

September 12, 2013

VIA ELECTRONIC MAIL ONLY

Dr. Jelena Hartman
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, Suite 1000
Rancho Cordova, CA 95670
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SUBJECT: Revisions to Waste Discharge Requirements for Growers Within the Eastern San Joaquin River Watershed that are Members of the Third-Party Group (R5-2012-0116)

Dear Dr. Hartman:

Our firm represents the East San Joaquin Water Quality Coalition (ESJWQC) with respect to Waste Discharge Requirements for Growers within the Eastern San Joaquin River Watershed that are Members of the Third-Party Group (R5-2012-0116) (East San Joaquin WDR). The ESJWQC is the recognized third-party group for administration of the East San Joaquin WDR and its requirements for third-party groups. Accordingly, we have reviewed the proposed revisions to the East San Joaquin WDR, and submit the following limited comments.

Provision IV.B.18 – The proposed revisions would clarify that the member needs to maintain a hard copy or an electronic version of the East San Joaquin WDR at their primary place of business. The proposed new language includes an error in that the word “of” should be “or.”

Provision VII.D – The ESJWQC supports the proposed date extensions to allow the California Department of Food and Agriculture (CDFA) and State Water Resources Control Board (State Board) task force and expert panel processes to complete.

Attachment A to East San Joaquin WDR, page 22 – The proposed revisions to Attachment A provide additional information and clarification with respect to the spatial resolution of Nitrogen Management Plan data, and reporting of that data. The ESJWQC generally supports the clarifications provided with respect to the spatial resolution for reporting of Nitrogen Management Plan summary report data. However, the ESJWQC

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believes it important for the Central Valley Regional Water Quality Control Board (Regional Board) to provide some additional narrative explanation with respect to reference to the term “sufficient time.” Specifically, the proposed revision states that “[a]fter allowing a sufficient time to evaluate the effectiveness of third-party outreach efforts, the board intends to request information from the third-party for those Members who are not meeting nitrogen performance standards.” The language proposed fails to provide any guidance as to what constitutes effective outreach efforts, and fails to explain what may constitute “sufficient time.” With respect to the nitrogen management, the ESJWQC suggests that outreach efforts will be a multi-year effort, and the effectiveness of those outreach efforts will need to be evaluated over several years. For example, the ESJWQC recommends no less than three years be the minimum time frame to evaluate third-party outreach efforts.

Further, if effectiveness of outreach is considered to relate directly to groundwater quality, proof of effectiveness may take many years as existing groundwater quality may be degraded and actual groundwater improvements may not be measurable for many years. To ensure that there is a general understanding with respect to the subjective nature of the terms proposed, we recommend that the Regional Board provide further clarification.

Attachment B to East San Joaquin WDR (MRP Order R5-2012-0116), page 23 – The ESJWQC generally supports the clarifying language that is being added to Report Component (17) - Summary of Reported Nitrogen Data. However, the proposed language makes reference to a “description of corrective actions to be taken, if necessary.”¹ Based on the language provided, it is uncertain as to the type of corrective actions for which this language is referring. If the intent is for the ESJWQC to take corrective actions with respect to the quality of data submitted for each township, then ESJWQC is not opposed to the proposed language. However, if reference to corrective actions is intended to mean something different, then ESJWQC would have concerns due to not knowing the nature of corrected actions that would be expected.

Further, with respect to Report Component (18) - Summary of Management Practice Information, the ESJWQC does not agree that the ESJWQC should provide all individual data records used to develop the summary. The amount of data being requested here is extensive and is unlikely to be used in any meaningful manner by the Regional Board. Rather, the Summary of Management Practice Information provided by the ESJWQC to the Regional Board will be more meaningful and will include appropriate analysis. Accordingly, the ESJWQC does not believe it appropriate for the raw data to be provided.

¹ The same language referenced here is also repeated in Report Component (18) - Summary of Management Practice Information. The ESJWQC expresses the same comment with respect to its application in Report Component (18) as is expressed here in relationship to Report Component (17).

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Moreover, submittal of such data will be an additional administrative burden on the ESJWQC and there does not appear to be any benefit or reasonable basis for submittal of individual data records. To the extent that Regional Board staff wants to review individual data records of a certain member, or sub-group of members, he/she has access through the ESJWQC and has the ability to obtain such information upon written request. (See East San Joaquin WDR, Provision X.) Thus, the ESJWQC recommends that Report Component (18) be revised to be similar to that provided for Report Component (17).

Thank you for providing this opportunity to comment.

Sincerely,

A handwritten signature in black ink that reads "Theresa A. Dunham". The signature is written in a cursive style with a large, looping initial "T".

Theresa A. Dunham

cc (*electronically only*): Parry Klassen (pklassen@unwiredbb.com)
Joe Karkoski (jkarkoski@waterboards.ca.gov)

TAD:cr



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VIA EMAIL TO JHARTMAN@WATERBOARDS.CA.GOV

Karl Longley, Chair
Jennifer Moffitt, Vice Chair
Jon Costantino, Board Member
Sandra Meraz, Board Member
Carmen Ramirez, Board Member
Robert Schneider, Board Member
Pamela Creedon, Executive Officer
Joe Karkoski
Adam Laputz
Clay Rodgers

**Re: Comments re Proposed Changes to ILRP Eastern San Joaquin River
Watershed WDRs
Hearing: October 3/4, 2013**

Dear Chair, Vice Chair, Members, Ms. Creedon, Mr. Karkoski, Mr. Laputz and Mr. Rodgers:

On behalf of the Southern San Joaquin Valley Water Quality Coalition, we submit these comments as to the Central Valley Regional Board's proposed changes to ILRP Eastern San Joaquin River Watershed WDRs.

WDR Order

1. Pg. 13, ¶ 47 – Expert Panels

It is appropriate for the Order to reference both the CDFA (Expert Task Force) and the State Water Resources Control Board (Expert Panel) reviews and recommendations as to the management of nitrate. This important issue merits expert and reasoned review, and the Order needs to be modified to embrace these recommendations. Other Regional Board approaches on this subject state clearly that the Order/Waiver may be opened for such amendment when these Expert Panels' reports are issued and evaluated. This is more direct than the reference in the Eastern San Joaquin Order. It states:



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“The deadlines for preparation of a nitrogen management plan and associated reporting have been established to allow the board to make any necessary adjustments to this Order based on the findings and recommendations of the CDFA Task Force and the SWRCB Expert Panel.”

Information Sheet

2. Page 13, Table 2 – Trigger Limits

This Table has set the trigger limits for biologic indicators at “80% growth,” but it has now been changed to any “reduction in growth.” The actual practice has been a trigger of “statistically significant reductions” and it was recently represented that is not intended to change, notwithstanding this significant amendment in the Table itself. This is said to be somewhat corrected by Footnote 3, referencing “statistically significant.” Anything that can be additionally done to substantiate that no effect is intended by this significant amendment to the language of the order would be important and proper.

3. Page 22 – Nitrogen Management

We agree with the amended language, but with reservations as to the next to last sentence, which states:

“After allowing a sufficient time to evaluate the effectiveness of third-party outreach efforts, the board intends to request information from the third-party for those Members who are not meeting nitrogen management performance standards.”

First, “sufficient time” is beyond subjective and needs some additional clarification (i.e., after evaluation of three years of monitoring data and farm plans). Second, it needs to be recognized that coalitions will seldom know exactly what management practices are actually engaged on every farm field and the ability to link a particular field practice to causing a groundwater problem would be very rare. If the coalition happens to know this information it would be reasonable, but it will be somewhat rare that would be the case, and therefore this section requires qualification by adding key words (i.e., “the Board may request information,” “third-party information they may have as to members...”).

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Monitoring and Reporting Program

4. Page 23, Report 18 – Summary of Management Practice Information

In Report 17 it specifies that nitrogen data would be summarized and presented in ranges (10th – 90th percentile) and there would be the identification of outliers. Report 18 goes on to specify that “the third-party will provide the individual data submitted.”

After considerable discussion leading up to this order it was agreed that such data would go to the coalitions and would then be summarized. This language now circumvents all that and allows that the Board may direct that all data be submitted to the Board. If the intent is consistent with this new language, why not just have the data go directly to the Board. If that is not the intent, then some qualifying language should be added establishing a reasonable condition that would give rise to compelling the individual farmer data.

5. MRP Appendix 2 – Monitoring Wells

This Appendix addresses new dedicated monitoring wells that will be required. It, however, only deals with the specifics of the wells themselves and the associated reports. Those provisions offer no problems. Section II is entitled Well Installation and Sampling Plan; however, it offers no indication as to what may be acceptable as a dedicated monitoring well plan and many of the other factors necessary to be understood involving such new wells, such as how many, where, access, liability, etc. We have been asking these questions since this issue was introduced as “representative monitoring;” but it has been somewhat camouflaged in recent versions of the Order and in all discussions relating to this issue staff has resisted clarifying.

It would be proper to provide some guidance on possibly how many, but it is absolutely necessary to address some of the other elements listed above that will be required where the Board would be requiring coalitions to direct installing such wells.

Sincerely,



William J. Thomas
for BEST BEST & KRIEGER LLP

WJT:lmg



September 12, 2013

Karl Longley, Chair
Central Valley Board Water Quality Control Board
Rancho Cordova, CA
Via electronic mail

Re: Proposed revisions to Eastside San Joaquin River Regional Order

Dear Chair Longley and Board Members,

On behalf of Clean Water Action, Community Water Center, California Rural Legal Assistance Foundation, and Leadership Counsel for Justice and Accountability, we respectfully submit these comments on the proposed changes to the Eastside San Joaquin River Regional Order (order).

Our organizations' priority for this and other orders is to ensure that agriculture's significant contribution to groundwater degradation in the Central Valley be minimized in order to stem the increase in contamination and improve water quality for Valley residents. As you know from the petition filed with the State Board, our opinion is that this order falls far short of the minimum standards required by Porter Cologne and the State's anti-degradation policy. The changes proposed by staff in this most recent iteration of the order fail to address our concerns.

Delay in Nutrient Management Plan preparation and reporting is unwarranted

One of our chief concerns continues to be the very long time-frame for implementation of this order. By extending the timeline for developing and reporting nutrient management plan information, this revised order exacerbates that problem. The first nitrogen summary information for high vulnerability areas now won't be available until 2016, for an order that seeks to ensure compliance with water quality standards by 2013. Nutrient management plans

(NMP) are basic building blocks of crop health – the information required is already collected by farmers. Reporting information that is already collected should not be an insurmountable task, and will provide basic needed information for the order. The justification of waiting for findings from task forces convened by the State Board and the California Department of Food and Agriculture does not make sense; those processes are being timed for completion in early 2014, more than a year before the first NMP reporting requirement in the current order. This kind of slippage facilitates continued contamination, increases the cost to communities and may not be permitted by the Regional Board

Attachment A – Compliance and Enforcement

The new explanation of the Regional Board’s enforcement policy (Attachment A, Information Sheet, pp 26-27) is concerning, as it appears unlikely to provide sufficient protection of groundwater. First of all, we are concerned with the Board’s reliance on informal enforcement. We do not see how informal enforcement provides either the transparency or consistency necessary to ensure effective and appropriate escalation of enforcement actions. Furthermore there is no guidance as to when an informal enforcement action is appropriate creating an arbitrary enforcement scheme undermining the very validity of Board enforcement.

Equally arbitrary is the Board’s reliance on resident complaints to guide allocation of enforcement resources. Complaints are more likely to arise from surface water violations, perpetuating the unfair and unequal bias toward protection of surface water at the expense of groundwater. To ensure adequate monitoring and enforcement of groundwater quality standards, the Board must allocate sufficient resources to conduct regular inspections of growers, especially those operating in high vulnerability areas with a high likelihood of contamination.

Delegation of decision-making to Executive Officer

Proposed amendments to Attachment A (Page 27 “Reports and Plans”) fail to allay our concerns about the lack of transparency in this order and the decision-making process. The Information Sheet reinforces the Board’s intent to allow the Executive Officer to control virtually every decision in the implementation of this order, effectively bypassing Board (and therefore public) review and approval. The same concern applies to the clarification that most documents and related decisions will NOT be open to public review and comment. This program has a high level of uncertainty because of the large volume of data that has yet to be collected, yet the public will receive almost no advance information or opportunity to comment. We urge the Board to maintain control of this process and ensure that decisions are made in an open and collaborative manner.

Thank you for providing the opportunity to comment.



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CALIFORNIA FARM BUREAU FEDERATION

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September 12, 2013

Dr. Jelena Hartman
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Re: Comments on the Revisions to the Eastern San Joaquin River Watershed WDR and MRP for Discharges from Irrigated Lands

Dear Dr. Hartman:

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 more than 74,000 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 revisions to the Eastern San Joaquin River Watershed Waste Discharge Requirements and Monitoring and Reporting Program (collectively “WDR”) for Discharges from Irrigated Lands, and respectfully presents the following remarks.

General Order Pages 26-27, Section VI., D—Nitrogen Management Plan

Farm Bureau appreciates the revisions acknowledging 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, amending the nitrogen management plan deadlines to allow for the incorporation of future recommendations is both appropriate and appreciated.

NANCY N. McDONOUGH, GENERAL COUNSEL

ASSOCIATE COUNSEL:

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

Attachment A Page 22—Spatial Resolution of Nitrogen Management Plan and Farm Evaluations

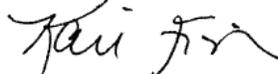
The revisions outline the process in which a third-party will collect data from members and report the data to the Regional Board at the township level. The revisions further describe the process in which the third-party must provide information from individual members who are not meeting nitrogen management performance standards. Specifically, the revisions state: “After allowing a sufficient time to evaluate the effectiveness of third-party outreach efforts, the board intends to request information from the third-party for those Members who are not meeting nitrogen management performance standards.” (Attachment A, p. 22.) What amount of time is considered “sufficient”? Farm Bureau hopes the term will be interpreted in an appropriate manner to allow growers an adequate amount of time to make progress toward meeting nitrogen management performance standards.

Attachment B Page 23—Report Component (18)—Summary of Management Practice Information

The revisions now require a third-party to aggregate and summarize information collected in the Farm Evaluations while *also* providing the individual data records to the Regional Board. (Attachment B, p. 23.) No explanation is given to support the necessity of needing the individual data records. Farm Bureau questions the need for third-parties to submit individual data records and suggests this new addition to the management practices information reporting component be removed.

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 Eastern San Joaquin River Watershed WDR and MRP for Discharges from Irrigated Lands.

Very truly yours,



Kari E. Fisher
Associate Counsel

KEF:pkh



PARAMOUNT FARMING

September 12, 2013

Attn: Dr. Jelena Hartman
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hartman@waterboards.ca.gov

Re: Proposed revisions to Waste Discharge Requirements General Order for Growers Within the Eastern San Joaquin River Watershed That Are Members of the Third Party Group

Dear Dr. Hartman:

The Central Valley Regional Water Quality Control Board ("Board") has posted revisions to the Waste Discharge Requirements General Order for Growers Within the Eastern San Joaquin River Watershed That Are Members of the Third Party Group ("Revised Eastside Order").

These comments are submitted on behalf of Paramount Farming Company LLC, Paramount Land Company LLC, Paramount Pomegranate Orchards LLC, Paramount Citrus LLC and their related entities ("Paramount"). Paramount is the largest grower and processor of almonds, pistachios, pomegranates, and citrus in the United States and is just one of many agricultural operations that will be severely impacted by the waste discharge requirements under the long-term Irrigated Lands Regulatory Program ("ILRP") and specifically the Revised Eastside Order.

The e-mail Notice of Public Hearing issued by the Board states, "The Board will "only consider adoption of the proposed revisions, and will not be re-considering other aspects of the Order."

Paramount feels consideration by the Board of adoption of only the revisions to the Revised Eastside Order is inappropriate. Although the proposed revisions expand a few deadlines, costly and cumbersome program requirements and deadlines remain unchanged and do not take into account meaningful feedback and recommendations on ILRP elements that are forth coming.

The California Department of Food and Agriculture ("CDFA") and the State Water Resources Control Board ("SWRCB"), the two leading state bodies on water quality and agriculture, have both recognized the need for scientific research and expert analysis to develop and guide the ILRP and a successful plan for addressing nitrate issues in California and are undergoing expedited expert panel processes ("Expert Panels") to develop recommendations. Paramount agrees additional analysis is necessary to support ILRP requirements, identify the data needed to determine the potential, if any, of current practices to discharge waste and identify a uniform system of reporting. Paramount asks the Board to suspend all activities and timelines related to the Revised Eastside Order until the critical input from the Expert Panels can be used to inform an effective and efficient ILRP. Board action prior to this is irresponsible and only serves to burden growers with unnecessary expense.

Need to Incorporate Recommendations of Expert Panels:

The purpose of the CDFA Task Force on Nitrogen Tracking and Reporting Systems is to “determine appropriate nitrogen mass balance tracking and reporting systems in nitrate high risk areas...that would provide meaningful, high-quality data to help better understand groundwater quality.”

In the recently released draft Order in the Matter of Review of the Conditional Waste Discharge Requirements Order No. R3-2012-0011 for Discharges from Irrigated Lands, the SWRCB, identified significant aspects of the ILRP that need to be further analyzed stating, “...many of the groundwater issues contested in the petitions are best addressed by the Expert Panel... We expect the panel to conduct a more thorough analysis and to provide long-term recommendations that may be applied statewide. Broadly, the issues we will request the Expert Panel to consider include: the indicators and methodologies for determining risk to surface and groundwater quality, the appropriate targets for measuring progress in lowering that risk, and the efficacy of groundwater and surface water discharge monitoring in evaluating practice effectiveness...Answers to these broad and specific questions will inform the development of the agricultural regulatory program in the Central Valley and elsewhere in the State...This Order constitutes only an interim determination...pending the Expert Panel’s more thorough examination of the underlying issues.”

The SWRCB and CDFA recognize the ILRP has failed to address critical issues, the issues are best addressed by the Expert Panels and the Expert Panels’ results should be incorporated into the ILRP statewide. The issues in front of the Expert Panels are not small; they are critical components of a successful ILRP. Finding 47 in the Revised Eastside Order recognizes the Expert Panels but merely adjusts the “deadlines for preparation of a nitrogen management plan and associated reporting...to make any necessary adjustments to this Order based on the findings and recommendations...” The Revised Eastside Order does not recognize the need to base the ILRP on sound science and makes no substantive changes to the original order, which lacked scientific justification.

The Expert Panels recommendations may alter the required data, method of collection, tracking and/or reporting for ILRP compliance. Without effectively and thoughtfully incorporating the Expert Panels recommendations and accepting and incorporating comments, a mere delay of certain deadlines forces growers and third parties to move forward with costly program elements without knowing if these elements will later change. We support a scientifically based ILRP, but do not support beginning a costly endeavor, with no assurances the ILRP framework will not change.

Lack of Meaningful Outreach and Communication:

Throughout the ILRP process many entities, including Paramount, who have significant experience in irrigation, site specific conditions and monitoring and reporting, presented analysis and recommendations that could inform a more effective ILRP. Rather than meaningfully incorporating the comments or engaging the parties to understand the comments and analysis, the Board has chosen to make slight revisions to the Revised Eastside Order, in favor of meeting artificial deadlines. Merely accepting comments and issuing Response to Comments is not effective outreach.

Practical and Universal Tracking and Reporting:

In addition to identifying data needs, the practical aspects of grower reporting need to be fully considered by the Board. Paramount depending on its method of compliance, may be in five or more third party groups, or under the Individual Order. Paramount sees a need to develop a uniform manner of reporting that is explained fully in the general orders and consistent among the third party Orders and Individual Order. Nitrogen tracking and reporting is a key element under review by the Expert Panels and developing, or utilizing an established system, that ensures all relevant data is collected, reported and analyzed uniformly is critical to reduce the burden on growers, and to ensure the data collected can be analyzed, synthesized and aggregated to determine current practices and site specific conditions that are both protective of groundwater and that may contribute to discharges.

Unreasonable Regulation:

The ILRP and the Revised Eastside Order lack scientific evidence to support program requirements. The Board's actions constitute an abuse of discretion as it failed to properly comply with CEQA by improperly relying on "Findings and Statement of Overriding Considerations" which are inadequate and not supported by substantial evidence. The Findings do not specifically assess how the benefits of the ILRP and the Revised Eastside Order outweigh the significant and unavoidable environmental and economic impacts identified in the PEIR.

Hold Interested Persons to the Same Standard as Growers and Third Parties:

Attachment B, Section IV.A.5. of the Revised Eastside Order states, "An interested person may seek review by the Central Valley Water Board of the Executive Officer's decision on the designation of high and low vulnerability areas associated with approval of the Groundwater Quality Assessment Report."

The Board requires specific scientific reporting and analysis to be conducted by the third party in presenting its recommendation for the designation of high and low vulnerability areas. The Executive Officer is then required to review the recommendation and provide approval. Generally allowing an interested person to seek review on the designation, without requiring a scientific analysis to support the basis of the review is unreasonable. To prevent abuse of this allowance at the expense of growers and third parties, any interested person seeking review of area designations, should be required to submit the same level of scientific analysis to the Executive Officer as is required by the third parties as part of the recommendation prior to the Executive Officer accepting the request. Additionally, the third parties covering the area should also be afforded a review and comment period on the request.

Requirements for Areas Pursuing a Basin Plan Amendment:

Other ILRP orders recognize certain irrigated lands may be situated in areas whose water quality is such as to not support the current beneficial use designation and, therefore, are eligible to pursue a basin plan amendment. The Revised Eastside Order should include similar language. All ILRP orders should provide for reduced monitoring and reporting and recognize that if the third party presents analysis demonstrating that portions of the area pursuing a Basin Plan Amendment (“BPA”) and covered under the Basin Plan Amendment Workplan do not have the potential to discharge waste for the beneficial uses remaining after the BPA, those certain areas are not subject to regulation under the ILRP. These additions would properly address the fact that after a BPA, certain irrigated acreage may no longer have the potential to discharge waste and should not be regulated.

Given the significant additional regulatory compliance burden the ILRP, including the Revised Eastside Order, imposes on growers and the lack of scientific analysis and evidence presented by the Board to support its current ILRP framework, Paramount respectfully requests the Board to suspend all activities related to the Revised Eastside Order and the ILRP process until the Expert Panels’ recommendations can be used to inform a uniform, scientifically supported ILRP.

If you have any questions, please contact Kimberly Brown or me at the contact information listed above.

Sincerely,



William D. Phillimore
Executive Vice President