



August 6, 2012

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

Re: East San Joaquin Revised draft WDR

Dear Mr. Longley,

As representatives of environmental and environmental justice communities located in the Central Valley and throughout California, our organizations have closely followed the development of the Eastside San Joaquin Region's General Waste Discharge Requirements for Irrigated Agricultural Discharges. We appreciate the efforts made by staff as well as the regulated community to create an effective regulatory program for agriculture. Our comments on the current draft continue to reflect the urgent need to address widespread groundwater contamination attributable to irrigated agriculture, and your responsibility under the Porter-Cologne Act to do so.

We greatly appreciate the clarifications provided by this revised draft order. We continue to have two major concerns;

- That the program fails to control contamination of groundwater from pesticide use;
- That the program does not provide adequate levels of enforcement capabilities to protect water quality.

Pesticides

The Board has apparently decided to cede regulatory authority over pesticides in groundwater to the Department of Pesticide Regulation (DPR). The order makes the assumption that monitoring performed by DPR is adequate to identify groundwater contamination trends due to pesticides. Unfortunately, DPR monitors for only about one-third of the pesticides on its



6800(b) list of likely groundwater contaminants. This order fails to identify which pesticides on the 6800 (b) list are used in the region, even as it acknowledges that monitoring data is not available for all pesticides in use in the region.

DPR's program as implemented does not comply with the Board's anti-degradation policy, or with DPR's own Pesticide Contamination Prevention Act. We've provided a short brief, attached to this letter, outlining our concerns. In sum, approximately 375 tons of pesticides from DPR's 6800(b) list were applied in the region in 2010, according to the departments pesticide use reporting data, of which approximately 60% by weight are included in either DPR's or CDPH's monitoring program. This seems to us to be clearly inadequate for ensuring the protection of groundwater quality.

The Board cannot cede its responsibilities for protecting water quality and preventing degradation to another agency, if that agency's program has demonstrated that it is not adequate to comply with California's water quality laws.

Recommendation: Require that groundwater trend monitoring workplans include monitoring protocol for those pesticides in use within DPR Groundwater Protection Areas that appear on the departments 6800 (b) list but are not being monitored by DPR's shallow groundwater or soil monitoring program.

Enforcement

We appreciate that the East San Joaquin order is the first regional order, and agree that this region should not be subject to a timeline that penalizes it for being proactive. However, we are now looking at a very long timeline for implementation of the order and associated improvements in water quality:

- 1999 – Senate Bill 390 is signed into law, required the Regional Water Boards to review their existing waivers and to renew them or replace them with WDRs
- 2003-2004 - surface water monitoring begins
- 2008 – board agrees to include groundwater in future regulatory program
- 2012* – October: East San Joaquin River WDR approved
 - December: application of 3rd party coalition approved
- 2014 (spring)* – first nitrogen budgets due



- first summary report due
 - 2014 (fall/winter)* - trend and representative groundwater monitoring workplans due
 - 2015* – groundwater trend monitoring begins; annual data submission to GAMA
 - 2016* – second summary report due
 - 2018*- third summary report due – three years of GW quality monitoring information available for review/comparison
- * estimated dates based upon the terms of the draft order

Given the very long timeline for implementation of the plan, and estimates of several decades after that to realize significant improvements in groundwater quality, it is clear that any enforcement based on water quality monitoring will not be possible for at least a decade, and communities will continue to suffer and pay for water quality degradation for the foreseeable future. This order, therefore, must include reasonable measures for enforcement based on reporting that indicates use of protective practices, in addition to the water quality monitoring programs aimed at showing achievement of water quality objectives over the long-term. Even small token fines for exceeding nutrient budget parameters, for example, can ensure signal the importance of protecting water quality, while also generating funds to mitigate continuing community impacts.

As currently written, enforcement will be based upon administrative paper compliance – timely enrollment and report submittal – rather than improvements in water quality or adoption of protective practices, which is everyone’s goal. Information indicating on-going impacts to water quality in the short term is limited to the required reporting of nitrogen budgets on a square mile basis. We strongly support this requirement, as well as the submittal of nitrogen budgets by crop and grower. This information also provides an opportunity for enforcement based on impacts to water quality.

Recommendation: The Water Board should set a level for appropriate deviation from median for crop-based nitrogen budgets, and issue violation notices and fines to those growers who report nutrient budgets outside of that deviation. This fine could be set at a minimal level for 2014, and increase with each bi-annual report, with the fines generated going to a SEP established to provide safe drinking water to communities with nitrate contamination.

Another barrier to enforcement is the limited amount of information to be made public by the 3rd party coalitions in their bi-annual reports to the Board. While nitrogen budgets are



extremely useful for planning and reporting, they only provide a ratio of nitrogen applied versus nitrogen removed. Reporting of fertilizer application on the same square mile basis will, when combined with the nitrogen budget ratio, provide important information about nitrogen loading to groundwater. This information will be critical both to understanding groundwater monitoring data and in prioritizing growers for inspection and enforcement.

Fertilizer use, much like pesticide use, is not a confidential trade secret and is an indicator that should be provided as part of the nutrient budgets to determine nitrogen loading of groundwater.

Recommendation: Include fertilizer use reporting on a square mile basis in 3rd party coalition's bi-annual reports.

Conclusion

We appreciate the opportunity to review this order and provide input. Both staff and the East San Joaquin River Water Quality coalition have succeeded in developing a plan with clear timelines and responsibilities. We continue to be concerned about the limited amount of information that will be made available to the public, and about the establishment of clear mechanisms to enforce the order based upon threats to water quality. We trust that the final order will remedy these faults so that we can fully support this order.

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