

February 18, 2014

VIA ELECTRONICALLY ONLY

Mr. Daniel McClure
Senior Engineer
Regional Water Quality Control Board,
Central Valley Region
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SUBJECT: East San Joaquin Water Quality Coalition's Comments on Amendments to the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins for the Control of Diazinon and Chlorpyrifos

Dear Mr. McClure:

Our firm, Somach Simmons & Dunn, represents the East San Joaquin Water Quality Coalition (ESJWQC) on various water quality matters. Accordingly, we submit the following comments on their behalf on the proposed revisions to the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins (Basin Plan) for the Control of Diazinon and Chlorpyrifos. As a preliminary matter, the ESJWQC submitted comments on the March 2013 Draft Staff Report in May of 2013. To the extent that the Central Valley Regional Water Quality Control Board (Regional Board) staff did not address ESJWQC's concerns expressed in its May 2013 letter, we incorporate by reference those same concerns. Also, we support the comments submitted by the Western Plant Health Association. Our comments below are specific to the proposed Basin Plan amendment language contained in Appendix C.

Appendix C - Proposed Basin Plan Amendment

Specific Pesticide Objectives, p. C-1: The proposed Basin Plan amendment proposes to list specific water bodies to which the objectives would apply, and also proposes to indicate that the objectives are also applicable to waters with designated beneficial uses of WARM and/or COLD. Because the objective would apply to waters with such designated beneficial uses, it is unnecessary to individually list a sub-set of water bodies. Further, to the extent that the Regional Board's process for consideration of beneficial uses finds that one of the specifically listed water bodies does not properly include WARM and/or COLD beneficial

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uses, a Basin Plan amendment would be required to remove application of the water quality objective. Accordingly, the ESJWQC recommends that the references to the individual water bodies be removed.

Diazinon and Chlorpyrifos Discharges, Provision 1.c, p. C-5: The language in this subdivision refers to the level of concentrations in the discharge versus concentrations in the receiving waters. Water quality objectives apply to receiving waters and are not discharge limitations. Accordingly, references to meeting water quality objectives in the discharge itself should be deleted. We recommend that this provision be revised as follows: “Encourage implementation of measures or practices by all dischargers that result in concentrations of chlorpyrifos and diazinon in all applicable waters ~~discharges~~ that are below the water quality objectives.”

Diazinon and Chlorpyrifos Discharges, Provision 2, p. C-5: The ESJWQC does not believe that provision 2 is necessary. In the waste discharge requirements (WDRs) for irrigated agriculture, wastes discharged from covered agricultural operations are not allowed to cause or contribute to exceedances of applicable water quality objectives. (See, e.g., Order No. R5-2012-0116-R1, p. 17.) If such exceedances do exist, then the dischargers are required to comply with water quality management plan requirements, which must be approved by the Regional Board’s Executive Officer. Because the receiving water limitations are in all of the Regional Board’s orders for irrigated agriculture (and other dischargers as well), it is unnecessary to include provision 2 here. Further, elimination of the provision here ensures that there is no confusion with respect to time schedules and application of management plans as contained in WDRs for irrigated agriculture.

To explain further, the General Order for the Eastern San Joaquin River Watershed (Order No. R5-2012-0116-R1) includes time schedules for compliance. This language would potentially allow for time schedules for alternatives to diazinon and chlorpyrifos. However, the Eastern San Joaquin River Watershed’s General Order specifically states that “Any applicable time schedules for compliance established in the Basin Plan supersedes the schedules given below (...).” Would the language of provision 2 requiring that dischargers ensure that pesticide discharges not cause or contribute to an applicable water quality objective for alternatives supersede the time schedule language allowed in the General Order? There is no specifically stated time schedule for meeting water quality objectives for alternatives, which could be argued to mean that compliance is required immediately. Without a specific schedule, and the fact that the General Order states that the Basin Plan is superseding, would provision 2 then mean that immediate compliance with water quality objectives must occur upon the effective date of the Basin Plan amendment? Considering that the inclusion of reference to alternatives creates confusion, such language should be deleted.

Moreover, as a practical matter, the proposed Basin Plan amendment is intended to address diazinon and chlorpyrifos. Because it is specific to those two pesticides, it is inappropriate to include additional language referencing “alternatives.” As explained further

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below, the term “alternatives” can be very broad and could increase the economic impact of this proposed amendment three-fold. Thus, such reference to “alternatives” is speculative and should be removed.

Diazinon and Chlorpyrifos Discharges, Provision 3, p. C-5: Time schedules in WDRs and waivers need to be set according to existing time schedule policies contained in laws and policies, and not be set here for compliance in five years. For example, in the ESJWQC’s WDRs, time schedules are established for meeting receiving water limitations. Receiving water limitations are essentially equivalent to adopted water quality objectives. In the ESJWQC’s WDRs, growers are required to meet receiving water limitations immediately, or they are subject to management plans that must include a schedule for compliance. The schedule for compliance in management plans must be as short as practicable but cannot exceed ten years. The Executive Officer maintains the discretion to adopt the management plans, and the proposed schedule contained therein. The schedule contained within the management plan, or such schedule that the Executive Officer may be willing to approve, may be shorter than five years. The primary advantage of deferring to existing laws and policies is that it allows for schedules to be realistic and to be supported with proper justification. Otherwise, the five years as proposed in the Basin Plan is basically arbitrary and not linked to actual management plan actions as is required in the WDRs. Thus, it is unnecessary to include a specific time for compliance as part of the Basin Plan amendment. The ESJWQC recommends that provision 3 be revised to reflect this accordingly.

Diazinon and Chlorpyrifos Discharges, Provisions 6 and 7, pp. C-5 through C-6: Provision 6 is unnecessary. Considering the WDRs for irrigated agriculture, there is no need for an independent management plan to be required by the proposed Basin Plan amendment. Rather than including specific provisions, the Basin Plan amendment should refer to management plan requirements contained in the irrigated lands WDRs.

Diazinon and Chlorpyrifos Discharges, Provision 8, p. C-7: Provision 8 is a restatement of the law and is unnecessary. All adopted WDRs or waivers are required to be consistent with the Basin Plan. Thus, it is unnecessary to repeat the requirement here.

Agricultural Discharge Monitoring: In general, the ESJWQC does not believe that the specific agricultural discharge monitoring requirements as proposed are necessary. Rather than identifying specific monitoring program requirements, we recommend that the language be limited to only requiring that WDRs for irrigated agriculture include a monitoring and reporting program that addresses agricultural discharges of diazinon and chlorpyrifos. Under the current WDRs, the Regional Board mandates monitoring that is reflective of constituents of concern in certain geographic areas. This allows the Regional Board to identify what pesticides are appropriate for monitoring based on the crops in the geographic area and constituents detected in past monitoring activities.

Conversely, as proposed, the Basin Plan amendment would mandate monitoring for diazinon, chlorpyrifos, and alternatives to these pesticides into perpetuity regardless of the data and information gathered from third parties and individuals implementing said WDRs. This may result in monitoring by certain third parties that is unnecessary. For example, as written, the proposed Basin Plan amendment would require that any WDRs that address agricultural pesticide discharges meet the requirements set forth in the proposed language. The California Rice Commission implements WDRs that address agricultural pesticide discharges. However, these chemicals are not used on rice. Regardless of this fact, the proposed language would require the monitoring of these chemicals and alternatives by the California Rice Commission. To avoid this and other similar consequences, the language must be revised to (1) be limited to WDRs or waivers that apply to growers that use diazinon and chlorpyrifos, and (2) allow the Regional Board the discretion to require agricultural discharge monitoring for these two pesticides as determined appropriate in the various WDRs.

Agricultural Discharge Monitoring, Provision 4, p. C-8: To the extent that the Regional Board determines to maintain the agricultural discharge monitoring provisions as essentially proposed, the ESJWQC believes that provisions 4 and 5 need to be deleted. With respect to provision 4, it would mandate that the ESJWQC and others would need to monitor for alternatives to diazinon and chlorpyrifos. Such a requirement could result in a substantial increase in the irrigated lands monitoring and reporting programs for the ESJWQC and others. Chlorpyrifos is a widely used chemical with registrations on many commodities and is effective for controlling many pests. There are an extremely large number of alternative products that can be used in place of both chlorpyrifos and diazinon. In fact, any product with overlapping registrations for commodities and pests could be viewed as an alternative product, whether it is applied as an alternative or not. Requiring monitoring of these chemicals without the additional step of determining whether they may or may not be worth monitoring is going to be extremely costly. The waste discharge requirements that are being adopted within the irrigated lands program require that the Regional Board, Department of Pesticide Regulation, and the various third parties develop a process that allows for identification of pesticides that should be monitored in each watershed. Rather than mandating “alternatives monitoring” here, the ESJWQC and others should be allowed to use that process to identify appropriate pesticides to monitor in each subwatershed, instead of simply adding as many chemicals as possible because they might be considered alternatives to chlorpyrifos and diazinon.

Agricultural Discharge Monitoring, Provision 5, p. C-8: With respect to provision 5, it would require monitoring to determine if discharges are causing or contributing to toxicity impairment due to additivity or synergistic effects of multiple pollutants. Attempting to identify additive and synergistic effects of multiple pollutants is difficult to do under the most optimum of circumstances and generally, additivity and synergy cannot be detected. If toxicity in a sample is at least 50%, a toxicity identification evaluation (TIE) may be able to identify classes of constituents that contribute to the toxicity. However, the TIE only points to a class of constituents (e.g., non-polar organics), and additional chemical

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analyses must be performed to identify potential chemicals contributing to toxicity. Even if toxic units of the chemicals are known, it will still not be clear if additivity or synergy is present because it is not possible to determine if the chemical analyses found every chemical. Attempting to do so would require a Phase III TIE, which can cost several thousand dollars per sample with no guarantee of success. While the ESJWQC has been somewhat successful in determining the classes of compounds responsible for toxicity in some samples, the requirement to determine additivity or synergy in every toxic sample would be extremely burdensome and costly.

Thank you for providing this opportunity to comment.

Sincerely,

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

Theresa A. Dunham

cc (*electronically only*): Pamela Creedon
Parry Klassen
Michael L. Johnson

TAD:cr