

**California Citrus Mutual
California Farm Bureau Federation
California Rice Commission
Dairy Cares
East San Joaquin Water Quality Coalition
Sacramento Valley Water Quality Coalition
San Joaquin County and Delta Water Quality Coalition
Western Plant Health Association
Westside San Joaquin River Watershed Coalition**



August 7, 2014

Via Electronic Mail Only

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814
commentletters@waterboards.ca.gov

SUBJECT: Comments on Agricultural Expert Panel Draft Report

Dear Ms. Townsend:

The above-listed agricultural organizations/entities have reviewed the draft report titled, *Conclusions of the Agricultural Expert Panel: Recommendations to the State Water Resources Control Board pertaining to the Irrigated Lands Regulatory Program* (Draft Report). Many of the above-listed organizations have been involved in developing and implementing the irrigated lands program in the Central Valley since its earliest inception in 2003. Accordingly, the above-listed organizations/entities are exceedingly familiar with the Central Valley irrigated lands program requirements as currently established, the legal requirements that the water boards must address, and the growers who are subject to the requirements imposed on them through the various waste discharge requirements (WDRs), which collectively are considered to constitute the Central Valley's irrigated lands program. Based on this collective knowledge, the above-listed organizations/entities provide the following collective comments to improve the usefulness and practical implementation of many of the recommendations contained in the Draft Report as it relates to the Central Valley's irrigated lands program. We understand that the Draft Report may impact other regional irrigated lands programs; however, these comments pertain only to its relation to the Central Valley irrigated lands program.

Further, the comments presented here are those that have been agreed on by the above-listed organizations/entities. To the extent that these organizations/entities have additional comments, they will be so provided under separate cover from the individual organizations/entities.

As a preliminary matter, we appreciate the time and attention that the Agricultural Expert Panel (Expert Panel) members have given to consider and answer the questions posed by the State Water Resources Control Board (State Water Board). In particular, we appreciate their ability to provide a Draft Report for public review and comment in such a short amount of time considering the complex questions put before them.

These comments are presented in a manner that corresponds with statements made in the Draft Report, as they appear consecutively.

I. Essential Background Concepts

The Draft Report appears to question the utility of some of the current monitoring approaches contained in the Central Valley WDRs. We recognize that a certain amount of monitoring is necessary to establish data trends, and that representative monitoring will need to occur as part of the Management Practice Effectiveness Program. Further, we understand that regional boards need some level of reporting from the coalitions to ensure that participant members are taking actions to improve their cultural practices, where necessary, to better protect groundwater quality. Although the monitoring and reporting itself does not necessarily protect groundwater quality directly, it establishes a certain level of accountability that is a given part of any regulatory program.

Based on this understanding, the coalitions and commodity organizations in the Central Valley worked closely with the Central Valley Regional Water Quality Control Board (Central Valley Water Board) and its staff to develop an overall monitoring program that provided the Central Valley Water Board with an appropriate level of information, without overburdening the coalitions and their grower members. We continue to work with Central Valley Water Board staff to develop monitoring work plans that strike a balance between the Central Valley Water Board's data and information needs and the need to ensure that such plans are efficient and technically sound.

The Draft Report also suggests that the recommendations contained therein are a "paradigm shift" in regulatory approaches to reduce nitrate levels in groundwater. Further clarifications as to how the recommendations constitute a paradigm shift with respect to reducing nitrate levels in groundwater would be helpful. We agree with the Expert Panel that with respect to reducing future nitrate levels from agriculture, sound nitrogen management is essential. However, we believe that this fundamental premise already exists in the irrigated lands program. Perhaps the Expert Panel was trying to convey that compliance with the irrigated lands program in general for individual growers, or at least with the nitrate components of the irrigated lands program, should be based on implementation of sound

nitrogen management, and that such management should be set forth in a management plan. In the legal context, such compliance is often referred to as creating a presumption of compliance. In other words, as long as a grower has an appropriate nitrogen management plan, and is implementing the plan, it will be presumed that the grower's practices are protecting groundwater. We generally agree with such an approach as it specifically pertains to nitrogen management.

First, however, we must express concern with the inclusion of irrigation management as being a key component in the irrigation and nitrogen management plans as envisioned and explained in the Draft Report. While we understand and agree that irrigation management is often a component of nitrogen management, issues associated with irrigation and water use efficiency are much broader than those related to nitrogen management and water quality in general. Consequently, we would be concerned with a nitrogen management plan requirement in the Central Valley WDRs that includes irrigation management. Such a requirement could result in irrigation management being excessively controlled by this one issue. This could have unintended consequences for irrigation management, water use, and production. Thus, irrigation management should not be a detailed, mandatory requirement in the nitrogen management plan, as we understand the Draft Report to recommend, but an individual component that is left to each grower to address based on the total needs of their farming operation.

Second, to further complement this approach of presuming compliance based on implementation of sound nitrogen management practices, we believe that it would need to be in conjunction with other work to evaluate the effectiveness of management practices, which is a key component of the Central Valley WDRs. In other words, nitrogen management plans cannot stand alone, and must be complemented with research (e.g., literature review and focused field studies) to ensure that the management actions identified in these plans are effective in protecting groundwater. Through this process, practices that are by themselves inadequate to protect groundwater would need to be complemented with others, or modified. This would clearly be an iterative approach as new information is developed. Further discussion is provided below.

Next, the Draft Report comments that regional boards are "over-tasked by their legislative charge to protect beneficial uses of groundwater in the context of the IRLP and other agricultural orders (e.g., the Dairy General Order)." We request that additional clarification as to the intent and the purpose of this statement within the context of the Draft Report be provided.

II. Risk and Vulnerability

While we appreciate the Expert Panel's comments with respect to confusion surrounding the terms "high vulnerability" and "risk," within the Central Valley irrigated lands program there is a general understanding of what is meant by identifying "high vulnerability areas," and the practical implications of the terms. Specifically, the agricultural

coalitions in the Central Valley have either already prepared a Groundwater Assessment Report to determine which of their covered areas are highly vulnerable, or are in the process of preparing such reports. The value in identifying areas that would be considered highly vulnerable, based on the criteria established in the WDRs, is that it allows coalitions to identify and prioritize areas that merit greater emphasis on nitrogen management. The diversity of hydrogeologic settings, topography, climate, soils, and crops throughout the Central Valley, and within each coalition area, coupled with the scale of the land area being addressed, suggest that such prioritization is both possible and of great practical value in the administration of this program.

Further, while the definition of “high vulnerability area” may be ambiguous as it appears in the Central Valley WDRs, the determination of “high vulnerability area” is assessed as part of a process that occurs during and through the development of the Groundwater Assessment Report. Such reports consider many different types of data and information, including but not limited to: land use/cropping pattern, climatic, water supply, subsurface (soils, geology, hydrogeology, groundwater quality) and management data, publicly available monitoring well data, and other relevant information. Through the collection and analysis of these data, high vulnerability areas are then identified. Thus, although it is difficult to agree on a definition, the process for identifying such areas includes consideration of a significant number of important factors and variables, and is subject to review and approval by the Central Valley Water Board’s Executive Officer. For these reasons, we do not agree that the high vulnerability areas methodology, as utilized by coalitions, should be abandoned. As we indicated previously, such designations serve an important purpose with respect to the administration of the program, and most importantly, such determinations are made through a sound, iterative process that considers relevant data and information.

III. Application of Management Practices

As stated previously, we agree that nitrogen management plans are an essential component for reducing nitrate discharges into groundwater from agricultural activities. And, the Central Valley WDRs require them for all growers, regardless of whether the area they farm is designated as highly vulnerable. Further, nitrogen management plans remain on the farm, and are available for review by regulators if necessary. In the Central Valley WDRs, operations in areas designated as low vulnerability are not required to have their nitrogen management plans certified by a professional, or by a certified grower. Thus, other than the certification issue, it appears that the general approach recommended in the Draft Report is consistent with the existing Central Valley WDRs.

However, the level of detail expected in each individual nitrogen management plan as discussed in the Draft Report appears to be at a much more specific, individualized level than that envisioned by implementing coalitions and organizations in the Central Valley, and as required in the Central Valley WDRs. Specifically, the Draft Report implies that growers

would develop tools and practices through the implementation of individual plans to minimize nitrogen applications. Under the current program, the development of new practices, information, and evaluation of effectiveness of practices would occur through coalition programs. Individuals would be responsible for implementing practices that have been identified as being effective. This approach allows for evaluation of representative conditions that could be applied broadly, rather than requiring an intensive program that evaluates each farm/agricultural operation individually. Further, the Central Valley coalitions are well situated to disseminate such information effectively and efficiently to their members.

Similarly, many of the topics identified in the Draft Report as being vital components of a “good grower/farmer education program,” and the knowledge gaps under “Effective Educational/Awareness Programs – Designing the Venue and Materials,” are intended to be addressed in the Central Valley’s WDRs through the Management Practice Effectiveness Programs. These programs will help to determine and ensure the effectiveness of management practices for specific crops and representative conditions. By conducting this work at a coalition level, there is an efficiency of resources and assurance that methods are consistently and properly tested to determine their effectiveness. As the information is developed by the coalitions, it will be shared with the growers through the coalition education and outreach programs.

Further, we agree that grower education and outreach is an essential element of this program. However, the Draft Report appears to imply that all growers should be required to take mandatory, intensive, multiple-day courses, and through these courses, the grower would then develop an intricate irrigation and nutrient management plan. Considering the level of effort and resources associated with such an approach, we are uncertain as to its viability and practicality with respect to implementation.

With respect to a related issue, we also comment that the grower education and outreach described in the Draft Report, and as implemented by the coalitions, needs to be directed to the grower or the individual with day-to-day management responsibility of the growing operation. For example, some growers assign management responsibilities to trained individuals who are their employees, and it is these individuals who should participate in training activities. It is not appropriate to direct this education and outreach to many landowners because many are absentee and do not directly manage the growing operation.

Finally, as noted above, the irrigation uniformity evaluation should not be a required component of the nitrogen management plan as described in the Draft Report. It is a larger issue for the growing operation, and should not be developed with nitrogen impacts being the only driving force.

IV. Verification Measures

We agree with the Draft Report comments with respect to trend monitoring to track general aquifer conditions over multiple years, and that this may be accomplished by monitoring existing wells. We also note that the frequency needed for such trend monitoring may vary, and may not need to be annual, but rather could occur once every few years. We further agree with the Draft Report that extensive monitoring of first encountered groundwater has limited utility. At most, limited first encountered groundwater monitoring may be appropriate if well-designed, and part of a Management Practice Effectiveness Program's focused field studies, in conjunction with monitoring other media (e.g., soil).

V. Reporting

The Draft Report recommends that reporting from growers to coalitions, and then presumably to regional boards, should consist of the following: (1) crop; (2) crop acreage; and (3) nitrogen applications for each crop (lbs/acre), including applications of organic and synthetic fertilizers, and of nitrogen applied in irrigation waters. We agree that a certain level of reporting needs to occur from growers to coalitions, and then from coalitions to regional boards. Overall, the type of information identified in the Draft Report appears to be reasonable, and fairly easy to obtain from individual growers. However, in light of the discussion above regarding prioritization by level of vulnerability, we believe that the reporting of this information to the coalition should be limited to lands in high vulnerability areas, as identified in the Groundwater Assessment Report. This will allow the coalitions to prioritize efforts for education and outreach.

Again, thank you for your efforts. We appreciate the opportunity to submit comments on the Draft Report. Please contact Tess Dunham at (916) 446-7979 or tdunham@somachlaw.com if you have questions with respect to the comments provided here.

Sincerely,



Theresa A. Dunham

cc: Pamela Creedon, Executive Officer, Central Valley Regional Water Board
TAD:cr