



CALIFORNIA FARM BUREAU FEDERATION

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January 21, 2014

Mr. Mark Cady
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670-6114

Re: *Comments on the Sacramento River Watershed Tentative Draft WDRs/MRP for Discharges from Irrigated Lands*

Dear Mr. Cady:

The California Farm Bureau Federation (“Farm Bureau”) is a non-governmental, non-profit, voluntary membership California corporation whose purpose is to protect and promote agricultural interests throughout the state of California and to find solutions to the problems of the farm, the farm home, and the rural community. Farm Bureau is California’s largest farm organization, comprised of 53 county Farm Bureaus currently representing approximately 78,000 agricultural, associate, and collegiate members in 56 counties. Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California’s resources.

Farm Bureau appreciates the opportunity to provide comments on the tentative draft of the Sacramento River Watershed Administrative Draft Waste Discharge Requirements and Monitoring and Reporting Program (collectively “Tentative WDR”) for Discharges from Irrigated Lands and respectfully presents the following remarks. Many of the comments raised in Farm Bureau’s previous letter on the Draft WDR, dated October 11, 2013, are still pertinent, and are incorporated and reiterated herein.

Upon reviewing the Sacramento River Watershed Tentative WDR, as well as the previously adopted Eastern San Joaquin River Watershed WDR and Tulare Lake Basin Tentative WDR, Farm Bureau is concerned that the general orders are not being individually developed and tailored, but rather are duplications of previously prepared orders with *minor* revisions. Each coalition represents unique geographic characteristics, including, but not limited, to rainfall, hydrology, drainage, commodities grown, and topography. Given all of these vast differences, each general order should be individually drafted specific to the region it regulates in order to properly reflect the unique circumstances of the area.

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General Order Page 1, Finding 1—Definition of “Waste”

The Tentative WDR seeks to regulate discharges of “waste” from irrigated lands. As referenced in the footnote to Finding 1, Attachment E defines the term “waste” to not only include the statutory definition found in Water Code section 13050(d), but also adds additional language to include the regulation of “earthen materials..., inorganic materials, organic materials such as pesticides and biological materials” as wastes which “may directly impact beneficial uses...or may impact water temperature, pH and dissolved oxygen.” (Tentative WDR, Attachment E, pp. 6-7.) No rationale is provided within the WDR for the overly broad expansion of a statutorily defined term; accordingly, the term “waste” should be limited to its definition found in Water Code section 13050(d). To provide clarity and conformance with Water Code section 13050(d), Farm Bureau offers revising the second sentence of the definition of “waste” to read (additions are underlined):

“Potential examples of wastes from irrigated lands that may conform to this definition include, but are not limited to, earthen materials (such as soil, silt, sand, clay, rock), inorganic materials (such as metals, salts, boron, selenium, potassium, nitrogen, phosphorus), organic materials such as pesticides, and biological materials, such as pathogenic organisms.”

General Order Page 2, Finding 5—Regulation of Water Quality

The Tentative WDR amends the scope of regulatory coverage from the previous conditional waiver by deleting specific provisions limiting the regulation of water traveling through particular structures. (Tentative WDR, p. 2.) The current scope of coverage causes concern regarding the regulation of on-farm conveyances and between-farm conveyances, causing potential ambiguity regarding the point of demarcation for regulation; as currently written, the regulation could be read to regulate any water that leaves the root zone whether or not it reaches saturated groundwater. In order to provide clarity, Finding 5 should be revised.¹

General Order Page 9, Finding 28—Basin Plan Amendment and Beneficial Use Designation; Page 37, Finding M—Basin Plan Amendment Workplan

Farm Bureau appreciates the inclusion of a process for the third-party to pursue a basin plan amendment to address the appropriateness of a beneficial use. Such a process recognizes the unique topography and geography in the Sacramento River Watershed,

¹ Finding 5 could be potentially revised to state: “This Order is not intended to regulate water in agricultural fields, including, but not limited to, furrows, beds, checks, and ancillary structures, contained on private lands associated with agricultural operations. This Order is not intended to address the lawful application of soil amendments, fertilizers, or pesticides to land.” Additionally or in the alternative, the following phrase, “from which there are discharges of waste that could affect the quality of any waters of the state,” could be added to Finding 5 to clarify that the WDR is not regulating water that moves past the root zone when there is no threat to waters of the state or that the movement of water below the root zone is a de facto discharge of waste.

including the naturally occurring constituents in groundwater, and acknowledges that specific beneficial use designations may be unattainable.

General Order Pages 9-10, Findings 33-37—Compliance with the California Environmental Quality Act

The Tentative WDR relies upon the environmental analysis conducted in the Program Environmental Impact Report (“PEIR”) and concludes that “[a]lthough the Order is not identical to any of the PEIR alternatives, the Order is comprised entirely of elements of the PEIR’s wide range of alternatives.” (Tentative WDR, p. 10, ¶ 34, *see also id.* at ¶ 35.) Relying on such analysis, the Tentative WDR further concludes “the PEIR identified, disclosed, and analyzed the potential environmental impacts of the Order” and the “potential compliance activities undertaken by the regulated Dischargers...fall within the range of compliance activities identified and analyzed in the PEIR.” (*Id.* at ¶ 34.) However, the Tentative WDR, or its estimated costs, is not within the realm of alternatives analyzed within the PEIR, but rather goes beyond those alternatives by including provisions substantially different from elements in those alternatives, especially alternatives 3 through 5. These new components, such as provisions creating end-of-field discharge limitations, as well as the farm management performance standards, in addition to the associated costs, do not represent merely a “variation” on the alternatives in the PEIR, but rather are elements that were not thoroughly considered previously and are likely to result in the imposition of new burdens on irrigated agricultural operations that will have a significant and cumulatively considerable impact on the environment. Thus, reliance on the PEIR for CEQA compliance is inappropriate.² In order to comply with CEQA, the Regional Board should prepare a supplemental EIR that analyzes the new elements along with revised cost estimates.

General Order Pages 11-12, Finding 40-41—California Water Code Sections 13141 and 13241

Pursuant to the Water Code, the Regional Board is obligated to consider costs associated with the entire Long-Term Irrigated Lands Regulatory Program, as well as each individual general order, such as the Sacramento River Watershed WDR. (Wat. Code, § 13141.) Finding 40 incorrectly concludes that any new cost analysis is unnecessary given that “the Basin Plan includes an estimate of potential costs and sources of financing for the *long-term irrigated lands program*.” (Tentative WDR, p. 11, ¶ 40, emphasis added.) Although the Basin Plan was amended to include costs associated with the *long-term irrigated lands program*, the Basin Plan Amendment did not include specific costs associated with the Sacramento River Watershed WDR as it was not in

² Farm Bureau also questions the Regional Board’s authority to require mitigation measures within the Tentative WDR for farm level activities. Implementation of management practices at the farm level, which is the heart of the WDR, is not subject to a discretionary approval by the Regional Board. (See Pub. Resources Code, § 21080, CEQA generally applies only to discretionary projects.) Mitigation measures that cannot be legally imposed need not be proposed or analyzed. (CEQA Guidelines, § 15126.4(a)(5).)

existence at the time nor were the specific program requirements analyzed (such as the templates and individual reporting summarized by the third-party). The templates, as well as the instructions as to how frequently these reports must be completed and compiled, were not available when the cost study was performed and could not have been accounted for in that study. Given that this Tentative WDR proposes new costly regulatory components not previously analyzed during the environmental review stage or when adopted in the Basin Plan, the Regional Board must analyze, evaluate, and estimate all of the costs of these new regulatory requirements.

General Order Pages 14-15—Coordination and Cooperation with Other Agencies

Farm Bureau appreciates the provisions within the Tentative WDR that describe the Regional Board’s coordination and cooperation with other agencies as well as how the implementation of the WDR will utilize such coordination and cooperation. Growers within the Sacramento Valley Watershed have a long-standing relationship with many agencies, including the United States Department of Agriculture Natural Resources Conservation Service (“NRCS”). To highlight this relationship, a provision should be added, such as Provision 52 in the San Joaquin County and Delta Draft WDR, stating:

The United States Department of Agriculture Natural Resources Conservation Service (NRCS) administers a number of programs related to water quality. NRCS can provide technical assistance to growers and has identified practices that are protective of the environment and are feasible in an agricultural setting. The NRCS Environmental Quality Incentives Program (EQIP) provides cost share assistance for management practice installation. The NRCS has also provided assistance with research of management practice effectiveness. The third-party and its Members are encouraged to utilize the information and resources available through the NRCS to meet the requirements of this Order.

General Order Page 15, Provision 51—Nitrogen Management and Control

Farm Bureau appreciates the acknowledgement of the assessment of nitrogen management and control currently underway by the California Department of Food and Agriculture’s Task Force, as well as the soon to be convened State Water Resources Control Board’s Expert Panel. Given the assessments and recommendations to be made by both processes to determine appropriate nitrogen tracking and reporting systems and management practices, adjusting the nitrogen management plan deadlines to allow for the incorporation of future recommendations is both appropriate and appreciated.

General Order Page 19, Provisions III. A and III. B—Receiving Water Limitations

The use of “shall not cause *or contribute*” to an exceedance of applicable water quality objectives is overly expansive and creates an unreasonable standard that is undefined, ambiguous, and holds farmers and ranchers liable for even the smallest *de minimus* contribution. Accordingly, a qualifier should be added before “contribute” or the discharge limitations for both surface water and groundwater should be rewritten to

state “wastes discharged from Member operations shall not cause an exceedence of applicable water quality objectives in surface water [or the underlying groundwater], unreasonably affect applicable beneficial uses, or cause a condition of pollution or nuisance.” Such proposed revisions will not impact the Regional Board’s program, but will provide regulatory clarity.

General Order Page 20, Provision IV. B. 8—Nitrogen Management Plans

Provision IV. B. 8 requires all members to prepare and implement an annual nitrogen management plan. Such plans should analyze “nitrogen” application rather than “nutrient” application. (Tentative WDR, p. 20, ¶ 8; see also Attachment A, Information Sheet, p. 34 stating “the Order requires that Members implement practices that minimize excess **nitrogen** application relative to crop consumption” (emphasis added).) As seen in previous drafts for other WDRs, only members in high vulnerable areas where nitrate is a constituent of concern were required to prepare annual nitrogen budgets and management plans. Rather than requiring all members to prepare nitrogen budgets and plans, as Provision 8 is currently written, the Tentative WDR should be revised to allow flexibility in the requirements for those areas that have no or a lower propensity to impact water quality.

General Order Page 26, Provision VII. B—Farm Evaluation

Farm Bureau appreciates the inclusion of footnote 23 specifying that any farm maps or information on the locations of wells does not need to be provided to the third-party.

General Order Page 32, Provision VIII. C—Template Requirements for Farm Evaluations, Nitrogen Management Plans, and Sediment and Erosion Control Plans; Attachment A, Information Sheet, VII. D, p. 37

The Tentative WDR deletes the ability of the Coalition to provide modified templates and replaces it with the ability to solely provide comments. (Tentative WDR, p. 32; see also Attachment A, p. 37.) Although Farm Bureau understands the rationale for requiring standardized information, the Regional Board must allow for flexibility and variability depending on the geographic area, the commodities grown, known water quality impairments, the propensity to impact water quality, and the size and scale of farming operations. Such tailoring will allow the Regional Board to obtain the most relevant information specific to the area being regulated, while also allowing growers to minimize costs. Farm Bureau respectfully requests that the language in the previous Draft WDR allowing for modifications be reinstated and the last two sentences in section VII. D of Attachment A be deleted.

General Order Page 20, Provision IV. B 7; General Order Page 28, Provision VII. B. 2; and General Order Page 34, Provision VIII. F—Watershed/ Subwatershed Based Sediment and Erosion Control Plans

Farm Bureau appreciates the inclusion of watershed/subwatershed based plans, allowing growers the option to work together on sediment and erosion control, in lieu of

preparing individual Sediment and Erosion Control Plans. This option represents a cost effective approach to compliance, as control of sediment and erosion will occur while allowing growers to minimize costs.

Attachment B, MRP, Pages 9-10, Provision III. C. 1(a)—Reduced Monitoring/Management Practices Verification Option

Farm Bureau appreciates the inclusion of a reduced monitoring/management practices verification option as such an option will provide flexibility to growers who have a lower potential for surface water quality impacts. Farm Bureau appreciates the deletion of the following sentence which previously limited the application of the reduced monitoring option: “The Central Valley Water Board does not anticipate that this option will apply to areas of the valley floor due to the intense agricultural land use.” (Tentative Attachment B, MRP, p. 9, sentence in strike-out.) In order to fully utilize this option, however, Farm Bureau respectfully requests the incorporation of the following additional changes:

- (1) A new element or bullet point should be added recognizing those areas with current pilot programs, such as those in Napa County and El Dorado County, and allow such programs to continue to be implemented as previously approved.
- (2) The requirement that the agricultural land use must be low intensity should be deleted.³

The ability to utilize this option should not be negated based solely on location or use, especially since portions of the Sacramento Valley have successfully completed management plans and have taken action to address water quality exceedances by funding and using management practices. As drafted, to qualify to use the reduced monitoring and management practices verification option, any such program must first be approved by the Executive Officer. Thus, the Executive Officer can and should make the decision on the applicability of this option on a case-by-case basis rather than limiting its application by location and use.

Attachment B, MRP, Pages 14-15, Provision III. C. 4—Toxicity Testing

As currently drafted, the Tentative MRP’s language could be interpreted that both acute and chronic toxicity testing is required for all toxicity tests. (See Tentative Attachment B, MRP, p. 14, footnotes 7 and 8 stating that chronic and acute toxicity testing should be completed in accordance with U.S. EPA testing methods.) Since the inception of the Irrigated Lands Regulatory Program, surface water monitoring has occurred and has utilized acute aquatic toxicity testing, with no evidence of any shortcomings. If there is no U.S EPA acute toxicity testing method of *Selenastrum capricornutum*, Farm Bureau recommends adding language to footnote 8 to specify that the use of chronic testing is appropriate *only* in this circumstance.

³ As an alternative to deleting the reference to low intensity agriculture, Farm Bureau supports the recommended language suggested by the Sacramento Valley Water Quality Coalition in its January 21, 2014 letter (see provision 11) regarding situations in which the Executive Officer may permit a reduction in the frequency of surface water quality monitoring.

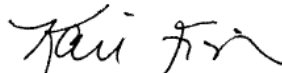
Attachment B, MRP, Page 33, Reporting Components 19 and 20⁴

Reporting Components 19 and 20 outline the process in which a third-party will collect data from members and report the data to the Regional Board at the township level. As currently drafted, Farm Bureau supports the reporting at the township level. Reporting at the township level allows coalition groups to properly compare crop data, evaluate nitrogen management trends, and manage the data in an efficient and effective manner. The comparison of data at the field level, with or without the identification of a member's parcel, is not supported and would not result in an efficient use of resources or the ability to assess and evaluate trends.

Reporting Component 20—Summary of Management Practice Information further requires a third-party to provide the individual data records to the Regional Board in addition to aggregating and summarizing information collected in the Farm Evaluations. (Attachment B, p. 33.) No explanation is provided in the MRP or WDR to support the necessity of needing the individual data records. Rather, the summary of management practices provided by the third-party will be more meaningful than the individual data records and will include the appropriate analysis needed by the Regional Board. Thus, Farm Bureau questions the need for third-parties to submit individual data records and suggests this addition to the management practices information reporting component be removed.

Thank you for the opportunity to provide our comments and concerns. We look forward to further involvement and discussion with the Regional Board on the Sacramento River Watershed WDR and MRP for Discharges from Irrigated Lands.

Very truly yours,



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KEF:pkh

⁴ See also Attachment A, Information Sheet, Pages 35-36—Spatial Resolution of Nitrogen Management Plan and Farm Evaluation Information.