



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
commentletters@waterboards.ca.gov

February 20, 2015



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

Re: *Comment Letter—Statewide Bacteria Objectives—Scoping Comments*

Dear Ms. Rose and Ms. Gillespie:

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 57,000 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 California Environmental Quality Act (“CEQA”) Scoping Comments on the development of Proposed Statewide Water Contact Recreation Bacteria Objective Amendments to Water Quality Control Plans for Inland Surface Waters, Enclosed Bays and Estuaries and the Ocean Waters of California. Given the preliminary nature of the plan and the generalized conceptual information offered to date, Farm Bureau offers the following comments regarding the scope and content of the environmental analysis and environmental documentation for the forthcoming Biological Objectives, and will provide subsequent comments on potential elements when additional information is available.

Necessity of a Substitute Environmental Document to Analyze Proposed Project’s Environmental Effects

As proposed, the State Water Resources Control Board (“State Board”) is proposing amendments to the statewide Water Quality Control Plans for Inland Surface Waters, Enclosed Bays and Estuaries and the Ocean Waters of California. Farm Bureau appreciates the State Board’s commitment to prepare the required substitute environmental document (“SED”)

NANCY N. McDONOUGH, GENERAL COUNSEL

ASSOCIATE COUNSEL:

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

pursuant to CEQA.¹ Farm Bureau respectfully requests that the SED contain sufficient information to adequately assess any potential impacts to agriculture in order to create a project that contains appropriate and feasible alternatives and mitigation measures, as required under CEQA:

Require that an activity will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available that would substantially lessen a significant adverse effect that the activity may have on the environment.²

and

- (A) Alternatives to the activity and mitigation measures to avoid or reduce any significant or potentially significant effects that the project might have on the environment, or
- (B) A statement that the agency's review of the project showed that the project would not have any significant or potentially significant effects on the environment and therefore no alternatives or mitigation measures are proposed to avoid or reduce any significant effects on the environment. This statement shall be supported by a checklist or other documentation to show the possible effects that the agency examined in reaching this conclusion.³

As stated above, the SED plays a fundamental role as it serves to document the agency's reasoning in reaching its conclusion on the scope of the project by disclosing "the data or evidence upon which the person(s) concluding the study relied. Mere conclusions simply provide no vehicle for judicial view."⁴ In addition to including the elements described above, Farm Bureau respectfully requests that the SED contain the points raised below.

Agricultural Resources Must Be Considered During Environmental Review

Agricultural resources are an important feature of the existing environment of the State, and are protected under federal policies, such as the Farmland Protection Policy Act and National Environmental Policy Act ("NEPA"), State policies, and CEQA. Agriculture is the number one industry in California, which is the leading agricultural state in the nation.⁵ Agriculture is one of the foundations of this State's prosperity, providing employment for one in ten Californians and a variety and quantity of food products that both feed the nation and provide a significant source of exports.⁶ In 1889, the State's 14,000 farmers irrigated approximately one million acres of farmland between Stockton and Bakersfield. By 1981, the number of acres in agricultural production had risen to 9.7 million.⁷ More recently, the amount of agricultural land

¹ See Pub. Resources Code, § 21080.5; Cal. Code Regs., tit. 14, §§ 15251(g), 15252.

² Pub. Resources Code, § 21080.5(d)(2)(A).

³ Cal. Code Regs., tit. 14, § 15252(a)(2).

⁴ *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal. App. 3d 151, 171.

⁵ Food & Agr. Code, § 802(a).

⁶ CALFED Final Programmatic EIS/EIR, July 2000, pg. 7.1-1.

⁷ Littleworth & Garner, *California Water II* (Solano Press Books 2007) p. 8.

in the State has declined. From 1982 to 1992, more than a million acres of farmland were lost to other uses. Between 1994 and 1996, another 65,827 acres of irrigated farmland were lost, and this trend is expected to continue.

In order to preserve agriculture and ensure a healthy farming industry, the Legislature has declared that “a sound natural resource base of soils, water, and air” must be sustained, conserved, and maintained.⁸ Prior to negatively impacting agricultural lands, decision makers must consider the impacts to the agricultural industry, the State as a whole, and “the residents of this state, each of whom is directly and indirectly affected by California agriculture.”⁹

One of the major principles of the State’s environmental and agricultural policies is to sustain the long-term productivity of the State’s agriculture by conserving and protecting the soil, water, and air that are agriculture’s basic resources.¹⁰ Overly expansive and duplicative regulations may conflict with this policy by leading to the conversion of agricultural lands to other uses. This conversion would add to the existing statewide conversion of substantial amounts of agricultural lands to other uses, and may conflict with adopted plans of many local governments, including cities and counties, and existing habitat conservation plans or natural community conservation plans. Such conversion will have a significant impact on the region’s environment, including the agricultural environment.

CEQA requires analysis of significant environmental impacts and irreversible changes resulting from proposed projects.¹¹ These include unavoidable impacts; direct, indirect, and cumulative effects; irreversible and irretrievable commitment of resources; relationships between short-term uses and long-term productivity; and growth-inducing impacts to the environment. Pursuant to CEQA, the physical environment includes agricultural lands and resources. Given the national and statewide importance of agriculture and the legal requirements of environmental review, Farm Bureau respectfully urges the State Board’s SED to properly assess all direct and indirect effects on the agricultural environment resulting from the proposed project in its environmental analysis.¹²

Of particular relevance for such analysis of impacts on the agricultural environment, CEQA Guidelines Appendix G, section II, Agriculture and Forestry Resources, states the following:

⁸ Food & Agr. Code, § 802(g).

⁹ Food & Agr. Code, § 803.

¹⁰ Food & Agr. Code, § 821(c).

¹¹ In CEQA, “[s]ignificant effect on the environment” means, “a substantial, or potentially substantial, adverse change in the environment.” (Pub. Resources Code, § 21068.) The CEQA Guidelines make it clear the “environment” in question encompasses, “any physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise and objects of historic or aesthetic significance.” (Pub. Resources Code, § 21060.5.)

¹² Any and all adverse environmental effects on agricultural resources resulting from the project, as well as cumulative impacts that will occur over time, must be fully assessed and disclosed under CEQA, as well as avoided or mitigated as required by CEQA.

In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. In determining whether impacts to forest resources, including timberland, are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding the state's inventory of forest land, including the Forest and Range Assessment Project and the Forest Legacy Assessment project; and forest carbon measurement methodology provided in Forest Protocols adopted by the California Air Resources Board. Would the project:

- (a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?
- (b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?
- (c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?
- (d) Result in the loss of forest land or conversion of forest land to non-forest use?
- (e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use?¹³

Regulations of Waste Discharges From Irrigated Lands Must Be Feasible

In formulating regulations that impact agricultural lands, such as new water quality objectives, new implementation plans, management zones, and new recharge and recycling policies, the State Board should seek to develop the most efficient and feasible program that accomplishes water quality goals.¹⁴ Given the array of geography, topography, local conditions, and agricultural commodities grown throughout the State, water management and monitoring programs must be flexible and allow for necessary adaptations. In addition to being flexible, future regulations and project alternatives must be feasible such that they are “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.”¹⁵ All components of feasibility must be fully analyzed within the State Board's environmental analysis of the regulations and its impacts to agriculture.

¹³ Cal. Code Regs., tit. 14, § 15000 et seq. (“CEQA Guidelines, Appendix G).

¹⁴ Pub. Resources Code, § 21061.1.

¹⁵ *Ibid.*

Specific Environmental Concerns That Must Be Analyzed in the State Board's Environmental Review

The following specific concerns relating to agricultural resources should be analyzed in the environmental review, including:¹⁶

- **Accurate and Complete Identification of Agricultural Resources:** The agricultural lands surrounding the Project must be accurately and completely depicted. The California Department of Conservation, through the Farmland Mapping and Monitoring Program ("FMMP"), monitors changes in Prime Farmland, Farmland of Statewide Importance, Unique Farmland, and Farmland of Local Importance. The environmental analysis should incorporate the FMMP Maps as a basis for its analysis. The acreage of farmland that will be converted and/or impacted from this project must be included in the environmental review. Additionally, any other changes in the existing environment due to the project which, due to their location or nature, could result in conversion of agricultural to nonagricultural use must also be examined.

Farm Bureau also recommends that any agricultural impact discussion for areas outside existing Important Farmland Map boundaries be based on the agricultural land definition in the Williamson Act.¹⁷ This would also be in accordance with the definition of "agricultural land" in CEQA. Public Resources Code Section 21060.1 provides:

- (a) "Agricultural land" means prime farmland, farmland of statewide importance, or unique farmland, as defined by the United States Department of Agriculture land inventory and monitoring criteria, as modified for California.
 - (b) In these areas of the state where lands have not been surveyed for the classifications specified in subdivision (a), "agricultural land" means land that meets the requirements of "prime agricultural land" as defined in paragraph (1), (2), (3), or (4) of subdivision (c) of section 51201 of the Government Code.
- **Accurate and Complete Analysis of All Impacts:** The impact analysis must not be limited to direct impacts from the regulations. The analysis should consider all direct, indirect, and reasonably foreseeable cumulative impacts.
 - **A Full Range of Alternatives Must be Examined:** The State Board shall identify and rigorously examine all reasonable alternatives for the project.¹⁸ The range of alternatives must be feasible and must avoid or substantially lessen the project's significant

¹⁶ Note: this list is not exhaustive.

¹⁷ The California Land Conservation Act of 1965 (Gov. Code, §§ 51200 *et seq.*), commonly known as the "Williamson Act."

¹⁸ 40 C.F.R. §§ 1500.2 subd. (e), 1501.2 subd. (c), 1502.1, 1502.14 subd. (a), 1502.15 subd. (d).

environmental effects¹⁹ “even if these alternatives would impede to some degree the attainment of the project objectives or would be more costly.”²⁰ A feasible alternative is one that is “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.”²¹

- **All Impacts to Agricultural Resources Must be Fully Mitigated:** All feasible mitigation measures that are analyzed in the environmental review documents need to address the impacts to agricultural resources, must be fully described, and must mitigate for the impacts. A project of this magnitude has the potential to negatively impact agricultural lands, leading to the conversion of significant amounts of agricultural land to non-agricultural use.²²
- **Social and Economic Impacts Must be Analyzed:**²³ Although impacts that are solely economic in nature do not constitute “significant effects on the environment,” economic or social impacts that will or have the potential to cause a physical change should be considered.²⁴ The term “significant effect on the environment” is defined in Section 21068 of CEQA as meaning “a substantial or potentially substantial adverse change in the environment.”²⁵ Despite the implication of certain sections focusing on physical changes, CEQA does not focus exclusively on physical changes, and it is not exclusively physical in concern.²⁶ Thus, in certain situations such as the adoption of an expansive regulatory program impacting irrigated lands, economic and social effects of the project must be used to determine the significant effects on the environment.²⁷

¹⁹ Pub. Resources Code, §§ 21002, 21001.1(a), 21100(b)(4), 21150.

²⁰ Cal. Code Regs., tit. 14, § 15126.6, subd. (b), *emphasis added*.

²¹ See Pub. Resources Code, § 21061.1; Cal. Code Regs., tit. 14, § 15364.

²² The State Board should consult with applicable county and local governments to assess local agricultural mitigation measures. For example, San Joaquin County and Yolo County have adopted ordinances to preserve agricultural land through the use of agricultural easements for agricultural land lost to development. San Joaquin County requires a 1:1 mitigation ratio for any “General Plan amendment that changes the designation of any land from an agricultural to a nonagricultural use” or any “Zoning Reclassification that changes the permitted use from agriculture to a nonagricultural use, regardless of the General Plan designation.” (*San Joaquin County General Plan*, Section 9-1080.3(a),(c).) Yolo County requires a 1:1 mitigation ratio for any “conversion or change from agricultural use to a predominantly non-agricultural use....” (*Yolo County General Plan*, Section 8-2.2416(3).)

²³ CEQA requires analysis of a proposed project’s potential impact to agriculture, but social and economic changes are not considered environmental impacts in and of themselves under CEQA, although they may be used to determine whether a physical change is significant or not. CEQA also permits discussion of social and economic changes that would result from a change in the physical environment and could in turn lead to additional changes in the physical environment. (Cal. Code Regs., tit. 14, § 15064 subd. (f).)

²⁴ Cal. Code Regs., tit. 14, §§ 15064(e), 15131.

²⁵ Pub. Resources Code, § 21068.

²⁶ Discussion following Cal. Code Regs., tit. 14, § 15131.

²⁷ *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal. App. 3d 151, 170, [“The lead agency shall consider the secondary or indirect environmental consequences of economic and social changes. . . . economic or social change may be used to determine that a physical change shall be regarded as a significant effect of the environment. Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project. Alternatively, economic and social effects of a physical change may be used to determine that the physical change is a significant effect on the environment.”].

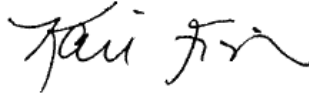
Letter to Jeanine Townsend

February 20, 2015

Page 7

Thank you for the opportunity to provide our comments. We look forward to further involvement and discussion with the State Board on the development of the Proposed Statewide Water Contact Recreation Bacteria Objective Amendments to Water Quality Control Plans for Inland Surface Waters, Enclosed Bays and Estuaries and the Ocean Waters of California.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kari Fisher", written in a cursive style.

KARI E. FISHER
Associate Counsel

KEF/pkh