



May 21, 2012

Karl Longley
Chair, Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670

Re: EJ comments – East San Joaquin draft WDR

Dear Mr. Longley,

We are representatives of environmental and environmental justice communities located in the Central Valley and throughout California. We appreciate the hard work that staff has put into preparing the draft administrative order for the Eastside San Joaquin Region's General Waste Discharge Requirements for Irrigated Agricultural Discharges, as well as their efforts to keep us and other stakeholders engaged and informed during the process of development. Our comments on the draft reflect the urgent need to address widespread groundwater contamination attributable to irrigated agriculture, and your responsibility under the Porter-Cologne Act to do so.

The proposed order reflects the fact that staff have incorporated years of stakeholder input on how to craft an effective regulatory program for irrigated agriculture. We are encouraged to see the emphasis of requirements for nutrient budgeting in high vulnerability areas and this step alone is a huge step forward in ensuring that there are widespread changes to improve nutrient efficiency and protect groundwater.

While containing some promising steps like the nutrient budget, it is unclear how the order will achieve water quality improvements. The third party reporting requirements provide a way to enforce based upon successful paperwork rather than on identifying actions of individual growers (such as high fertilizer use in a hydrogeologically vulnerable area) that directly impact water quality. In addition, the proposed phased approach towards implementation of a groundwater monitoring strategy may further delay implementation of practices to improve groundwater quality.



Moreover, as a region-specific order, this draft falls far short. Little information specific to water quality or agricultural land use in the region is included, and virtually all specific information regarding actions and objectives is relegated to plans that will not be developed until after the order is adopted. This raises the question of why the Board has developed a staggered schedule for the development of regional orders, since so little unique information is included.

Our major concerns are included in more detail below.

Findings describing reasons for this Order do not adequately document groundwater problems in the region.

- What is in the order: Far more could and should be done to document the impacts of irrigated agriculture on current groundwater quality. Attachment B, the Monitoring and Reporting Program, provides some information about water quality issues in the region.
- Our concerns: Not information is provided about residents dependent upon groundwater in the region. The State Board's draft report "Communities that Rely upon Contaminated Groundwater" identifies community water systems serving nearly 300,000 residents in Stanislaus and Merced Counties that are wholly dependent upon groundwater supplies. This does not include those served by state small systems or private wells, which total more than 100,000 (Balazs, 2011). Many of these communities are at risk from current and future contamination of groundwater from agricultural discharges, and protection of drinking water quality for these communities is a key driver for this program.
- Proposed Changes: While more details on the problem and sources will be developed through implementation of this order, there is a significant amount of data available already to justify the need for this program that should be more thoroughly documented in the findings of this and other orders for the irrigated lands regulatory program.

The Order Fall Short of the Components Necessary to Implement an Effective Regulatory Program.



The following outlines what we believe to be the basic components necessary to implement an effective regulatory program for irrigated agriculture. For each component we have included our understanding of what is included in the order and where the proposed order falls short.

1) Collect basic information on farm practices and water quality.

- What is in the order: The draft order does collect basic information on farm practices and water quality, however, the lack of transparency of the reporting means that we are not sure how effective this will be.
- Our Concerns: Templates outlining what information will be collected for both farm practices and water quality will be prepared and approved after adoption of this order and without a public review process. As written, for instance, this order fails to directly require even the most basic groundwater protections measures, such as the identification and destruction of abandoned wells. Furthermore, all farm-level reports will be retained by the third-party coalition and only provided to the Regional Board upon request. Only aggregate reports will be publicly available unless specific action is taken in the future by the Executive Officer. The use of aggregate reporting has the effect of masking extremes, making it difficult for the Board to identify Members for review and inspection.
- Proposed Changes: Include a template of the Farm Evaluation, Nitrogen Budget, Annual Monitoring Report, and other reporting documents with the order to allow for transparency, public review, and input. Require submittal of nutrient budgeting and farm evaluation as an attachment to the annual aggregate report to allow for public review and oversight of farm level practices.

2) Results in real farm-level changes to protect groundwater.

- What is in the order: The order does require individual farm evaluations as well as education and outreach on best management practices. We think these are vital and important components of the program, without which the program could not be effective. We like that there is an educational component to help ensure the information on management practices and problems is getting down to the farm level and not just maintained in third-party coalitions or regional reports.
- Our Concerns: The Representative Groundwater Monitoring component delays the review of best practices, first through a "phased" implementation process, and second through a reporting element that allows six years to elapse for each phase before the



efficacy of the management practices are reported. It is difficult to understand how growers can comply with the 10-year time frame for compliance when the schedule for evaluating new and improved practices will take most of that time. The education component is part of the aggregate reporting by the 3rd party coalition, leading to the concern that some bad-actor members will be able to avoid this requirement without attracting the attention of the Board.

- Proposed Changes: The order should require the first Summary Representative Monitoring report 2 years after adoption of the Representative Groundwater Monitoring Plan, with annual reporting thereafter. The aggregate reporting of the education component should identify which members have not participated.

3) Sets clear standards for compliance, and ensures that the Board has effective enforcement mechanisms to compel compliance.

- What is in the order: Currently the enforcement seems to be only:
 - Third Parties
 - No compliance for farms unless turned in by third-party for non-payment, failure to implement BMPs, or subject to Board inspection; there seems to be no enforcement provision for failing to meet water quality objectives.
- Our Concerns: There is no clear enforcement mechanism tied to nonattainment of water quality objectives. Also, the aggregation of information in annual third-party reports makes it difficult for the Board to prioritize farms for enforcement based upon threat to water quality (for instance, farms with a high nitrogen budget).
- Proposed Changes: See above response regarding requiring best practices; require annual reports to identify either nitrogen budget or key information in the budget, such as total fertilizer application, by member.

4) Includes a component to address both cleanup of legacy agricultural contamination and mitigation of continued degradation and exceedances.

- What is in the order: Currently there is nothing in the order to address clean up of legacy contamination nor mitigation of continued degradation or exceedances.
- Our Concerns: This program allows for continued impacts to beneficial uses, and even continued exceedances of water quality objectives, but does not provide any mechanism to mitigate those impacts to communities or other beneficial uses impacted.



- Proposed Changes: Require a clean-up or mitigation fee/penalty to cover the impacts during phased implementation.

The Draft Order does not adequately support the State's Anti-degradation Policy

The Anti-degradation policy requires that high quality waters not be allowed to exceed water quality objectives. This requires two things: 1) that groundwater limitations prohibit discharges to cause or contribute to exceedances of water quality objectives, and 2) that there be a mechanism to enforce that limitation. Neither is included in the Draft Order.

Secondly, the order must provide substantial evidence to support a finding by the board that the degradation that is authorized through this permit is consistent with the "maximum benefit to the people of the state." In order to do this, the Board should be provided with an analysis of the level of degradation that is authorized through this permit and what the impacts of that are expected to be. This is not provided in the Draft Order.

Specific Comments on Regional Groundwater Plan Requirements

The Regional Groundwater Plan Requirements appear to be adequate to do the following: 1) identify area covered by plan, 2) summarize and assess existing data, 3) identify contamination sources, 4) include measures to evaluate plan's effectiveness, 5) describe outreach to growers, 6) track which management practices are being implemented and where – in aggregate, 7) include a monitoring plan to track changes in water quality, 8) require grower education, 9) identify assistance provided to farmers on implementing recommended BMPs.

We have concerns regarding its ability to do the following:

- 1) Identify management practices to
 - i. Reduce pesticide and fertilizer use
 - ii. Prevent groundwater wells from serving as a conduit for contamination
 - iii. Avoid leaching of waste to groundwater through construction and maintenance of ponds, reservoirs, or other water containment structures
 - iv. Promote irrigation practices that reduce leaching of contaminants below root zone
- 2) Track where management practices are being implemented on the farm level.
- 3) include schedules and milestones for achieving water quality objectives - no



- 4) Report mitigation actions taken – this applies to CEQA only and not on-going mitigation to address water degradation impacts and contribution to exceedances.

Overall, the groundwater trend monitoring requirements look good except for pesticides. First, the order acknowledges that monitoring data is not available for all pesticides in use in the region, but doesn't identify those pesticides in the order. Next, the order makes the assumption that monitoring performed by the Department of Pesticide Reform (DPR) is adequate to identify any groundwater contamination trends is unfounded. DPR monitors for only about one-third of the pesticides on its 6800(b) list of likely groundwater contaminants.

We strongly support that all monitoring information is to be submitted directly to GAMA and incorporated into Geotracker. This is an important part of complying with the Basin Plans.

Proposed changes: The order must require identification of all on-farm wells, and identification and proper destruction of abandoned wells. The order should identify which pesticides with a tendency to leach to groundwater (i.e. on the 6800(b) list) are used in the region, which are included in DPR's groundwater monitoring program, and which need to be included in the trend monitoring program.

It is unclear how the Board will exercise its authority independently of third-party coalitions.

- What is in the order: the third party coalition provides a membership list to the Board annually, including information on those arrears in payment or reports. The third party is responsible for developing all reporting templates, collecting information from all members, developing and implementing groundwater monitoring and developing Annual Monitoring Report with aggregate information.
- Concerns: The Board does not receive sufficient information to enforce the order for individual farms. The third party can withhold phone numbers for individual members, and provides only aggregate water quality and nutrient application information. How will the Board identify and prioritize farms for inspection and review without a) contact information and b) individual information on nutrient application and/or nitrogen balance by farm?
- Proposed changes: The annual summary report should identify those members in hydrologically vulnerable areas with the highest level of nutrient application. That will



allow the Board to prioritize for inspection those operations most likely to be impacted groundwater. The annual membership list submitted to the Board must provide contact information for each member.

Closing

We appreciate the opportunity to review this order and provide input. It seems clear, however, that considerable additional information is needed to ensure that this is an effective and enforceable program. Most importantly, we expect to see the report templates included in the final draft order before the Board is asked to act on it; and that sufficient information about individual farms is included in third-party reports to allow the Board to enforce the order based on water quality considerations.

Sincerely,

A handwritten signature in black ink that reads "Laurel Firestone".

Laurel Firestone
Co-Executive Director and Attorney at Law
Community Water Center

A handwritten signature in black ink that reads "Jennifer Clary".

Jennifer Clary
Water Policy Analyst
Clean Water Action

Phoebe Seaton
California Rural Legal Assistance Foundation