

**State Water Resources Control Board
Eastern San Joaquin Agricultural General Order Petitions
Wednesday, October 19, 2016 Staff Workshop**

MINUTES

1. Purpose of staff workshop

State Water Board staff explained the intent of the meeting was not to provide public comment to the Board, but to allow discussion on comments previously provided, in order to assist staff in drafting the next version of the order. Projected date for release of the next draft order is January 2017. There will be an opportunity for additional public comment at that time. The staff workshop will be made part of the administrative record for the proceedings.

2. Introductions and identification of parties and other stakeholder representatives

Meeting Attendees:

State Water Resources Control Board: DeeDee D'Adamo, Darrin Polhemus, Ashley Zellmer, Phil Wyels, Emel Wadhwani, Shahla Farahnak, Johnny Gonzales, Scott Couch, Eric Gillman, John Borkovich, AnnMarie Ore

Parties:

Central Valley Water Board: Sue McConnell, Adam Laputz, Andrew Deeringer, Patrick Pulupa
East San Joaquin Water Quality Coalition: Parry Klassen, Tess Dunham, Michael Johnson, Melissa Turner
Community Water Center: Laurel Firestone, Debi Ores
California Rural Legal Assistance: Marisol Aguilar
California Sportsfishing Protection Alliance: *no representatives present*
San Joaquin County Resource Conservation District (on behalf of the San Joaquin County and Delta Water Quality Coalition): Jennifer Spaletta
California Farm Bureau Federation: Kari Fisher, Danny Merkley
Southern San Joaquin Valley Water Quality Coalition: Bill Thomas

CDFA: Barzin Moradi, Amadou Ba, Mark Cady, Jenny Lester Moffitt

Other stakeholder representatives/attendees: Thomas Harter (UC Davis), Phoebe Seaton (Leadership Counsel), Jennifer Clary (Clean Water Action), David Cory (SJVDA), Charlotte Gallock (Westlands Water District), Mike Wackman (SJC&DWQL), Donald Ikemiya (KBWQA), Steve Shimek (Otter Project), John Schaap (KRWCA), Nicole Bell (KRWCA), Mike Claiborne (Leadership Counsel), Sean Bothwell (Coastkeeper), Adam Bolt (CWC), Bruce Houdesheldt (SVWQC), Chris McGlothlin (WPA/CCGGA), Velvet Gaston (KRWCA), Rachel Kubiak (WPHA), Nina Robertson (Earth Justice), Kirk Schmidt (CCWQP), Abby Taylor Silva (Grower-Shipper), John Dickey (SSJV)

- 3. Measuring and reporting nitrogen application and removal (Irrigation and Nitrogen Management Plan)**
 - a. Data appropriate to be reported by the growers to the coalitions – INMP Summary Report**
 - b. Development of coefficient to convert crop yield to nitrogen removed**
 - c. Calculations that should be performed by the coalitions**
 - d. Accounting for nitrogen in irrigation water**

Discussion centered on values that should be reported by the growers and calculations that should be conducted by the coalition to facilitate ease of reporting and reduce errors in reporting. State Water Board staff suggested for consideration having growers only report nitrogen applied values and yield, with the coalitions calculating nitrogen removed and A/R and A-R. Grower representatives conveyed sensitivity of reporting yield values.

Several attendees raised concerns with the specificity and detail of the template INMP Summary Report proposed by the State Water Board staff and suggested that the State Water Board should provide general guidance and leave the details of the forms to the regional boards and coalitions. Several attendees also relayed that crop patterns differ significantly between areas and regions, requiring flexibility in determining values to be reported.

State Water Board staff additionally sought feedback on how to allow credit for growers applying irrigation water with high nitrogen values, such that such growers are not considered outliers for purposes of following up on excessive nitrogen application.

Attendees reported that Central Valley coalitions have made significant progress toward development of the coefficients for conversion of yield to nitrogen removed.

- 4. Development and use of A/R ratio action levels**
 - a. Use of three-years' reported data for development of initial A/R ratio action levels**
 - b. Further refinement of A/R ratio action levels**
 - c. Interim measures needed to encourage reduction in nitrogen application while action level development is progressing**

State Water Board staff conveyed need for work to proceed on two tracks: (1) Long-term development of appropriate action levels (not firm regulatory limits) for A/R or A-R values and (2) Short-term use of multi-year A/R or A-R values to address and reduce excessive application of nitrogen by identifying outliers. State Water Board staff solicited comment on how to determine outliers for purposes of short-term follow up and in particular sought suggestions for alternatives to the staff order's proposal of relying on a standard deviation from the mean to identify outliers. Several attendees proposed that broad, general education of all growers should be emphasized over identification of outliers. Others suggested that follow up with outliers was appropriate but that not enough data was available at this point to determine how outliers should be defined. The Central Valley Water Board staff supported follow up to control excessive application, while development of solid metrics for appropriate application proceeds with aid of the Management Practice Evaluation Program (MPEP). Environmental

and EJ representatives requested that the process focus on the end goal of water quality protection and that the State Board set expectations for these goals now. The representatives further noted the value of tracking a township-level A/R metric over several years to determine if grower education and follow up is in fact working to bring down nitrogen application levels.

5. Management Practices Evaluation Program

- a. Purpose and expectations**
- a. Number of studies, time frame, and cost**
- b. Manner in which may inform A/R ratio action levels**

State Water Board staff conveyed that the purpose of and expectations for the MPEP are difficult to pin down because different parties appear to have different visions for what it will accomplish and because the program is evolving. Additionally, there appears to be overlap between the functions of the MPEP, the Groundwater Quality Management Plans (GQMP), and the development of A/R target ratios. State Water Board staff stated that there are current, proven-effective, universal management practices, such as irrigation management, that should be implemented now for nitrogen management and not be delayed for further study.

Discussion indicated that the existing MPEP work plan focuses on studying the effectiveness of management practices in protecting water quality under different site-specific conditions; however, the Central Valley Water Board staff and some stakeholders also view the MPEP as an opportunity to refine A/R action levels/agronomic goals. There was no clear consensus as to the exact scope of the MPEP and it is expected to continue to evolve. Stakeholders generally agree, however, that the ultimate purpose of the MPEP must be to provide the link between practice implementation and water quality results, and that short-term feedback and outreach must proceed on a parallel track (such as through the GQMP).

6. Reporting individual data to the regional board

- a. Pros and cons of individual data reporting**
- b. Consideration of anonymized (no name, no location) data reporting for outlier identification and A/R action level development**
- c. Continued township level reporting for groundwater modeling purposes**

7. Auditing as an alternative to reporting individual data to the regional board

- a. Meeting applicable auditing goals (data validation, validation of summary calculations, peer review/analysis of alternate summary methods, data security)**
- b. Regional board vs. third party auditing**

State Water Board staff sought feedback on a potential “middle ground” alternative to individual field-level data reporting: coalition reporting of field-level data to the regional board, but without a name or specific location identifier. Growers would continue to report field-level data to the coalition and the coalition would anonymize the data by assigning a pin identifier prior to submitting the data to the Central Valley Water Board. The data could be accompanied by a generalized location identifier, such as township or county identifier.

State Water Board staff conveyed that significant comment had been received suggesting that the field-level reporting proposed by the staff draft order would lead to many growers pulling out of the coalitions, potentially jeopardizing the existing coalition-based regulatory structure. However, State Water Board staff also emphasized that there is continued need to ensure public confidence that the program is working and to ensure that coalition reported data and outcomes are verified – i.e. accurate, reliable data is reported, analyses are appropriately done and presented, reported outcomes are accurate, and data is securely stored.

State Water Board staff acknowledged that one option to address this concern is to continue with the summary data reporting as currently carried out in the East San Joaquin program, but add a robust, third party auditing mechanism. But the State Water Board staff stated that some of the functions of the auditing program could alternatively be met by the reporting of anonymized individual field-level data. The data would then be available for verification of coalition analyses and for additional research.

Feedback on the proposal was varied. The discussion centered on a number of issues, including whether individual grower accountability is required for water quality results, whether coalition-reported summary data combined with robust auditing is a sufficient substitute for individual accountability, the level of transparency appropriate for a regulatory program, and whether auditing is appropriately conducted by a regional water board (as currently anticipated in the East San Joaquin Order) or a third party. State Water Board staff and stakeholders agreed to further discuss these questions at the November 18, 2016, staff workshop, with consideration of more specific auditing options and additional feedback on the option of anonymized field-level data reporting.

8. Drinking water well monitoring

- a. Option of direct reporting by laboratories to GeoTracker**
- b. Appropriate constituents for testing**
- c. Replacement water**
- d. Legislative options and timing**

State Board staff stated that the next draft order could allow drinking water well monitoring to rely on direct lab reporting to GeoTracker and thereby remove the role of the coalitions in such reporting. Additionally, staff expected to further refine its proposal to account for the legal authority of owners/lessees in carrying out testing. However, State Water Board staff asked for further discussion on the suite of constituents for which testing should be required. Discussion among stakeholders centered on the legal authority under the Water Code to require testing for constituents that may arguably not be related to agricultural discharges. Staff and stakeholders agreed that continued discussion was warranted at the November 18 workshop.

Attendees also briefly discussed comments from EJ representatives regarding the need for a stronger statement from the State Board regarding provisions of replacement water where a tested well exceeds nitrate MCLs. Agricultural representatives indicated that growers have generally provided replacement water voluntarily in the Central Coast, but attendees disagreed as to whether a requirement for the provision of drinking water is appropriate or legally supported in the context of the agricultural orders.

9. Farm Evaluation

- a. Reporting frequency**
- b. Content of form**
- c. Level of reporting to regional board**

The discussion focused on the appropriate frequency of reporting of management practices. Central Valley Water Board staff reiterated its position that management practice reporting is valuable, but indicated that annual reporting is not necessary in all cases because practices tend to be stable from year to year. If vulnerability distinctions (which were eliminated in the staff-proposed order) are not restored, there should still be some mechanism for lowering frequency. Options may include executive officer discretion, or requiring annual reporting only in water quality management areas.

10. Vulnerability determinations and phasing

- a. Certification of INMP**
- b. Submission of INMP Summary Report**
- c. Education**

State Water Board staff invited discussion on whether the above requirements should be applied uniformly to all growers and, if not, if vulnerability distinctions should be restored to allow for lower reporting requirements for some growers or areas. Agricultural representatives advocated for keeping the vulnerability distinctions for purposes of variable reporting requirements, allowing them to manage workload in a manner that imposes requirements on the highest risk dischargers as well as acknowledge areas or crops that are less likely to have water quality impacts. Environmental and EJ representatives emphasized the importance of maintaining some minimum level of reporting for all growers.

11. Precedential nature of Order

In general, attendees relayed that some of the specific findings and direction of the staff-proposed order would not make sense when applied to certain crops or hydro/geological conditions. Attendees also asked the State Water Board staff to consider whether setting a precedent may discourage other regional boards from adopting more stringent conditions in some programs. State Water Board staff indicated that it intended to provide more direction on the manner in which any adopted order will or will not be precedential and that, while some parts of the order may be specifically precedential, other parts of the order may provide a set of guiding principles rather than making the exact details of the East San Joaquin Order precedential.

12. Time permitting, open forum (2 minutes per speaker)

No speakers asked for open forum.

13. Next steps and adjourn

Additional staff workshop will be held November 18 to continue discussion on individual field-level data reporting and drinking-water well monitoring, as well as to discuss surface water discharge monitoring.