

December 22, 2017



Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814
Submitted electronically to: commentletters@waterboards.ca.gov

RE: NOTICE OF EXTENSION OF THE WRITTEN PUBLIC COMMENT PERIOD
FOR THE SECOND STAFF-PROPOSED ORDER SWRCB/OCC FILES A-2239(a)-
(c)

Dear Members of the State Water Resources Control Board and Ms. Townsend,

Monterey County Farm Bureau, Grower-Shipper Association of Central California, Grower-Shipper Association of Santa Barbara and San Luis Obispo, the California Strawberry Commission and KMI join to provide comments on the proposed Eastern San Joaquin Agricultural General WDR Requirements as issued in draft form by the State Water Resources Control Board on October 10, 2017. We appreciate the opportunity to provide comments from the perspective of Central Coast landowners and growers on the precedential nature of the requirements and their impacts to agricultural production in our region.

Monterey County Farm Bureau ('MCFB') represents family farmers and ranchers in the interest of protecting and promoting agriculture throughout our County. We strive to improve the ability of those engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of our local resources.

The Grower-Shipper Association of Santa Barbara and San Luis Obispo Counties ('GSA-SB & SLO') represents over 170 growers, shippers, farm labor contractors, and supporting agribusinesses. Similarly, the Grower-Shipper Association of Central California ('GSA-CC'), representing Monterey, San Benito, Santa Cruz and Santa Clara counties, represents over 340 members. Our members grow diverse row crops such as broccoli, strawberries, lettuce, celery, nursery products, field flowers, and wine grapes.

The California Strawberry Commission ('CSC') represents all of California's strawberry farmers, shippers, and processors which produce over 80% of the nation's strawberries.

KMI provides services to assist and advise members of the agricultural community with compliance, management, and production improvements to protect water and other natural resources.

All of our organizations strive to maintain a vibrant agricultural industry by assisting our members to address challenges and capitalize on strengths and opportunities. Collectively, these five entities represent more than a thousand farmers, ranchers, and processors in the Central Coast region. The vast majority of these farms are family-owned over multiple generations.

Many provisions of the Eastern San Joaquin Agricultural General WDR Requirements ('ESJR') raise a number of issues and questions on how to implement the precedential mandates of this order for the Central Coast region. The following are comments on specific subject areas impacting the Central Coast.

APPLIED/REMOVED RATIOS

Central Coast farming is very much different from Central Valley farming. Other than wine grapes, there are very few multi-year crops in the Salinas Valley area of Monterey County, or in the Santa Maria Valley area. These are production areas for leafy greens, vegetables, berries, and wine grapes predominantly. This means there is significant crop rotation for vegetables and berries each year, along with multiple crops produced each year.

For example, in the Salinas Valley area there is generally a four-year cycle of crop rotations. Strawberries may be planted for approximately two years of production, which is then rotated into a leafy green crop for a year, and then a vegetable crop for the final year of rotation. This is done for disease and pest control purposes but also for soil health and resource conservation. This rotational process has been fine-tuned over the past decades for maximum yields, crop protection purposes, and conservation management.

There are also significant climatic gradients in growing areas of the Central Coast. This will inherently impact the amount of irrigation required (and therefore nitrogen applied through irrigation water) for A/R metrics. On the same day in the Salinas Valley, coastal areas can be quite foggy and overcast while inland areas may reach 100 degrees. This impacts how crops are managed and the times of year that they are successful. Although some crops are sub-region specific (berries and Brussels sprouts near the coast and wine grapes inland), there are many crops such as lettuce and broccoli that can be grown throughout the Salinas Valley.

The State Water Resources Control Board includes the following language on ratios for nitrogen applications, either applied and removed (A/R) or net applied (A-R):

“The Agricultural Expert Panel additionally considered the recommendations of the Nitrogen Tracking Task Force, including the recommendation that growers track values for total nitrogen applied to the field, actual yield, and nitrogen removed from the field through primary and secondary harvest yields. The Agricultural Expert Panel proposed a refinement on the nitrogen applied and nitrogen removed calculations as the simplest metric of good management – the multi-year ratio of nitrogen applied to the field (A) to nitrogen removed from the field (R), or the A/R ratio. The nitrogen applied includes nitrogen from any source (i.e. organic amendments, synthetic fertilizer, and/or nitrogen in irrigation water). The nitrogen removed includes the nitrogen present in all harvested materials removed from the field (including any prunings, removed vegetation, etc.) plus, in the case of perennial crops, the nitrogen sequestered in the permanent wood. Nitrogen removed is based on a measurable value of yield. Crop yield is multiplied by a coefficient determined via direct testing of the harvested materials. The nitrogen removed coefficient expresses the amount of nitrogen for a given crop per unit of crop yield.”

There are many points of this A/R ratio structure that are not congruent and will not function with Central Coast crops and their production:

- A multi-year metric on any given ‘field’ may be difficult to obtain for short-term leafy green and vegetable crops due to multiple turns per year and varied climates by season. As stated above in describing crop rotations, a field may have one crop for a single year and a multi-year metric may not be established for that particular crop on that exact field in a specific soil type with weather variations throughout each season. Late season crops (those grown in the late summer and fall months) have a somewhat different field practice than early season crops.
- A multi-year metric may be difficult due to land tenure in the Central Coast region; many growers move production around from year to year.
- The same crop, produced in different regions of the Central Coast, has many different input requirements based on climate and soil types. Establishing a multi-year metric for a one-size-fits-all circumstance may cause most of the growers to become “outliers” simply because of varied growing practices needed to be successful. What is utilized in the Pajaro Valley is not the same as the King City area or the Santa Maria Valley when producing the same crop, such as leafy greens. Will growers in particularly hot areas be labeled as ‘outliers’ for applying too much irrigation water and necessary nitrogen?
- The ESJR is unclear how research on coefficients for harvest removal will be conducted in the absence of a functioning coalition. Calculations for removed nitrogen will be problematic for many growers who have short windows for harvesting their crops and the multitude of crops in production at any point of the year. In the absence of a coalition, how

might a grower go about collecting the sheer amount of data that will be generated by these required calculations? Especially for those with small blocks of short-term crops, this will be daunting unless they have a dedicated resource to collate and track this data load. This is a significant burden to small family farms who do not have the resources (either manpower or financial) to manage this data requirement and then to calculate the ratios for each crop harvested.

- Specific crops may generate complex issues related to nitrogen ratios. For example, the production of romaine hearts currently has three methods of harvesting and packing that leave different portions of the crop in the field (although agronomically, the plant requires the same in applied nitrogen). These different harvesting methods could occur on the same farm or field to satisfy market chain demands for products. Any farmer would be challenged to determine the nitrogen removed in three different harvest processes, creating a situation where sampling of product harvested comes in three different levels of tissue. Residuals left in the field would then need to be tested three ways (based on the packing methods) and then contribute nitrogen to the next crop grown, which may not even be romaine hearts.
- The collective number of data points created by A/R and/or A-R ratios would be daunting to manage for an individual grower let alone any third-party entity. There could be in excess of 3,000 samples and ratio calculations in any given year for the average Salinas Valley farm operation. Keeping track of all this data through leasehold changes to develop any three-year averages will only add to this complexity. Multiply these projected data points for each farm together with the number of farms and this data set gets considerably larger to manage and aggregate into an overall crop ratio.
- Yield is often calculated by two common methods for leafy greens, vegetable, and berry crops: by the carton or by the pound. It is unclear how yield factors will play into nitrogen ratios when determining an optimal A/R or A-R for any field given these methods of yield. For instance, water weight can vary in a lettuce crop from one end of a field to another during the same day of harvest. Even with adjusted implementation timelines, these crops will likely need to be aggregated by crop family or management unit.

Contingencies are needed for A/R ratio and A/R outliers as there are many factors that influence yield, not just nitrogen. Most of the crops grown on the Central Coast are delicate, highly perishable, hand-harvested, subject to stringent food safety standards and shipped to other parts of the country and world. This combination of factors makes the specialty crops grown on the Central Coast more susceptible to changes in growing and market conditions resulting in losses in harvest. This would have a severe impact on the nitrogen removed component of the A/R ratio and mistakenly flag an otherwise

exceptional grower as an A/R outlier. Scenarios that have actually happened in the past year resulting in reduced or eliminated harvest include: no available labor to harvest the crop; cost of labor to harvest exceeding market value of crop; and ash damage from nearby wildfires resulting in inability to harvest entire fields. For these reasons, contingencies must be included to address such realities.

The current treatment of “Nitrogen applied in irrigation water” in the Irrigation and Nutrient Management Plan (INMP) Summary Report and subsequent A/R Ratio and A/R outlier identification creates a strong disincentive to “pump and fertilize.” Although the availability of nitrate in groundwater for crop cultivation is still a topic of active research, the proposed approach decreases the likelihood of long-term improvements in groundwater quality. This is particularly true where legacy nitrogen loading likely contributed to nitrogen levels exceeding drinking water standards. Instead, the focus should be on minimizing current and future loading from fertilizers and amendments. Growers should be encouraged to utilize nitrogen in irrigation water to the maximum extent possible, rather than penalized with additional regulatory requirements. Such incentives could take the form of a positive credit for utilizing high-nitrate irrigation water in INMP reporting or at least be neutral or nominal in the A/R ratio calculation and A/R outlier identification. Pump and fertilize incentives must also provide flexibility for effectively managing the higher levels of salts that often correlate with high nitrogen levels.

Finally, we believe that a reduced regulatory burden should be available to a landowner or grower if they are actively attempting to improve and/or protect water quality in a way that isn’t easily captured in the INMP or other compliance reports. Examples of this might be building containment basins and sediment basins, then directing that tail-water to areas planted with cover crops; innovative product trials including reducing nitrates coming from drain water, extracting the fertilizer and reusing it; and watershed working groups dedicated to water quality improvement.

Applying A/R ratios as a regulatory endpoint in the mapping and reporting concepts contained in the ESJR will not work well in practice for Central Coast crops. The complexity and intensity of agricultural production will cause data anomalies and increased burdens on those who must collect, collate, and analyze the data sets into anything meaningful, and then report on it with any degree of accuracy.

For these reasons, A/R ratios are not a proxy for surface or groundwater quality nor can the ongoing financial investment in establishing these ratios be justified as commensurate to their benefit to water quality.

Further, we find that numerical targets established in Total Maximum Daily Load (TMDL) regulations are increasingly inspirational and not realistic.

Combined with A/R ratio mandates, this will place agricultural production in a position of being unable to meet future water quality standards.

YIELD CALCULATIONS

For Central Coast crops produced, many are contracted in advance of actual production taking place. Growers are contracted for a specific deliverable product, often multiple iterations of the deliverable product being produced in the same field during the same crop cycle. Many contracts are paid by field, not specific yield amounts, or in some cases, by pounds of product harvested.

Given these types of contracts, yield calculations may not be specific to the amount of product removed from the field, thus requiring the grower to institute a new process of capturing a yield by field, no matter how this is ultimately defined for the purposes of regulatory compliance reporting. We see this as an additional recordkeeping burden for growers who are contracted for a specific deliverable by field.

Crops such as leafy greens and vegetables have multiple yield calculations possible in the same field, based on the deliverable product harvested. It will be difficult to draw any conclusions from yield calculations due to the multiplicity of products produced; there will be no definition of yield for these crops that can provide a simple way for growers to collect and collate this information by field.

EXEMPTION FROM NITROGEN APPLIED REPORTING

ESJR language contains this precedential provision:

“However, we recognize that there may be uniquely-situated categories of growers for whom the requirement for nitrogen management is inappropriate because applied nitrogen is not expected to seep below the root zone in amounts that would, even over multiple decades, reach groundwater, and is further not expected to discharge to surface water. We will not distinguish these categories based on high and low vulnerability as the Eastern San Joaquin Agricultural General Order currently does. Instead, any category of Members (such as growers of a particular crop or growers in a particular area) seeking to be exempted from irrigation and nitrogen planning and reporting requirements shall make a demonstration, for approval by the relevant regional water board, that nitrogen applied to the fields does not percolate below the root zone in any significant amount and does not migrate to surface water through discharges, including drainage, runoff, or sediment erosion. The criteria for determining categories of growers that may be exempted from the irrigation and nitrogen planning and reporting requirements shall also be precedential statewide.”

We question how the mechanism for determining inert groundwater vulnerability for categories of crops in the Central Coast Region would be established. Does this mean that all leafy green crops would need to ‘demonstrate’ a low vulnerability of root zone leakage to qualify for the exemption?

In order for this type of exemption to work for the Central Coast region (which we would strongly support as a provision for the irrigated lands program), a better definition of ‘category’ is desired, along with flexibility in how to ‘demonstrate’ for this exemption. Again, a one-size-fits-all mandate would not accommodate the uniqueness of crops, climatic gradients, soil types, irrigation methods, and market demands of Central Coast production.

ENFORCEMENT

We suggest that any new irrigated lands program developed regionally have a component of enforcement that is consistently addressing non-enrollment and is supportive of those who are making efforts to meet those compliance requirements.

While we don’t want to encourage a police state attitude to develop within the staff of the Central Coast Regional Water Quality Control Board (Regional Board), we do expect that enforcement of non-enrollment will be undertaken as appropriate when needed. The vast majority of landowners and growers who participate in compliance with the irrigated lands program would appreciate that energies be focused on identifying and enrolling those not currently enrolled.

Any third-party entity that is charged with compliance responsibilities will have more incentive for membership if there is consistent enforcement, in structured and measured steps, directed at those individuals who have not enrolled in the irrigated lands program.

DATA COLLECTION

As noted in the Eastern San Joaquin draft:

“We will, however, proceed cautiously at this time and not require more information than we find is necessary to effectively manage the irrigated lands regulatory program and provide the public with the essential assurance that we are doing so.”

The Ag Expert Panel was adamant that data should not be collected for the sake of collecting data. We agree.

Additionally, we have concerns about the expansion of reporting requirements and data transfers that are proposed for the ESJR as precedential. We agree that if there is no clear direction of the use of data collected it should not be collected in the first place, either to the Regional Boards or the State Water Resources Control Board.

We expect that there will be millions of data points that will be collected by the expansion of monitoring, sampling, and the various management reports that will be generated statewide. This represents what is currently referred to as 'big data' and presents a daunting task of analyzing the data sets when there are so many variables involved. As described previously, Central Coast agriculture is quite different and much more intense in its crop rotations than any other region in the state. Collection of these data sets by growers will become a bigger element of their business management and will require additional resources, at a cost and liability, to manage and collate into reportable sets, either to the third-party entity or the Regional Board directly. If sent to a third-party entity, this will also require additional resources that ultimately the growers will be paying for through their coalition membership fees.

We note that the ESJ Draft Order does not estimate the costs to individual growers of collecting the mandated data.

We urge that any precedential requirement for reporting of on-farm data for any part of the irrigated lands program of the Central Coast region allow for this variability and intensity, simply due to the management burden that big data implies.

SELF-CERTIFICATION

We appreciate the State Water Board's efforts to suggest solutions to address the lack of technical service providers in California.

That said, we, as trade organizations, would not eagerly encourage any grower to self-certify without first understanding the potential liability involved in doing so. As with any economic sector, people change jobs, responsibilities change with new practices, and proper attention to nuances of details will be more difficult to manage collectively for those choosing self-certification. Support must be provided in the event that a self-certified plan is challenged when best available information, practices, and technical knowledge are used by the grower. In other words, when all is done according to best knowledge at the time, the plan is conceived and self-certified, and put into practice accordingly, the self-certification should have a strong degree of liability protection against frivolous legal challenges or bounty hunters.

There is clearly a shortage of CCAs, PCAs, and other technical experts and consultants for current compliance requirements; additional certifications of on-farm reports and plans can only be managed in the sheer numbers needed by self-certification to ensure that these documents are developed and in place as required.

The need for indemnification is implied in the ESJR language:

“We have also specified certification language for the INMP that states that the preparer used sound irrigation and nitrogen management planning practices to develop irrigation and nitrogen application recommendations and that the recommendations are informed by applicable training for meeting the crop’s agronomic needs while minimizing nitrogen loss to surface water and groundwater.”

We urge that any self-certification program include explicit indemnification for the grower if all aspects of the plan are adhered to in cultural practices and the plan was developed in all respects with current technical and practical knowledge, and in good faith.

For the same reason, trade organizations most likely would not participate in the self-certification process because of exposure to potential liability.

Also desired is a level of indemnification for CCAs, PCAs, and other technical experts and consultants who are exposed to significant liability due to their development and certification of these required plans. There is often a distinction between the many players involved with data collection:

- Who collects and handled the data (usually field staff and office staff)
- Who analyzes the data in preparation for the INMP and other reports (grower and/or CCA)
- Who is ultimately responsible for past and future decisions such as fertilizer applications, best management practice implementation, etc.

Without this indemnification, we see that there will be a void in professional certifications available for these plans.

LACK OF SPECIFIC TERM DEFINITIONS

Throughout the ESJR we note references to several terms that are not adequately defined and leave broad interpretations of these terms open-ended. We suggest that further definition be provided for these terms, as noted in the document in multiple places (and often in conflicting uses):

- Field

- Crop
- Yield
- Target
- Coefficient
- Category of crops
- Outlier(s)

We note this because each Regional Board has different interpretations or definitions of these terms in their current irrigation lands programs. For instance, “farm” is defined specifically for the Central Coast region but we see no similarity in the way it is used in the ESJR document. If provisions of any portion of the ESJR are to be indeed precedential, it will be extremely important to define these terms and avoid differing interpretations, which in turn leads to data incongruences between regulatory regions when analyzing overall water quality improvement trends.

Specific to ‘outliers’ we note:

“Outliers will be identified by the Third Party annually based on the INMP Summary Report data submitted for that particular year. Eventually, it is our expectation that outliers will be determined with reference to the ranges for the multi-year A/R ratio and A-R difference target values developed by the Third Party and the Central Valley Water Board.”

If there is no third-party entity established for the Central Coast region, a specific definition of ‘outlier’ is critical to management of the irrigated lands program for consistent application of the ‘outlier’ principle in the absence of A/R or A-R target values.

RESEARCH MANDATES

As noted in the ESJR:

“Research is required to determine crop removal values. The Agricultural Expert Panel recommended research by third-party groups, commodity groups, and institutions to develop the data. Such research would determine values for how many pounds of nitrogen are contained in a unit of crop yield (e.g. lbs.-N/ton of almonds). This can be expressed as a coefficient, that, when multiplied with a crop harvest, will estimate the nitrogen removed. The research will ultimately need to be completed for all harvested crop materials, including secondary, or complementary, harvests (i.e. prunings, removed vegetation, etc.).”

Currently, fewer than 12% of the crops produced on the Central Coast have been researched in this manner, and most of the data used to determine the

outcomes is outdated or relies on farming practices that are no longer relevant, or is for varieties that are no longer widely grown. This puts the Central Coast farmers at an extreme disadvantage when discussing research as suggested in the ESJR.

Given the variability of crops, climate, soil types, climatic gradients, and rotations it will be very difficult and extremely expensive to conduct this type of research for each and every crop grown in the Central Coast region.

We find this is more a responsibility of academic institutions, such as the University of California's Cooperative Extension Service, to provide the necessary research and guidance to develop any crop removal values that are congruent with current crops and on-farm practices. Indeed, this has been the type of research that our organizations have been suggesting for years.

Due to the complexity of crops grown and the multiple varieties there needs to be an interim process to implement the precedential aspects of the state order, if enacted, and provide the Central Coast necessary time to determine how to collect and begin work collecting the research needed to provide accurate and informative data.

UNANSWERED ISSUES

After many discussions within our organization's Boards and committees, we find there are a number of unanswered questions on how the ESJR will apply to Central Coast landowners and growers.

- There is a dearth of scientific data available to regulate the Central Coast in the same manner as the ESJR requirements. What scientific data will growers need to use to meet precedential compliance requirements?
- If there is no third-party entity established for the Central Coast region, taking on responsibilities noted as precedential in the ESJR, how will research be conducted to develop the data required?
- Will a CCA be able to certify an irrigation management portion of an Irrigation and Nutrient Management Plan (INMP)? Will an irrigation specialist be able to certify a nitrogen management portion of the same INMP plan?
- How will record keeping requirements be managed for individual landowners and growers in the absence of a third-party entity?
- The calculation of evapotranspiration across multiple crops or varieties, bed spacing (furrow or row sizing), and soil types in the same field increases the complexity of calculation. What research and training (technical expertise) is required to complete this complex calculation?

- Water use (irrigation rate) varies on the same crop within different regions of the Central Coast; coastal crops may require less irrigation than crops grown more inland in the Salinas Valley. How will irrigation differentiations in use be quantified when managing crop nutrient coefficients?
- Many factors influence yield on crops grown in the Central Coast region. Factors beyond the control of the grower include disease and pest infestations, climate variations such as heatwaves, and poor germination. Market factors dictate the desired crop for harvest and growers must react quickly to ensure a short-term crop is marketable. Many of these changes happen mid to late season, sometimes after the majority of nitrogen application has occurred. How will the Regional Board treat growers that are labeled as ‘outliers’ due to poor yields but with otherwise normal fertilizer applications? Conversely, how will grower decisions made mid-cycle to ensure a marketable crop (i.e. additional nitrogen applications) impact their ability to react to factors beyond their control?
- How will compost, which is not currently required to be labeled for nitrogen content, be managed as an input?
- Growing crops in three-turn cycles each year have different input requirements, including nutrients and irrigation. How will an A/R ratio established for a crop account for these variations without causing late-season crops to be out of compliance?
- How will crop yields be calculated when a grower is managing multiple different types of lettuce in the same field in the same growing and harvesting cycle?
- What are the impacts to the A/R ratio if there is no yield on a crop (i.e. crop failure or abandonment due to no harvest crew available)?
- What are the impacts to organic growers who grow smaller quantities of multiple crops in the same field for weekly distribution?

COALITIONS

It should be recognized that growers on the Central Coast have been part of voluntary coalitions or collaborative third party groups formed to address water quality and supply issues for decades. The Salinas Valley Water Project and Seawater Intrusion projects would not have occurred without functioning critical private/public partnerships. Other examples include the Ag Water Quality Coalition, which grew out of the Monterey Bay National Marine Sanctuary Ag Advisory Committee, Central Coast Water Quality Preservation, Inc., Central Coast Groundwater Coalition, and the very recent example related to Salinas River maintenance, the Salinas River Channel Stream Maintenance Program’s River Management Unit Association, Inc.

The State Water Resources Control Board includes the following language in the ESJR on third-party entities:

“The particular balance struck on this issue in the Eastern San Joaquin Agricultural Order requires significant reliance on the Third Party. The Third Party fulfills the role of collecting data on the management practices that are implemented by the Members. The Farm Evaluation and a Nitrogen Management Plan Summary Report are submitted by the Members to the Third Party. The Third Party in turn reports the information in these plans to the Central Valley Water Board with the data identified or aggregated at a township level, without Member identification or location information. The Third Party must submit a Management Plan Progress Report to the Central Valley Water Board each year reporting on the degree of implementation of management practices and evaluation of the effectiveness of the management practices with the data in aggregated form. The Third Party also fulfills the role of monitoring surface water and groundwater quality. Such monitoring is regional in scale and all data is reported to the Central Valley Water Board.

We continue to support third-party approaches to regulating agricultural discharges, as permitted by the Nonpoint Source Policy.”

During negotiations for the Ag Order adopted in 2012 growers in our region proposed “On Farm Solutions” and suggested that coalitions provide some of the function similar to the ESJR program (i.e. follow-up with growers with low water quality, help with implementing best management practices, etc.). However, the Central Coast Regional Board staff strongly discouraged coalitions for these purposes, and even as a means to allow growers to aggregate their groundwater monitoring program for cost savings and uniformity. Only during a last minute insertion by a Regional Board member at the adoption hearing were coalitions included as an option for groundwater monitoring along the Central Coast.

Growers in the region then elected to form their groundwater coalition, the Central Coast Groundwater Coalition (‘CCGC’). At every step, the Regional Board changed the rules, which both degraded the value of the coalition and made it more costly for farmers to be a member. Although the Work Plan and other agreements made with Regional Board staff regarding requirements of the coalition were routinely amended, and in some cases were negated completely, special interest groups began making it challenging for staff to manage their workload. Some of the significant changes to the Work Plan included:

- Elimination of anonymity and trade secret protections
 - Disclosure of landowner/operator exceedance letters (Zamora decision)
 - Disclosure of all CCGC data to the Regional Board
 - Exact well location no longer masked on GAMA
- Changes to the CCGC Work Plan leading to increased costs

- Rejection of contour maps
- Changes to sampling and monitoring programs
- Legal fees paid by CCGC members, even though the Ag Order and CCGC Work Plan were previously approved
- Growers often required to interact directly with both CCGC and the Regional Board, making compliance less efficient

Additionally, the Regional Board staff determined that information previously promised to be held as proprietary (i.e. trade secrets) was publicly releasable. This, along with the significant changes detailed above, have caused considerable pause regarding the value of a coalition on the Central Coast whose purpose is to collect and aggregate data.

Related to the exceedance letters, to the extent that the Environmental Law Foundation argues or claims that the Zamora decision is controlling on the State Board's decision with respect to protection of individual grower information, we disagree. First, the Zamora decision is a superior court decision that has no precedential value on other proceedings. Second, the information at issue in the Zamora case pertained specifically to landowner and/or grower names and addresses that had a responsibility to notify domestic well users if a domestic well exceeded a drinking water standard. That is not the information that the State Board seeks to protect in the Second Draft Order. Rather, the State Board is protecting grower names and specific location information for field information relevant to the application and use of nitrogen fertilizers. Domestic well data and information is not proposed for protection. Third, the superior court decision was essentially a finding that the information in question was "used" by the Central Coast Water Board because of its audits and thus was a public record. Under the Second Draft Order, while the Executive Officer has the discretion to review records, until such records are actually "used" in the same manner as the Central Coast Water Board used the records in Zamora, the Zamora case findings are not applicable.

These collective actions have led to a general distrust that any information collected by a third party group could be kept anonymous when part of a regulatory mandate managed by the Regional Board. The ESJR predisposes that information gathered through the third-party entities will be reported in aggregate format with anonymous identifiers to the regional water board, but experience on the Central Coast illustrates, and the letter read directly into the record of the State Water Board's December 6, 2017 workshop by Regional Board staff indicates, that this will not be the case. On the Central Coast outside forces will work against the State Water Board's intended reporting structure and push for individual farm and well information to be released into the public domain.

The State Water Resources Control Board recognizes this potential data dilemma in the ESJR program:

“The Environmental Petitioners argue that the Eastern San Joaquin Agricultural General WDRs require monitoring and reporting at a level of granularity too general to achieve the feedback mechanism the Nonpoint Source Policy requires...”

However, for growers on the Central Coast, the release of proprietary information has become a reality, and threatens the coalition structure.

Further, State Water Resources Control Board emphasizes the following for third-party entities:

“Because third parties build on relationships **already in place with growers**, third parties can engender a high level of trust and more effectively reach out to growers to increase understanding of the permit provisions and to facilitate management practice development and deployment, especially in cases where improved management practices are required of particular growers. In addition, **there are a number of cost benefits to the growers** enrolled in a third-party program. These include centralization of fee collection and the resulting reduction in the growers’ annual water board fee, potentially reduced costs in management practice implementation facilitated by access to management practice effectiveness information, significantly reduced monitoring costs due to allowance for regional and trend water quality monitoring by the third party in lieu of individual farm monitoring under an individual permit, and reduced reporting costs when the third party shoulders responsibility for data entry into systems such as CEDEN and GeoTracker.”¹

Quite the contrary is true for landowners on the Central Coast. Many landowners and growers now view a coalition in the Central Coast Region charged with collecting and aggregating data as having no specific benefit, either from a cost standpoint or from information aggregation with anonymous identifiers, as compared to individual reporting. To be viable, coalitions must have a specific benefit to landowners and growers. Without a direct incentive for participating, landowners and growers will continue to move away from the third-party approach.

The ESJR also includes new responsibilities for these third-party entities to manage and report, the most impactful and costly of which is the need for research into on-farm practices and practical improvements in water quality due to reported nitrogen applications. This type of research will be extremely expensive given the multitude of crops grown in the Central Coast region in many soil types with climatic gradients throughout the region.

¹ Emphasis added.

This leaves open the question of how Central Coast Regional Board staff will manage any future Ag Order program if there's not a third-party entity in place to complete precedential requirements of the East San Joaquin Ag Order.

The ESJR also states:

“The Agricultural Expert Panel also endorsed the third-party based approach of the Central Valley Water Board irrigated lands program and recommended that other regional water boards follow a similar approach.”

Central Coast Agriculture is very different from Central Valley Agriculture. Farms along the Central Coast grow more intensive vegetable, leafy greens, and berry crops, amongst others. There are over 150 different crops and varieties produced along the Central Coast. The Central Coast is currently not suited to manage the additional requirements of the ESJR. The distinction that one-size-fits-all when implementing third-party entities is not compatible with Central Coast crop production, and as currently structured the ESJR precedential mandates, will add significant cost burdens and insurmountable implementation hurdles for all landowners and growers participating in the presently-established coalitions.

There are a number of designated Technical Experts for the Central Coast Irrigated Lands Program (Ag Order 2012) by the Regional Board staff. Increasing the program's requirements, and adding complexity to the compliance reporting, will increase the liability exposure for organizations advising. The third-party coalitions experience the same liability threat but on a higher exposure level; increasing the requirements of these coalitions may make it impossible to obtain liability insurance coverage, or survive such a challenge if one were to arise.

Beyond this discussion of legalities, there is a question about any third-party entity taking on the function of enforcement of “outliers” and determining who those farms may ultimately be. Given this open-ended liability problem of enforcement for the coalitions, it will be difficult to find actual farmers who will be willing to serve on the Board of Directors for these entities.

Finally, this order describes in detail the actions and activities of a coalition but does not provide the same detail as it relates to a non-coalition option for individual landowners/growers or groups of landowners/growers. Absent the option, this takes away the ability of the landowner or grower to make the best choice on how to operate their farm to optimal efficiency and viability.

This draft predisposes that data collected through coalitions will be reported in aggregated format with anonymous identifiers to the Regional Board, but our experience on the Central Coast illustrates to us that this will not be the case.

Outside forces will work against this reporting structure and force individual farm and well information to be released into the public domain.

We maintain our belief that coalitions that can build and maintain the trust of farmers and facilitate the implementation of management practices can be beneficial to improving water quality. However, we question whether the tasks assigned to coalitions in the ESJR in fact undermine coalitions and their many benefits by placing coalitions in an enforcement role that is better suited to the Regional Board. This is especially true when there is no additional benefit to participation, such as protection of confidential information or cost efficiencies.

In spite of the many potential benefits of coalitions, unless the Regional Board's opposition to data privacy and aggregated reporting, clearly communicated to you on December 6, 2017, can be clearly usurped by the State Water Board's direction, a Coalition as data collector and aggregator would provide little to no value to the growers and landowners on the Central Coast. It's important to note that the Central Coast Regional Board did not feel this way when the Central Coast Groundwater Coalition program was adopted in 2013. The change in Regional Board perspective has been honed by political pressure by certain stakeholder groups and a localized, non-precedential court decision. Our concern with a coalition approach for data collection and aggregation is directly correlated to this perspective. It's also important to note that we as an agricultural community have not "agreed" that the data transparency argument presented by the Regional Board is the best method to improve water quality. The Central Coast Regional Board has become immovable on that point, and so we share that without data privacy our members will not find value in third party groups as mandated by the ESJR.

Since Central Coast agriculture is reluctant to form Third Party Groups that will meet each of the requirements in this order, the ESJR needs to better clarify how its mandates (such as research or education) should be fulfilled in absence of a functioning Third Party Group.

CONCLUSION

After years of discussions with landowners and growers, as well internally among the agricultural organizations of the Central Coast region, we conclude that the ESJR will not be workable for the Central Coast region as currently written. As described throughout this letter, agricultural production on the Central Coast is far more unique than any precedential Ag Order could anticipate or accommodate.

Although our organizations do not support the ESJR as currently written, we would be willing to work with SWRCB and other relevant parties to develop a regulatory program that will reasonably protect water quality, while ensuring

the long-term viability of Central Coast agriculture. Our request is that the State Water Board identify exceptions and provide more flexibility for the Central Coast to develop a workable regulatory solution with State Water Board assistance.

For example, given the issues stated with the A/R metrics due to the complexity of crops grown in the Central Coast region, and the multiple factors that may influence yields, we suggest that the State Water Board allow the Regional Boards the flexibility to require growers to submit either the A/R data set OR the current Total Nitrogen Applied ('TNA') report (as N applied per acre). Although the TNA form is not perfect and requires a significant amount of manpower, growers on the Central Coast have already developed data tracking systems for this reporting and have become accustomed to doing so. In addition, growers on the Central Coast find it much more useful to plan fertilizer applications per acre, not per ton harvested.

The Total Nitrogen Applied form will still fulfill the State Water Board's goal of having nitrogen reported; it is also a method where Regional Boards can identify 'outliers' that may be over applying nitrogen as fertilizer. Because acreage is a constant, the Regional Board staff would rarely have to initiate discussions with 'outliers' related to pest outbreaks, labor availability, heat waves or other aspects that affect yield.

If the current ESJR were adopted, as written, there would be a need to balance mandates with reasonable implementation timelines. For example, field level reporting needs, such as gathering research about removal data, could take years.

We ask that this regulatory program not take effect immediately so that we can develop the structure and ongoing research mechanisms necessary to reconcile the unique characteristics of the growing system on the Central Coast with SWRCB goals. Any efforts would occur in parallel with the existing program requirements.

Without exceptions for the Central Coast, associated timeline adjustments, and more flexibility to design a program that fits coastal cropping systems, the current ESJR will set a deleterious course for landowners and growers in the Central Coast region where the provisions of compliance are not fully understood and will be difficult to manage. The science does not exist to mandate the irrigated lands program for our region. That places unreasonable burdens that are not supportive of achieving improved water quality, only additional reporting requirements. Time must be allowed to develop reliable scientific data that empowers an irrigated lands program that the Central Coast region can manage and comply with without unnecessary burdens. We urge the Board to suspend the precedential aspects of Order to better adapt to the diversity of crops and dynamic land use patterns on Central Coast.

MCFB, GSA-CC, GSA-SB & SLO, CSC and KMI are appreciative of the ability to offer these extensive comments for consideration. Please contact us if there are any points that need further information or clarification.

Sincerely,



Norman C. Groot
Executive Director
Monterey County Farm Bureau



Abby Taylor-Silva
Vice President, Policy & Communications
Grower-Shipper Association of Central California



Claire Wineman
President
Grower-Shipper Association of Santa Barbara & San Luis Obispo Counties



Rick Tomlinson
President
California Strawberry Commission



Kay Mercer
President
KMI