

SAN JOAQUIN VALLEY DRAINAGE AUTHORITY

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Pamela Creedon, Executive Officer
Central Valley Regional Water Quality Control Board
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Subject: Westside San Joaquin River Watershed Coalition Comments on the Eastern San Joaquin River Watershed Tentative WDRs and MRP for Discharges from Irrigated Lands

Dear Pamela,

Following are the comments of the Westside San Joaquin River Watershed Coalition on The Tentative Waste Discharge Requirements General Order for Growers within the Eastern San Joaquin River Watershed that are Members of Third Party Groups (WDR). Although the Eastside WDR will not be directly applicable to growers within the Westside Coalition, we are commenting on the Eastside WDR in order to provide regional board members and staff with some practical perspective from an area that has been implementing successful agricultural water quality improvement programs for decades. The approach taken in this WDR ignores the administrative burdens placed upon the parties tasked with implementing the order. It is also clear that staff has not attempted to balance with cost of fulfilling the requirements with the water quality benefits of those requirements.

California agriculture has made significant progress in addressing the very difficult problem of non-point source discharges to surface waters. Farmers across the Central Valley have organized and implemented management practice to help protect the state's waters. However there are many surface water challenges remaining. In order to meet these existing challenges and the added challenge of incorporating groundwater protection into program, limited resources must be targeted to provide maximum water quality benefits and not be squandered on overly burdensome data collection and reporting requirements. The Eastside's tentative WDR will shift the coalition's efforts away from assisting growers to improve water quality and instead force the coalition to focus primarily on collecting and cataloging vast amounts of data that may or may not be needed in the future.

Board members and staff should evaluate the costs and expected water quality benefits of each of the extensive administrative burdens proposed in this order and determine if the resources necessary to comply with the requirements could produce greater water quality improvements by allocating those funds to other efforts such as management practice implementation. As the

Watershed Coordinator of the Westside Coalition with decades of experience implementing agriculturally related water quality improvement programs it is obvious that the level of staffing required to successfully implement the tentative WDR will be enormous and the associated water quality benefits of many of those requirements will be minimal.

Some of the most costly and least beneficial requirements in the order include: **1)** Unrealistically short timelines for submission of member notice of confirmation. **2)** Unrealistically short timelines for submission of the first annual membership list. **3)** Unrealistically short timelines for submission of Farm Evaluation Plans. **4)** Requirements to hire licensed individuals (i.e. engineers) to draft and certify Sediment Control Plans. **5)** Requirement to hire licensed individuals (i.e. engineers) to design and certify all settling ponds and tail water recovery systems. **6)** Requirement for all irrigated lands to prepare annual Nutrient Budgets. **7)** Requirement to submit annual Mitigation Monitoring Reports. **8)** Requirement to summarize farm evaluations on a square mile basis. **9)** Requirement to summarize on a square mile basis all Nutrient Budgets held by coalition **10)** Unrealistically short timelines for submission of Water Quality Management Plans. The cumulative resource drain of complying with the above requirements and other more substantive requirements simultaneously will limit progress to improve water quality.

One of the most frustrating aspects of these new burdens is the reality that resources will be focused on these administrative tasks rather than being focused on working with growers to make meaningful water quality improvements. The Westside has consistently strived to fulfill all irrigated lands program obligations, including both the specific provisions and the overall goal of improving water quality. Recently, the Westside Coalition Board authorized additional resources to increase our efforts to work with growers in areas needing additional assistance in improving water quality. If the Regional Board imposes the same requirements as are in the Eastside order we will be forced to devote a massive amount of resources to attempt to meet unrealistic requirements with little or no corresponding benefits to water quality. The coalition will be relegated to administrative staff of the board collecting and crunching data rather than being facilitators of water quality improvements working with growers to address problems.

Below is more detailed information on 10 specific inefficient requirements in the order. The list is not intended to be complete but serves to exemplify the flaws in the order.

1) Unrealistically short timelines for submission of member NOCs.

The order requires growers to submit their Notice of Confirmation (NOC) / Notice of Intent (NOI) to the coalition group with 120 days of issuance of the third party coalition's Notice of Applicability (NOA) (WDR §V-2). The Coalition is given 30 days to provide the NOC to individual coalition members. This gives Coalition members as little as 90 days to submit the NOC to the coalition.

At first glance completing and filing an NOC/NOI does not seem particularly time consuming. However, the new WDR is lengthy and specifically requires growers to be familiar with the entire order. Given the complexity of the order including a new groundwater component even skilled water experts require significant time to become even casually familiar with the

document. If the board actually expects all participants to be familiar with the requirements of the order they must give the coalition time to explain the order and educate growers as to it many new requirements. The board should not want growers to blindly agree to an order with which they are not familiar.

Collecting even the simplest forms from a large group is very difficult and time consuming. Even though farmers want to comply with law, at times, nature imposed deadlines such as planting, harvest or unexpected weather induce farmers to place the forms on the desk and solve more pressing problems. This requires the coalition to reach out individually to many farmers to ensure proper compliance. The 90 day deadline will require significant effort on the part of the coalition to educate and motivate some growers to file their NOC/NOI. The number of farmers likely to miss the deadline will significantly increase if the deadline occurred during planting or harvest.

As an example our most recent Focused Management Plan III for Poso Slough and Salt Slough required that a survey be completed by each operator with 100% return of the survey. The survey was mailed to operators in October of 2011 and just recently in August of 2012 we have reached the 100% level. This has required staff from our member districts as well as staff hired by the Westside Coalition to put in the effort to follow up with farmers. The short 90 day deadlines for multiple similar activities in the Eastside WDR if extended to the Westside Coalition are simply not possible.

This NOC/NOI filing timeline must be longer and more flexible to accommodate the specific needs of the coalition group. Extending the NOC/NOI filing requirement will not adversely impact efforts to improve water quality. In fact, a thorough process of educating growers about the requirements in the order before they confirm their willingness to adhere to it conditions could only benefit water quality.

Additionally, section VII A-3 references “120 days from the order’s effective date” this appears to be inconsistent with the prior section that refers to “120 days from the NOA”. Staff may want to consider correcting this inconsistency when they are modifying the order to extend the filing deadline for NOCs and NOIs.

2) Unrealistically short timelines for submission of the first annual membership list.

Coalitions are given 150 days from the issuance of the coalition’s NOA to submit membership lists to the regional board. These 150 days dwindle to 30 days when one considers that NOC/NOI are not due until 120 days from the issuance of the NOA. WDR section VII C sets forth a lengthy list of requirements to be included in the membership list. Coalitions have thousands of members and parcels to be compiled into a list with significant other information including but not limited to owner, operator, section, township and range, address and phone number, county APN, and irrigated acreage. If the Regional Board wants these lists to be complete and accurate they must give coalitions the time necessary to compile an accurate list.

The level of effort to compile the current list is significant. The first list of the new program will be significantly more burdensome given the additional information required on the form and the fact that many members will likely need to be dropped and others added to the list. All of this

effort will be taking place at the same time as the implementation of many other new provisions requiring the attention of coalition staff.

3) Unrealistically short timelines for submission of Farm Evaluation Plans.

The order requires growers to submit farm evaluations to the coalition within 90 days of regional board approval of the farm evaluation template. (WDR §VII B) The coalition must make the farm evaluation templates available to members within 30 days of the template approval. This leaves as little as 60 days to complete the farm evaluation. Similar to the problems associated with growers submitting NOC/NOI it will be impossible to get every farmer to return the Farm Evaluation within 60 days, especially if the deadline occurs during planting or harvest.

Given that the farm evaluation templates do not exist it is impossible to theorize as to how time consuming these evaluations will be to complete. Again similar to grower NOC/NOI providing additional time to ensure growers understand the form and enter the most accurate information will further the goals of the program. A hastily completed farm evaluation will be less useful to the grower, the Coalition and regional board. If the Board expects thoughtful completion of these forms with meaningful information they must give substantial time for growers to complete them. Otherwise compliance will be relatively low and the information on the submitted forms will not be as complete and accurate as possible.

4) Requirements to hire licensed individuals (i.e. engineers) to draft and certify Sediment Control Plans.

The WDR requires every irrigated acre within the Central Valley that has the potential to discharge sediment offsite to hire a qualified sediment control advisor, such as a licensed engineer, to write, amend, and certify a Sediment and Erosion Control Plan. (WDR §IV B-7 & §VIII C) The order lists several types of qualified sediment control advisors that may be able to be utilized for drafting, amending and certifying the plans. However, given the fact the sediment template has not been developed, it is impossible to judge the cost of preparing such a plan. It is almost certain that any licensed individual will not certify a plan without spending the time to understand the particular situation and being adequately compensated for the service.

Although many areas in the valley have sediment issues, most irrigated land within the valley do not have sediment problems. Requiring all lands to develop a sediment management plan even if they do not contain highly erodible soils demonstrates the lack of any cost benefit analysis that has been undertaken when developing these WDRs. The approach seems to be that if Sediment Management Plans are good for some it must be better to require them from everyone and if sediment plans are require from everyone they might as well be written and certified by an expert. Cost considerations were never taken into consideration.

This requirement needs to be wholly redrafted to only require sediment plans from lands with sediment issues and to eliminate the requirement to have them certified by an expert. Sediment management is not rocket science and can often be developed with the informal assistance of the coalitions and other agricultural advisors.

5) Requirement to hire licensed individuals (i.e. engineers) to design and certify all settling ponds and tail water recovery systems.

Section IV B-16 of the WDR requires all newly constructed or modified settling ponds, basins and tailwater recovery systems to be designed by or under the direct supervision of, and certified by, a California licensed Civil Engineer. This requirement again lacks any sensitivity to the cost farmers must incur in hiring a civil engineer for every construction or modification of a tailwater facility. This provision and many others requiring expert certifications may be justified if the goal of the program is to provide full employment for experts and engineers. However the requirement is not justified if the goal of the program is to improve water quality without jeopardizing the economic viability of all sizes of farms. This requirement is unjustified and should be eliminated.

6) Requirement for all irrigated lands to prepare an annual Nutrient Budget.

The order requires all irrigated lands to prepare annual nutrient budgets and requires lands in highly vulnerable areas to have these nutrient budgets certified by a qualified expert. Requiring annual nutrient budgets may be beneficial in highly vulnerable areas. However nitrogen budgets are not necessary in many areas of the Central Valley. The order should be modified to only require nutrient budgets in highly vulnerable areas.

Staff seems to be treating all irrigated lands as if they are concentrated animal feeding operations (CAFO) needing to dispose of vast amounts of manure. In fact, nutrients are not a byproduct of irrigated agricultural operations but instead they are expensive input to grow crops. Given the high cost of fertilizers farmers have an inherent economic incentive to avoid excess application of nutrients. Highly vulnerable areas may benefit from the requirement of Nutrient Budgets but these budgets need not be as extensive as a budget used on a CAFO. A more appropriate tool would be a simple sheet inducing growers to ensure that nutrient applications are appropriate for the crop being grown.

7) Requirement to submit annual Mitigation Monitoring Reports.

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.

8) Requirement to summarize farm evaluations on a square mile basis.

The MRP requires coalitions to summarize farm evaluation information on a per square mile basis (section, township range) in ARcGIS electronic format. (MRP§ V C-18). The administrative difficulty of summarizing this data on a square mile basis across the entire Central Valley is staggering. Given that the Central Valley contains over 7 million acres this will require summarizing data for over 11,000 section of land each with their own unique mix of management practices. Even within a single coalition or sub section of a coalition the task is daunting. Each farm evaluation plan must be analyzed and inputted into a massive data base that correlates the information to individual section township and range. Unfortunately field level realities do not line up with imaginary section lines on a map. Significant effort must be expended to establish what practices are being implemented within each section.

Staff justifies the reasonableness of section by section (640 acres) reporting requirement by citing the fact that growers already report pesticide use on a section basis. This justification

misses the point. Conceptually section reporting is possible. However, the issue is the utility of the effort given the complexity of summarizing that data into a usable data base that can be helpful in ascertaining management practice implementation. Despite the fact that DPR collects data on a section by section basis our experience is the DPR data base is not useful as initially published as it contains inaccuracies and duplicates of data entries. Our experience with the DPR program shows that this scale of data summary is not useful because the data base cannot be developed on a reliable basis. The effort to ensure quality data management on this scale is too great and the benefits too small.

Staff explains the need for this scale of data summary on the basis that this scale is essential to allow the board to effectively use the data to determine if members are implementing management practices. Given the fact that this data analysis scale has proven to be unmanageable for DPR the same scale will be even more problematic when attempting to summarize the many variations on management practices that are used to protect water quality. The most effective way for the board to determine if a grower is adhering to the terms of the Order is to visit the site and review the Farm Evaluation Plan.

It may be appropriate to summarize farm evaluation information within small sub-regions of the coalition to address specific water quality problems. However a blanket requirement to develop a coalition wide section by section data base of management practice implementation and maintain that data base is unrealistic, unachievable and unnecessary. The program should remain flexible to allow data summaries necessary for the particular area. The section by section approach is administratively impossible to implement and will not result in a meaningful data base that will be useful in determining program compliance and the resources needed to attempt this feat should be used to help growers address water quality issues.

9) Requirement to summarize on a square mile basis all Nutrient Budgets held by coalition.

For the same reason stated above related to farm evaluation plans, the effort to summarize nutrient budget data on this scale is likely is unachievable, and unnecessary. However it is difficult to determine the difficulty of summarizing this data on a section by section scale without knowing the details of the information contained in the nitrogen budget and the amount of the information required to be summarized in the data base. Regardless of size this scale of data summary and collection will be overwhelming to develop and annually maintain. (MRP§ V C-17).

10) Unrealistically short timelines for submission of Water Quality Management Plans.

MRP section VII-I 1 requires the coalition to submit Water Quality Management Plans within 45 days of the coalition first receiving laboratory or field data that indicate the exceedance of a water quality trigger. This requirement will result in hastily developed plans. Meaningful Management Plans take significant time to develop and implement. Including this short of a timeline in the order will result in the development of less effective plans.

The order does allow for the development of Comprehensive Water Quality Management Plans. The order eliminates these illogical timelines if a coalition has developed a comprehensive plan. We support the ability to develop Comprehensive Plans but do not see the justification for

requiring a coalition that does not have a Comprehensive Plan to develop individual management plans on a schedule that results in the development of an ineffective plan.

The cumulative resource drain of complying with the above requirements and other more substantive requirements simultaneously is in efficient and unrealistic.

The above 10 new requirements are by no means the heart of the irrigated lands program. They are examples of unnecessary administrative tasks being forced on growers with little to no benefits to water quality. Agriculture and the regional board must focus its efforts on continuing the current efforts of the program to ensure that growers address agriculturally related water quality issues in an effective and efficient manner. The expansion of the irrigated lands program to include a new groundwater component will further challenge the participants in the program. Heaping unnecessary and expensive administrative tasks on the participants will serve to weaken the program and distract agriculture from the main focus of the program to minimize agricultural impacts on water quality.

We submit that the third party will be frantically seeking to understand the requirements and determine how to obtain staff and financial resources during the initial months of the new program, and that the requirement to accomplish so many unnecessary administrative tasks is wholly unrealistic. 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. This phased implementation has not been incorporated into the order.

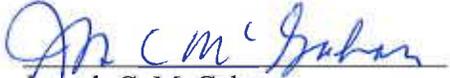
Establishing timelines to submit documents is necessary but the timelines in this order are not well thought out. Developing forms, templates and reports all take time for the coalition to produce functional documents. The coalition must then explain the documents and requirements to every grower or landowner within the watershed. The effort to communicate with existing and potential new members will take significant time. 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 inclusion of inflexible and unrealistic deadlines in the order will likely result in technical violations of the order and could result in formal enforcement action being taken against growers because the required deadlines were unachievable. Finding 48 of the WDR states that failure to timely submit reports will be considered a “priority” violation that will require formal enforcement actions. The unrealistic deadlines combined with the finding of late filings being a priority enforcement issue will serve to waste both the regional board’s and the growers’ limited resources.

In order to meet the primary goal of protecting beneficial uses, the irrigated lands program must be tailored to leverage limited resources in the most effective and efficient manner. Imposing expensive and unnecessary requirements on every agricultural parcel with no regard for the cost of implementing the requirement and the corresponding water quality benefits of that requirement will waste resources and weaken the program. Exhaustive requirement may appear to be protective of water quality. However inefficient requirements will limit agriculture’s ability to address water quality issues. The Board and staff need to tailor requirements to the

specific needs of the area and not impose expensive blanket requirements across the entire Central Valley.

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



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