

# CALIFORNIA CATTLEMEN'S ASSOCIATION

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Submitted via email to [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

June 1, 2016

Ms. Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, California 95812



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

Dear Chair Marcus and Honorable Members:

The California Cattlemen's Association (CCA) appreciates the opportunity to provide feedback regarding the State Water Resources Control Board's (SWRCB) proposed order modifying the Eastern San Joaquin Agricultural General Waste Discharge Requirements (the Proposed Order). CCA is a statewide trade organization representing more than 1,700 cattle ranchers and beef producers throughout California. CCA members include ranchers grazing cattle on irrigated pasture within the Eastern San Joaquin River Watershed. CCA's interest in the matter is heightened, however, due to the SWRCB's stated intention that "this precedential order apply statewide" "for the next generation of regional water quality control board... agricultural regulatory programs." Many CCA members irrigating pasture throughout California are thus impacted by the Proposed Order.

CCA members pride themselves on acting as responsible stewards of the state's land and water resources, and seek to incorporate responsible management practices informed by the best available science into their ranching operations to ensure that our lands and waters remain healthy for Californians and sustainable for future generations of ranchers.

While CCA has many reservations regarding the Proposed Order, our chief concerns are the Proposed Order's abandonment of high- and low-vulnerability area distinctions, requirements that growers submit field-level evaluations directly to the Central Valley Regional Board, and the significant cost increases that the Proposed Order would represent. Because the costs associated with the Proposed Order for the growers, coalitions, and Regional Boards significantly outweigh *any* intended benefits, CCA urged the SWRCB to revise the Proposed Order to eliminate these burdens, deferring instead to the carefully-negotiated and crafted elements of the Central Valley Water Board's Agricultural General WDRs.

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## **The Proposed Order Should Retain High- and Low-Vulnerability Determinations**

The Central Valley Water Board's Agricultural General WDR distinguished between areas of "high vulnerability" for water quality impacts and areas of "low vulnerability." The SWRCB's Proposed Order rejects these distinctions for both groundwater and surface water for differing reasons. Because these justifications differ, we treat them separately below.

### *For Groundwater*

The SWRCB's Proposed Order rejects the high/low vulnerability distinction for *groundwater* because "[t]he Agricultural Expert Panel found that [the] definition of high vulnerability in the General WDRs was vague, ambiguous, circular, and not supported by sound technical rationale." Despite the Agricultural Expert Panel's finding, however, there remain significant policy considerations which weigh in favor of retaining the high/low vulnerability distinction.

For instance, according to Central Valley Water Board staff, the SWRCB's Proposed Order (eliminating the distinction) imposes five additional reporting requirements upon growers who would have otherwise been within low-vulnerability areas under the Central Valley Water Board's General WDR, including (1) that farm evaluations be conducted annually (rather than every five years); (2) that Irrigation Nitrogen Management Plans (INMPs) be professionally certified annually; (3) that an INMP summary report be submitted annually; and (4) that data be submitted to the coalition, the Central Valley Water Board, and GeoTracker. This is a significant burden to ranchers on irrigated pasture.

Additionally, removing the designation between high and low vulnerability groundwater areas has a significant detrimental impact to the Central Valley Water Board—according to Regional Board staff, review of annual submittals of Farm Evaluations and INMPs would require 99 personnel-years, a 550% increase over the status quo.

While the distinction between high-vulnerability and low-vulnerability groundwater areas may not be perfect, the Proposed Order would require significant expenditures of time, money, and other resources on behalf of members, coalitions, and Regional Boards. The current high/low vulnerability distinction strikes an appropriate balance despite its perceived imperfections, ensuring maximum groundwater quality protections on the 55% of acreage designated as highly-vulnerable while not completely overwhelming the resources of members, coalitions, and Regional Boards. Thus, CCA urges the SWRCB to retain the high/low vulnerability distinctions in the Proposed Order.

### *For Surface Waters*

The SWRCB has also removed the distinction between high-vulnerability and low-vulnerability areas for *surface waters*, despite there being no apparent rational basis for the SWRCB to reject such distinctions. As the Proposed Order notes, "[d]etermining whether an area is a high vulnerability area for surface water *does not necessarily suffer from the same level of technical uncertainty as the determination of high vulnerability areas for groundwater*" (emphasis added). Nevertheless, the Proposed Order summarily determines—without any analysis—that there is

“little utility” in retaining high-vulnerability and low-vulnerability distinctions for surface waters.

To the contrary, there is significant utility in retaining the high/low vulnerability determinations for surface waters in the Eastern San Joaquin River Watershed. There is utility in the distinction for ranchers, as those who are not in a high-vulnerability surface water area need not update their Farm Evaluation annually (but rather would only be required to do so every five years) and because they would not have to participate in-person at an outreach event annually. Thus, the high-vulnerability determination is useful to ranchers as it saves significant time (as well as any attendant costs and opportunity-costs associated with preparing an annual farm evaluation or in traveling to and attending an outreach event). Additionally, there is utility in the high/low vulnerability determinations for coalitions and for Regional Boards, as the decrease in Farm Evaluations and outreach events would lighten the burden on those bodies.

Where the SWRCB can think of no compelling reason for *rejecting* the Central Valley Water Board’s distinction between high-vulnerability and low-vulnerability areas for surface waters, they ought to defer to the Regional Board’s determination that the distinction is beneficial. Additionally, the SWRCB’s summary rejection of vulnerability distinctions for surface waters ignores the significant policy considerations which justify those distinctions. Thus, the SWRCB’s Proposed Order ought to retain high/low vulnerability determinations for surface waters.

### **Members Should Not be Required to Submit Farm-Level Evaluations Directly to CVWB**

Under existing practice and under the Central Valley Water Board’s Agricultural General WDR, Members typically submit their Farm Evaluations to the Coalition, which then summarizes and aggregates the members’ data and submits the aggregated data to the Regional Board. Individual data is submitted on a township level, rather than by field location. Under the Proposed Order, however, the SWRCB proposes requiring that every coalition member also submit their field-level data directly to the Regional Board.

The SWRCB notes that ranchers and other growers have “a strong and genuine concern...with regard to privacy,” but mischaracterizes these concerns as merely rooted in “competitive advantage and trade secret concerns.” While growers do indeed have serious privacy concerns with regard to competitive advantage and trade secrets, their privacy concerns are much deeper than those business concerns. While trade secrets and secret processes may be protected from disclosure by the Public Records Act, other sensitive information may not be shielded from public review upon submission to Regional Water Boards. Growers may be concerned that information relating to the locations of their operations will fall into the wrong hands, which could put themselves, their employees, or their families in danger from anti-agriculture extremists, could subject them to increased scrutiny and harassment from detractors and protestors, or could increase their risk of trespassers. At the very least, *any* information made publicly available via submission to a government agency could subject ranchers and other growers to increased scrutiny from the public, a threat which is especially troubling because much of the data made available will be decontextualized from any scientific meaning or on-the-ground impacts. Because of the increased scrutiny that would result from members of the public

opposed to certain agricultural activities, any direct submission of data to the Regional Boards which would be publicly-accessible rather than protected by a coalition will be treated with extreme skepticism by the ranching community.

Members have developed trusting relationships with their coalitions. This trust does not necessarily currently exist between regulators (Regional Boards) and the regulated (ranchers and other growers). If growers must now submit the same data to the Regional Boards as they do to their coalitions, it is also reasonable to assume that growers will be more guarded about the data they provide, and may be less open to seeking out assistance in improving water quality in circumstances where they fear such openness may expose them to enforcement actions or to lawsuits.

Direct submission of farm-level evaluations to the Regional Boards is also ill-advised because Regional Boards do not have the staff necessary to meaningfully evaluate and make use of farm-level evaluations. Coalitions are useful not only for safeguarding the privacy of members, but also because they condense a significant amount of data into a format that is digestible to Regional Board staff. Under the Proposed Order, the Regional Board would be charged with duplicating the efforts of the coalition, a task which is needlessly redundant and impossible at current staffing levels. Essentially, the Proposed Order creates a significant additional burden for Regional Boards and growers, without providing any tangible benefit.

The SWRCB's transmittal memo recognizes that direct submission of farm-level evaluations to Regional Boards is controversial, and outlines three alternatives for consideration by stakeholders. However, the most preferable alternative is one not listed: the status quo. Currently, coalition members must retain their farm-level evaluations, and they must submit the farm-level evaluations to the Regional Board *if requested do so*. This existing mechanism allows the Regional Board to access farm-level evaluations *when necessary* and when the data would be of *real value* to the Regional Board. The status quo strikes the proper balance between access to specific farm-level data (as it is available, upon request, for *every* member) and staff resources (because it allows staff to examine data where problems actually exist and may be cured in part by evaluation of farm-level data, rather than devoting resources to reviewing *every* evaluation regardless of its value). Thus, CCA urges the SWRCB to retain the status quo, where coalitions aggregate and summarize township-level data, but where every coalition member's farm-level evaluation is available to the Regional Board *upon request*.

Importantly, the status quo does not threaten water quality, as coalitions presently target outliers to ensure improvements in water quality moving forward. In fact, given Regional Board staff resources, coalitions are likely better-suited to such follow-up than the Regional Boards themselves, rendering the status quo preferable to the proposed alternatives.

Should the SWRCB nevertheless pursue one of the three alternatives laid out in the transmittal memo, Alternative 3 is preferable to the extent that data submitted to the Regional Board by the coalition does not identify the data by field location or name. While Alternative 3 would still be impractical at the coalition level and at the Regional Board level, it is the Alternative which best safeguards the privacy interests of growers, and is thus preferable to Alternatives 1 and 2.

## **The Proposed Order Would Result in Significant Costs for Ranchers**

During the May 4 workshop in Sacramento, members of the SWRCB and staff for the Central Valley Water Board affirmed a commitment to keeping irrigated agriculture viable in California, with Chair Marcus stating that “we’re committed to maintaining the economic viability of agriculture in our state” and Pamela Creedon stating that “[o]ur goal for this is to protect water quality but also keeping in mind the cost of compliance and the ability for agriculture to remain in business.” Unfortunately, the Proposed Order will significantly increase costs for ranching on irrigated pasture, thereby threatening the economic viability of ranchers’ operations.

While the Proposed Order recognizes “a number of cost benefits to the growers enrolled in a third-party program,” such as reduced monitoring and reporting costs, much of the Proposed Order imposes individual reporting mandates that negate those cost benefits of enrollment in coalitions.

The cost increase for ranchers and other growers is likely to be significant. Coalitions speaking at the workshops in Sacramento and Fresno testified that the Proposed Order would likely increase coalition fees by as much as 20% per acre. This increase in cost does not reflect the significant *direct* cost to the grower, such as the costs of conducting drinking water well testing, having INMPs and other plans professionally certified on an annual basis, additional reporting costs, and the costs and opportunity-costs associated with personally attending an annual outreach event, among other costs. Between direct costs and increased fees associated with the coalition and the Regional Board, the Proposed Order imposes significant additional costs that threaten the economic viability of many ranching and growing operations, particularly smaller operators.

But the costs associated with the Proposed Order cannot be viewed in a vacuum. Growers will already see increased costs arising from implementation of the Sustainable Groundwater Management Act within the state. Additionally, the SWRCB this year instituted new regulations regarding the monitoring and reporting of surface water diversions; the cost of compliance for growers on irrigated lands could be as high as \$19,100 *per diversion* according to SWRCB estimates. These are only two examples of a wide variety of regulatory costs (including those not associated with water use and water quality) that California’s growers must bear. The Proposed Order would result in significant increased costs for California’s growers, and when examined holistically along with the wide range of other regulatory costs faced by growers, the Proposed Order threatens the economic sustainability of a number of ranching and growing operations—precisely the opposite of the SWRCB’s stated intention of ensuring economic viability.

## **The SWRCB Should Provide Ample Additional Opportunity for Public Input**

During the May 4 workshop in Sacramento, Chair Marcus stated that “after [the written comment deadline], the Water Board will consider all the comments and will likely—though not always, but likely—release a revised Proposed Order for further comment before considering adoption of an order.” The workshops in Sacramento and Fresno underscored the importance and complexity of the Proposed Order, with a wide array of speakers addressing the SWRCB late into the evening. Given the complexity of the issue as well as the variety of alternatives and suggestions put forth and addressed at the workshop (and in the written comments that the

SWRCB will receive), CCA urges the SWRCB to carefully consider revisions to the Proposed Order. Whether or not significant revisions are proposed, however, the SWRCB ought to provide another opportunity for public participation prior to noticing potential adoption of the Proposed Order.

At the May 4 workshop in Sacramento, Chair Marcus underscored the importance of the workshops as an “opportunity for the various sides to hear from each other.” Unfortunately, many stakeholders not present at the Fresno meeting will not have had the opportunity to hear the perspectives addressed at that workshop, as the video of the Fresno meeting had not been posted on the SWRCB website as of the time of the written comment deadline. To ensure that all stakeholders are able to respond taking into account the full range of expertise and perspectives advanced at the May 17 workshop in Fresno, CCA again suggests that the SWRCB provide another opportunity for public input on the Proposed Order *before* it is noticed for adoption.

Finally, while Central Valley stakeholders have had opportunity to provide input at Sacramento and Fresno, this Proposed Order will likely be precedential for irrigated lands throughout California. Thus, the SWRCB ought to provide increased outreach and additional opportunity for input for agricultural users of irrigated lands *outside* the Central Valley who may be indirectly impacted by the Proposed Order.

## **Conclusion**

California Water Code § 13267(b)(1) dictates that “[t]he burden, including costs, of ...reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports.” As discussed above, the benefits of these additional reporting requirements are negligible, especially considering Regional Board staff’s protestations that they simply do not have the manpower necessary to meaningfully utilize the additional reporting required of coalitions and members under the Proposed Order. Additionally, the Proposed Order imposes steep increases in financial costs for growers, threatening the economic viability of ranching and growing operations. Given these realities, the additional burdens of the Proposed Order bear no reasonable relationship to the benefits the SWRCB hopes to achieve from the increased regulatory requirements, and thus these burdensome elements of the Proposed Order ought to be rejected under § 13267. CCA urges the SWRCB to revise the Proposed Order, retaining high- and low-vulnerability area determinations, removing the field-level reporting requirement, and making other changes as necessary to reduce the regulatory and economic burdens upon ranchers and growers.

Sincerely,



Kirk Wilbur  
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California Cattlemen’s Association