



Central Coast Regional Water Quality Control Board

Via Electronic Mail

DATE: December 22, 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



John M. Robertson

Digitally signed by John M. Robertson

Date: 2017.12.22 11:58:43 -08'00'

FROM: **John M. Robertson**
Executive Officer
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 very much appreciates the State Board's investment of time and effort to prepare this draft order, as well as the time State Board staff (Emel Wadhvani and Darrin Polhemus) spent working with us to assist our understanding of the Eastern San Joaquin draft order (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. We provided oral comment, in the form of a brief letter, at the workshop held by the State Board on December 6, 2017. Our December 6 letter focused on the roles and responsibilities of a third party to whom an order would precedentially be issued, precedential aggregation and anonymization of data, and precedential language that appears to deemphasize water quality protection and limit Regional Board flexibility in identifying and following up with dischargers. This letter is not a criticism of the Central Valley Regional Board's approach, rather, because the nature of both farming and irrigated agriculture regulation are so different between the Central Coast and the Central Valley, several of the proposed precedential components in the draft order would prove either unnecessarily complex for farmers or substantially regressive for regulatory implementation in the Central Coast. Therefore, we believe that each Regional Water Board should implement a program that effectively addresses the water quality issues and agricultural variability within its region, and the draft order should provide sufficient flexibility to accommodate that regional variability. We also acknowledge, along with farmers and agricultural representatives in our region, that the precedential components of the draft order do not reasonably reflect the complexity of farming

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the Central Coast region, nor does the draft order's precedential components adequately credit the progressive state of both farming and water quality regulation of that farming in the Central Coast.

Our main concern is in maintaining the Central Coast Water Board's regulatory authority to achieve specific objectives, including:

1. Defining actual waste loading to waters of the state.
2. Limiting waste loading to protect and restore water quality objectives on a defined schedule, especially with respect to drinking water.
3. Verifying results with appropriately scaled monitoring and reporting.
4. In the infrequent instance when necessary, taking reasonable enforcement actions against actual dischargers to compel compliance when necessary.
5. Maintaining transparency of data and information regarding public trust resources, such that we can fulfill our regulatory responsibility and verify individual compliance with requirements.

These objectives are necessary to comply with Porter Cologne, our Basin Plan, multiple state policies (Anti-Deg, NPS, etc.), and court decisions. We know from decades of experience with our Ag Order efforts that the objectives above are critically important.

The current draft order limits or prevents us from achieving these objectives for the Central Coast Region. We are especially concerned given that waste loading from irrigated agricultural is causing severe degradation of sole-source drinking water supplies on the Central Coast. The increasing cycle of drought and diminishing water supplies due to climate change underscore the need to protect and restore our groundwater basins. The Central Coast Region is more heavily dependent on groundwater for drinking water supplies than any other area of the state, and we are the most severely impacted area in terms of ongoing drought.

There are many components of the draft order with which we agree, and where we understand the State Board's rationale. There are other components where we are requesting clarifying language be included in the final order to ensure that the intent of the language is realized. Finally, there are some components of the draft order that we are asking the State Board to either not include as precedential, or to provide sufficient flexibility to the Regional Boards. We find that some precedential components may result in complications in implementation in the Central Coast region, based on our experience implementing our Agricultural Orders so far, and on court decisions specific to our region.

1. Third Party Programs and the Nonpoint Source Policy

Existing Language

"We take our support for third parties one step further in this Order. We believe that a carefully-crafted third party-based approach should be an available option for all of the significant agricultural discharge programs in the state. Therefore, we direct all of the regional water boards to issue general waste discharge requirements or general waivers of waste discharge requirements based on a third-party approach consistent with our description of the roles and responsibilities of a third party in this Order within the next five years. The regional water boards should also continue to issue general waste discharge requirements or general waivers of waste

discharge requirements for individual growers that choose not to form a third party or to join an existing third party. Those individual growers would have the same management and reporting obligations that are identified as precedential in this Order, but would not, of course, receive the benefits associated with being a member of a third party” (p8).

Recommended Language

“We take our support for third parties one step further in this Order. We believe that a carefully-crafted third party-based approach should be an available option for all of the significant agricultural discharge programs in the state. Therefore, we direct all of the regional water boards to issue general waste discharge requirements or general waivers of waste discharge requirements with conditions that both allow and encourage the formation of third-party programs and, where found to be appropriate by the Regional Board based on a third-party approach consistent with our description of the roles and responsibilities of a third party in this Order within the next five years. Regional Boards may modify the roles and responsibilities to be consistent with the Regional Board’s objectives regarding water quality issues in their regions. ~~The regional water boards should also continue to issue general waste discharge requirements or general waivers of waste discharge requirements for individual growers that choose not to form a third party or to join an existing third party. Those individual growers would have the same management and reporting obligations that are identified as precedential in this Order, but would not, of course, receive the benefits associated with being a member of a third party” (p8).~~

Discussion

As noted in our December 6 letter, we agree that third party programs could provide benefits to growers, including providing technical assistance and expertise to reduce pollutant loading to achieve water quality objectives, performing and verifying results via both site-specific and watershed- and groundwater basin-level monitoring, and helping to achieve economies of scale to minimize costs while maximizing effectiveness. We recommend against generic ‘support for third party programs.’ We recommend supporting third party programs that assist growers in verifiably reducing waste loading to achieve water quality objectives on a defined schedule. We do not support third-party programs for the purpose of reducing data availability, resolution, or transparency to the Water Boards and the public. Please also note that many growers do not agree that existing third party programs provide benefits. Many growers have expressed their frustration with high costs, lack of services, and lack of transparency and accountability regarding third party fees. The Water Boards should be careful to avoid supporting third party programs that benefit certain growers at the expense of others, or whose mission is inconsistent with the Water Board’s mission and regulatory responsibility.

In reviewing the Nonpoint Source Policy (NPS Policy), we note that it speaks both to the value of third party programs, and it also describes the flexibility afforded to the Regional Boards to address their region-specific NPS pollution.

The NPS Policy states, “A primary advantage of the development of third-party programs is their ability to reach multiple numbers of dischargers who individually may be unknown to the RWQCB” (p9). We agree with this concept, and note that, in the Central Coast, individual dischargers are not unknown to us - we have been successfully receiving information directly from growers since the adoption of our 2004 Ag Order, over 13 years ago. In addition, as a fundamental aspect of effective regulatory programs, the Water Boards must know who the

regulated parties are, where they are located, and must be able to determine individual compliance with requirements, if they are to fulfill their regulatory roles and obligation; the Water Boards cannot delegate this responsibility. Additionally, the public should know who the dischargers are and what dischargers are doing (or not doing) to control waste discharges relative to protecting and achieving water quality objectives.

The draft order identifies education and outreach capabilities as an area where third-party programs can provide cost-effective and site-specific technical assistance, and includes education and outreach as key responsibilities of the third party. We agree that education and outreach are valuable services that third-party programs can provide to growers. We ask that the State Board retain sufficient flexibility for third-party programs to take on only the roles and responsibilities that best suit their individual goals and capabilities.

The Central Coast's existing Ag Order includes two conditions relating specifically to third party programs. Condition 10¹ states, in part, "*Dischargers may comply with this Order by participating in third-party groups (e.g. watershed group, or water quality coalition, or other similar cooperative effort) approved by the Executive Officer or Central Coast Water Board.*" Condition 11 further notes that "*Dischargers may form third party groups to develop and implement alternative water quality improvement projects or programs or cooperative monitoring and reporting programs to comply with this Order.*" Successful third-party programs currently exist in the Central Coast, and are able to provide a variety of valuable services to growers. Under the next generation Central Coast agricultural order (4.0) we hope to increase the list of compliance- and water quality related services provided to growers via third-party programs.

For example, the Central Coast's surface water monitoring cooperative assists growers by performing regional surface receiving water monitoring. They are able to achieve reduced regional monitoring costs for growers who elect to join, and have the technical expertise needed to perform the monitoring following strict quality assurance protocols. They also analyze the data and publish annual reports on water quality conditions and trends. Another successful third-party program is the Central Coast's groundwater cooperative, which has recently begun assisting growers with tracking and reporting nitrogen application information. We also have Sustainability in Practice (SIP) for vineyards. Being SIP certified means reduced requirements for member growers, but SIP has not elected to assist their members with the monitoring and reporting required in the Central Coast. Rather than prescribing the roles and responsibilities of a third-party program, we ask that the State Board retain flexibility and thereby allow for the development of new and creative third-party programs that may assist growers with certain requirements or specific areas (i.e., narrower scope or as constituencies [vineyards]) of water quality improvement.

We are also concerned that the precedential requirement for all Regional Boards to draft a minimum of two orders for irrigated agriculture – a third party order and an individual order for those growers who elect not to join a third party – will decrease our program's efficiency, and therefore reduces our ability to create a comprehensive and meaningful regulatory program. Our largest concern with the third-party orders is the precedential requirement to anonymize and obfuscate submitted data (discussed later in this letter), but we also find that requiring the

¹ Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands, Order No. R3-2017-0002

creation of a third-party order is not in alignment with the NPS Policy. The NPS Policy states, "A RWQCB may use whatever mix of organizational approaches it deems appropriate" and "RWQCBs are not required to endorse or approve any specific program or type of program" (p9). We ask that the State Board, following the language of the NPS Policy, modify the language in the draft order to allow Regional Boards to use the mix of organizational approaches and endorse the type of program they identify as being most appropriate to address their region's specific needs. This will improve the Regional Board's ability to work with existing and potential third-party programs to ensure that the programs are formed and implemented to provide maximum benefit to both the growers and the Regional Board.

Finally, the NPS Policy also notes that "*The RWQCBs have broad flexibility and discretion in using their administrative tools to fashion NPS management programs, and are encouraged to be as innovative and creative as possible, and, as appropriate, to build upon Third-Party Programs. The State Board, in turn, is encouraged to establish a program that recognizes and honors successful and outstanding third-party efforts*" (p10). We encourage the State Board to recognize the existing successful third-party models found in the Central Coast, and ask that the Regional Boards retain full flexibility and discretion related to third-party programs moving forward.

2. Anonymous and Aggregated Reporting

Existing Language

"The requirement to submit Member-specific field-level management practice implementation data to the regional water board shall be precedential statewide. For third-party programs only, the data shall be submitted with Anonymous Member IDs unless the regional water board finds that there is a compelling grower-specific or location-specific reason why the data should be submitted with name or location identifiers" (p34).

"The requirement for field-level AR data submission to the regional water board consistent with the data sets and analysis of those data sets described in this Order shall be precedential for irrigated lands programs statewide. For third-party programs only, the data shall be submitted with anonymous identifiers unless the regional water board finds that there is a compelling grower-specific or location-specific reason why the data should be submitted with name or location identifiers. With regard to the aggregated dataset, the regional water board is not limited to aggregating the data at the township level, but may choose a smaller or larger area unit based on region-specific and program-specific considerations" (p54).

Recommended Language

"The requirement to submit grower-Member-specific field-level management practice implementation data to the regional water board at the field-, crop-, or other level, as found appropriate by the individual Regional Board, shall be precedential statewide. ~~For third-party programs only, the data shall be submitted with Anonymous Member IDs unless the regional water board finds that there is a compelling grower-specific or location-specific reason why the data should be submitted with name or location identifiers~~" (p34).

"The requirement for ~~field-level~~ AR data submission to the regional water board at the field-, crop-, or other level, as found appropriate by the Regional Board, ~~consistent with the data sets~~

~~and analysis of those data sets described in this Order shall be precedential for irrigated lands programs statewide. For third-party programs only, the data shall be submitted with anonymous identifiers unless the regional water board finds that there is a compelling grower specific or location specific reason why the data should be submitted with name or location identifiers. With regard to the aggregated dataset, the regional water board is not limited to aggregating the data at the township level, but may choose a smaller or larger area unit based on region specific and program specific considerations" (p54).~~

Discussion

The draft order, in compliance with Water Code section 13263 and the Key Element 1 of the NPS Policy, defines its ultimate purpose as, "*Wastes discharged from Member operations shall not cause or contribute to an exceedance of applicable water quality objectives in surface water [or the underlying groundwater], unreasonably affect applicable beneficial uses, or cause or contribute to a condition of pollution or nuisance" (p14).* The draft order also allows members to meet receiving water limitations over time if they are implementing a SQMP or GQMP with an approved timeline, per Key Element 3 of the NPS Policy. However, the draft order also requires through precedent that field-level data submitted to the Regional Board by the third party be anonymized, and non-anonymized data be aggregated by township.

Water quality objectives and beneficial uses, and their impairments, are tied to specific waterbodies. By requiring anonymized data without information to tie the field-level data to a specific spatial location, the Regional Board will be unable to confirm whether or not an individual grower is causing or contributing to an exceedance of a specific water quality objective. Therefore, the submitted data results in the Regional Board and the public being unable to determine whether the order is achieving its stated purpose, as required by Key Element 4 of the NPS Policy.

Moreover, the anonymized and aggregated data approach is not appropriate when the dischargers have caused and are causing degradation beyond water quality objectives. The current waste loading on the Central Coast is many times what is necessary to protect and restore water quality objectives, based on facts established in the literature, including State Water Board reports, from the 1970s to recent evaluations of water quality and nitrate loading conditions.

In the Central Coast, we previously received anonymized data from one of our third-party monitoring programs. The third-party program submitted groundwater monitoring data to us using anonymous identifiers, and then provided us with additional documents (relational key) which could be used to correlate the anonymized data with grower-specific data from our enrollment data. We found this approach to be a highly ineffective use of our staff's time, relegating the program staff less time to work on water quality-related issues because of the time needed to use the relational key to correlate multiple data sets. As part of the recent Zamora² ruling in the Central Coast, regarding the anonymous identifiers generated by the third-party and linked to the monitoring data and drinking water notification letters, the court found that, "*Instead of making these notification and confirmation letters available to the public, the Coalition generates three technical documents that intentionally make it difficult for all but the*

² Superior Court of the State of California, County of San Luis Obispo, Case No. 15CV-0247

most sophisticated user to figure out the owners and locations of polluted well water. There is no justification for such obfuscation: the strong interest in public accountability cannot be overcome by vague notions of privacy..." In its ruling, the court also discussed Public Records Act requests. The court found that *"the California Constitution provides that the PRA be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access."*

The Central Coast Water Board and staff spent an extraordinary amount of time and resources on the anonymization and obfuscation issue. These resources should have been spent assisting growers in reducing pollution loads and protecting drinking water. We recommend that the State Board refrain from precedential decisions that require the Central Coast Regional Board to limit transparency or other actions necessary to resolve severe pollution problems, as we have already worked through this issue to access a more resource-efficient location.

In addition, we note the following from the State Water Board's recently adopted cannabis order:

"Except for material determined to be confidential in accordance with California law, all reports prepared in accordance with terms of the General Order shall be available for public inspection at the office of the Regional Water Board. Data on waste discharges, water quality, geology, and hydrogeology are not confidential."

. We continue to work to move our ILRP forward in finding the best methods of regulating agriculture in our region, and ask that the State Board allow us to retain full flexibility in how we go about implementing our program in the future.

As noted in our December 6 letter, we have been successfully receiving ranch-level reporting of grower-specific information related to management practice implementation and assessment, and are constantly working directly with growers in terms of how to develop and submit reporting information. We continue to receive electronically-submitted, grower-specific, ranch-level groundwater quality monitoring, individual surface discharge monitoring, and total nitrogen applied reporting on an annual basis. This information is currently publicly available in the Central Coast region and to date, there have been no substantive negative effects counterweighing the availability of this information to the regulatory agency or the public. 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 also 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 effectively regress our regional irrigated lands program, and require us to work in a less efficient manner to achieve water quality goals. Aggregated and anonymized data make it impossible to realistically assess and resolve waste discharge problems. 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.

We recognize that irrigated lands programs throughout the state are at various stages in their evolution, and are implementing different and varied strategies to achieve their water quality goals, consistent with the specific drivers and variables in respective regions. We ask that State Board not push precedential content that makes the Central Coast Region move backwards in their programmatic evolution. We are striving to make this program similar to other programs within the Water Boards with respect to data transparency, and in so doing remain consistent with our organizational policies and values, and achieve a equity across programs –treat those we regulate similar regardless of the program. 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.

3. Uniform Application of Groundwater Protection Requirements

Existing Language

“The uniform application of requirements for groundwater protection shall be precedential for irrigated lands programs statewide. But we leave open the possibility that risk-based designations continue to be used for differentiating surface water protection requirements and for phasing in groundwater protection requirements. We also decline to direct a uniform set of criteria for risk designation and leave the regional water boards with considerable discretion to design reasonable frameworks for differentiation and prioritization. In addition to the high/low vulnerability approach of the Eastern San Joaquin Agricultural General WDRs, such criteria may, for example, include the risk-based tier designations in the Central Coast irrigated lands programs or possibly categories based on farm-size” (p26).

Recommended Language³

“~~The uniform application of r~~Requirements for groundwater protection shall be precedential for irrigated lands programs statewide. But we leave open the possibility that risk-based designations continue to be used for differentiating surface water protection requirements and for phasing in groundwater protection requirements. We also decline to direct a uniform set of criteria for risk designation and leave the regional water boards with considerable discretion to design reasonable frameworks for differentiation and prioritization. In addition to the high/low vulnerability approach of the Eastern San Joaquin Agricultural General WDRs, such criteria may, for example, include the risk-based tier designations in the Central Coast irrigated lands programs or possibly categories based on farm-size” (p26).

Discussion

We agree that all ILRPs statewide should include groundwater protection requirements. However, we ask that the State Board revise the language requiring “the uniform application” of groundwater protection requirements. While the draft order does build in some flexibility for the

³ The AR values are required via precedential language on page 43 of the draft order, and therefore do not need to be called out in our suggested language modification, unless the precedential AR language is significantly altered in the final order.

regional boards to prioritize and phase in groundwater protection requirements, we request that further flexibility be provided in the ultimate application of groundwater protection requirements given the severe and ongoing degradation of our sole-source drinking water supplies.

We understand that the Agricultural Expert Panel rejected the concepts of risk and vulnerability related to groundwater protection, and recommended that all growers submit AR data, regardless of ranch location, proximity to an impaired well, or size⁴. In general, we agree with the proposal that the requirement to submit AR data should be applied to all ranches, at least until sufficient information is gathered about the different crops grown throughout the state. However, we ask that the State Board modify its precedential language to recognize that there are situations where the reporting of AR data is insufficient to protect groundwater quality, and the Regional Board must have the ability to establish additional groundwater protection requirements.

4. AR Values – Calculation of Annual and Multi-Year Values by Field

Existing Language

The requirement for calculation of annual and multi-year A/R ratio and A-R difference parameters for each Member by field shall be precedential for irrigated lands programs statewide; the regional water boards shall retain discretion as to the division of responsibilities among the growers, third parties, and regional water boards for determination of the values, provided that the values are known to both the growers and the third parties” (p43).

Recommended Language

The requirement for calculation of ~~annual and multi-year~~ A/R ratio and A-R difference parameters for each ~~grower Member~~ by field, crop, or other level found to be appropriate by the Regional Board, shall be precedential for irrigated lands programs statewide; the regional water boards shall retain discretion as to both the time period the calculated values should cover, e.g. annual or multi-year, and the division of responsibilities among the growers, third parties, and regional water boards for determination of the values, provided that the values are known to both the growers and the third parties” (p43).

Discussion

Multi-year AR values would not be possible to calculate for many ranches in our region. We believe this and Central Coast growers and grower groups we have spoken with about this have confirmed this as well. In many cases, growers farm a ranch for a year, then rotate to another location. The new location could have significantly different soil, micro-climate, irrigation water nitrate concentrations, and amount of residual soil nitrogen available for the next crop to uptake. Even if a grower does not rotate away, many ranches grow a large variety of crops, and may not grow the same crop from one year to the next. We recommend that the draft order not require the calculation of multi-year AR values, and instead leave both the timeframe and the scale of the AR calculations to the discretion of the Regional Board.

⁴ Conclusions of the Agricultural Expert Panel, Recommendations to the State Water Resources Control Board pertaining to the Irrigated Lands Regulatory Program (Sept 9, 2014), page 26

We also request that the State Board refrain from requiring information to be reported by field. In the Central Coast, we went through a long process of attempting to use field-level reporting language, and found that it does not apply to the majority of crops grown in our region, but does introduce confusion for growers when reporting. For example, although a footnote in Attachment A provides some definition to the term, "*Where this Order requires reporting by field, Members may report data for a field or multiple fields provided that the reported area has (1) the same crop type (i.e. crops with similar nitrogen and irrigation management needs) and (2) the same fertilizer inputs and irrigation management*" (p27). Language similar to this was included in a previous Ag Order in our region, and it caused confusion because some growers interpreted this to mean that they could, for example, aggregate all of their vegetable crops when submitting their reporting. Staff spent a significant amount of time working with growers to correct their reporting, and therefore we ask that the draft order provide the Regional Boards with more flexible language so that we can maintain the progress we have achieved versus regressing to a more confusing regulatory strategy.

5. AR Outlier Training

Existing Language

"The requirement for follow up and appropriate training for AR data outliers and for identification of repeated outliers as set out above shall be precedential in irrigated lands programs statewide, except that the regional boards will be responsible for the follow up and training for irrigated lands programs that directly regulate growers without a third-party intermediary" (p56).

Discussion

We ask that the State Board clarify what is meant by the Regional Boards being responsible for the training of outliers. Are Regional Boards expected to hold or create classes? Or is the intent that the Regional Board would ensure that an outlier attended certain existing courses identified by the Regional Board by tracking participation/certification of completion?

6. Irrigation Water Nitrogen

Existing Language

"A Member will not be identified as an outlier based on high AR data solely due to application of nitrogen in irrigation water" (p55).

Recommended Language

"A grower Member will not be identified as an outlier based on high AR data solely due to application of nitrogen in irrigation water if no other nitrogen applications are made from other sources" (p55).

Discussion

This is a minor language clarification recommendation. We agree with the State Board's intent in including this language, and recognize that there may be situations where a grower may apply a large amount of nitrogen due to the high nitrate concentration in their irrigation water alone, without applying any fertilizer nitrogen.

7. Conversion Coefficients

Existing Language

"The requirement for use of coefficients for conversion of yield to nitrogen removed values shall be precedential statewide. In determining the appropriate coefficients, the regional water boards must approve the values, but may rely on their own research or on the research of the third party, including a review of the scientific literature, and further may consider for approval coefficients evaluated by other regional water boards" (p45).

Proposed Language

"The requirement for use of coefficients for conversion of yield to nitrogen removed values shall be precedential statewide. In determining the appropriate coefficients, the regional water boards must approve the values, but may rely on sources including but not limited to their own research or on the research of the third party, including a review of the scientific literature, and further may consider for approval coefficients evaluated by other regional water boards" (p45).

Discussion

We agree with the precedential requirement to use coefficients for conversion of yield to nitrogen removed, and suggest that the State Board include the clarifying language above to avoid unintentionally limiting the Regional Board's ability to identify and approve conversion coefficients.

8. INMP Requirements and Certification Language

Existing Language:

"The requirement for all Members to prepare certified irrigation and nitrogen management plans and to submit summary data from the plans to the party shall be precedential statewide. The certification language shall also be precedential statewide" (p38).

"The person signing the INMP below further certifies that he/she 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" (p132 of Att. A).

Recommended Language

"The requirement for all growers ~~Members~~ to prepare certified irrigation and nitrogen management plans and to submit summary data from the plans ~~to the party~~ shall be precedential statewide. The certification language shall also be precedential statewide" (p38).

"The person signing the INMP below further certifies that he/she 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 managing all sources of nitrogen to minimize ~~meeting the crop's agronomic needs while~~ minimizing nitrogen loss to surface water and groundwater" (p132 of Att. A).

Discussion

As noted in our December 6 comment letter, we are concerned that the language required by precedent to certify the INMP places a reduced emphasis on water quality in favor of crop needs and crop yield.

The Central Coast Water Board requires ranch- and crop-level reporting information, including groundwater monitoring, surface water monitoring, and total nitrogen applied information. We also require INMP effectiveness reports. We use this information to determine the highest priority pollutant load problems and to follow up with growers to reduce loading.

We recommend updating the precedential language to make it clear that the goal of the INMP certification is to protect and achieve water quality objectives. A certification required by a Regional Board should not include certification that the crop's agronomic needs were met, but rather should focus solely on certifying that waste discharges were minimized.

We also agree with the precedential requirement to incorporate irrigation management elements into nitrogen management planning for all ILRPs statewide. Irrigation management is often considered to be the weakest link in nutrient management programs, and therefore it is critical to consider irrigation management in conjunction with nutrient management.

9. Sampling of Domestic Wells

We agree with the precedential requirement to monitor all on-farm drinking water supply wells. We appreciate the discretion provided to the regional boards regarding the frequency of monitoring.

10. Groundwater Trend Monitoring

We agree with the precedential requirement for groundwater trend monitoring. We appreciate the discretion provided to the regional boards regarding the specific required and the monitored constituents.

11. Sediment and Erosion Control

Existing Language

"The requirement for implementation of sediment and erosion control practices by Members with the potential to cause erosion and discharge sediment that may degrade surface waters shall be precedential for irrigated lands programs statewide; however, the regional water boards shall continue to have discretion as to how these practices are documented and reported" (p35).

Recommended Language

"The requirement for implementation of sediment and erosion control practices by growers ~~Members~~ with the potential to cause erosion and discharge sediment that may degrade surface waters shall be precedential for irrigated lands programs statewide; however, the regional water boards shall continue to have discretion as to how these practices are documented and reported" (p35).

We agree that the requirement for implementation of sediment and erosion control practices should be precedential for all ILRPs statewide. We also appreciate the discretion provided regarding how the practices are documented and reported to the regional boards. However, we request that the State Board review its use of the term “members” in this precedential statement, and instead use the term “growers.” All growers with the potential to cause erosion and sediment discharge that may degrade surface waters should be required to implement sediment and erosion control practices, regardless of whether or not they are a member of a third party.

12. Maintaining Records

Existing Language

“We revise the General WDRs to require maintenance of the reports and records for ten years and to require the Third Party to back up the field-specific data submitted on the Farm Evaluations, the INMP Summary Reports, and the MPIRs in a secure offsite location managed by an independent entity. This requirement is needed because it is critical that the Central Valley Water Board have the ability to access outlier Members’ names and locations if warranted at a future date. This recordkeeping requirement shall be precedential statewide for all third-party irrigated lands programs” (p56).

Discussion

We agree with the importance of maintaining and backing-up records. The water quality problems we are dealing with will take decades to resolve and the threat to public health is severe. These are fundamental reasons why the Water Boards must have the data in their possession, and they must maintain the data permanently – to track progress and learn and improve/course correct as we go forward. The NPS Policy states *“The SWRCB and RWQCBs may not delegate their NPS authorities and responsibilities to another agency...” (p10)*. One responsibility of the Regional Boards is responding to Public Records Act requests. By relying on third parties to maintain records which may be requested by the public, the Regional Boards would be delegating this responsibility, despite the guidance of the NPS Policy.

13. General Language – Member vs Grower

We ask that the State Board carefully review the language used in the precedential components of the draft order, specifically to clarify the potential difference between an individual discharger (grower) and a discharger who is a member of a third party (Member), and to ensure that the State Board’s intent is achieved in the final precedential language.

14. Lack of Milestones

We recommend the inclusion of quantifiable milestones to reduce waste loading and achieve water objectives on a defined schedule, or the stated flexibility for Regional Boards to include them. This is a fundamental requirement of the NPS Policy, and is critical given that current waste loading on the Central Coast far exceeds load limits necessary to protect and achieve water quality objectives.

15. Human Right to Water

We don't agree with the assertion that the Human Right to Water is being protected due to the draft order requiring: *"(1) calculation and reporting of field-level AR data; (2) implementation and reporting of management practices where the Member is identified as having a significantly higher than average multi-year A/R ratio in order to reduce over-application of nitrogen; (3) monitoring of on-farm drinking water supply wells to determine if they exceed public health standards; (4) prompt notification of users if a well exceeds public health standards."*

Calculating and reporting AR data is not in itself protective of groundwater quality. The draft order does not define clear numeric targets or time schedules for AR values or waste load limits relative to water quality objectives; therefore, the State Board cannot conclude that this order will be protective of drinking water sources. The draft order requires the Central Valley Water Board to submit a progress report to the State Board regarding development of potential targets by 2020, and suggests that an expert panel will be convened at some unknown future date. While we recognize the value of collecting data to create the best possible target value, we recommend that the State Board include enforceable milestones to achieve water quality objectives over time and to protect the Human Right to Water, or direct the Regional Boards to do so.

The draft order does require those growers identified as "outliers" to implement and report on practices. However, it does not require them to make quantifiable improvements regarding waste loading relative to water quality objectives. There is also no discussion on what would happen if average AR values were to increase over time. The draft order does require the monitoring of all domestic wells and the notification of users if the well exceeds the drinking water standard, but that, in itself, is also not protective of the human right to water. Such monitoring is 'after the fact' because it allows the beneficial use to be degraded.

Conclusion

Throughout this letter we have included recommendations for ways in which the language in the draft order could be updated to provide sufficient flexibility to the Regional Boards. We ask that the State Board consider our recommendations and the discussions provided related to the potential impacts of the existing precedential language. We hope that the State Board will recognize the work that the Central Coast Water Board has put into developing and implementing its ILRP and Ag Orders so far, and allow us to continue to further develop our program to best suit our specific agricultural practices and regional water quality challenges.

We also ask the State Board to continue to help us deal with the severe degradation in the Central Coast Region, the ongoing waste loading causing the degradation, and the need for the Regional Board to have full regulatory flexibility in implementing requirements necessary to protect and restore water quality objectives.