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File No. 82231.00003

August 7, 2014



VIA EMAIL: COMMENTLETTERS@WATERBOARDS.CA.GOV

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Re: Agricultural Expert Panel Draft Report - Comments

Dear Panel Members and Darrin Polhemus:

The Southern San Joaquin Valley Water Quality Coalition (Coalition) appreciates the work and dedication of the Panel and staff time participating in the SWRCB Expert Panel review. Many of the issues identified in the Expert Panel Report address topics that have been of concern to our Coalition throughout the Irrigated Lands Regulatory Program (ILRP) WDR General Order development process because of the characteristics of our basin and the advancement of management practices in many areas. We will address those issues below in Section B. Initially, however, we will identify those items in your Report with which we have some concern.

A. Issues of concern or in need of clarification

There are three issues addressed throughout the Report, which give rise to concerns and require comment, and perhaps additional clarification.

1. High Vulnerability Areas

The high vulnerability criteria was incorporated into the General Orders to prioritize the regulatory program and therefore the classification of a vulnerability area triggers several specific regulatory components. The Expert Panel Report did not address each of the Orders' specific components, nor clarify if the Panel otherwise envisions some means of prioritization. Consequently, further clarification is merited. We emphasize that without a system of prioritization this will dramatically spread limited coalition and farm management resources, and thereby reduce focus on and resources committed to our key vulnerable areas.



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2. Report Nitrate Applied

The Panel Report calls for reporting of nitrogen applied. This suggests a departure from the existing system of the General Order surrogate compliance approaches, such as nitrogen ratio. Certainly, reporting nitrate applied would be a simple approach, but this significant shift from the General Orders needs further evaluation. In some cases higher nitrogen application rates are appropriate to support higher yield potential. Additional communication between growers and the coalitions regarding the farm and coalition data base will be needed to identify outliers.

3. Irrigation and Nitrogen Management Plans

A major new and problematic issue arises if reporting of irrigation water applied is required. Collecting and potentially reporting applied water and distribution uniformities is uncertain and costly if it gets incorporated into the Nitrogen Management Plan template that the Coalition groups proposed to the Central Valley Regional Water Quality Control Board. The issue of applied water is understandingly an important factor as to percolation, but it has not been part of the regulatory discussion on these General Orders, or the entire ILRP over the last decade. Because there was limited detail offered in the Panel's Report questions and concerns are offered.

There are also considerable concerns as to how this may impact salinity management, conjunctive use and water rights. As an example, if a farmer is deemed to be applying an excess of irrigation water for recharge and/or salinity management, this may be determined to be excess of his beneficial use application and thereby raise issues involving a farmer's water rights. These and many other concerns arise. Therefore, this is a premature element for regulatory inclusion and therefore needs considerable further discussion.

B. Areas of Support

We fully support the Panel's observations that first encountered groundwater data does not in many instances support enforcement against the overlying farmer, and that an increase in nitrate concentration may actually mean better water/nitrate management. Likewise, we have consistently pointed out difficulties with growers or coalitions calculating nitrate mass balances at the field scale with currently available information. Consequently, we support a number of the Panel's comments, including:



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- Calculation of nitrate balances is currently infeasible for the majority of crops at the field level and cannot be done at the farmer level.
- There is currently no single metric available to judge good from poor management practices.
- As to nonpoint source discharges, there is no current surrogate that can show mass flux of nutrients below the root zone in many systems.
- Data on the farm may not actually document actual conditions in the soil.
- Accurate estimates of percolation of nitrate to groundwater aquifers cannot be made.
- Annual nitrogen cycle computations should not be required, as their accuracy is questionable.

We also embrace the comments that significant changes in nitrate and irrigation management will take several years.

C. Monitoring

We agree that the General Order programs for surface and groundwater monitoring must be meaningful and should not include monitoring merely for monitoring purposes alone. We recognize that monitoring is a necessary part of water quality regulation and is certainly important to indicate problem areas, trends, and as to surface water identifies quality exceedances. We do appreciate the Panel's observation that groundwater monitoring at a specific depth and location should not be used for enforcement against the overlying land. Monitoring does, however, serve many program components, and can assist proper regulatory oversight and enforcement, and serve as a means of compliance with other existing legal requirements and policies.

E. Education

We certainly acknowledge that education is important to focus land operators on water quality issues and is therefore an imperative ingredient to long range sustainability. Our Coalition is presently attempting to coordinate with both the Department of Food and Agriculture, with UC Cooperative Extension, and with our Regional Board in putting together meaningful farm education programs. We support the Expert Panel's recognition of the importance of education.



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F. Nitrogen Hazard Index

The Expert Panel is reluctant to fully embrace the utility of a Nitrogen Hazard Index approach to groundwater management. We believe that this could be an area for additional discussion on where it could be useful despite the current limitations discussed by the Panel. Experts within our Coalition area have been working with a Nitrogen Hazard Index approach as a meaningful tool to assist in managing groundwater, educating growers, and focusing on surface activities. Certainly, no single surrogate tool can address the complex issue of nitrogen management, but we believe the management toolbox ought to employ a variety of meaningful tools. Further clarification on the Nitrogen Hazard Index by the Panel could be meaningful.

G. Report Continuity

A general observation is that there are components of the Report that look as if they were added by different individuals at different times as the language, terms, and topics do not seem to be fully integrated. Any work the Panel could do to smooth out and harmonize the language throughout the Report would be helpful. Further, if the Report could be presented in a more constructive and less critical manner, it may go a long way to assist the State Board in embracing many of the Panel's positive contributions.

H. Coordination with the General Orders

Lastly, the coalitions in the Central Valley are presently trying to put different component programs together to comply with their ILRP General Orders. One of those now relevant programs is the Management Practices Evaluation Program (MPEP). It would be helpful to the coalitions and the Regional Boards if the Expert Panel could make specific recommendations as to how these program elements should be structured so that the Regional Board can meet its statutory requirements in a cost-effective manner.

Sincerely,

William J. Thomas
for BEST BEST & KRIEGER LLP

WJT:lmg

Cc: Southern San Joaquin Valley Water Quality Coalition