San Joaquin County and Delta Water Quality Coalition

San Joaquin County Resource Conservation District
3422 W. Hammer Lane, Suite A
Stockton, California 95219
209-472-7127 ext 125

May 21, 2012

Via Electronic Mail

Pamela Creedon, Executive Officer
Adam Laputz
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670
AWLaputz@waterboards.ca.gov

Re: Comments on East San Joaquin River Watershed proposed WDR

Dear Ms. Creedon and Mr. Laputz,

After reviewing the administrative draft of the East San Joaquin River proposed Waste Discharge Requirements General Order (Order), the San Joaquin County and Delta Water Quality Coalition (SJC & DWQC) has several concerns about the Order. The SJC & DWQC is commenting on this Order due to the realization that it will be precedent setting and any orders to follow concerning agriculture waste discharge compliance by third parties will have similar requirements.

The SJC & DWQC has concerns about the groundwater monitoring program, nitrogen budgeting, reporting requirements for growers and third party coalitions, the use of incomplete data for setting water quality criteria, the dismissal of the authority of Department of Pesticide Regulations (DPR) as the entity with statutory authority to regulate pesticides, the misuse of DPR groundwater protection zone information along with several other areas to be discussed in this document. SJC & DWQC is also concerned with the CEQA analysis of the draft Order and the large cost of implementing the program proposed compared to the minimal likelihood that the proposed program will actually meaningfully improve groundwater quality in the Central Valley.

The following summarizes our comments and concerns regarding the Order as proposed:

1. The Regional Board Cannot Rely on the Inadequate Program Environmental Impact Report for the Long-Term Irrigated Lands Regulatory Program when Exercising Its Discretion to Adopt the Order.

The Order provides that it "relies on the environmental impact analysis contained in the [Program Environmental Impact Report] PEIR to satisfy CEQA requirements." Order at 7, ¶7. More specifically, the Regional Board acknowledges that "[t]he Order has been developed using the Framework alternative as a starting point – which has been constructed from the alternatives evaluated in the PEIR." Attachment D, Findings of Fact and Statement of Overriding Considerations at 14.

The problem with the Regional Board's approach, however, is that the PEIR *never* environmentally reviewed the "Framework," and the Framework contains new regulatory requirements not advanced or reviewed during the CEQA process for the PEIR. Notably, the Framework was neither disclosed nor analyzed in either the Draft PEIR or the Final PEIR. Instead, Regional Board staff belatedly introduced the Framework for the first time in the staff report for the hearing in which the Regional Board certified the Final PEIR. Such an approach deprived the decision makers and the public from having an adequate opportunity to review and comment on the Framework as part of the CEQA process. The Long-Term Framework, moreover, does not resemble the alternatives analyzed as part of the Draft PEIR. Nor is it related to any of the alternatives analyzed as part of the required economic analysis under Water Code section 13141. Because the proposed Order is based on the Framework, which was never environmentally analyzed in the PEIR, the Regional Board cannot rely on the PEIR for the required CEQA review before taking the discretionary action to approve the Order.

The Order's statement that its requirements "are based on the elements found in Alternatives 2-6 of the PEIR," (Order at 7, ¶33), is equally troubling since the PEIR only analyzed five alternatives. The purported "sixth alternative" – the Staff Recommended Long-Term Irrigated Lands Program (RPA) – upon which some of the Order's requirements are based, was never analyzed in the Draft PEIR. Instead, the RPA was merely attached as an appendix to the Draft PEIR. The RPA, therefore, was not in and of itself evaluated to determine if it has significant environmental impacts.

The RPA and Framework, moreover, include regulatory provisions that differ significantly from those identified and contained within the five alternatives actually included in the PEIR. For example, for nitrate impacted areas the Framework proposed requiring nutrient management plans certified by a "certified crop advisor." Framework at A-17, ¶4; A-16, ¶10. The proposed Order contains similar regulatory requirements. *See e.g.*, Order at 16, ¶8 ("Members located within a high vulnerability groundwater area for which nitrate is identified as a constituent of concern, shall prepare and implement a farm-specific annual nutrient budget as required by section VII.D of this Order."); Order at 21-22, ¶D ("The Proposed Annual Nitrogen Budget Worksheet(s) must be prepared or approved by a certified nutrient management plan

specialist."). The PEIR, however, did not analyze the environmental and economic impacts associated with nutrient management plans and management practices resulting from the nutrient management plans.

Similarly, the Framework called for an assessment and trend monitoring for groundwater. Framework at 22, ¶5; 31, ¶8. The proposed Order also requires trend groundwater monitoring. *See* Order Attachment B, Monitoring and Reporting Program (MRP) at 13-19. This trend monitoring requirement was not subject to environmental or economic analysis. Groundwater is not farm specific, and the groundwater underlying a farm or underlying a monitoring point may be very old water sourced from many miles away. Consequently, trend monitoring is unlikely to show any results for decades if at all.

The Order also requires groundwater compliance within 10 years. Order at 28, ¶XII. This requirement appears to be based on one contained in the Framework. *See* Framework at A-26 (discussing compliance time schedule of 5 to 10 years, but cannot exceed 10 years). Yet the proposed compliance schedules were not analyzed in the PEIR pursuant to CEQA and are wholly unreasonable given the complex nature of groundwater issues and the expense associated with the proposed program.

Because the PEIR is inadequate as a CEQA document and never analyzed the environmental impacts of many of the regulatory requirements upon which the Order is now based, it cannot serve as the basis for the Regional Board's mandatory compliance with CEQA in adopting the Order. It is not enough to cherry-pick specific regulatory requirements from some of the PEIR alternatives or the RPA and Framework and claim that those requirements have been environmentally evaluated in the PEIR. In reality, no environmental review has been conducted for the program proposed in the Order since it is a conglomeration of elements of the five alternatives in the PEIR and the two belatedly-introduced alternatives (the RPA and Framework) that have not been evaluated in the PEIR or any other environmental document. Before adopting the Order the Regional Board must comply with CEQA by preparing an environmental document that studies and discloses to the public the potentially significant adverse environmental impact from the project as proposed.[1]

2. The Regional Board Cannot Legally Impose Many of the Mitigation Measures Identified in the PEIR.

Under the Order, certain members are required to implement the mitigation measures identified as part of the PEIR. Order at 8, ¶34. Many of these mitigation measures require additional environmental review even though no discretionary action may be triggered. For example, Mitigation Measure CUL-MM-1 regarding cultural resources requires that "[w]here

[1] Because the Regional Board cannot rely on the PEIR, it must conduct subsequent or supplemental environmental review under CEQA Guidelines §§15168 and 15162.

adverse effects to cultural resources cannot be avoided, [the member must] undertake additional CEQA review and develop appropriate mitigation to avoid or minimize the potential impact." *See* Order Attachment C, CEQA Mitigation Measures ("Attachment C") at 2. Likewise Mitigation Measure BIO-MM-1 concerning impacts on sensitive biological resources requires additional CEQA review to develop a restoration or compensation plan to mitigate for the loss of resources where adverse effects cannot be avoided.[2] *See* Attachment C at 3. Mitigation Measure FISH-MM-1 regarding fishery impacts requires a member to undertake additional CEQA review and develop a restoration or compensation plan to mitigate the loss of any fishery resources that cannot be avoided by altering construction periods. *See* Attachment C at 4.

Because CEQA only applies to discretionary actions (Pub.Res.Code §21080(a)), the Order cannot require members to undergo additional CEQA review if they are not undertaking an activity that triggers approval by a public agency exercising discretion. Thus, if a member is implementing a specific management practice that only involves obtaining a grading or building permit in order to construct, which are nearly always ministerial, no legal basis exists for requiring that member to engage in additional CEQA analysis even if the impact on cultural resources, sensitive biological resources or fisheries cannot be reduced to a less than significant level. The mitigation measures must therefore be revised to adhere to the legal limitations inherent in CEQA's statutory scheme.

Paragraph 34 of the Order should also be revised since the language seems to imply that members must reduce all potential impacts to an insignificant level. Order at 8, ¶34 ("this Order requires that Members either avoid the impacts or implement mitigation measures to reduce the potential impacts to a less than significant level."). CEQA, however, does not require that all environmental impacts be reduced to a level of insignificance. Instead, mitigation measures must be designed to minimize significant environmental impacts, not necessarily eliminate them. Pub.Res.Code §21100(b)(3); CEQA Guidelines §15126.4(a)(1). Projects may still be approved even if an adverse environmental impact cannot be mitigated to a less than significant level. *See e.g., San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus* (1996) 42 Cal.App.4th 608, 616 (CEQA's purpose is "to compel government at all levels to make decisions with environmental consequences in mind." CEQA does not "guarantee that these decisions will

[2] Mitigation Measure BIO-MM-2 forces members to conduct a delineation of affected wetlands "prior to implementing any management practice that will result in the permanent loss of wetlands." Attachment C at 3. In delineating wetlands, the mitigation measure requires it to be conducted in accordance with current U.S. Army Corps of Engineer ("Corps") methods. The implementation of management practices is most likely to occur on irrigated agricultural land currently in production, however. Such agricultural areas do not fall within the jurisdiction of the Corps since its authority is limited to actions affecting "waters of the United States," which by definition do not include prior converted croplands. 33 C.F.R. §328.2(a)(8). If the Corps lack jurisdiction to conduct a delineation, then it follows that the Regional Board does not have the authority to order individual agricultural operations to undertake such an action as a mitigation measure.

always be those which favor environmental considerations."); Pub.Res.Code §21081(b); Guideline §15093(a).

Also, it is improper and illogical to make the third parties responsible for mitigation measure paperwork. *See* Order at Section VII. E. The third party is not the agency responsible for CEQA compliance or the agency making any discretionary decisions. The third parties are going to be over-tasked with limited budgets which should be dedicated to improving water quality, not processing CEQA paperwork for the Regional Board. As we have noted above, the mitigation measures are unnecessary and should be removed from the Order. If they remain a part of the Order, however, the third parties should not be tasked with maintaining paperwork related to mitigation measures.

3. The Regional Board Cannot Rely on the Previous Economic Analysis Performed for the PEIR.

The Porter-Cologne Water Quality Control Act (Porter-Cologne) requires the Regional Board to estimate the total costs of an agricultural water quality control program and the potential sources of funding. Water Code §13141. Although the Order acknowledges this requirement, it nevertheless appears to claim that it need not comply. Order at 9. According to the Order, "Section 13141 concerns approvals or revisions to a water quality control plan and does not necessarily apply in a context where an agricultural water quality control program is being developed through waivers and waste discharge requirements rather than basin planning." Order at 9, ¶38.

Despite this questionable position, the Order provides that the total cost of complying with the Order is estimated to be 108 million dollars per year. "The estimated costs were derived by analyzing the six alternatives evaluated in the PEIR." Order at 9, ¶38. According to the Order, because it is purportedly "based on Alternatives 2-6 of the PEIR," the estimated costs of the Order fall within the previous estimates, which were based on the information provided in the *Draft Technical Memorandum Concerning the Economic Analysis of the Irrigated Lands Regulatory Program*. Order at 9, ¶38.

Yet, as the Order acknowledges, it was developed "using the Framework alternative as a starting point…" Attachment D, Findings of Fact and Statement of Overriding Considerations at 14. As discussed above, the belatedly-introduced Framework was never analyzed as part of the PEIR. Tellingly, Attachment D – Findings of Fact and Statement of Overriding Considerations – confirms that the Framework was never an alternative analyzed in the PEIR. In discussing the feasibility of "alternatives considered in the EIR," Attachment D does not list or discuss the Framework. *See* Attachment D at 24-31. Because it was never analyzed in the PEIR, the Framework was also never analyzed in the economic analysis contained in the Draft Technical Memorandum Concerning the Economic Analysis of the Irrigated Lands Regulatory Program.

Moreover, a review of the Framework reveals that its discussion of economic impacts is woefully inadequate and does not comply with Water Code section 13141. The staff report containing the Framework, which was introduced for the first time before the Regional Board certified the Final PEIR, includes only a cursory examination of the costs of the program and potential sources of financing. *See e.g.,* March 2011 Staff Report at 30-34. The analysis, however, is not sufficiently detailed to alert those subject to the regulatory program to the true costs of the program, nor has it been indicated in any regional water quality control plan as required by the Water Code. The staff report cost examination is also based on different assumptions than those analyzed in the economic analysis contained in the PEIR. According to the staff report, "[a]n estimated total cost of the recommended ILRP Framework also has been developed and differs from the estimation approach used for the six alternatives. March 2011 Staff Report at 30.

This issue is important because the Order as proposed contains several very costly and time-consuming requirements that were based on the Framework and not analyzed or disclosed in the PEIR or its economic analysis. For example, the Order, like the Framework (March 2011 Staff Report at 3), requires all irrigated agricultural operations to complete a farm-specific evaluation and to identify management practices for Regional Board inspection. *See* Order at 21, ¶B ("Within 60-days of the Executive Officer approval of the Farm Evaluation Template developed by the third-party, the Member shall complete a Farm Evaluation and submit a copy of the completed Farm Evaluation to the third-party group…[which] must be produced upon request by Central Valley Water Board staff."); *see also* MRP at 25-26 (Farm Evaluation Template must identify "on-farm management practices implemented to protect surface and groundwater quality" and "[s]pecifically track which management practices recommended in management plans have been implemented at the farm."). The true cost of the farm-specific evaluation requirement has not been adequately analyzed, and the Order cannot rely on the PEIR's economic analysis to support imposing such a condition.

The PEIR's economic analysis, moreover, fails to address a number of the costs that will be incurred as a result of implementing the Order based on the Framework. These costs include, but are not necessarily limited to, nutrient management, irrigation practices, and the installation and operation of monitoring wells. Compliance costs could range in the hundreds of millions of dollars. Yet these costs have not been adequately addressed in the PEIR economic analysis or in the brief cost estimates contained in the March 2011 Staff Report which introduced the Framework after the PEIR had been completed.

4. Timing/Implementation Issues.

a. The Order Should Apply to Owners <u>or</u> Operators.

Finding 10 on page 5 states, "This Order regulates both landowners and operators of irrigated lands from which there are discharges of waste that could affect the quality of any

waters of the state. In order to be covered by this Order, the landowners and operators must also be Members. The third-party group representing Members will assist with carrying out the conditions of this Order. Both the landowner and operator are ultimately responsible for complying with the terms and conditions of this Order."

In many cases, the property owner(s) may be difficult if not impossible to find. Some properties are owned by large investment groups or multiple family members. It is more appropriate for the Member to be either the owner or the operator as it is the operator who is able to control the impact on water quality

b. Overlapping Boundary Problems.

Finding 3, page 3 states: "There are some locations within the Eastern San Joaquin River Watershed where it may be more effective for owners and operators of irrigated lands that are not "Members" to enroll under an irrigated lands regulatory program (ILRP) Order that recognizes a different third-party representative. In these locations, the boundaries of the third-party area overlap with boundaries of a third-party area recognized by a different ILRP Order. Growers are only required to obtain coverage under one ILRP order."

This overlap creates numerous problems for third parties adjoining the ESJWQC by decoupling the potential discharge of waste from the monitoring and outreach components of the third party. Although the maps were seemingly drawn to reflect surface water drainage, it is not clear that groundwater subbasins and flow also place the land in the ESJWQC region. Growers may discharge into groundwater that is monitored within the third party region, but because they are members of the ESJ third party, there is little the SJC & Delta third party can do to prevent the discharge. It would be more appropriate to keep the boundaries as currently drawn.

c. Timing of Submittals by the Third Party Should be Measured from the Date of Approval of the Third Party.

Throughout the document, there are numerous dates for various documents and submissions that are based on the date of adoption of the Order. Given a potential delay in the third party acceptance by the Regional Board, those dates would be better established from the date of acceptance of the third party.

d. The Focus of the Third Party Efforts Should be on Implementation and Not Enforcement.

Section IV. C. 10 explains that the third party must work cooperatively with the Central Valley Water Board to ensure all Members are providing required information and taking necessary steps to address exceedances or degradation identified by the third-party or board. As part of the Annual Monitoring Report, the third party must provide an annual list to the Central Valley Water Board of growers who have: (1) failed to implement improved water quality

management practices within the timeframe specified by an applicable SQMP/GQMP and failed to achieve compliance with the surface or groundwater limitations (section III); (2) failed to respond to an information request associated with any applicable SQMP/GQMP; (3) failed to participate in the third-party's site-specific or representative monitoring studies required by the Central Valley Water Board for which the third-party is the lead; or (4) failed to submit required fees to the third-party.

These requirements place the third party in the position of being responsible for monitoring the implementation of management practices and reporting "noncompliance". It may not be possible to determine individual landowner compliance with surface or groundwater limitations (number 1 above) and places the third party in the position of enforcement which is not and should not be the third party's responsibility.

Rather, the third party should work on implementation to improve water quality. Policing paperwork violations is not an efficient use of limited resources and does nothing to improve water quality. If the third party is able to work on monitoring and characterizing water quality problems, this will lead to locating causes and then dealing with reporting issues. The proposed Order should eliminate the paperwork enforcement function for third parties.

e. One Year Is Not Enough Time to Complete a Useful Groundwater Quality Assessment Report.

Page 23 of the proposed Order directs the third party to submit the Groundwater Quality Assessment Report in one year. This is too short. A progress report can be submitted in one year, but it will likely take at least three years to complete a Report that is of any real value given the complexities that must be studied and the funding needed to undertake this level of study.

6. Expensive Measures in the Proposed Order that Will Not Improve Water Quality Should be Removed or Modified so that they are Targeted at Improving Water Quality and are Cost-Effective for that Purpose.

a. Farm Evaluation Plans.

Section VII. B. of the proposed Order requires every Member to complete a Farm Evaluation Plan and to submit new plans to the third party annually. This is a significant new paperwork requirement that is burdensome and expensive for Members and the third party and does not appear to serve any practical purpose since the third parties cannot feasibly review and critique each submitted plan each year. Also, there does not appear to be any correlation between this very expensive paperwork exercise and improved water quality.

Alternatively, the third parties are going to be familiar with the geography in their jurisdictions and with the water quality monitoring results that may reflect sediment problems. It makes much more sense for the third party or the Executive Director to simply have the ability to

request that Members in problem areas complete these plans on an as-needed basis when they are shown to actually be useful for improving water quality in a particular area.

b. Nutrient Management Plans.

Section VII. D of the proposed Order states that Members located within a high vulnerability groundwater area for which nitrate is identified as a constituent of concern must prepare or have prepared a Proposed Annual Nitrogen Budget Worksheet(s) for the upcoming year, and a Final Annual Nitrogen Budget(s) for the previous crop year in accordance with the Annual Nitrogen Budget Worksheet template approved by the Executive Officer as described in section VI.C of the MRP. The Proposed Annual Nitrogen Budget Worksheet(s) must be prepared or approved by a certified nutrient management plan specialist.

Certified nutrient management plan specialists include Professional Soil Scientists, Professional Agronomists, Crop Advisors certified by the American Society of Agronomy, or Technical Service Providers certified in nutrient management in California by the National Resource Conservation Service (NRCS).

By 1 March of each year, beginning the year after the Central Valley Water Board Executive Officer approves an Annual Nitrogen Budget worksheet template developed by the third-party, Members subject to this requirement shall submit to the third-party the Final Annual Nitrogen Budget(s) for the previous crop year, and the corresponding Proposed Annual Nitrogen Budget(s) that was prepared for the previous crop year. Proposed and Final Annual Nitrogen Budget(s) shall be maintained at the Member's farming operations headquarters or primary place of business; and, must be produced, if requested by board staff or, should board staff or authorized representative conduct an inspection of the Member's irrigated agricultural operation.

The requirements that (1) the budgets be prepared by a certified specialist, and (2) be submitted to the third party, are both unnecessary and add significant expense to the proposed program without a showing of correlated benefits. These two requirements should be removed.

Growers understand fertilizer use and applications and generally are very cognizant of their application rates and crop use because fertilizer is such a large expense to the farming operation. Most growers are capable of completing these plans without the aid of a "certified specialist" but can certainly choose to hire one if they see fit. It does not need to be a requirement.

Also, the submittal of two budgets per year for every Member to the third party is a paperwork overkill that serves no practical purpose other than to drive up the cost of administration for the third party and the grower and take precious resources away from work to improve water quality. This requirement should be removed from the draft Order. The plans/budgets should be maintained by the Members and available for submittal upon request of the third party or the Regional Board.

From a practical perspective, the limited resources of the third party are better spent providing educational information to Members on how to reduce nitrate use or ensure that applied nitrogen does not reach groundwater, than on processing two sets of paperwork for every Member each year.

c. Sediment and Erosion Control Plans.

The Sediment and Erosion Control Plan is another example of extra paperwork and expense that should only be required when it will improve water quality, such as when water quality monitoring shows a sediment problem in an area or when lands exceed a certain slope.

The third parties should not be required to review every Farm Evaluation and determine who needs an erosion control plan, nor is it even feasible for a third party to accomplish this task in 60 days given the thousands of plans that would be submitted to the third party. S*ee* Order at 18, Section IV.C.8.

d. Outreach Events.

Section IV. B. 4 requires each Member to participate in third-party outreach events, at least annually, if any of its parcels are in a designated "high vulnerability" area or governed by a SQMP/GQMP.

It is good to see that this requirement is limited to Members in "high vulnerability" areas, but the annual attendance requirement appears excessive. If a Member has attended such an event and there is no new information to provide, additional annual attendance indefinitely is nothing more than a wasteful, expensive requirement that does nothing to improve water quality. Attendance every 5 years combined with receipt of mailed information on new developments would appear to achieve the same result at a much lower expense.

7. Technical Flaws in the Proposed Order.

a. The Proposed Order Reflects an Unfounded Assumption Regarding the Impact of Current Farming Operations on Groundwater Quality.

Page 2, #6 of the Order states, "This Order is not intended to regulate water quality as it travels through or remains on the surface of a Member's agricultural fields, including, but not limited to, furrows, beds, checks, ancillary structures associated with agricultural operations, and soil pore liquid within the root zone." This limit is too narrow. The Regional Board does not have the authority to regulate any discharge until it reaches and degrades groundwater – which may or may not occur long after water leaves the root zone in a farmer's field. How water travels through the soil strata is determined by a myriad of factors that include but are not limited to soil types, soil layers (i.e., clay layers, hardpan layers), soil density, rainfall, percolation and

plant uptake. Also, many factors determine which constituents actually travel to the groundwater basin; factors such as microbial activity, half-life of active ingredients, and plant uptake.

Throughout this program the Regional Board appears to assume that current irrigated agriculture is causing the water quality problems. Yet in our experience in the program so far, we have determined it is only certain farms in certain areas that have a potential to effect water quality. A narrowed focus approach has been successful in improving surface water quality. The same approach should be used to address groundwater. There is nothing to suggest that current farming has caused or is worsening the nitrate levels in groundwater. Rather, farming practices from decades ago are the likely cause of the current problem. Imposing very burdensome and expensive paperwork requirements on all current operations will do nothing to reverse this condition, and, rather, will monopolize limited resources that would be better spent on defining the cause of the current nitrate levels in groundwater, educating farmers on how not to repeat the problems of the past and determining if there is actually any more that current farmers can do to affect nitrate levels in groundwater.

b. Improper use of Department of Pesticide Regulation Groundwater Protection Zones.

The MRP Attachment, Section IV.A discusses groundwater vulnerability designation, and equates a "high vulnerability area" for purposes of this proposed order with an area "deemed vulnerable by the Department of Pesticide Regulation." This does not follow scientifically. DPR groundwater protection zones are designed for a specific constituent, how they travel through the soil and react with the soils types. To use these zones with a broad interpretation that any constituent applied in this area would have the potential to impact groundwater is inaccurate and unscientific. Just because this area might be susceptible to contamination by certain constituents does not extrapolate into being vulnerable to fertilizers or nitrates. Also, in the DPR designated groundwater protection zones, DPR already has regulations and mandated management practices to protect groundwater from the specified constituent. To have another governmental agency layer duplicate (or worse, develop inconsistent) regulations on irrigated agriculture is wasteful and inefficient. If an area does not have any other reasons to be designated as "highly vulnerable" for water quality purposes other than the existing DPR designation, it makes more sense for that area to simply continue to comply with the DPR regulations in place than to have to comply with the additional regulations imposed by the proposed Order for "high vulnerability areas." The proposed Order should specify this.

c. Concerns Regarding Development of Water Quality Trigger Limits and Establishing Water Quality Testing Methods and Chronic Toxicity Testing.

Section III. C. of the MRP states that the Monitoring Parameter Report must also include third-party proposed "trigger limits" for any parameter that does not have an adopted numeric water quality objective identified in the Basin Plan.

The development of trigger limits needs to incorporate all third parties and the Regional Board in a joint effort with the agencies who have the scientific experience with these chemicals, including DPR and the EPA under FIFRA guidelines.

MRP Attachment Section III. C. 3 explains that the third party shall monitor pesticides (currently registered for use) that have been applied and/or detected in a site subwatershed area during all or part of three consecutive years of PUR data, unless the third-party demonstrates that an exemption is warranted. Factors that the third party may consider in requesting an exemption include: the proportion of acres treated out of total irrigated acres; total pounds or pounds per acre of pesticide applied; application rates; LC50 or EC50 toxicity thresholds; prior monitoring results; availability of reliable analytical methods; and chemical characteristics of the parameter, such as mobility or half-life. The third-party may also consider pesticide-use trends. Documentation of the evaluations must be provided to the Central Valley Water Board, including a table or chart that summarizes the three previous years of pesticide use data used in the analysis.

Allowing one third party to develop a process for selecting pesticides to monitor may result in a process with which other third parties disagree. While there is nothing in the language that requires any other third party to use the process developed by any other coalition, the development of the process needs to occur in the larger stakeholder community and involve entities such as DPR.

MRP Attachment, Section III.C.4.a explains that aquatic toxicity testing shall include *Ceriodaphnia dubia, Pimephales promelas,* and *Selenastrum capricornutum* in the water column and shall follow the USEPA chronic testing methods[3] (short-term estimation methods). Toxicity test endpoints are survival and reproduction for *C. dubia,* survival and growth for *P. promelas,* and growth for *S. capricornutum*.

The use of chronic toxicity testing is unwarranted. It is much more expensive and would drive up the cost of compliance substantially. The development of chronic toxicity testing is expensive and should be handled by those agencies that have the expertise in these fields such as DPR and EPA. Scientifically, the chronic endpoints are not well correlated with impaired beneficial uses and thus, this requirement does not help improve water quality.

Conclusion

We urge the Regional Board to reconsider the proposed Order consistent with these comments and aim to produce a program that can best use limited resources to improve water quality, rather than simply create mounds of paperwork and consultant fees.

Sincerely,

Mike Wackman
San Joaquin County & Delta Water Quality Coalition