneficial for the Regional Board to look at a similar Ag Waiver program that includes TMLDs (sic), such as the Colorado River Regional Board’s Conditional Waiver...”

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Response: In drafting the proposed CWAD, Regional Board staff reviewed and considered the agricultural regulatory programs, established by conditional waivers of waste discharge requirements or waste discharge requirements. This includes consideration of the NOI form employed by the Central Coast Regional Board. The eNOI form proposed for use to enroll dischargers in the proposed CWAD was tailored to Santa Ana Regional Board needs.

9. Manner of Compliance: “A provision should be added to clearly acknowledge that the Regional Board cannot prescribe the specific management practices or dictate the manner of compliance (Water Code section 13360).” RCFB provides examples of such language used in other agricultural lands orders.

Response: The draft CWAD sets out the requirements to be met by enrolled dischargers but does not specify the method or manner of compliance with those requirements. Board staff are fully aware of the Water Code proscription, and this is reflected in the adaptive management approach utilized in the draft Order (see also Response to Comment A.1.) Pursuant to this approach, the dischargers are required to propose plans and schedules whereby the requirements of the CWAD will be met. The proposed plans and schedules are to be implemented upon approval and refined over time based on the water quality results of implementation. Since recognition of the Water Code proscription of dictating method and manner of compliance is inherent in the structure of the draft Order, Board staff does not believe that an explicit reference to this Water Code provision is necessary or appropriate.

10. The Conditional Waiver’s Use of Coalitions is Appropriate and Beneficial. “The inclusion of a third-party group structure with coalitions as the intermediary is a vital component for increasing participation and efficiency in reach water quality objectives”.

Response: Comment noted.

11. Submittal of Individual Information for Members Participating in a Coalition Group: “The WDR requires that various reports be submitted for approval or annually to the Regional Board. CFBF [California Farm Bureau Federation] highly recommends that these plans be kept on farm, available for inspection or submitted to the Coalition Group who can aggregate the information and then send it to the Regional Board.” Relevant sections of comment drafted by CFBF to the Colorado and North Coast Regional Boards are cited. These comments assert, in part, that farm specific information, including pesticide application, irrigation practices, crop rotations, etc. are intellectual property, trade secrets, and proprietary information that must remain confidential. Water Code Section 13267(b)(2) is cited.

Response: As noted at the outset of these responses to the RCFB comments, Board staff discussed this matter with RCFB and CFBF representatives and we requested that additional information regarding the legal basis for maintaining farm specific information confidential be provided.

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In response to this request, Kari Fisher (CFBF legal counsel) provided an example of language employed to address this matter in Central Valley Regional Board WDRs (see e-mail message from Ms. Fisher to Joanne Schneider dated June 6, 2016). (No additional information was provided regarding the legal basis for the confidentiality assertion.) Ms. Fisher questioned whether the CWAD could be revised to include confidentiality protections for members of a coalition group or to specify the difference in reporting requirements for individuals versus members who join a third party group. Joanne Schneider provided a preliminary e-mail reply on June 6, 2016 to Ms. Fisher's message; this reply is attached to this response to comments document.

In short, Ms. Schneider's reply was that unlike the Central Valley, no Coalition Groups have as yet been formed in the San Jacinto watershed. However, Board staff is conceptually in agreement with the Coalition Group approach of collecting and summarizing data for presentation to the Regional Board, provided that individual discharger data can be provided directly to the Board if and as the need arises.

Accordingly, the draft CWAD has been modified to provide that individual dischargers must complete the information required in the eNOI, unless: a) they are a member of an established Coalition Group that has prepared an acceptable Compliance Program; b) that Compliance Program requires the submittal to the Group of the pertinent information required by the eNOI; and, c) the Coalition Group aggregates the pertinent data, summarizes the data and submits the data to the Regional Board in accordance with the method and schedule specified in the approved Compliance Program. Individual dischargers who fail to submit these data in a timely manner would be required to provide the data upon Executive Officer notification of the need to do so. Please see **B. ENROLLMENT, AUTHORIZATION TO DISCHARGE, AND TERMINATION OF ENROLLMENT, 2.**

C. INLAND EMPIRE DISPOSAL ASSOCIATION

- 1. Re Finding 10; Discharge Prohibition 1:** Modify the definition of "Agricultural dischargers" to include reference to physical contaminants and trash (including plastics, glasses and metals, etc.)

Response: Trash and municipal solid waste are prohibited from discharge under Discharge Prohibition 8 in the Conditional Waiver. Therefore, no change to the draft Order to incorporate this recommendation is necessary.

- 2. Re Findings 15 and 26:** The definitions of "Compost" and "Mulch" should be expanded to include the physical contaminant limits and treatment standards specified in California Code of Regulations, Title 14, sections 17868.3.1 and 17852(a)(24.5)(A).

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Response: The definitions of “Compost” and “Mulch” have been revised accordingly in the revised draft Order.

3. Re Finding 30 and Discharge Prohibition 8: The term “Trash” should be excluded in the definition of “Waste” allowed for discharge, consistent with the State Water Board’s Trash Amendments (Resolution No. 2015-0019).

Response: Trash has been included as a prohibited waste under the definition of “Waste” and under Discharge Prohibition 8 of the Conditional Waiver.

4. Re DEFINITIONS: The definition of “Trash”, as defined in the Trash Policy, should be included.

Response: The definition of “Trash”, as defined in the Trash Amendments, has been included in the Definitions.

From: [Schneider, Joanne@Waterboards](mailto:Schneider_Joanne@Waterboards)
To: [Kari Fisher](#); [Riverside County Farm Bureau](#)
Cc: [Cross, Wanda@Waterboards](#); [Theisen, Ken@Waterboards](#); [Rice, David@Waterboards](#); [Berchtold, Kurt@Waterboards](#)
Subject: RE: WORKING DRAFT CWAD
Date: Monday, June 06, 2016 3:22:15 PM

Good afternoon, Kari. While we had hoped for a succinct explanation of the legal basis for maintaining farm-specific information confidential, we thank you for your review and recommendations re the CWAD. Here is a preliminary response.

Generally speaking, I believe that we agree in concept with the aggregation of data of the type required by the eNOI by a third party representing a "coalition group" (the term employed in the draft CWAD), provided that the data remain "obtainable" by the Regional Board, should the need arise. However, as you know, the circumstances in Region 8 differ significantly from those in Region 5, where coalition groups have been formed and are operating. The CWAD allows and provides incentives for the formation of one or more such groups in the San Jacinto watershed, but if group formation does not occur, then the CWAD must be tailored accordingly to set requirements that would apply to all enrollees. With this said, the CWAD provides for the submittal of a Compliance Program by a coalition group, if formed. That Compliance Program could propose an approach whereby aggregation of data would occur in lieu of individual submittals. To proceed with this approach, we will need to review the e-NOI text of the CWAD again to assure that the CWAD, as written, does not preclude this possibility.

fyi - we expect to post/distribute the revised draft CWAD and draft Mitigated Negative Declaration in the very near future, hopefully by the end of this week. Of course, this allows for additional review and comment before the Regional Board is asked to consider adoption of the CWAD/approval of the MND.

Thank you again for your thoughts.

Joanne

Joanne E. Schneider
Environmental Program Manager
Regional Water Quality Control Board - Santa Ana Region
3737 Main Street, Suite 500
Riverside, CA 92501-3348
Joanne.Schneider@waterboards.ca.gov
Phone: 951-782-3287
FAX: 951-686-8016

From: Kari Fisher [kfisher@CFBF.com]
Sent: Monday, June 06, 2016 11:58 AM
To: Schneider, Joanne@Waterboards; Riverside County Farm Bureau
Cc: Cross, Wanda@Waterboards; Theisen, Ken@Waterboards
Subject: RE: WORKING DRAFT CWAD

Good morning Joanne,

Thank you for providing us with the opportunity to review the latest draft of the CAWD. With regard to the components to the eNOI, we briefly talked about the possibility to making certain components confidential if a coalition exists. Can the CAWD be revised to include references to such protections or specify the difference in reporting requirements for individuals versus members who join a third party group?

For example, the Central Valley Regional Water Board's irrigated lands regulatory program WDRs for

coalition groups provide the following requirements which provide the Regional Board with ample information:

Under the coalition WDRs, the coalition submits the following membership list to the Regional Board:

The third-party shall submit a list of its Members to the Central Valley Water Board within 180-days of receiving an NOA from the board and then annually by 31 July of each year (beginning the year following initial submission of the list). The membership list shall identify Members. The list shall also identify growers that have had their membership revoked and Members that are pending revocation. The membership list shall contain, at a minimum, the following information for each member: all parcel numbers covered under the membership, the county of each parcel, the section, township, and range associated with each parcel, the number of irrigated acres for each parcel, the Member's name, mailing address, the contact name and phone number of the individuals authorized to provide access to the enrolled parcels, the name of the farm operator for each parcel, if different from the Member, and identification of each parcel

that is part of a Small Farming Operation, if applicable. In lieu of providing Members' phone numbers as part of the membership list, the third-party may provide the office contact name(s) and phone number(s) of a representative of the third-party.

Each member also completes a Farm Evaluation which has information requested in the CAWD eNOI, such as name, APN, crop, irrigation practices, etc. The Farm Evaluation is submitted to the coalition (as well as a copy stays on farm) who aggregates the information at a township level and submits an aggregated summary to the Regional Board. The Regional Board receives individual data at the township level and also maintains the authority to inspect the Farm Evaluation.

Central Valley Coalition WDR requirements:

Report Component (18) – Summary of Management Practice Information

The third-party will aggregate and summarize information collected from Farm Evaluations. The summary of management practice data must include a quality assessment of the collected information by township (e.g. missing data, potentially incorrect/inaccurate reporting), and a description of corrective actions to be taken regarding any deficiencies in the quality of data submitted, if such deficiencies were identified. In addition to summarizing and aggregating the information collected, the third party will provide the individual data records used to develop this summary in an electronic format, compatible with ArcGIS, identified to at least the township level.

Farm Evaluation components:

The link below is the template that all coalition members must fill out. At a minimum, the template was required to contain:

- Identification of the crops grown and acreage of each crop.
- Location of the farm.
- Identification of on-farm management practices implemented to achieve the Order's farm management performance standards. Specifically track which management practices recommended in management plans have been implemented at the farm.
- Identification of whether or not there is movement of soil during storm events and/or during irrigation drainage events (sediment and erosion risk areas) and a description of where this

occurs.

- Identification of whether or not water leaves the property and is conveyed downstream and a description of where this occurs.
- Location of in-service wells and abandoned wells. Identification of whether wellhead protection and backflow prevention practices have been implemented

I am happy to discuss this with you further at your convenience.

Thank you,

Kari

Kari E. Fisher
Associate Counsel
Legal Division
California Farm Bureau Federation
2300 River Plaza Drive Sacramento, CA 95833
916-561-5666 phone
916-561-5691 fax
kfisher@cfbf.com
www.cfbf.com

From: Schneider, Joanne@Waterboards [mailto:Joanne.Schneider@waterboards.ca.gov]
Sent: Friday, May 27, 2016 9:53 AM
To: Riverside County Farm Bureau <pastor@riversidecfb.com>; Kari Fisher <kfisher@CFBF.com>
Cc: Cross, Wanda@Waterboards <Wanda.Cross@waterboards.ca.gov>; Theisen, Ken@Waterboards <Ken.Theisen@waterboards.ca.gov>
Subject: RE: WORKING DRAFT CWAD

I have attached another version of the draft CWAD that should be used for your review, rather than the version I sent yesterday. I apologize for any inconvenience.

Joanne

From: Schneider, Joanne@Waterboards
Sent: Thursday, May 26, 2016 3:32 PM
To: Pastor@RiversideCFB.com; kfisher@CFBF.com
Cc: Cross, Wanda@Waterboards; Theisen, Ken@Waterboards
Subject: WORKING DRAFT CWAD

Good afternoon. Thank you for your time this afternoon. Attached, as promised, is the latest working draft of the CWAD. Please bear in mind that additional changes are likely to be made before this is released to wider distribution.

Your specific comments, and specific recommendations for changes (e.g., to address confidentiality via Coalition Group) would be welcomed.

Joanne

Joanne E. Schneider
Environmental Program Manager

Regional Water Quality Control Board - Santa Ana Region
3737 Main Street, Suite 500
Riverside, CA 92501-3348
Joanne.Schneider@waterboards.ca.gov
Phone: 951-782-3287
FAX: 951-686-8016