

# SAN JOAQUIN VALLEY DRAINAGE AUTHORITY

P O Box 2157 Los Banos, CA 93635  
209 826 9696 Phone 209 826 9698 Fax

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Pamela Creedon, Executive Officer  
Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive #200  
Rancho Cordova, CA. 95670-6114

Subject: Westside San Joaquin River Watershed Coalition Comments on the Eastern San Joaquin River Watershed Draft WDRs and MRP for Discharges from Irrigated Lands

Dear Pamela,

Following are the comments of the Westside San Joaquin River Watershed Coalition on The Draft Waste Discharge Requirements General Order for Growers within the Eastern San Joaquin River Watershed that are Members of Third Party Groups (DGO). Although the DGO is applicable to the Eastern San Joaquin River Watershed it appears to establish an intended programmatic approach applicable to subsequent irrigated lands watersheds orders. We realize that the DGO is a preliminary draft and appreciate the opportunity to comment in the early stages of development. However after reviewing the documents, it is clear that significant revisions are necessary to make the order constructive and coherent. This order is not a continuation of the existing surface water regulatory program with the addition of a groundwater component. Instead the DGO is a significantly new regulatory program. Many of the requirements in the order place unnecessary bureaucratic reporting and record keeping burdens on coalitions and growers with no corresponding benefits to water quality.

The existing watershed coalition approach is stripped away in the order's language and function. The DGO will assuredly make the farming community feel immediately defeated because of both the unachievable requirements and the fact that the order's language and structure is not readily comprehensible. The vastly increased demand for information, reports and records defies common sense and disregards the human resource and financial costs for individual farmers, third party groups and the Regional Board. The order's generalized and understated economic analysis is not the type of economic analysis required by Water Code Section 13141 or Water Code 13260. Nor does the economic analysis give the Regional Board members a realistic assessment of the economic burdens this order will place on growers in the Central Valley. These comments are not intended to be comprehensive but instead urge staff to make a major re-write of the order with significant shift in approach.

### **Revise Deadlines for Grower and the Watershed Coalition Tasks**

The Order's timing for different actions is established by different events. For example growers are required to submit a Notice of Confirmation (NOC) with 90 days of the adoption of the order. However the coalition cannot send the NOC form to the growers until after the Regional Board issues an NOA. The coalition has 30 days to send the Regional Board a letter requesting authorization to act as a "third party group" and 30 days after receiving the NOA to send the NOC form to the growers. Presumably, the Regional Board will need some time to determine if the group is qualified to serve in this capacity. This gives growers significantly less than 30 days to submit their NOC. In fact, if the Regional Board takes 30 days to grant an NOA from the time it receives the coalition's application letter, growers could be out of compliance as soon as they receive the NOC form. This is just one example of the incoherence of the order as it applies to filing deadlines.

Another example of the intrinsic flaws in the DGO is the application of footnote 9 to IIIB. Section III B states that discharge limitations for groundwater are immediately effective "except where Members are implementing an Approved Groundwater Management Plan, etc." But under MRP Order IV.B, even the Groundwater Assessment Report is not due for 1 year after the Notice of Availability. There should be a delay in the effective period for Member discharges to groundwater so long as the third party is moving through the development timeline. There may be similar timing problems regarding the assessment and development of nitrogen budgets and the annual nitrogen budget reporting requirements or elsewhere.

Here is a preliminary listing of what must be accomplished in the first four months. The tight timelines are unachievable and unnecessary:

#### **Immediately:**

WDR VIII G, H and I: Continue providing exceedance reports, annual monitoring reports, and implementing Management Plans under prior program (i.e., existing staff fully occupied by continuing all work Coalitions are now implementing)

#### **Within 30 days:**

WDR VIII A: submit letter applying for Notice of Applicability as the Third Party. (30 days from Order adoption)

WDR VII A1 Provide Form for Notice of Confirmation to all Members (30 days from Coalition receiving NOA)

#### **Within 90 days/3 months:**

WDR VIII B: Submit Farm Evaluation template to Regional Board (New Concept in Program; need time to learn what it means and staff recruitment to implement)

WDR VIII D: Submit Annual Nitrogen Budget Template to Regional Board (New Concept in Program; need time to learn what it means and staff recruitment to implement)

MRP IVB: Submit outline Groundwater Assessment Report (New Concept in Program)

**Within 120 days:**

WDR VIII C: Submit Membership Lists, including information on Members who have dropped out or been ejected (complicated by requirement that both landowners and operators be “Members” covered by WDR, so potentially much more information to collect and compile; as well as need to address requests for approval of new members.)

WDR VIII E: Submit Sediment Erosion Control Templates (New Concept in Program/ need to develop screening process/record to determine where applicable and staff recruitment to implement)

We submit that the third party will be frantically seeking to understand the requirements and determine how to obtain staff and financial resources during those initial four months, and that the required accomplishment of so many tasks, especially with reference to the new groundwater regulation elements, is wholly unrealistic and needs to be extended by several months. The Westside Coalition understood that Regional Board intended to phase the implementation of the new requirements of the program so as to not disrupt the current efforts to address water quality issues.

Establishing timelines to submit documents is necessary but the timelines in this order are not well thought out. Developing forms, templates and reports all take time for the coalition to produce functional documents. The coalition must then explain the documents and requirements to every grower and possibly landowner within the watershed. The effort to communicate with existing and potential new members will take significant time. 90 days is not sufficient to get growers to submit their NOC even if the timing was based upon when they receive the NOC.

It is important to remember that giving a reasonable amount of time to comply with the filing requirements is essential to a successful program. Additionally, the added time will not compromise efforts to improve water quality. The water quality improvement efforts of the existing program will continue to be implemented as these bureaucratic form filing actions are taking place. In fact, unrealistically short timelines will serve to put many, if not all growers, in noncompliance with the order. Growers want to comply with the Regional Board’s requirements. If simple deadlines are established in such a way as to ensure failure, growers will not be able to embrace the program. These failures will undermine the coalitions’ efforts to implement measures that protect water quality.

**Create a Step-Wise Description of How the Transition to the DGO Will Be Accomplished.**

The DGO needs to be reorganized/rewritten to put in one place, in logical order, the process for getting and maintaining coverage once the DGO is adopted. The Findings are fairly clear, but the required actions in the Order are segregated into Member and Third Party sections, with some Third Party responsibilities merged into the Member responsibilities without an integrated timeline to let both Members and the third parties easily track what must happen when. This

could easily be remedied by just setting up a step-wise description, in its own section, of what needs to take place and when, such as:

Step 1: Within 30 days of Adoption of Order, Watershed Coalition submits application for Notice of Applicability and sends Notice of Confirmation to all Members.

Step 2: Within 30 days of watershed coalition application, Regional Board will consider and act on the application

Step 3: Within 150 days of the coalition receiving a Notice of Applicability (NOA), Members covered by Order R-2006-53 send Notice of Confirmation to watershed coalition; parties wishing coverage under this Order who are not Members must become Members of applicable Watershed coalition within 90 days of Order.

Etc.

### **Reorganize and Streamline Sections Applicable to Farmers.**

Another example of how the draft sets growers up to fail is DGO section IV.B.17. That section requires “the Member” to keep a copy of the order at its primary place of business to be available as a reference (the regulatory “Bible”) and also requires that “the Member, landowner or designee be **familiar** with the content.” The document is huge, internally inconsistent, not written in laymen’s terms, and contains complex technical information, some of which doesn’t apply to Member. After spending dozens of hours reviewing the DGO most water quality attorneys could not claim to be “familiar” with all the requirements of the order. Either this requirement is meaningless, or if the Program truly requires “familiarity” at the farm level the document needs to be majorly streamlined or staff needs to develop a greatly streamlined handbook for Members outlining the key information with which farmers must “be familiar.”

### **Change Burdensome Informational Requirements into Phased Approach**

Sign-up, reporting, record keeping and certain notice requirements should focus on those required to accomplish new aspects of the regulation, such as groundwater, and should be phased to reduce/avoid significant new burdens on both growers and on coalitions. As an example, DGO Section IX requires detailed reporting requirements that appear to be needed only to preclude fraudulent documents or to arm the Regional Board with legal proof to bring a case. Item 2 first identifies authorized parties for only a few of the types of the third party, operators or landowners, including terms that are not likely to make sense for the smallest operators (e.g., do mom and pop recognize themselves as “a sole proprietorship”?). It then goes so far as to require submittal to the regional board for “authorized representatives.” Is the Regional Board going to review and approve the authorization for every trustee? There are thousands. These details are not necessary for the program to work, are overbearing, and create unnecessary paperwork for growers, coalitions and the Regional Board. It would be far more efficient to accept signatures that with their represented titles. If there are indications of fraudulent reporting or other non-compliance, then require the regulated parties involved with those parcels to provide additional documentation. While the Board might have to do research in order to bring a case in some rare instance, the cost can be recovered through the ACL and the savings to the program overall will be significant.

**Both Landowners and Operators Should Not be Required to be Members.**

The DGO required both Landowners and Operators to become members of the coalition group. This requirement is unnecessary and administratively burdensome. Many landowners are absentee landowners held by Trusts, investment groups, or other large entities. It will be very difficult if not impossible to obtain NOCs from every landowner. The DGO should be changed to allow for either the Landowner or the Operator to be members of the coalition. Additionally, the requirement to have both landowners and operators be “Members” complicates many of the requirements of the order. As an example, Section IV B 4 requires members to participate in third party outreach events. Does staff intend to require an absentee landowner to fly back to Central California to attend such an event? If so what water quality benefit would this provide? Many landowners have never seen the land they own. They certainly do not make management decisions that could impact water quality. If the property is owned by a trust or corporation who must attend the meeting, every stockholder and trustee? Many other requirements referencing Members create similar problems if both Landowners and Operators are required to be members.

**CEQA Mitigation Requirements.**

We continue to object to making CEQA mitigation requirements a term of the regulatory program. Since the Board cannot dictate what measures are implemented to meet water quality objectives, it is not taking a discretionary action under CEQA as to on-farm actions. Private farmers are not subject to CEQA. This section should be eliminated.

**Revise Section Related to Growers Currently Served by other Coalitions**

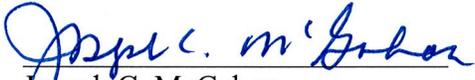
We appreciate the inclusion of Finding 2 of the DGO that states that growers may join a different coalition than the one organized to facilitate the Eastside order. The Westside Coalition has existing participants with land within the Eastern DGO boundary. These lands desire to remain with the Westside Coalition. The organizational structure as well the hydrology of the Westside Coalition make covering these lands efficient and effective. However, Finding 9 and Section I-1 of the DGO seem to rescind the existing conditional waiver coverage for all lands within the boundaries of the Eastern DGO. The order needs to maintain coverage under Order R5-2006-0053 of all lands currently participating in the Westside watershed coalition even if those lands are within the Eastern DGO boundaries.

**No Need to Change from Acute to Chronic Toxicity Testing**

Attachment B Monitoring and Reporting Program on page 10 proposes that chronic toxicity testing be used for measuring aquatic toxicity. Shifting to chronic toxicity will increase costs by 300% from the current acute testing. This single item has a significant effect on monitoring cost and will result in a large increase in cost for just the surface water portion. It is not clear that going to chronic toxicity for this program improves the identification of water quality issues. We propose that acute testing provides the information that is needed. There is not unlimited funding for this program and for the Westside Coalition additional funding would be better spent on outreach to farmers than adding monitoring costs.

We will likely have additional comments on subsequent drafts as we have many additional concerns. Again, we appreciate the opportunity to suggest some of the changes needed as you prepare the next draft.

If you should have any questions please give me a call directly at 559-582-9237.



Joseph C. McGahan

Watershed Coordinator

Westside San Joaquin River Watershed Coalition

cc via email:

Joe Karkoski

Adam Laputz