



SAN JERARDO COOPERATIVE, INC.

September 16, 2013

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

Re: Comment Letter – September 24th Hearing on Central Coast Agricultural Order Files
A-2209 (a)-(e)

Dear Members of the State Water Resources Control Board,

On behalf of Clean Water Action (“CWA”), Community Water Center (“CWC”), California Rural Legal Assistance Foundation (“CRLAF”), California Rural Legal Assistance, Inc. (“CRLA”), Environmental Justice Coalition for Water (“EJCW”), and Leadership Council for Justice and Accountability (“Leadership Council”), we respectfully submit these comments in advance of the September 24th Board meeting regarding the Central Coast Agricultural Order (“Order”).

Introduction

As representatives of environmental justice communities, our organizations work extensively at the local, regional, and state level to ensure that all communities have equitable access to safe, affordable, and accessible drinking water. Nitrate due to agricultural use of fertilizers is the single greatest contributor to groundwater contamination in the Central Coast. Communities reliant on shallow drinking water wells, primarily low-income communities of color, disproportionately bear the brunt of this contamination, and often lack the technical, financial, and political wherewithal to seek remedies. As such, several of us have been engaged in the

development of this Central Coast Agricultural Order since before the Central Coast's original Draft Order in February of 2010.

At the September 10th hearing, we were prepared to thank the Board and accept the Revised Order as proposed given some minor changes. Additional, last minute changes posted the night before the hearing seriously diluted our support for the Revised Order. We are resolute in our belief that these changes were misguided and are not in the best interest of the public, but most importantly, not in the best interest of the vulnerable communities which we represent. Please consider adopting our recommended changes, as we believe they will ensure a more protective Order than the version proposed by the September 9th Revised Draft.

A. Provision 11: Technical Advisory Committee

In our last comment letter, we sought clarification for the following sentence in the Technical Advisory Committee section of Provision 11: "Third party projects or programs specifically allowed elsewhere in this Order are not subject to the requirements of Provision 11 (Aug. 20th Order, p.15)." As a means to provide clarification, the September 9 draft amended the sentence to read, "Third party projects or programs specifically allowed elsewhere in this Order, such as cooperative receiving water monitoring and cooperative groundwater monitoring, are ~~not~~ subject to the specific provisions authorizing such party projects and programs, rather than the requirements of Provision 11 (Order, p. 16)."

Nevertheless, the meaning of this sentence and the purpose it serves is still unclear. Given the way the sentence is phrased and its position at the end of the paragraph describing the Technical Advisory Committee (TAC), the sentence seems to state that cooperative monitoring programs do not need to adhere to the enumerated requirements of Provision 11, including having proposals evaluated by a TAC, where specific provisions authorize such third party projects. However, the sentence does not make clear what alternative specific provisions authorize third party projects or why a cooperative monitoring program would then be able to disregard the requirements of Provision 11. Moreover, there is no record that this change was requested by any member of the public either via comment letters or testimony during the September 10 hearing to clarify the change. It is troubling that cooperative monitoring program proposals, for example, would not be subject to TAC review in some instances, particularly when Provision 11 is a key provision in permitting alternative water quality improvement projects and cooperative monitoring programs in the first place.

Proposed Revision

We suggest that this sentence be deleted to prevent undue confusion and to promote TAC evaluation of that third party water quality improvement projects or programs and third party monitoring and reporting program proposals.

E. Provision 33: Containment Structures

We are pleased to see that the term "avoid" was retained in Provision 33 of the September 9th draft of the proposed order and hope that the term "avoid" will be retained in the final approved

Order. As currently drafted, Provision 33 provides significant options and accommodates to the various needs of Dischargers while seeking to protect water quality. Specifically, Provision 33 not only provides a list of specific compliance options that a discharger can implement to adhere to the provision, but also allows Dischargers to choose a method of compliance appropriate for their individual farms. Additionally, contrary to some assertions and comments, the provision does not require the construction or retrofitting of existing structures nor does it require lining the structures. This has been made explicitly clear on numerous occasions including the July 23 workshop and the September 10th hearing. On the contrary—as drafted, provision 33 is very flexible and offers various options for growers to avoid percolation, be in compliance and avoid liability.

The term “avoid,” more so than any other suggested term or phrase, better assures that compliance options do not lead to any increase in volume or severity of discharges already authorized by the Agricultural Order or any lowering of water quality. We urge the Board to retain this language.

G. Groundwater Monitoring, Provision 51 and Part 2, Section A.6-7, of the Tier 1-3 MRPs

It goes without saying that Environmental Justice Advocates care deeply about the quality of this provision, specifically because we know intimately the challenges of disadvantaged community members impacted by contaminated drinking water. Their personal testimonies attest to persistent insecurity about their own health and that of their children and to the hardships of having to travel far from home to purchase clean water, often without access to reliable transportation and/or little to no disposable income. As such, we were taken aback by the State Board’s decision to strike the August 20th Revised Order language requirement of individual monitoring of *all* domestic drinking water wells. The Ag Order program covers only 1,110 on-farm domestic wells, and the Central Coast Regional Board has repeatedly presented estimates for the cost of domestic well testing of only \$200 per well, a cost that can be verified by various regional labs. In comparison, San Jerardo residents spend about \$125 monthly for their drinking water even after receiving grant funding to replace their wells that were contaminated by nitrates. Individuals and communities have spent far more mitigating the contamination of their drinking water, and even with comprehensive well testing, will surely spend much more into the future.

While we disagree with the State Board that the cost of individual testing is sufficient to merit dilution of this provision, we will respond to the Board’s concerns by responding to the specific changes set forth by the September 9th Revised Order. In doing so, we hope to address the most severe deficiencies of this revised provision and ensure that a more protective cooperative groundwater monitoring and reporting program is put in place.

Firstly, we would like to clarify that we do not disagree with the State Board’s opinion that “[characterization] of the groundwater quality of the uppermost aquifer” is a valuable and necessary objective. A solid characterization will help establish a baseline of groundwater water quality, set the stage for long term trend monitoring, and provide an illustration of groundwater quality for Central Coast residents that are not subject to the Ag Order. However, we must differentiate between a characterization and the requirement to, “**identify and evaluate**

groundwater used for domestic drinking water purposes,¹ the latter of which has a much more immediate value for the on-farm domestic well user. It is not beyond reason to assume that some of these individuals are currently and unknowingly drinking water in excess of the nitrate MCL at risk to their health. The need for this information is **now**.

As written, the Revised Order grants Dischargers enrolled in a cooperative program the flexibility to delay individual well testing until a characterization has been developed and individual wells have been identified for follow up testing.

“...[W]e find that any cooperative groundwater monitoring must still characterize drinking water at the level of the individual well if there is a concern that the nitrate concentration in the well may approach the MCL...Our revision states that, even where a cooperative groundwater monitoring program relies on representative sampling to determine nitrate levels in drinking water wells, follow up monitoring of the individual well, including annual monitoring, is required if the nitrate level is projected to be within 80% of the MCL (Order, p.32)”

Environmental Justice Advocates are strongly opposed to any change that will delay an individual domestic well user’s ability to receive accurate information about his or her drinking water quality. Individuals reliant on domestic wells need this information in the near term so that they can take the appropriate measures to protect their health and that of their families. Additionally, we wish to call out the 80% value as the trigger for follow-up monitoring of the individual well. This value has been chosen without a reasonable basis and is inconsistent with the value of 50% of the MCL used by CDPH as the trigger for quarterly monitoring. For consistency and to buffer against possible error associated with the “confidence level” of the statistical method, we suggest that the State Board adopt CDPH’s value of 50% as the trigger for follow-up testing.

Additionally, we advise the State Board against any language that allows a cessation of well testing after a domestic well has been determined to exceed the MCL. Such a choice could be detrimental to both the individual domestic well user as well as mislead long term projections of groundwater quality by skewing water quality down towards lower levels. Regularly collecting water quality information is critical to determining treatment options, trends and documenting water quality improvements or high-risk areas. Point-of-Use and Point-of-Entry treatment devices for nitrate are only certified for levels below 120ppm, therefore it is critical to determine when water quality has surpassed this threshold.

¹ The Agricultural Order has consistently—even throughout the various drafts—required three separate and distinct requirements of cooperative monitoring programs: at a minimum, “cooperative monitoring efforts must include sufficient monitoring to [1] adequately characterize the groundwater aquifer(s) in the local area of participating Dischargers. [2] characterize the water quality of the uppermost aquifer, **and** [3] identify and evaluate groundwater used for domestic drinking water purposes.

Proposed Revisions

Section A.6.

...The cooperative groundwater monitoring proposals must include one or more of the following approaches, **in order of preference**, for each well that is or may be used for drinking water purposes: (1) two initial sampling rounds (one Spring, one Fall); (2) submission of appropriate existing data; or (3) statistically valid projections of groundwater quality. **All three approaches should be accomplishable within the same timeframe. That is, if development of a statistically valid projection (Approach 3) is anticipated to take longer than individual sampling of all domestic wells, the cooperative program must default to Approach 1 or 2.** If projections are used, the cooperative groundwater-monitoring proposal must demonstrate that the statistical methods will yield a high level of confidence **and for quality assurance purposes, data used for monitoring must be subject to public review.** Consideration shall be given to the timing of sampling so that potential seasonal fluctuations and other variable are accounted for and either statistical projections or follow-up monitoring to sample nitrate in the wells at the highest potential value. In addition, all drinking water wells that have, or are projected to have, a nitrate concentration between ~~36~~ **22.5** and 45 mg/L (nitrate NO₃) must be individually sampled with a repeat sample taken within 12 months and continuing annually **even after well has been shown to exceed the MCL.** ~~unless an alternate sampling schedule is based on trending data or the well is approved by Executive Officer.~~

Section A.7. We strongly urge the State Board to stick with a single template for notification drafted by the Regional Board. The Regional Board has already prepared one for Discharger that elected individual groundwater monitoring, and we deemed it appropriate for layperson understanding. A diversity of templates will only confuse domestic well users by introducing disperse language of water quality messaging. A single template drafted by the Regional Board will ensure that everyone is speaking the same technical language and will help facilitate follow up enforcement.

We only suggest that the State Board add one addition bullet point to the list of minimum information: **Whether the Nitrate Level was derived using a statistical projection or individual well sampling.**

J. Provisions Addressing Nitrogen Application

Successive revisions of the Order have resulted in a much-reduced capacity to evaluate nitrate loading and effectiveness of on farm management practices, both of which are ultimately necessary for the prevention of continued impacts on water quality, specifically quality of groundwater used for drinking water in rural households. Environmental Justice advocates have been ardent supporters of the nutrient balance ratio for several reasons. While not a precise measure, in conjunction with total nitrogen applied, it provides the Regional Board with the best indicator of nitrogen loading to groundwater and helps to identify outlying Dischargers who may be applying nitrogen far from “normal” levels. EJ Advocates, Environmental Petitioners, and the Regional Board all agree that this was critical to the Regional Board’s ability to target limited

staff time and start to collect valuable data by which to evaluate the future effectiveness of the Ag Order program.

We will preface our comments on Provision 70, by affirming that simply documenting Total Nitrogen Applied is an insufficient means to evaluate the impacts of on farm practices on water quality and urge the State Board to consider the above-mentioned concerns in their revision of the Nitrogen Application provisions and guidance to the Expert Panel.

2. Total Nitrogen Applied, Provision 70 and Part 2, Section C.5 of Tier 2 and Tier 3 MRPs

Changes to Provision 70 and Part 2, Section C.5 of Tier 2 and Tier 3 MRPs were made in response to claims that “it was not uncommon” for farm/ranches to “be divided into quarter-acre management blocks” and have multiple rotations such that Dischargers would have to report hundreds or thousands of management blocks. Specifically, the September 9th draft added a second method of reporting - reporting of aggregate data at the nitrate loading risk unit - to reduce the burden on farms that have multiple crops planted over multiple rotations (Method 2). Farms subdivided into quarter-acre management blocks, or anything approximating that size, actually constitute a rare exception. This contention is based on daily field observations and testimony of CRLA community workers and client community, many of which have years of experience working in various facets of the Salinas Valley agricultural industry, including nitrogen application.

Introduction of a second method is problematic on many accounts:

1. **Method 2 is not limited to farms/ranches that are subdivided into small units and have multiple rotations**, in fact, as written, any grower can opt to report aggregate data for any portion/subdivision of a farm/ranch or the entire farm/ranch based on “ease of monitoring and reporting” an entirely subjective justification that does not necessarily relate to the number of management blocks that would have to otherwise be reported under Method 1.
2. **Two methods will result in two incomparable sets of data.** Not only does Method 2 allow Discharges to aggregate nitrogen application independent of crop type, but it also omits the Method 1 requirement to report “total nitrogen present in soil.” In essence, while this method would provide the Regional Board with information that a farm/ranch would be out of balance, the Regional Board would not know which crop or component of the process caused that imbalance making it all the more difficult to judge effectiveness of management practices and compare data over time.
3. **As stated in the Revised Order, Method 2 “does not assist the Discharger in effectively managing nitrogen inputs (Order, p. 44).”** Our support for this Order is based on its ability to collect vital information, *but also* because the Order instituted implementation of management practices meant to reduce the impact of nitrogen use on water quality. Introduction of an alternative that *does not* lead to better management practices and reduced water quality impacts is counterproductive.

Proposed Revisions

Tier 2 and 3 MRP, Part 2, Section C:

In light of the claimed justification and the potential drawbacks, if the Board seeks to retain the second method of reporting, confining language should be added to limit the availability of the second option to farms/ranches that make a threshold showing that their property is subdivided into small parcels, consistent with what was represented in the Grower-Shipper Comment Letter and Ms. Dunham during her presentation.

Strike “ease of monitoring and reporting” language in lieu of justification based on actual number of management blocks. This proposed revision is in addition to the constraining language, which we are asking of the State Board.

“2. ...Factors that a discharger may consider in subdividing the farm into nitrate loading risk units include but are not limited to (irrigation system type, crop type, nitrate concentration in the irrigation water, soil type, ~~ease of monitoring and reporting, number of management blocks that would have to otherwise be reported under Method 1~~ (Order, p. 45 and 46).”

Require reporting of “total nitrogen present in soil” by nitrate loading risk unit for Method 2.

Conclusion

We appreciate and thank you for providing us the opportunity to comment on the Revised Order utilizing the lens of how these revisions and recommendations impact disadvantaged communities. We appreciate the Board’s consideration of these comments and look forward to the implementation of a Revised Order following the September 24th Hearing.

Sincerely,



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