

**STATE WATER RESOURCES CONTROL BOARD  
EX PARTE COMMUNICATIONS REGARDING PENDING GENERAL ORDERS  
DISCLOSURE FORM**

*Note: This form is intended to assist the public in providing the disclosure required by law. It is designed to document meetings and phone calls. Written communications may be disclosed by providing a complete copy of the written document, with attachments. Unless the board member(s) provided you with a different contact person, please send your materials to: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)*

**Use of this form is not mandatory.**

1. Pending General Order that the communication concerned:

In the matter of Review of General Order No. R5-2012-0116, SWRCB/OCC Files A-2239(a)-(c)

2. Name, title and contact information of person completing this form:

*Note: Contact information is not mandatory, but will allow the Water Board to assist you if additional information is required. If your contact information includes your personal residence address, personal telephone number or personal email address, please use a separate sheet of paper if you do not want that information posted on our website. However, this information may be provided to members of the public under the Public Records Act.*

Dr. Karl Longley, Pamela Creedon, Adam Laputz, Clay Rodgers, Patrick Pulupa, Andrew Deeringer, Sue McConnell

3. Date of meeting, phone call or other communication: 4/12/16

Time: 11:00am

Location: CalEPA Headquarters, 1001 I Street, Sacramento, CA 95814

4. Type of communication (written, oral or both): Both



5. Names of all participants in the communication, including all board members who participated:

Steven Moore, Dr. Karl Longley, Pamela Creedon, Adam Laputz, Clay Rodgers, Patrick Pulupa, Andrew Deeringer, Sue McConnell, Emel Wadhwani

6. Name of person(s) who initiated the communication:

Pamela Creedon

7. Describe the communication and the content of the communication. *Include a brief list or summary of topics discussed at the meeting, any legal or policy positions advocated at the meeting, any factual matters discussed, and any other disclosure you believe relevant. The Office of Chief Counsel recommends that any persons requesting an ex parte meeting prepare an agenda to make it easier to document the discussion properly. Attach additional pages, if necessary.*

See attachment

8. **Attach a copy of handouts, PowerPoint presentations and other materials any person used or distributed at the meeting. If you have electronic copies, please email them to facilitate web posting.**

## **Draft State Board Order Addressing Petition of East San Joaquin ILRP General Order**

The Central Valley Water Board (CVWB) maintains that its Irrigated Lands Regulatory Program (ILRP), including the General Order issued to the East San Joaquin (ESJ) Coalition, fully complies with all applicable legal requirements, including the State Water Board's Nonpoint Source Policy and the Antidegradation Policy. Therefore, it would appear that the proposed mandates in the draft State Water Board Order (draft Order) primarily reflect the State Water Board's policy interest in adding "greater specificity and transparency" to the CVWB's ILRP and to similar programs undertaken by other Regional Boards.

However, several of the mandates in the draft Order introduce costly redundancies that threaten to undermine a highly successful and carefully-balanced regulatory structure that was the product of over 10 years of stakeholder outreach. These include mandates that direct growers to report individual farm-level management plans to both their coalitions and the CVWB, and new mandates regarding nitrogen accounting. Since these mandates neither provide any ascertainable water quality benefits over the near-term, nor do they respond to legal deficiencies in the current set of General Orders, it is the opinion of the CVWB that these mandates are not warranted. In this briefing document, the CVWB describes its rationale for opposing several mandates currently under consideration in the draft Order. Because the draft Order is precedential, the following discussion includes potential impacts to both the ESJ Coalition and to the entire ILRP.

When the CVWB developed the ILRP, it considered a wide range of alternatives. This range of alternatives included scenarios where individual farms would submit data and plans directly to the CVWB for analysis and scenarios where all information would go to a coalition for summary reporting. In considering the alternatives, the CVWB weighed factors such as:

- Need for the information to protect water quality
- Compliance with the Nonpoint Source and Antidegradation Policies, as well as the Water Code
- Cost of obtaining the information
- Program effectiveness (how can we be most effective in program implementation?)
- Need to leverage local resources
- Board staffing to implement the program
- Need to collect "quality" data

Specific to the issue of transmittal of nitrogen management plans, farm plans, and farm specific data for each operation, the CVWB weighed the need for this information against costs, and whether the information is required by policy and law. In considering these factors, the CVWB found that specific individual data (such as A/Y ratios and farm evaluations) are best transmitted to the coalitions and summarized for the CVWB, thus leveraging local resources in gathering good data, keeping costs down, and providing the information needed to protect water quality. Also, the CVWB was keenly aware that gathering individual information for 35,000 operations, spanning roughly 7 million acres, and multiple commodities, would overwhelm the CVWB's limited resources, could result in a situation where the information, once received by the CVWB, would simply "sit on the shelf," having not been properly reviewed by staff.

However, while the CVWB placed the burden on the coalitions to aggregate and summarize farm-specific data and plans, the CVWB was also adamant that the coalitions provide all data to the CVWB upon request, should the CVWB deem such information necessary for focused compliance audits. All of the ILRP Orders contain provisions effectuating this concept. Ultimately, the CVWB found that this framework met the requirements of the Nonpoint Source Policy and Water Code. While growers and coalitions argued that all farm-specific data be kept confidential, the CVWB rejected these arguments and instead based its decision on the above factors.

Ultimately, the CVWB is respectful of the policy direction contained in the draft Order. However, it is the opinion of the CVWB that there are better ways to implement this policy direction. For instance, it is well within the

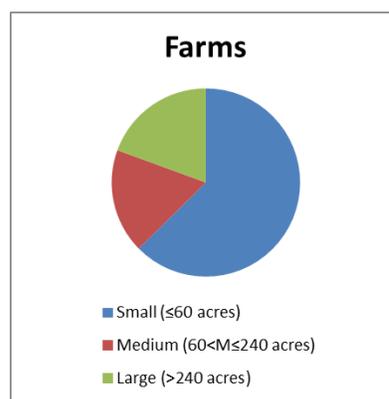
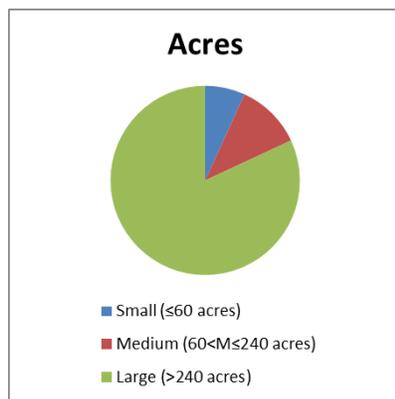
State Water Board’s authority to adopt statewide policies that require greater individual grower accountability or that promote specific means of on-farm nitrogen accounting practices. Adopting such forward-looking policies, rather than mandating changes to existing orders, would give the CVWB and all other affected regions the opportunity to reconvene stakeholder outreach efforts in order to find cooperative means of integrating these policy goals into the next iteration of ILRP General Orders. In the view of the CVWB, mandating substantial and disruptive changes to existing successful regulatory programs does a disservice to water quality and to the communities of the Central Valley Region.

**IRRIGATED LANDS REGULATORY PROGRAM BACKGROUND**

**Table 1. Farm size in Central Valley Region**

Size	Farms	Acres
Small (≤60 acres)	21,368	528,295
Medium (60<M≤240 acres)	6,132	871,150
Large (>240 acres)	6,627	6,347,150

\*From Programmatic EIR; acreage estimates have changed but relative distribution should hold



- Table 1 shows the number of small farms is almost twice that of medium and large farms combined. Smaller farms require more CVWB staff resources for compliance and outreach, especially when there are language barriers and if growers don’t join the coalitions.
- The ESJ General Order was developed through an extensive stakeholder process, EIR, and economic analysis over multiple years. In contrast, the draft Order has been developed without the benefit of this exchange, and has not adequately estimated the potential costs and program impacts of the proposed changes. Also, there is no meaningful environmental or cost analysis justifying such far-reaching changes.
- Current annual cost to the ESJ Coalition is about \$2.8 million, which does not account for management practice implementation, reporting or grower time for outreach and training.
- The ESJ Coalition has successfully addressed a significant number of the surface water quality exceedances through the implementation of management plans (see Table 2 below).
- The ESJ Coalition has collected over 50,000 surface water data points since the start of the ILRP.

**Table 2. Current CVWB ILRP Cost and Summary of Successful Management Plans**

	East San Joaquin Coalition	Central Valley coalitions
Cost of ILRP	\$2.8 million*	>\$23 million
Management Plans developed	216	873
Management Plans completed	48	141
Surface Water monitoring	>50,000 data points	>300,000 data points

\*Cost based on grower fees collected by ESJ Coalition.

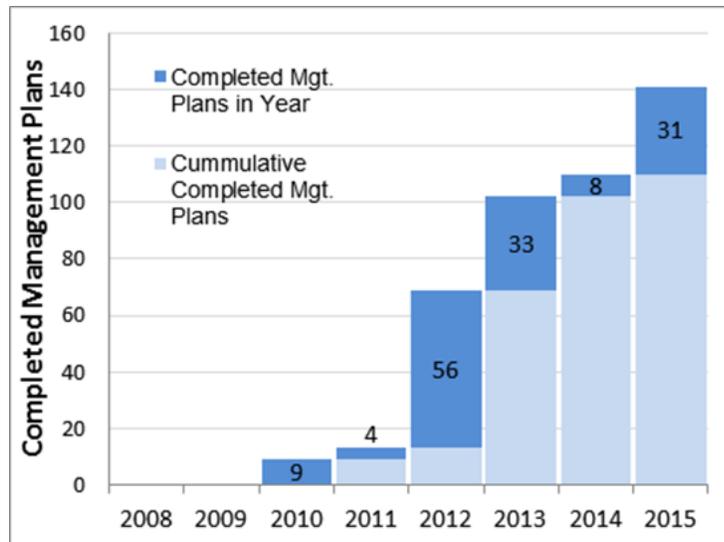


Figure 1: Surface water quality problems successfully addressed

### DRAFT STATE WATER BOARD ORDER – NEW REQUIREMENTS

Draft requirements of the draft Order are discussed below (underlined text); with following bullets providing effects and concerns of these requirements.

All members must monitor all domestic wells with data reviewed by CVWB. CVWB must also conduct follow-up to ensure safe drinking water. [ILRP does not currently require domestic well monitoring.]

- CVWB Impact:** With about 35,000 farms region-wide and 2+ wells on average, there will be greater than 100,000 new data points generated per year. The CVWB would need significant resources to review this data in a timely manner and to conduct the needed follow-up to ensure that public health is protected. Table 5 (below in Economic and Programmatic Discussion) estimates the minimal staffing needed to implement this requirement effectively. Also, in other regions (e.g., the Central Coast Water Board), there are County Health Department programs/resources in place to help facilitate, outreach, and provide this sampling; this is not necessarily the case throughout the Central Valley. In many areas, the Board would need to take a lead role to ensure the data collected is high quality, and representative of conditions (outreach and training needs). This will be such a major draw on resources, especially when considering the number of small farms, that the CVWB would not have the capacity to handle this requirement effectively. The State Water Board should consider leveraging the capacities of the Division of Drinking Water and local public health departments.
- Policy Impact:** The CVWB supports the Human Right to Water and will continue to work with Disadvantaged Communities to ensure there is access to safe drinking water. However, while the CVWB clearly understands and appreciates the need to address this important public health issue, we are concerned that this requirement is solely focused on one discharger category (such monitoring requirements are not required for any other discharger type or individual domestic well holder), and that the CVWB will be unable to meet this requirement with current resources. In addition, the CVWB suggests that, by solely addressing nitrates, the State Water Board may foreclose the development of more holistic approaches that would also address common constituents that are equally harmful to public health such as pathogens, pesticides, arsenic, chromium VI, etc. Finally, there is no discussion of the need for source identification, thereby neglecting to consider other possible sources of nitrate contamination, including functioning or failed septic systems. Instead of implementing this requirement through waste discharge requirements, the CVWB believes this

type of program should be implemented through a much broader, statewide approach that would involve domestic drinking well owners, the Division of Drinking Water, and local public health departments.

- **Cost Impact:** Tables 3 and 4 (below in “Economic and Programmatic Discussion”) summarizes the cost impact of gathering this information, conducting outreach and training, and other requirements. Note that the growers and the coalition will need to absorb substantial increased costs associated with the draft Order. The draft Order is silent on these costs.

All members must develop certified INMPs, participate in outreach events, and submit INMP summary reports and farm evaluations to the Coalition annually. Coalition must transmit individual INMP summary reports and farm evaluations to the CVWB for review. [These requirements are currently limited to growers in high vulnerability areas, and duplicate reporting of raw data the CVWB is not required]

- **CVWB Impact:** Under the draft Order, there would be approximately 35,000 farms or about 70,000 documents for the CVWB to review annually w/ approximately 18 PY. It would be infeasible to review all that data with current resources. When adopting the ILRP Orders, the CVWB seriously weighed the burden associated with a wide variety of data collection and reporting options, relative to the water quality benefits associated with these different options. The CVWB believes that the reporting requirements established in the existing ILRP will indeed provide the CVWB with the information needed to determine the effectiveness of its program to address water quality concerns. We do not agree additional data for the sake of collecting the data is warranted. The draft Order requires that the CVWB use the newly-obtained data to verify accuracy of Coalition submittals and appropriateness of Coalition actions. Currently, CVWB does not have staffing, programmers, or data managers to complete this task, nor do we have financial resources to contract out for this work. Under the current CVWB ILRP General Order, the coalitions collect, compile and analyze a vast amount of data, and then report this data in a format that allows the CVWB to both efficiently evaluate areas of concern and mandate improved practices in such areas. At any time, the CVWB has full access to all the data. Further, the current ILRP allows for Board audit and reasonable targeted analysis which leverages coalitions, allows for enforcement, and is not overly burdensome and costly. Table5 (below) estimates the minimum staffing needs for the CVWB to implement the draft Order Valley-wide.
- **No Policy Analysis Justifying Need:** The Nonpoint Source policy does not mandate field-level reporting; it simply requires “sufficient feedback mechanisms so that the [Regional Board], dischargers, and the public can determine whether the program is achieving its stated purpose.” Nowhere has the draft Order supported a finding that the CVWB’s ILRP falls short in this regard, and the CVWB suggests that the ILRP’s demonstrated success in rectifying numerous water quality impairments points in the opposite direction. *[As shown in Table 2 and Figure 1 above, the ILRP has been very successful in addressing water quality concerns (management plan completion) under the current framework]*
- **Rubber-Meets-Road Program Concerns:** Coalitions are “voluntary.” The draft Order undermines the usefulness and benefit of coalitions in the eyes of growers by requiring duplicate reporting and fostering a lack of confidence in coalition summaries. Consequently, growers may decide that participation in a coalition is not worth the higher fees that coalitions will have to impose to implement the draft Order. Coalitions very well may fold altogether, setting the ILRP back a decade and possibly requiring the CVWB to start over with a different framework entirely. (As part of the development of the EIR for the CVWB’s ILRP, the CVWB considered a regulatory framework without coalitions: “minimum” estimated staffing for such a program is 360 PY.)
- **Additional Grower/Coalition Costs:** Tables 3 and 4 (below) summarizes additional costs associated with these new requirements.

CVWB to work with other Water Boards to develop multi-year A/R ratio target values within three years of having the nitrogen removed coefficient for the relevant crop.

- **CVWB Impact:** The proposed Order requires coalitions to submit PDF reporting documents to the CVWB until a State database is available to receive the data electronically. The proposed Order indicates this could take up to 2 years. This means electronic data will be unavailable to begin conducting this analysis for ~2 years, resulting in difficulty for the CVWB to meet this requirement. More importantly, the CVWB does not have the level of expertise or knowledge in farm or crop management needed to develop the targets required resulting in the need for outside resources. CVWB does not have the resources to contract the work nor the programming staff to analyze such data.
- **Policy Impact:** Setting an A/R target ratio does not equate to protecting water quality. The CVWB's ILRP has a process in place to conduct representative groundwater monitoring to equate on-farm A/R target ratios with water quality protection: the Management Practices Evaluation Program (MPEP). This process will take time, but it is the key to achieving the goals of protecting water quality, setting protective A/R targets, and ensuring consistency with the Nonpoint Source Policy and Water Code. Setting A/R target ratios without the MPEP process ignores the need to understand the effects on nitrogen leaching to groundwater. Also, the draft Order is silent on integrating farm management with nutrient management and monitoring to determine what is truly effective at protecting WQ while allowing a grower to maintain a viable farming business. The MPEP serves this function.
- **Coalition Impact:** Before the CVWB is able to develop A/R targets, the coalition is required to develop coefficients for nitrogen removed and nitrogen sequestered for growers to make the nitrogen-removed calculations. This task requires significant resources and support from the scientific community. The current ILRP requires the individual growers to develop and report the A/Y values to the Coalitions. All the Coalitions within the CVWB are tasked with developing accurate coefficients to translate the A/Y values to A/R values. This was done to ensure a consistent application of coefficients throughout the region, and to ensure the coefficients were developed based on adequate and proper research and scientific studies. The CVWB believes that having growers make individual nitrogen-removed calculations will introduce more error into this process. More error would result in higher outreach costs and poor data quality, which would render the program ineffective. Under the current IRLP, a feedback loop is included to ensure the growers are aware of their practices. The Coalitions are required to report the A/R values back to the growers. In addition, the Coalitions will also provide additional data to the growers to make them aware of how their values compare to other growers. Finally, the Coalitions are also required to work with growers that have significantly higher ratios.

Revise surface water monitoring program to meet NPS Policy (without meaningful direction).

- **Policy Impact:** The draft Order indicates that CVWB's representative monitoring of surface water is "not enough," but fails to recognize the following: that this program has been developed under the consideration of expert working groups, that monitoring sites must be fully representative of agricultural conditions, that it is similar to our sampling programs for stormwater (e.g., MS4s do not sample every watershed), that it has very effectively located problems and facilitated solutions throughout the Central Valley, that it is designed to trigger additional sampling to follow-up on problems, and that it requires protective management practices in represented watershed areas (areas not directly sampled, but "represented" by another location).

The draft Order fails to justify the need for more without considering the added cost to the monitoring program, cumulative cost when considering all of the draft Order's requirements for growers, or regulatory resource needs to implement and enforce the draft Order. The draft Order also fails to recognize the success of the current surface water monitoring effort, as shown in Table 2 and Figure 1 above.

- **Resource/Cost Impact:** The proposed changes would require revising all CVWB Orders to include additional surface water monitoring. This will require substantial staff resources and additional costs to growers and coalitions.

**Potential Benefits of Draft Order**

- Collecting domestic drinking well water quality data; notification of pollution.
- Addition of irrigation management component in INMP.

**ECONOMIC AND PROGRAMMATIC IMPACT**

- Increased reporting for growers, coalitions, and CVWB.
- Increased analysis and redundant data management for coalitions and CVWB.
- Concern about viability of coalitions and current regulatory structure.
- Significant data management and resource concerns for CVWB.

**Table 3 Increases in grower and Coalition costs per acre/year** (does not include Water Board staff – any increase in staffing will lead to higher state fees.)

East San Joaquin*	Current Cost	Post Order Cost	Change/yr (ESJ)	Change/yr (region)
Administration	\$ 0.85	\$ 1.28	\$ 300,000	\$ 2.4 million
Education	\$ 0.68	\$ 1.24	\$ 390,000	\$ 3.1 million
Farm plans	\$ 0.71	\$ 0.84	\$ 90,000	\$ 730,000
Monitoring/reporting/tracking	\$ 3.66	\$ 5.70	\$ 1.4 million	\$ 11.4 million
Management practices	\$ 113.34	\$ 113.34	\$ 0	\$0
<b>Total</b>	<b>\$ 119.24</b>	<b>\$ 122.40</b>	<b>\$ 2.2 million</b>	<b>\$ 17.7 million</b>

\*Costs from Programmatic EIR; assumes 50% increase in coalition administration costs

**Table 4. Summary of increased cost drivers in Draft Order requirements**

Annual Grower Costs	Current Cost (ESJ)	Draft Order Cost (ESJ)	Draft Order Cost (region)
Domestic well monitoring (Year 1)*	\$ 0	\$ 2.1 million	\$ 18 million
Domestic well monitoring (Post-Year 1)*	\$ 0	\$ 390,000	\$ 3.3 million
Certified INMPs**	\$ 740,000	\$ 1.4 million	\$ 11 million
Outreach Attendance**	\$ 470,000	\$ 860,000	\$ 7 million
Farm Planning (FE, SECP, NMP)**	\$ 490,000	\$ 580,000	\$ 6.2 million
NMP Summary Report**	\$ 360,000	\$ 660,000	\$ 2.9 million

\*Based on 2016 unit costs.

\*\*Costs based on Programmatic EIR (2010 dollars), updated to reflect change from high vulnerability to total acreage applications, as appropriate.

**Table 5. Minimal Staffing Needs to Implement the Draft Order in the Central Valley**

Minimum Staffing Needs to Implement Draft Order Central Valley-wide	Current PYs	Post Order PYs (minimum)
Central Valley ILRP staff (for entire region)	18.7	90* [at staff to irrigated lands acreage ratio similar to R3's current program]

\*90 PYs = more than all Regional Boards' ILRP staff combined. In the development of the program, the CVWB considered the staffing needs for comprehensive data submittals directly to the CVWB and found that the burden and costs of obtaining/reviewing the information outweighed the need for the data when considering potential benefits to water quality.