



CALIFORNIA FARM BUREAU FEDERATION

OFFICE OF THE GENERAL COUNSEL

2300 RIVER PLAZA DRIVE, SACRAMENTO, CA 95833-3293 • PHONE (916) 561-5665 • FAX (916) 561-5691

Sent via E-Mail

commentletters@waterboards.ca.gov

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Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100

Re: Comments to A-2239(a)-(c) Proposed Order

Dear Chair Marcus and Board Members:

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

Farm Bureau appreciates the opportunity to provide comments on the State Water Resources Control Board’s (“State Water Board”) proposed order revising the Waste Discharge Requirements General Order No. R5-2012-0116 For Growers Within the Eastern San Joaquin River Watershed that are Members of the Third-Party Group (“Proposed Order”).

Farm Bureau, along with San Joaquin County Resource Conservation District on behalf of the San Joaquin County and Delta Water Quality Coalition, and the Southern San Joaquin Valley Water Quality Coalition, petitioned the Central Valley Regional Water Quality Control Board’s (“Central Valley Regional Water Board”) adoption of the Eastern San Joaquin Waste Discharge Requirements (“East San Joaquin WDR”) due to concerns with compliance with the California Environmental Quality Act (“CEQA”), an

NANCY N. McDONOUGH, GENERAL COUNSEL

ASSOCIATE COUNSEL:

CARL G. BORDEN • KAREN NORENE MILLS • CHRISTIAN C. SCHEURING • KARI E. FISHER • JACK L. RICE

improper economic analysis, as well as concerns with regulation of non-waste and non-discharges outside the Central Valley Regional Water Board's jurisdiction.¹

However, the Proposed Order does not address the concerns raised by Farm Bureau, but rather includes new requirements that are concerning to both members within the East San Joaquin watershed as well as throughout the state. The Proposed Order goes beyond nitrogen management recommendations from the statutorily mandated Nitrogen Tracking Task Force and Agricultural Expert Panel, mischaracterizes recommendations, and unnecessarily incorporates the State Water Board's own views and judgment. It imposes new requirements that are costly, burdensome, create privacy concerns for individual members, and threaten the successful coalition structure. Farm Bureau is concerned with the statewide application of the conclusions and requirements within the Proposed Order and respectfully presents the following comments.²

The Precedential Nature of the Proposed Order Will Significantly Impact Irrigated Lands Regulatory Programs Statewide as a One-Size-Fits-All Approach is Not Appropriate

The Proposed Order indicates it is precedential in nature and its conclusions will apply statewide. Specifically, the Proposed Order would give direction to the Central Valley Regional Water Board and all other Regional Water Boards to update (or develop) their irrigated lands regulatory programs to be consistent with the Proposed Order. For this reason, the Proposed Order has significant implications for irrigated agriculture statewide and would directly affect all growers whether enrolled in coalitions or complying as individual dischargers.

By mandating a one-size-fits-all program, the irrigated lands regulatory programs cannot be individually developed and tailored to address water quality concerns specific to that area of the state. Each Regional Water Board region, as well as portions within the regions, represent unique geographic and hydrologic characteristics, including, but not limited to, rainfall, drainage, commodities grown, topography, reliance on surface water and groundwater, presence or absence of groundwater basins, and specific water quality concerns. Further, specifically with regard to groundwater basins, not all groundwater basins of the state are impacted similarly by waste discharges, whether they be from agricultural operations or other sources. Given all of these vast differences, rather than applying uniform requirements statewide, the State Water Board should allow each Regional Water Board the flexibility to individually draft an irrigated lands regulatory program, if one is needed, specific to the region it regulates and determine the level of reporting and management requirements necessary given its specific local conditions.

¹ The Proposed Order dismissed the claims raised in Farm Bureau et al.'s petition, asserting that the issues were resolved through a Sacramento Court ruling, issued May 21, 2013, and a State Water Board precedential order, WQ 2013-0101, decided after the petition's submittal. (Proposed Order, p. 9.)

² To the extent that the Proposed Order violates the terms of the Porter-Cologne Water Quality Act or the California Environmental Quality Act, these claims are not waived. Farm Bureau's comments within this initial letter focus on policy-level comments.

The Proposed Order Threatens the Coalition Structure

The coalition structure is invaluable to the irrigated lands regulatory programs, not only within the Central Valley, but statewide. The coalition approach for implementing the goals of the irrigated lands regulatory programs, whether through conditional waivers of waste discharge requirements or waste discharge requirements, is legally sound³ and effective at improving and protecting water quality. The purpose of coalitions is to put forward a program that focuses on the need to implement management practices to improve and protect water quality. By collecting and analyzing data submitted by growers, coalitions are able to identify water quality issues and implement effective outreach and education to address the issues. Additionally, the coalitions' mechanism for implementation allows for more efficient communication between Regional Water Board staff and the grower community on the effectiveness of management practices, and the need to implement such practices to protect water quality.

The potential impacts of the Proposed Order on the already successful cooperative coalition-based irrigated lands regulatory program, which has been in place for over a decade in the Central Valley, are not only significant and costly, but also compromise the proactive structure of the program. As currently drafted, the Proposed Order threatens the continued existence of the coalitions by jeopardizing the trust built between members and the coalitions, changing fundamental components of the coalition structure such as making coalitions a mere pass-through for data, and eroding the relationship between growers and the coalitions which has proven both successful and necessary for the program.

Confidentiality of information and working with coalition experts are the keys to a successful program and effectively working with the agricultural community to improve water quality. The Proposed Order jeopardizes this. Additionally, the new and expanded reporting requirements increase costs not only for the coalition, which are then passed down to individual members, but also directly increases costs for individuals due to increased monitoring and reporting requirements, such as drinking water well monitoring and reporting. Further, in order to deal with the substantial increase in raw data analysis and reporting, the coalitions and the Regional Water Boards will have to

³ The language of Water Code section 13269 states that waste discharge requirements may be waived for "a specific discharge or type of discharge if the state board or a regional board determines, after any necessary state or regional board meeting, that the waiver is consistent with any applicable state or regional water quality control plan and is in the public interest." (Wat. Code, § 13269.) A State Water Resources Control Board precedential order states that it does not believe there to be a legal requirement that "all dischargers subject to a waiver must be individually listed." (In the Matter of the Petitions of Agricultural Water Quality Coalition, et al., Order WQO 2004-0003.) The Nonpoint Source Policy ("NPS Policy") also recognizes the legality of third party groups. "Implementation programs for NPS pollution control may be developed by a RWQCB, the SWRCB, an individual discharger or by or for a coalition of dischargers in cooperation with a third party representative organization, or government agency." (NPS Policy, p. 8.) These State Water Board findings and its NPS Policy clearly support the notion that third party groups are legal, and may be used to implement requirements of an irrigated lands regulatory program.

hire additional staff in order to implement the proposed requirements, which further adds costs to individual growers while removing the focus of the coalitions and the Regional Water Board from improving and protecting water quality.

By increasing costs and eroding cornerstones of the coalition program, such as confidentiality, the Proposed Order may threaten the longevity of the cooperative and successful coalition approach for implementing the goals and requirements of the irrigated lands regulatory programs statewide. For these reasons, Farm Bureau respectfully requests the State Water Board to not adopt the Proposed Order as currently drafted.

Vulnerability Designations Should Be Maintained in Order to Prioritize Areas with Groundwater Quality Issues or The Potential for Groundwater Quality Issues

The East San Joaquin WDR, as well as similar WDRs adopted by the Central Valley Regional Water Board, prioritizes reporting requirements with risk to surface and groundwater quality. In order to best utilize limited resources and improve areas in most need, the WDRs focus on those activities and conditions that constitute the highest risk to water quality through increased monitoring, management implementation, and certification of plans in order to address water quality impacts, including nitrate contamination in groundwater.

Specifically, areas are designated as high or low vulnerability based on the groundwater quality assessment report (“GAR”), which was undertaken by each coalition to provide the most recent study of the groundwater basin including “an assessment of all available, applicable and relevant data and information to determine...where discharges from irrigated lands may result in groundwater quality degradation.” (Appendix A, Modified Eastern San Joaquin Agricultural General WDRs, Attachment B, MRP, section IV.B., p. 15.) Areas designated as high vulnerability have stricter requirements which allows the coalition, individual growers in those areas, and the Central Valley Regional Water Board to focus on those areas with known or potential groundwater quality impacts that constitute the highest risk in order to protect water quality and public health.

As currently drafted, the Proposed Order would eliminate vulnerability designations and all requirements within the Proposed Order would apply to all farms regardless of current or past threats to water quality, vulnerability designation, or implementation of best management practices. By drafting a one-size-fits-all WDR, members are not recognized for positive contributions to maintaining and improving water quality. Additionally, smaller growers unfairly bear the burden of the WDR’s administrative requirements and may be driven out of business. In order to maintain the goals of the irrigated lands regulatory program while maintaining a viable agricultural industry, flexibility and prioritization should be included within the WDR.

The Proposed Order Must Consider Reasonableness

In enacting the Porter-Cologne Water Quality Control Act, the Legislature laid out specific goals and objectives for the State's waters. The State Water Board and Regional Water Boards must conform to all such statutory mandates, including the Legislature's objective:

The Legislature further finds and declares that activities and factors which may affect the quality of the waters of the state shall be regulated to *attain the highest water quality which is reasonable*, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible.

(Wat. Code, § 13000, emphasis added.) As explained throughout these comments, requirements within the Proposed Order are not reasonable and do not properly consider all values involved, including economic and detrimental.

The Burden of the Proposed Order's New Monitoring and Reporting Provisions Is Not Reasonably Related to the Benefit

Within the Proposed Order, numerous monitoring reports and technical reports, such as management practice evaluations, irrigation and nitrogen management plans and summary reports, reporting of nitrogen applied and nitrogen removed values and ratios, and surface water, groundwater, and drinking water supply well monitoring, are required to be submitted to the Regional Water Board. Although the Regional Water Board has the authority, pursuant to Water Code section 13267, to require monitoring reports and technical reports, "the burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports." (Wat. Code, § 13267(b)(1).)

Here, the Proposed Order increases the scope and scale of the data required to be reported and the monitoring to be required. For example, the submittal of farm evaluation data and nitrogen application and management data at a field level and identified by location (including the three-year running average for the A/R ratio, the A-R difference, and the development of nitrogen removed coefficients), and drinking water supply well monitoring and reporting are costly and time consuming burdens for both individuals as well as coalitions, and the necessity of that information does not match the burden. As explained *infra*, aggregating management practice and nitrogen application information at the township level, rather than the Proposed Order's requirements for the submittal of all raw data at the field level and identified by location, bears a reasonable relationship to the need for the reports while providing the Regional Water Boards with proper oversight and the ability to verify the accuracy of the information and effectiveness of the program.

Additionally, the proposed revisions creating uniform statewide reporting requirements exceed the threshold of necessary and reasonable data required to improve nutrient management and protect groundwater quality. In many areas of the state, such uniform requirements are not appropriate or reasonable as there are no underlying groundwater basins, irrigated agricultural operations pose no risk to groundwater quality, or groundwater basins have adequate assimilative capacity to handle potential loads without causing exceedance of applicable groundwater quality objectives. Therefore, the burden, including the substantial increase in costs and time to expand the scope and scale of nitrate analysis and reporting as well as farm evaluation data to the field level and identified by location, as well as the erosion of keeping necessary information confidential, does not bear a reasonable relationship to the benefit of the information. Farm Bureau respectfully urges the State Water Board to reject the provisions requiring reporting of all raw data.

The Proposed Order's Expansion Requiring All Raw Data is Unnecessary, Creates Confidentiality Issues by Making All Data Public, and Threatens the Coalition Structure

The Proposed Order seeks to dramatically change the reporting requirements by requiring the coalitions to submit all raw farm evaluation data and nitrogen application data⁴ by field, identified by location. Within the current East San Joaquin WDR, individual members submit information to the coalition, which then analyzes the information and aggregates it on a township level prior to submitting the data to the Regional Water Board. Through this format, the coalition and the Regional Water Board are able to effectively implement the program with an appropriate amount of useful data that allows for proper Regional Board oversight and verification of accuracy without unwarranted and unnecessary amounts of data points that is burdensome or resource prohibitive. Further, the Regional Water Board retains the authority to inspect the coalition's records if questions arise or to simply further verify accuracy. This system provides all appropriate access necessary for a legally sound and successful program.

The reporting of raw data by field, identified by location will generate significant amounts of raw data points that will need to be reviewed, validated, and aggregated to determine trends in water quality improvement. The coalitions are the appropriate entity to review the data given their expertise and relationship with the growers. Transmitting a vast number of raw data points for growers and crops, especially in areas of the state with multiple growing seasons per year, to the Regional Water Boards will lead to data overload and increased risk of misinterpretation of data while not providing meaningful information to illustrate trends in water quality.

⁴ In addition to submitting the raw nitrogen application data, the Proposed Order "directs the Third Party to continue to aggregate and analyze the data...The Third Party is directed to report this information by May 1 annually." (Proposed Order, p. 43.) Report Component (18) in Attachment B to the General Order R5-2012-0116 is not clear in this requirement as it does not state that the Third Party is to aggregate the data and submit it annually (see Appendix A, Modified Eastern San Joaquin Agricultural General WDRs, Attachment B, MRP, section V.E. Report Component (18), pp. 26-27).

Reporting and analyzing farm evaluation data and nitrogen applications by crop at the township scale is an appropriate feedback mechanism; reporting raw data for the sake of gathering data is inappropriate and does not benefit water quality. Rather, it burdens the existing successful program by increasing costs and threatening the confidentiality of members. By requiring the coalitions to submit all raw data to the Regional Water Boards, coalitions become a mere pass-through for information and individual member's data points are now publically accessible. By making individual member's data points public, the risk of misinformation and misinterpretation of the data rises, as does the risk and threat of litigation by private citizens and the jeopardy of food safety and security.

By dramatically increasing the reporting and analysis requirements to now require farm evaluation data and nitrogen application data at the field level and identified by location, the Proposed Order puts the coalition model that has worked successfully for years at risk. The irrigated lands regulatory program should bolster instead of erode the coalition model, and continue to allow them to report data in aggregate at the township level rather than by field level and identified by location. Farm Bureau respectfully requests that the State Water Board maintain the current reporting for management practice and nitrogen application information aggregated at the township level rather than the Proposed Order's requirements for the submittal of all raw data at the field level and identified by location.

The Regional Water Board's Audit Compliance Program Allows for Verification of Accuracy and is a Proper Feedback Mechanism Making the Reporting of All Raw Data Unnecessary

The Central Valley Regional Water Board's audit compliance program is a feedback mechanism that allows the State Water Board and the Regional Board to verify the efficacy of the program without the need for the reporting of all farm evaluation and nitrogen application raw data. Through audits, the Regional Water Boards have reasonable oversight to verify accuracy of all aggregated information reported and can evaluate if growers are implementing appropriate management practices that are designed to protect water quality. Additionally, the audit program allows the Regional Water Boards to inspect upon request not only those with water quality issues, but also those in good standing to verify the program's effectiveness. Given an audit compliance program's reasonable alternative to the submittal of all raw data, Farm Bureau requests that the Proposed Order be modified to maintain the current township level of reporting for aggregated management practice and nitrogen application data.

The Proposed Order's New Metric for Nitrogen Application Management Is Problematic

A fundamental component of the Proposed Order is the multi-year ratio of nitrogen applied to the field to nitrogen removed from the field, or the A/R ratio.⁵ The

⁵ The Proposed Order's direction to develop A/R ratio target values for regulatory purposes is concerning and inappropriate given questions linking groundwater quality and nitrogen uptake ratios, and limitations with the A/R ratios.

Proposed Order recognizes that there is insufficient information currently available for the amount of nitrogen removed for most crops and that this data will need to be gathered over time. (Proposed Order, p. 36.) Nevertheless, the Proposed Order requires the coalitions to determine the nitrogen removed coefficients for crops that cover 95% of acreage within its boundaries prior to March 1, 2019 and 99% of the acreage prior to March 1, 2021.

Given the precedential nature of the Proposed Order, this requirement will apply statewide. California's agricultural abundance includes more than 400 commodities. Determining the nitrogen removed coefficients for even a vast majority of the number of crops statewide is overly burdensome and costly, especially on the accelerated timeline required by the Proposed Order.

The Proposed Order's Requirement to Sample All Domestic Wells is Outside the Scope of This Program

The Proposed Order requires individuals to monitor all drinking water supply wells on their property and notify water users if the well water exceeds the drinking water standard for nitrates. Monitoring results would be submitted to the Central Valley Regional Water Board in the Annual Monitoring Report as well as posted to GeoTracker along with the well location.

The inclusion of monitoring all drinking water supply wells within the irrigated lands regulatory program is problematic. Each farm would be required to monitor all wells, even landowner or tenant wells that the member may not have legal authority to access. In order to properly protect drinking water wells, legislation is needed to direct the counties to develop a well testing program for the specific needs of that county.

A New Economic Analysis of the Proposed Order is Warranted

The precedential Proposed Order will impact agricultural operations throughout the state and will dramatically increase costs. The new and expanded reporting and monitoring requirements directly increases costs for individuals due to increased monitoring and reporting requirements, such as drinking water well monitoring and reporting. Coalition costs, which are then passed down to individual members, will also rise due to increased reporting and monitoring requirements, such as the development of nitrogen removed coefficients, analysis of thousands of additional data points, development of new databases, and the evaluation of farm evaluation data and nitrogen application data at the field level and identified by location.

When taking into account economic considerations, the Central Valley Regional Water Board's analysis of costs for the East San Joaquin WDR did not include any of the new requirements or expanded requirements contained in the Proposed Order. Nor did the Central Valley Regional Water Board's analysis consider the costs of such a program applying statewide. Nor did the analysis consider all of the statewide demands being

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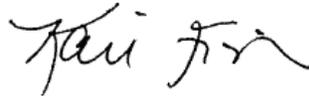
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made on the waters and all of the “total values involved, beneficial and detrimental, economic and social, tangible and intangible.” (Wat. Code, § 13000.) Therefore, any reliance on a previous economic analysis is inappropriate given the fundamental changes made to the East San Joaquin WDR, and its expansion to apply statewide. The State Water Board should analyze, evaluate, and estimate all of the costs associated with the Proposed Order’s new regulatory requirements, not only as they apply to the East San Joaquin Coalition, but also the statewide implications.

Conclusion

Farm Bureau appreciates the opportunity to provide comments on the State Water Board’s Proposed Order revising the Waste Discharge Requirements General Order No. R5-2012-0116 For Growers Within the Eastern San Joaquin River Watershed that are Members of the Third-Party Group. Farm Bureau remains concerned that the Proposed Order imposes a number of requirements that are burdensome, unnecessary, and unsupportable under Porter-Cologne. Farm Bureau requests the State Water Board to resolve those issues raised herein. We look forward to further involvement and discussion with the State Water Board on the East San Joaquin WDR.

Very truly yours,



Kari E. Fisher
Associate Counsel

KEF/ph