



Central Coast Regional Water Quality Control Board

Via Electronic Mail

DATE: December 6, 2017

TO: **State Water Resources Control Board members**
c/o Ms. Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
E-mail: commentletters@waterboards.ca.gov



FROM: 
John M. Robertson
Executive Officer


Dr. Jean-Pierre Wolff
Chair

CENTRAL COAST REGIONAL WATER QUALITY CONTROL BOARD

SUBJECT: SWRCB/OCC FILES A-2239(a)-(c): REVIEW OF WASTE DISCHARGE REQUIREMENTS GENERAL ORDER NO. R5-2012-0116 FOR GROWERS WITHIN THE EASTERN SAN JOAQUIN [ESJ] RIVER WATERSHED THAT ARE MEMBERS OF THE THIRD-PARTY GROUP

The Central Coast Water Board appreciates the State Board’s investment of time and effort to prepare this draft order. We also appreciate the opportunity to provide comment on the content of the draft order, especially on those areas set forth as precedential for all regional irrigated lands programs. This letter focuses on three topics: 1) roles and responsibilities of a third party to whom an order would precedentially be issued, 2) precedential aggregation and anonymization of data, and 3) precedential language that appears to deemphasize water quality protection and limit Regional Board flexibility in identifying and following up with dischargers.

Precedential Decisions

Regarding the precedential nature of certain components of the draft order, we ask that the State Board explicitly incorporate flexibility for the Regional Boards to develop and implement region-specific orders that address the unique circumstances in the regions such as water quality degradation, agricultural practices, including multiple crop rotations and crop selection, hydrogeology, climate, and dependence on groundwater for drinking water supplies. We agree with the State Board’s effort to create a degree of consistency throughout the state by setting forth certain minimum components that should be addressed by all region-specific agricultural orders, such as sediment and erosion control plans, which are precedential in this draft order. The design and implementation of requirements surrounding these plans is necessarily left to the discretion of the Regional Boards due to the unique settings and circumstances in the regions. All precedential aspects of the ESJ order should follow this approach. However, in the

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draft order sufficient regional flexibility is not provided. The precedential language in several areas in the draft order limits the Regional Board's ability to address severe water quality degradation issues, and would force regression in the Central Coast Region's irrigated lands program implementation efforts. We provide a few examples here, and will submit additional, more detailed comments in writing prior to the comment period deadline.

Third Parties

The draft order directs Regional Boards to issue orders based on a third-party approach consistent with certain roles and responsibilities. Third-party roles and responsibility descriptions inadequately address water quality issues in the Central Coast Region, and would be less effective in helping growers achieve water quality objectives than the existing regional order. Roles and responsibilities should be clearly defined as: services to growers, including technical assistance and expertise to reduce pollutant loading to achieve water quality objectives, and verification of results via both site-specific and watershed-level and groundwater basin-level monitoring. We strongly support third parties helping to achieve economies of scale to minimize costs while maximizing effectiveness, and in helping growers work towards water quality protection goals. We do not support third parties for the purpose of reducing data availability, resolution, or transparency to the Water Boards and the public, *and* we have already worked past this diminished data transparency stage with growers in the Central Coast. Additionally, we recommend language requiring third parties to provide full transparency regarding their budgets and how grower fees are spent. In summary, Regional Boards should be allowed the flexibility to define roles and responsibilities for third parties in their regions to meet the specific needs of growers and to address specific water quality issues.

Anonymous/Aggregated Reporting

Starting with the Central Coast Region's 2004 Ag Order, thirteen years ago, the Central Coast Water Board has regulated individual ranches and required ranch-level reporting of grower-specific information related to management practice implementation and assessment, including working with growers in terms of how to develop and submit reporting information. Currently, over 4000 ranches are enrolled in the Central Coast Water Board's Ag Order. Ranch-level groundwater quality monitoring, individual surface discharge monitoring, and total nitrogen applied reporting have been electronically submitted to the Central Coast Water Board since the adoption of our 2012 order. The collection and analysis of these ranch-scale data, and follow-up actions, are critical to the success of growers and the program in terms of reducing waste discharges and achieving water quality objectives. Central Coast Water Board staff use these data to follow up with growers daily, with thousands of staff/grower interactions per year. The same data should be used by third parties to follow-up with growers and reduce pollutant loading.

Changing to an indirect regulation model, especially with aggregated and anonymous reporting via third parties, would constitute a major step backwards in our Region. Aggregated and anonymized data make it impossible to realistically assess and resolve waste discharge problems; this approach is especially inappropriate given such wide-spread water quality degradation, including the severe degradation of drinking water sources. We ask the State Board to remove the requirement that Regional Boards provide a "compelling grower-specific or location-specific reason why the data should be submitted with name or location identifiers," as this requirement would inhibit our working with growers. We ask that the State Board instead

acknowledge the Central Coast Water Board's established need for these data based on the severe water quality degradation issues we are facing, the explicit need to resolve these issues, public transparency, and accountability to the public.

Based on our discussions with State Board members and CalEPA leadership, it is clear that at some point in time, it is anticipated all irrigated lands programs will have full data transparency; that is the anticipated course of irrigated lands program evolution, similar to data transparency in all other water board programs. The current draft order language would require us to regress to anonymity and data aggregation, and then at some future point expend valuable program resources on re-establishing transparency for a second time. The better approach is to retain sufficient regional flexibility to allow the Central Coast Region to exist as a model to inform and benefit the larger state-wide programmatic evolution.

In a recent ruling regarding a similar data transparency issue in the Central Coast Region, the court in the Zamora case provided a forceful rejection of data obfuscation by a public agency, including information collection and management schemes to create the obfuscation. The court found that the public is entitled to monitoring results to determine whether the Regional Board is achieving the requirements of Porter-Cologne. The court noted: *There is no justification for such obfuscation: the strong interest in public accountability cannot be overcome by vague notions of privacy...*

We encourage the State Board to embrace the spirit and intent of our laws and policies and the core principle of providing complete transparency regarding public trust resources.

Water Quality Emphasis

The draft order places too little emphasis on reducing waste discharges and achieving measurable progress towards water quality objectives, and instead disproportionately emphasizes agronomics (crop need and yield). We understand and celebrate the importance of agriculture; nevertheless, the purpose of Water Board orders should be to protect and restore water quality, by reducing waste discharges to achieve water quality objectives, and verifying these results. An example of this reduced emphasis on water quality occurs in the precedential certification language for Irrigation and Nitrogen Management Plans. The language states that the irrigation and nitrogen management plan recommendations of the preparer be "informed by applicable training for meeting the crop's agronomic needs while minimizing nitrogen loss to surface water and groundwater." This language seems to prioritize crop needs above or equivalent to water quality protection and does not prioritize or resolve the degradation that is occurring, nor does the draft order outline quantifiable milestones of progress such that it complies with the Non-Point Source policy. We recommend that the draft order include targets and/or milestones with timelines to achieve water quality objectives.

In conclusion, please provide full flexibility to the Regional Boards in developing and implementing requirements that address regional water quality issues, including requirements regarding the resolution of data collected, requirements to reduce waste loading, verification monitoring, and public transparency.