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File No. 82231.00003

May 16, 2012

**VIA EMAIL**

Adam Laputz  
Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive, #200  
Rancho Cordova, CA 95670-6114

**Re: Comments re Eastern San Joaquin River Watershed Tentative  
WDRs and MRP for Discharges from Irrigated Lands**

Dear Mr. Laputz:

The Southern San Joaquin Valley Water Quality Coalition (SSJWQC) submits these comments on the proposed East San Joaquin Water Quality Coalition (ESJWQC) General Order for the Irrigated Lands Regulatory Program. The agricultural waiver which has been in existence since 2004 pursuant to California Water Code section 13269 is now being bifurcated into six or more separate general orders, as driven by the staff alternative accepted by the Board, even though this alternative had not been reviewed pursuant to either the EIR or the associated Economic Analysis.

The Board is presently engaged in negotiating with three of the water quality coalitions ESJWQC, SSJWQC and the Rice Water Quality Coalition. Other coalition negotiations will follow. The SSJWQC is presently concluding our negotiations with the Regional staff and our proposed general order will soon be presented for public review, and thereafter before the Regional Board for action.

The new general orders are being advanced pursuant to CWC § 13263, and are to follow similar formats (with the likely exception of Rice); however, the operational sections will likely be significantly different to reflect the considerable differences between the coalitions in respect to commodities, rainfall, hydrology, groundwater, Delta drainage, etc.

Follows are some significant issues and potential problems with this proposed ESJWQC General Order.



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**1. Page 1, Footnote 1**

The general order appropriately references the CWC and defines “waste” in section 13050(d). That definition, however, is not the definition used in the general order, which is found on page 2, #5.

Water Code, Section 13050(d): “Waste” includes sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for purposes of, disposal.

Proposed Order: “Waste” includes nitrogen, pesticides, soil, silt, sand, clay, rock, metals, salts, boron, and other wastes that may impact the physical properties of water, such as temperature, pH, and dissolved oxygen.

What is the basis and authority for departing from the legislative direction?

**2. Page 3, #10 – Landowners/Land operators**

The massive amendment to more than double the required efforts/costs of coalitions in signing up both owners and farm operators is not merited. Having each property covered by membership by either the landowner or the land operator, has been fully sufficient and effective. Requiring efforts to get signatures from landowners who may be living in Europe or which involve trust funds, or long term farm leases with absentee landowners, or the flip side with having the landowner sign, and further not requiring the signatures of several lessees which may all change in less than a 12-month period, is not just a problem, but will needlessly throw lands out of “participation” merely for want of ability to timely comply with this duplicative requirement.

The only issue for the Regional Board is that the party who signs up is the one who is in control of the property. In our negotiations with staff we inquired if the present single party sign up had been a problem. It was revealed that this has not been a problem and the board has been able to prosecute all parties, notwithstanding the specific sign up requirements under the general order.

This general order should not be written to impose new significant problems just for the “possible” convenience of staff bringing an enforcement action.



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**3. Page 3, #13 – Growers Regulated Under This Order**

A 90-day period to convert old members and to sign up new members is inadequate even in this relatively small coalition, and it will be totally inadequate in the SSJWQC, which is nearly eight times larger. Moreover, due to limited surface water drainage, the SSJWQC will have to sign up nearly two million more acres (four times the total ESJWQC area) which have not previously been subject to the water quality regulatory world.

**4. Page 7, #33 – California Environmental Quality Act (CEQA)**

The language incorrectly states that there were “2-6 alternatives in the EIR”. This is expressly false, as only five alternatives were advanced and reviewed.

**5. Page 8, #36 State Water Resources Control Board Resolution 68-16 - Antidegradation**

In 1968, the State Board wanted to provide special protection for the state’s pristine “high quality waters” as distinct from mere “quality waters”, which would be those represented by waters meeting the Basin Plan standards. For those pristine high quality waters, the antidegradation policy provided for specific regulatory efforts. This general order should identify those waters which are classified as high quality.

**6. Page 16, #4 and Page 18, #9 - Requirements of Members of Third-Party Group**

This provision requires that each member shall annually participate in third-party outreach events. This is a meritorious provision; however, there are two significant problems with the language. First, these events will not be held only by the third party, but also by Farm Bureau, water districts, RCDs, commodity groups, University Ag Extension, and many other delivery methods. All these efforts will be in addition to traditional farm and water outreach mechanisms. There is absolutely no way to keep track of all such outreach and participation.

Secondly, this is wholly incompatible with the requirement that each the landowner and land operator must be members. That provision addressed in item #2 above should be eliminated, which would also resolve this particular problem.

Similarly, the requirements on page 18, #9 regarding attendance lists of those who attend (much less those who do not) is totally impossible.



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**7. Page 18, #10 – Report Compliance**

This section inappropriately compels coalitions to become enforcement agencies – a concept clearly agreed as far back as 2004 would not be required.

The requirement to inspect and report farmers who did not employ some specific potential management practice is inappropriate. Further, the requirement to report if the grower’s water or groundwater “failed to achieve compliance with water limitations” is a totally unjustified requirement of coalitions and is the responsibility of the Regional Board.

**8. Page 20, A1 and 2 Required Reports and Notices – Member; Notice of Confirmation/Notice of Intent/Membership Application**

The time lines are unreasonable to obtain membership. The 90 days should be extended to at least 180 days.

**9. Page 22, VIII, A.4. – Required Reports and Notices – Third-Party; Application to Serve as Third-Party Representing Members**

It seems strange that after nearly 10 years of effective operations, the Regional Board is trying to put itself into the business operations between farmers and their water districts and the water quality coalitions. This section should be amended by adding the words “participate in” to replace “direct”.

**10. Page 25, 2. – Groundwater Quality Management Plan (GQMP)**

This section triggers its regulatory provisions if “agriculture may cause or contribute to” the exceedances or trend. That can be triggered if agriculture is only a scintilla of the contribution. Therefore this is unfair. This section and any other using this language should be amended by adding the language “significantly contribute”.

**11. Surface water chronic toxicity testing**

For nine years, surface water monitoring for toxicity has compelled the traditional acute toxicity testing. Surface water monitoring is to protect from acute toxicity impacts (exposure for weeks/months to a year). We are not protecting from the chronic 70-year exposure regime.

Acute testing has not evidenced any shortcomings; therefore, any change would be inappropriate. Moreover, chronic testing is less relevant (the same water does not reside in the same area for 70 years) and far more costly; therefore, no such change or addition is merited.



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**12. Identification of problem Pesticides**

It is wholly unreasonable and misplaced to attempt to compel the regulated community – water quality coalitions – to identify presently unregulated chemistries and conjure up regulatory levels. This is the job of the governmental regulating agencies and, most particularly, the statutory and expert agency, CDPR.

Sincerely,

A handwritten signature in blue ink, appearing to read 'W. Thomas', with a long horizontal line extending to the right.

William J. Thomas  
for BEST BEST & KRIEGER LLP

WJT:lmg