



State Water Resources Control Board

February 8, 2016

VIA CERTIFIED MAIL AND EMAIL

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Mr. Bill Jennings
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3536 Rainier Avenue
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Dear Mses Firestone and Spaletta, and Mr. Jennings:

OWN MOTION REVIEW OF WASTE DISCHARGE REQUIREMENTS GENERAL ORDER NO. R5-2012-0116 FOR GROWERS WITHIN THE EASTERN SAN JOAQUIN RIVER WATERSHED THAT ARE MEMBERS OF THE THIRD-PARTY GROUP, CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD: TRANSMITTAL OF PROPOSED ORDER, NOTICE OF PUBLIC WORKSHOP, AND NOTICE OF WRITTEN PUBLIC COMMENT PERIOD
SWRCB/OCC FILES A-2239(a)-(c)

The State Water Resources Control Board (State Water Board) staff is hereby releasing a proposed order in the above-entitled matter. The State Water Board will hold a workshop on the proposed order on **Tuesday, March 15, 2016**, or on **Wednesday, March 16, 2016**, commencing at **9:00 a.m. in the Coastal Hearing Room, Second Floor of the Cal/EPA Building, 1001 I Street, Sacramento, California**. You will separately receive notice of the final workshop date and an agenda for the meeting.

The purpose of this workshop is to solicit oral comments from petitioners and interested persons regarding the proposed order. The State Water Board will take no final action on the proposed order at this workshop.

The State Water Board is also soliciting written comments on the proposed order. Written comments must be received by **12:00 noon, Friday, April 8, 2016**. Please indicate in the subject line, "Comments to A-2239(a)-(c)." Electronic submission of written comments is encouraged. Written comments must be addressed to:

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, CA 95812-0100 | www.waterboards.ca.gov

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
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P.O. Box 100
Sacramento, CA 95812-0100
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(email) commentletters@waterboards.ca.gov

After consideration of comments received at the workshop and through the written comment period, the State Water Board will schedule the matter for final action at a subsequent State Water Board meeting.

SPECIFIC COMMENTS SOLICITED

The petitions raise a set of complex and challenging issues that are considered in the proposed order. The State Water Board invites comment on both the policy direction expressed in the proposed order and the proposed revisions to Central Valley Regional Water Quality Control Board (Central Valley Water Board) Order No. R5-2012-0116 (Eastern San Joaquin Agricultural General WDRs). The State Water Board will review the comments it receives carefully and may make revisions to the proposed order prior to considering adoption.

The State Water Board particularly encourages comments on the reporting requirements established in the proposed order. The State Water Board has a mandate to protect water quality; to do so, it must provide sufficient transparency in any irrigated lands regulatory program to ensure and verify appropriate protections, while, at the same time, maintaining the economic viability of agriculture in California. The State Water Board recognizes that there is a range of reasonable approaches to the reporting requirements of an irrigated lands regulatory program. The State Water Board accordingly invites comment on the reporting requirements of the proposed order and requests specifically that interested persons consider the following reporting alternatives when preparing their comments:

Alternative 1: This is the alternative established in the proposed order. The proposed order would require all growers (Members) to submit information to the coalition (Third Party) on management practices implemented and nitrogen applied to and removed from the field. Starting in 2019, the Third Party would report the full field-level data set identified by field location to the Central Valley Water Board. The field-level reporting to the Central Valley Water Board would allow the Board to develop target three-year ratio values for nitrogen application and removal. It would also allow the Central Valley Water Board to correlate management practice data, nitrogen application data, and water quality data to determine effective and ineffective management practices and associated trends in water quality. The full data set would additionally enable verification of Third Party data summaries and analyses and follow-up actions.

Under this alternative, the proposed order would not institute the requirement to report field level data to the Central Valley Water Board until 2019. The Third Party would report the field-level data for 2016-2018 to the Central Valley Water Board in May 2019. The Third Party would report the field-level data to the Central Valley Water Board annually thereafter. This approach would recognize that, until 2019, the annual data

sets will contain partial data because the reporting requirements of the proposed order are phased in over several years. The delayed reporting would also acknowledge the multi-year characteristic of the nitrogen application indicator proposed in the order and allow Members and the Third Party several years to implement the revised nitrogen reporting requirements of the proposed order prior to reporting the values.

Alternative 2: Alternative 2 would consist of the same requirements as Alternative 1, but the requirement to submit field-level management practice implementation data and nitrogen application data by location to the Central Valley Water Board would commence effective the first year of implementation of the revised permit. Although the Central Valley Water Board would receive incomplete data sets in the first two years and would not have the multi-year data required to appropriately analyze the proposed nitrogen application indicator, the Board would be able to use the data to verify Third Party analyses and follow up actions as well as to analyze trends for reporting Members.

Alternative 3: Alternative 3 would differ from Alternative 1 and 2 in that the Third Party would submit most of the field-level data on management practice implementation and on nitrogen application to the Central Valley Water Board without identifying the data by field location or name. An automatic requirement for the Third Party to submit the field-level data identified by name and location to the Central Valley Water Board would be triggered only where (1) the field is located in an area subject to a Surface or Groundwater Quality Management Plan, or (2) where the field has a nitrogen application indicator that is substantially higher than the nitrogen application indicator for similar fields, in accordance with the metric laid out in the proposed order. This alternative would permit the Central Valley Water Board to follow up and verify Third Party actions where management practices may be ineffective in achieving water quality requirements. The Central Valley Water Board would continue to have the authority to request field location data for additional data points, and possibly the entire data set, at its discretion.

ATTORNEY ASSIGNMENTS

One of the attorneys assigned to this matter, Emel Wadhvani with the Office of Chief Counsel, assisted the Central Valley Water Board in the development of the Program Environmental Impact Report (Program EIR)¹ for the Irrigated Lands Long-Term Regulatory Program. Because the Eastern San Joaquin Agricultural General WDRs rely on the Program EIR for California Environmental Quality Act (CEQA) compliance, Ms. Wadhvani is precluded from reviewing any petition issues raising arguments under CEQA.

Ms. Wadhvani did not represent the Central Valley Water Board during the proceedings for or otherwise participate in the development of the Eastern San Joaquin Agricultural General WDRs.

However, Ms. Wadhvani assisted in drafting Section IV.E., State Antidegradation Requirements, of the Irrigated Lands Regulatory Program Long-Term Program Development

¹ Available at http://www.waterboards.ca.gov/centralvalley/water_issues/irrigated_lands/new_waste_discharge_requirements/program_environmental_impact_report/index.shtml

Staff Report,² which was circulated as Appendix A to the draft Program EIR. Out of an abundance of caution, Ms. Wadhvani has also been excluded from participating in any determinations on petition issues concerning compliance of the Eastern San Joaquin Agricultural General WDRs with the state antidegradation policy. Tim Regan with the Office of Chief Counsel is the assigned attorney on the antidegradation issues raised in this matter.

Ms. Wadhvani is the primary contact for procedural matters related to these petition proceedings.

PROCEDURAL MATTERS AT THE WORKSHOP

All comments shall be based solely upon evidence contained in the record or upon legal argument. Supplemental evidence will not be permitted except under the limited circumstances described in California Code of Regulations, title 23, section 2050.6.

To ensure a productive and efficient public workshop in which all participants have an opportunity to participate, oral statements will be time-limited. Parties and interested persons are encouraged to prepare panel presentations. Petitioners and interested persons proposing a panel must contact Ms. Wadhvani by e-mail at Emel.Wadhvani@waterboards.ca.gov by 12:00 noon on Wednesday, March 9, 2016, with the proposed panel and requested amount of time for presentation. Non-panel presentations are expected to be limited to five minutes per speaker.

The State Water Board will circulate an order of proceedings prior to the workshop with final determinations on panels and allotted speaking time based on the number of panels and speakers expected. Any materials to be presented at the workshop, including power point presentations and other visual displays must be submitted to Ms. Jeanine Townsend at the address above by 12:00 noon on Monday, March 14, 2016.

EXCEPTION TO PROHIBITION ON EX PARTE COMMUNICATIONS

The prohibition against ex parte communications³ does not apply to general waste discharge requirements until a specified date just prior to the State Water Board's scheduled adoption of the general WDRs.⁴ That date will be specified in a future notice. Until that date, interested persons may communicate with State Water Board members regarding the draft order, provided that any oral or written communications between interested persons and board members are disclosed by the interested person within seven days of the communication. More information and sample disclosure forms are available at: http://www.waterboards.ca.gov/laws_regulations/docs/swrcb_godf_fillin.pdf. There is no disclosure requirement for communications at a noticed board workshop or meeting or submitted as a comment letter in compliance with a public notice.

² Available at http://www.waterboards.ca.gov/centralvalley/water_issues/irrigated_lands/new_waste_discharge_requirements/progr am_environmental_impact_report/2010jul_draft_peir/peir_app_a.pdf

³ Gov. Code, § 11430.10 et seq.

⁴ Wat. Code, §13287.

Additional information regarding this matter, including instructions to join an email distribution list to receive correspondence from the State Water Board regarding this matter, is available at http://www.waterboards.ca.gov/public_notices/petitions/water_quality/a2239_sanjoaquin_ag.shtml. If you have any questions regarding this letter, please contact Ms. Wadhvani at (916) 322-3622 or at Emel.Wadhvani@waterboards.ca.gov.

Sincerely,

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

Michael A.M. Lauffer
Chief Counsel
Enclosure

cc: See next page

cc: **[via U.S. Mail only]**

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