

Revisions to Waste Discharge Requirements
for Growers within the Eastern San Joaquin River Watershed
that are Members of the Third-party Group
Order Number R5-2012-0116

RESPONSE TO COMMENTS

The California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board or “board”) has provided opportunity for the public to submit written comments on the tentative revisions to Waste Discharge Requirements for Growers within the Eastern San Joaquin River Watershed that are Member of the Third-party Group, Order R5-2012-0116 (referred to as the “tentative revised Order” or “Order”). This document contains written responses to comments that were timely received on the tentative revised Order.

The tentative revised Order was released for public review on 12 August with the comment period ending on 12 September 2013. The public notice stated that the board would only consider adoption of proposed revisions, and would not be re-considering other aspects of the Order. Five comment letters received by the deadline were submitted by:

1. [East San Joaquin Watershed Coalition](#)
2. [Southern San Joaquin Valley Water Quality Coalition](#)
3. [Clean Water Action, Community Water Center, California Rural Legal Assistance Foundation, and Leadership Counsel for Justice and Accountability](#)
4. [California Farm Bureau Federation](#)
5. [Paramount Farming Company](#)

This response to comments includes responses that apply to broader issues addressing a theme recurring in multiple comments (master responses), and responses to individual comments (specific responses). The master responses are given first, followed by itemized comments and responses from each letter.

There are five key issues addressed by master responses:

1. [Extension of deadline for nitrogen management plans and reporting](#)
2. [Data reporting requirements](#)
3. [Time before board requests individual data](#)
4. [Process for decision-making and opportunities for public comments](#)
5. [Comments outside the scope of the proposed revisions](#)

MASTER RESPONSES

1. Extension of timeline for nitrogen management plans and reporting

Comment summary

The proposed revisions include an extension of due dates for preparing the first Nitrogen Management Plan and submitting the first Nitrogen Management Summary Reports to allow the board to make any necessary adjustments to the Order based on findings and recommendations of the California Department of Food and Agriculture (CDFA) Task Force and the State Water Resources Control Board (SWRCB) Expert Panel on nitrate issues. Two commenters supported the proposed extension, and one commenter expressed concern about the delay in plan preparation and reporting.

Master Response 1

As reflected in the new proposed Finding 47, the California Department of Food and Agriculture has formed a Task Force (CDFA Task Force) and the State Water Resources Control Board will

establish an expert panel (SWRCB Expert Panel) to develop recommendations regarding nitrate issues related to agricultural discharges to groundwater. The anticipated results of these efforts are to identify intended outcomes and expected benefits of a nitrogen mass balance tracking system in nitrate high-risk areas, identify appropriate nitrogen tracking and reporting systems and potential alternatives that would provide meaningful and high quality data to help better protect groundwater quality, and recommend possible improvements in the regulatory approaches being used. The Order includes development of templates and setting up a reporting system for nitrogen management information, which represent a significant undertaking and a potentially substantial investment in developing the required tools and information management system.

The recommendations from the CDFA Task Force and the SWRCB Expert Panel may result in board re-consideration of the Order's nitrogen management requirements. The CDFA Task Force should finish developing its recommendations by the end of 2013 and the SWRCB Expert Panel should finish its report by the spring or summer of 2014. The current requirements for preparation of a Nitrogen Management Plan include a March 2014 deadline for large farms in high vulnerability groundwater areas. Without an extension of the deadline, the timing of the respective recommendations would not provide the board with sufficient time to consider the recommendations and make any adjustments to the Order prior to the first deadline. Adjustments to nitrogen management reporting requirements would affect the template and the reporting system for nitrogen management. Allowing additional time to incorporate any changes will result in an efficient use of resources to develop tools and information management system. Finally, the proposed extension of the timelines for nitrogen management plans and summary reports in the Eastern San Joaquin River Watershed is consistent with timelines proposed in pending tentative and administrative draft Orders for other parts of the Central Valley.

2. Data reporting requirements

Comment summary

The proposed revisions contain changes to reporting requirements for nitrogen data collected from Members, a clarification regarding management practice information, and an added requirement to include a quality assessment of data submitted by township.

Multiple comments were made regarding the requirement for the third-party to submit a summary of management practice information per Report Component (18) – Summary of Management Practice Information: the main concerns were that submission of extensive amount of data would be an administrative burden, and that data were unlikely to be used in a meaningful manner. Further, commenters suggested that individual data of a specific member of sub-group of members could be obtained upon written request; other commenters proposed that qualifying language be added establishing conditions that require individual data, or to remove the requirement.

One commenter expressed support for language added to Report Component (17) – Summary of Reported Nitrogen Data; added language to clarify that references to “corrective actions” in Report Components (17) and (18) are with respect to quality of data submitted for each township was suggested.

Master Response 2

Changes to reporting requirements for nitrogen data were proposed because the CDFA Task Force and SWRCB Expert Panel on nitrate issues are anticipated to provide recommendations on nitrogen tracking and reporting systems. Those recommendations may result in changes to the Order regarding the scope and spatial resolution of the information provided to the board. Until those recommendations are available, the revised requirement for a statistical summary of

the nitrogen consumption ratios that describe the range, percentiles (10th, 25th, 50th, 75th, 90th), and any outliers for similar soil conditions and similar crops on a township basis will provide sufficient information to staff to follow up on outliers or provide the basis for a request to the third-party for specific Member information.

With respect to the submittal of Management Practice Information, the requirement to provide individual data records used to develop the summary of management practice information was not changed. The proposed revisions are a clarification of the existing language. The submission of individual management practice data records will not be an added administrative burden as that information will already have to be collected and compiled to prepare summaries.

Unlike the nitrogen management information that can be statistically described and summarized, raw data submitted by Members are needed because management practice data are qualitative and there are a large number of variables (i.e., different practices). The qualitative nature of the data and the great number of variables make it difficult to specify the exact types of analyses that will be relevant to evaluating compliance with the Order. The board will use the individual data records to conduct analyses of the relationships between practices and water quality conditions, as well as conduct an initial assessment of compliance with performance standards.

Language has been changed to clarify that corrective actions are to be taken with regards to data quality, and is not intended to mean any other type of corrective action.

3. Time before board requests individual data

Comment summary

The proposed revisions include additional information and clarification with respect to the nitrogen management data reporting by the third-party. The third-party will report data collected from its Members aggregated by township. 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 may not be meeting nitrogen management performance standards. Multiple comments noted that the proposed language does not specify what constitutes sufficient time to evaluate effectiveness of outreach efforts; further clarification of relevant terms was recommended.

Master Response 3

The language has been changed to remove the reference to “sufficient time”. The language has been changed to clarify that it is the board’s intent to review available information and request information from the third-party for those Members who may not be meeting nitrogen management performance standards. The board does not believe it is appropriate to suggest a specific amount of time must pass before such a request would be made. Rather, requests will be based on the board’s review and evaluation of available information.

4. Process for decision-making and opportunities for public comments

Comment summary

The proposed revisions include language that explains the process for making reports subject to approval by the Executive Officer available on the board’s website. One commenter expressed concerns about decisions delegated to the Executive Officer, and that more documents and related decisions should be open for public to review and comments. Another commenter proposed that requirements should be imposed for interested persons seeking review of decisions.

Master Response 4

The proposed revisions regarding approval of reports and plans, and request for review by interested persons do not contain any change in requirements. The added language is merely a description of the process that is available to any interested person regarding any Executive Officer decision. The ability of any interested person to request the board to review any Executive Officer decision does not necessarily establish criteria for review nor does it mandate that the board, in exercising its discretion, will initiate the review in the absence of a reasonable justification for the request.

5. Comments outside the scope of the proposed revisions

A number of submitted comments were outside the scope of the proposed revisions.

Master Response 5

The public notice specifically indicated that comments would only be accepted on issues within the scope of the proposed revisions. Responses are not provided to comments that are outside the scope of the proposed revisions. However, it should be noted that some of the issues raised have been included in the petitions before the State Water Board, which are yet to be decided.

SPECIFIC RESPONSES**Comment Letter 1**1-1. Typographical error in provision IV.B.18

Comment summary: The proposed new language includes an error in that the word “of” should be “or” in Provision IV.B.18.

Response: The error has been corrected.

1-2. Support for date extension for nitrogen management plans

Comment summary: Support for the proposed date extensions to allow the CDFA Task Force and SWRCB Expert Panel processes to complete.

Response: see [Master Response 1](#).

1-3. Clarify "sufficient time" to evaluate effectiveness of outreach

Comment summary: The proposed language does not provide guidance as to what constitutes effective outreach efforts, and what may constitute “sufficient time.” With respect to the nitrogen management, outreach efforts will be a multi-year and the effectiveness will need to be evaluated over several years. At least three years are recommended to be the minimum time frame to evaluate third-party outreach efforts.

Response: see [Master Response 3](#).

1-4. Corrective actions with respect to quality of data submitted for each township

Comment summary: It is not clear as to the type of corrective actions for which the proposed language is referring to.

Response: see [Master Response 2](#).

1-5. Submission of individual data for management practices information

Comment summary: The amount of data being requested with respect to Report Component (18) is extensive and unlikely to be used. The summary provided by the third-party will be more meaningful and will include appropriate analysis. Individual data records can be obtained upon written request from the third-party.

Response: see [Master Response 2](#) and see [Master Response 5](#).

Comment Letter 22-1. Amending WDR's based on findings and recommendations on nitrate issues

Comment summary: Support for consideration of Expert Panel and Task Force findings and recommendations; propose a more direct statement that the Order may be opened for amendment when recommendations on nitrate issues are issued and evaluated.

Response: The board staff is committed to reviewing the findings and recommendations of the CDFA Task Force and SWRCB Expert Panel on nitrate issues. If changes are warranted, the board will act at that time; no commitment for reopening the Order is needed until more information emerges.

2-2. Trigger limits for toxicity described in Table 2 of Attachment A

Comment summary: The commenter expressed concern that the edit may result in substantive and significant change to the Order requirements

Response: Changes in Table 2 are merely a correction in text and not a change in the requirements. The change is in the Information Sheet and the data presented in the table, and is not a change to the Order. The table incorrectly referenced the "<80%" value for toxicity trigger limits, which was not how the data were evaluated. The trigger limits that have been actually used to evaluate toxicity are explained by already existing footnotes: a statistically significant (footnote 3) reduction compared to the control sample (footnote 2).

2-3. Clarify "sufficient time" to evaluate effectiveness of outreach

Comment summary: The "sufficient time" is subjective and needs additional clarification. Qualifiers should be added to capture uncertainty associated with farm-specific information, e.g. board "may" request information, or the information the third-party "may" have.

Response: see [Master Response 3](#).

2-4. Submission of individual data for management practices information

Comment summary: The comment focuses on the requirement to submit individual data, and proposes that a condition be qualified that requires submission of individual data.

Response: see [Master Response 2](#) and see [Master Response 5](#).

2-5. Concern about the new dedicated monitoring wells

Comment summary: Detailed information about new monitoring wells is not included.

Response: see [Master Response 5](#).

Comment Letter 33-1. Extension of deadlines for nitrogen management reporting

Comment summary: The commenter states that nitrogen management data should already be readily available to growers, and expresses concern about extending deadlines for nitrogen management reporting when timelines for compliance are already long.

Response: see [Master Response 1](#).

3-2. Compliance and enforcement

Comment summary: The comment questions if enforcement approach will provide sufficient protection to groundwater. There are concerns about reliance on informal enforcement with respect to guidance as to when informal action is appropriate, and with transparency and consistency of enforcement.

The comment further suggests that reliance on public complaints may result in bias towards protection of surface water at the expense of groundwater. The commenter recommends that sufficient resources be allocated for regular inspections, with emphasis on high vulnerability areas.

Response: As described in the Information Sheet, the board must adhere to the State-wide Water Quality Enforcement Policy that encourages progressive enforcement. Progressive enforcement includes both informal and formal enforcement actions, which depends on the circumstances and severity of the violations. The board has been consistently transparent in describing in its Executive Officer's reports the compliance and enforcement actions taken. In addition, any Notice of Violation issued to the third-party must be communicated to the third-party's Members to ensure the Members are aware of the third-party's performance under the Order.

Public complaints are taken into account in addition to the routine inspections and systematic enforcement. Field inspections are conducted on a routine basis, and will include "individual grower's operations to determine whether practices protective of groundwater are in place", as stated in the Information Sheet.

3-3. Decisions delegated to Executive Officer and public review

Comment summary: There are concerns about decisions delegated to the Executive Officer and opportunities for public review and comments.

Response: see [Master Response 4](#) and see [Master Response 5](#).

Comment Letter 4

4-1. Support for date extension for nitrogen management plans

Comment summary: Support the proposed date amendment to allow incorporation of any recommendations by the CDFA Task Force and SWRCB Expert Panel.

Response: see [Master Response 1](#).

4-2. Clarify "sufficient time" to evaluate effectiveness of outreach

Comment summary: Interpret what "sufficient time" means and allow adequate time for growers to change management practices.

Response: see [Master Response 3](#).

4-3. Submission of individual data for management practices information

Comment summary: The need for Individual data records is questioned.

Response: see [Master Response 2](#) and see [Master Response 5](#).

Comment Letter 55-1. Concerns about considering only the revisions and not the entire Order

Comment summary: The Commenter suggests that recommendations for other aspects of the Order be considered.

Response: see [Master Response 5](#).

5-2. Postpone action until CDFA Task Force and SWRCB Expert Panel input is available

Comment summary: The commenter suggests that all activities and timelines related to the Order be suspended until the Task Force and Expert Panel provide their recommendations.

Response: The Order addresses all constituents in discharges from irrigated agriculture that could affect the quality of waters of the state. There is no justification to suspend all activities, based on the activities of the Task Force and Expert Panel to address only nitrogen-based constituents. A delay in timelines associated with nitrogen management is appropriate and addressed in [Master Response 1](#).

5-3. Concerns about process for development of ILRP

Comment summary: The commenter alleges that the outreach and communication throughout the development of the ILRP were inadequate.

Response: see [Master Response 5](#).

5-4. Consistency in the manner of reporting among various WDR's

Comment summary: The Commenter requests a consistent manner of reporting across the various WDRs.

Response Board staff agrees that a consistent method of reporting will help reduce costs to growers and facilitate data analysis. The current Order includes requirements to develop templates, which is consistent with the recommendation, and the CDFA Task Force and SWRCB Expert Panel will be considering the issue of reporting and tracking, as well.

5-5. CEQA compliance**Comment summary**

The comment questions compliance with CEQA and adequacy of supporting evidence for the program.

Response: see [Master Response 5](#).

5-6. Ability of interested persons to request review of decisions

Comment summary: The commenter suggests that interested persons should be required to provide analyses and scientific evidence to support requests that the board reviews decisions made.

Response: see [Master Response 4](#).