>>> Walkers <walkerranch@4fast.net> 5/22/2012 1:54 PM >>>
Dear Ben,

Thank you for the opportunity to submit written comments on the program scope and tierring structure that was proposed at the last subgroup meeting. We have taken the opportunity to discuss the proposed program scope and tierring structure with our constituents, and we have summarized their comments below.

1. Permanent Irrigated Pasture Should be Excluded from Scope of Program.

Irrigated permanent pasture is not a risk factor to water quality in Region 1, and, in the upper-mid Klamath area, irrigated pasture is a net contributor to water quality improvement over natural conditions. The extensive root system of permanent pasture plants stabilize the soil, even on steep grades. In their natural state, steep dry-land hillsides are a primary source of erosion and sedimentation in the watercourses. The vegetative cover of permanent pasture also acts as a water filter, catching and preventing silt and nutrients from being transported to receiving streams. Over 95 percent of the irrigated land in the Upper-Mid Klamath drainages is planted to permanent pasture, and the majority of irrigated lands in the Scott and Shasta watersheds are devoted to irrigated pasture. If these pastures were not placed in irrigated pasture production and left in their "natural" states, there would be substantially more siltation of the area watercourses. The average annual rainfall in Montague, California is less than 13 inches annually, most of which occurs in the winter months. This precipitation model does not support extensive vegetative ground cover. Therefore, during heavy winter storms or summer thunder storms, the exposed bare soil is subject to extensive erosion and the creation of draws and gullies which direct accumulated silt and nutrients into area streams. These observations can easily be seen by touring areas of irrigated pasture and comparing it with adjacent ground which has remained in its natural state.

In our meeting, no evidence was introduced to show any negative effect irrigated pasture has on water quality or other beneficial uses. In fact, in our sub-group meeting, Steve Orloff of UC Cooperative Extension noted that both fertilizer and pesticides were generally not applied to irrigated pasture and if used were generally applied to irrigated pasture in our area at a level below UC recommendations. The only negative remarks about these pastures referred to a specific instance of abusive overstocking and, in effect, turning the pasture into a feedlot. This behavior would constitute a "nuisance" and the Board has, and will continue to have, the power to individually correct these limited examples. (Water Code Section 13002) As a result, the program scope and tierring structure should favor irrigated pasture as a benefit to water quality and not as a risk. Separate rules should be applied to feed lots.

2. Any Tierring Structure and Program Scope must be Based an Actual Scientific Base-Line Water Testing Not Inaccurate Models.

The Staff's attempt to develop a plan may be hampered by inaccurate data. Issues regarding inaccurate and missing water quality data must be resolved before a meaningful program structure can be constructed. When we requested information from Staff regarding water quality in our Upper-Mid Klamath streams we were informed that all the streams were impaired for Nutrient and Temperature as part of the TMDL process. Further

inquiries disclosed that these findings were the result of some sort of modeling or extrapolation from main-stem monitoring. No actual objective measurements were supplied to us supporting the impairment findings. We do not have data on all sub-basins in the Upper-Mid Klamath, but we have developed specific data on two of the streams that clearly contradicts the assumptions being used by the Regional Board to develop an ag lands program. The following summarizes our data:

Bogus Creek

Our ranch lies in the watersheds of both Bogus Creek and Willow Creek. When the TMDL studies concluded that Bogus Creek was impaired for Nutrients and Water Temperature, we were both surprised and disappointed. We had spent considerable time and money fencing riparian areas, piping irrigation water, and recycling tailwater. Each year we see thousands of salmon spawn and grow in our creek and we could not understand how it was found to be impaired. In order to resolve this seeming contradiction, we asked California Department of Fish and Game (CDFG) and Regional Water Board Staff to do a reconnaissance and study of Bogus Creek. Mark Hampton, a fish biologist with CDFG, did the study of Bogus Creek with the assistance of Staff members Bryan McFadin and Andy Baker. Mr. Hampton published "Bogus Creek Coho Restoration Project Summer Reconnaissance Survey" in 2010.

Mr. Hampton swam the creek four times during the summer and took temperature and flow measurements, observed the condition and growth of the juvenile Coho, the creek shading and spawning gravels. Bryan McFadin and Andy Baker placed hobo temps in several locations in the creek both above and below the irrigated pasture lands and recorded a continuous water temperature throughout the summer irrigation season. This data was then provided to Mr. Hampton and included in his study.

Contrary to the purported findings of the TDML, Mr. Hampton's report concludes, "[i]n general rearing habitat for juvenile coho salmon is in good condition. The riparian community contains both mature and young communities of deciduous trees, blackberry and shrubs. Canopy cover over the creek is very good and may approach 100% in some areas of the creek." (at page 8). The report goes on to say, "[i]n summary, both Bogus Creek and Cold Creek [a tributary of Bogus Creek] provide good habitat conditions for rearing salmonids. Water temperatures were generally very good (optimum) for rearing coho salmon with few exceptions." If Board Staff do not already have copies of this report we will supply staff with a copy.

We also contacted CDFG and asked for any other information or studies they have done on Bogus Creek and received "Bogus Creek Salmon Studies 2008" authored by Morgan Knechtle a Fish Biologist for CDFG. Mr. Knechtle has installed a fish counting facility on Bogus Creek and has done annual spawning ground surveys for Chinook and Coho Salmon in the Creek. Mr. Knechtle states in his report that "Bogus Creek is particularly important because it is a major salmon spawning tributary, Despite its small size. For example, during the 1996-98 spawning seasons, an average of 30.6% (8,914) of the total number of natural area adult spawners above the Trinity River confluence were estimated to have entered Bogus Creek to spawn. Therefore, a significant portion of natural escapement to the Klamath Basin would be unaccounted for if Bogus Creek studies were not conducted." (at page 3) The report also notes that Bogus Creek has averaged

8,874 Chinook returns since 1978 (page 13), and, in 2008, 111 Coho returned to Bogus Creek. (page 14)

These reports made it clear that agriculture operations on Bogus Creek are not unreasonably adversely affecting salmon spawning. In fact, Bogus Creek supports almost one-third of spawning salmon in Siskiyou County, often more than the Scott and Shasta Rivers or any other creek.

Despite what the TMDL models might conclude, these reports based on actual in-stream observations do not provide a description of a Creek that is impaired and the Board should not spend its limited resources regulating agricultural lands in this watershed. It should be noted that all irrigated agricultural land in the Bogus watershed is in permanent pasture. This is another affirmation that irrigated pasture is a benefit to water quality, not a risk, and should not be included in a regulatory structure. Resources should be focused on problem areas, not areas that are performing well.

Willow Creek

Willow Creek was also listed under the TMDL process as impaired for Nutrients and Temperature. This finding is erroneous on its face since temperature is only relevant during he high-ambient temperatures encountered in Summer months, and Willow Creek is a seasonal stream. All irrigation on Willow Creek ends by mid-June and the creek has no water flow in July, August and September.

The California Department of Water Resources did a detailed study on the hydrology of Willow Creek and included its findings in a report entitled "Report on Water Supply and Use of Water on Willow Creek Stream System Siskiyou County, California." The DWR engineers surveying the Willow Creek stream system built 4 measuring weirs on the Creek. One above all diversions and one below each of the three diversions. Table 7 of the report shows that flows in the creek above all diversions falls from 5.5 cfs in April to .6 cfs on June 15th and less than .1 cfs in July, August, and September. Table 8 reports no flow in the creek at the 2nd diversion in July, August, and September. The authors of the report note on page 9 that this study was conducted in a year that had 135 percent of normal precipitation in the area. It is difficult to understand how a measurement was made of Willow Creek's water temperature when there is no water in the Creek during the relevant time period.

We do not have reports on the other sub-watersheds in the Upper-Mid Klamath, so we can not positively say the Board's information is also erroneous as regards to these other streams. Based on our experience with Bogus and Willow Creek, however, the information for all tributary streams in the area should be very suspect.

The lesson to be taken from these two examples is not that mistakes were made describing two creeks, but rather that much of the information the Board is relying on to institute an ag lands program may be unreliable and should be verified before launching a vast program to cure ills that may not exist or, if they do exist, are not caused by agricultural practices. Scientific studies and on the ground observations need to be competed so the problems and causes can be accurately defined. This preliminary step of establishing accurate base-line monitoring before installing a regulatory program is contemplated by the

Water Code. Section 13241 of the California Water Code requires that the Board considered a number of factors when establishing water quality objectives through a program like the proposed ag lands program. Included in that list of factors are the "environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto." Also to be included in the statutory list of factors are the "Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area." It is difficult for us to understand how the Board has met it statutory obligation to consider the environmental characteristics of Bogus and Willow Creek or understand the water quality conditions that could be achieved in those creeks if no actual base-line measurements have been made in the creeks. We believe the current stakeholder discussion of a tierring structure is very premature and puts the cart in front of the horse. Such a discussion is only appropriate once the Board has met its statutory monitoring obligations and answered the threshold questions of Section 13241 of the California Water Code.

3. A Program Scope and Tierring Model that Would Draw Virtually all Ag Operators into a Regulatory Structure May be Appropriate in Regions with a Large Percentage of Land Devoted to High-Intensity Agriculture, but Such a Model is Inappropriate in Region 1, Where Agriculture is generally Very Low Intensity and Represents a Very Small Percentage of Land Use and Where Water Quality is Generally Very Good.

It appears that the form of the proposed tierring model for Region 1 is a clone of the one instituted in other Regions, including Region 5, without regard to the vast difference between these two regions. The model proposed at the last sub-region meeting anticipates that almost all ag producers in Region 1 will be subject to reporting, monitoring, and payment requirements. This model may make sense in Kern County where 80 percent of its 5.2 million acres are in ag production, and where annual ag sales exceed 4.7 billion dollars. Siskiyou County has less than 2.7 percent of its land in ag production and its production is only 4 percent of Kern County. The annual production from only 1320 acres of Kern County grapes is equal to the annual income from all the livestock sales in Siskiyou County. And Kern County is only one of 21 counties in Region 5. (References are from 2010 County Ag Commissioner's Report for Siskiyou and Kern Counties)

All of Region 5 is heavily populated by extensive and intensive ag operations that are heavy users of pesticides and fertilizers. University of California, Davis, recently released a study finding harmful levels of nitrates in large areas of Region 5's groundwater, which are attributed to heavy fertilizer use and high numbers of Dairy Cows. These problems are not found in Region 1 and especially Siskiyou County. there are only 900 dairy cows in all of Siskiyou County and the majority of ag operators in Siskiyou County use substantially less fertilizer than recommended by the UC Cooperative Extension. It would be counterproductive to adopt a regulatory system in Region 1 that is similar to Region 5's if we do not have anywhere near Region 5's ag diversity, chemical use, or water issues.

The Water Code acknowledges that conditions vary widely throughout the state "and that the statewide program for water quality can be most effectively administered regionally". (Section 13000) This region-by-region approach to water quality control is further described in Section 13241 of the Water Code, which states "[e]ach regional board shall establish such water quality objectives in water quality control plans as in its judgment

will ensure the reasonable protection of beneficial uses and the prevention of nuisance; however, it is recognized that it may be possible for the quality to water to be changed to some degree without unreasonably affecting beneficial uses." (Section 13241, emphasis added). This Water Code section goes on to list factors to be considered by the regional boards that will vary from region to region. The California Legislature correctly understood that one size regulatory shoe does not fit all areas of the state. As a result, our Regional Board has been given great freedom and a statutory mandate to form a unique programs that will work given the specific conditions that exist in Region 1.

The most notable difference between Region 1 and other regions in California is our high base-line water quality. Board has noted in its Basin Plan that "[t]he present water quality within the region generally meets or exceeds the water quality objectives set forth" (Water Quality Control Plan for the North Coast Region at page 1-11.00). The initial high quality of Region 1's surface and ground water would suggest that a very targeted program was called for, not an intrusive program that regulates virtually every farmer and rancher. Most landowners in Region 1 are sympathetic with a plan to maintain and improve water quality. Area farmers and ranchers have made numerous improvements aimed at these goals. Over 100 Ranchers have participated in the CCRP program of the Farm Service Agency and fenced livestock away from over 30,000 acres and 350 miles of riparian areas in Siskiyou County. Extensive work has been done in the Shasta and Scott watersheds to remove diversion dams, pipe irrigation water, plant riparian vegetation, and capture and reuse tailwater. The Araujo project alone cost over $1 million and has removed a major fish passage obstruction from the Shasta River and piped irrigation water, providing added flow to the river. The various water quality improvements undertaken by Region 1 landowners are far to numerous to list here, but are very significant both individually and in the aggregate. The Regional Board Staff has been instrumental in initiating and assisting in many of these projects.

We would submit to Staff that, through your previous work and the efforts of the RCD's, NRCS, FSA, CDFG, U.S. Depatment of Fish and Wildlife, and area landowners, substantial progress has been made in water quality improvement and in best management practices. We fear that the imposition of an intrusive and costly regulatory system in an attempt to accomplish what is already being accomplished on a cooperative basis risks destroying a good working relationship. It is our belief that an expansive regulatory plan that essentially demanding a fee to farm in Region 1 is a terrible and counter-productive idea. It will constitute an affront to all the farmers and ranchers who feel they are making an honest effort to leave the land and water better than they found it. The program scope and tierring as proposed treats every landowner as guilty without any presumption of innocence or even the ability to prove innocence. It is unlikely that such a program will garner the necessary landowner buy-in. In addition, such an approach will lead to landowner frustration constituting a step backwards for conservation efforts. Already, a number of our constituents have questioned why we have been working so hard to install on-ranch conservation projects if the Regional Board is just going to step in and regulate us regardless of all our efforts.

In light of (1) the good water quality in Region 1, (2) the small fraction of land devoted to agriculture in Region 1, and (3) the on going efforts of farmers and ranchers to work with resource agencies in Region 1 to improve water quality, we strongly question the need for an ag lands program in this Region. The time of the Regional Board Staff and the money

of landowners and California taxpayers would be much better used to continue the numerous voluntary efforts that are currently under way in the Region. If environmental quality of our streams is truly the goal, there is no doubt in our minds that this would be the most effective approach.

If, however, an ag land program is to be instituted in Region 1 the program should look much different than the program in Region 5 because Region 1 is dramatically different than Region 5. Any ag program in Region 1 should be very narrowly tailored to only include those operations where actual data shows and impact to water quality and beneficial uses and where voluntary efforts have proven ineffective. Certainly there are areas in Region 1 where intensive agriculture practiced, involving ground disruption and high chemical use, and an ag plan may be warranted. And, there are "bad actors" in every industry including agriculture that ignore their environmental and ethical responsibilities. But these two facts do not necessitate that every farmer and rancher in Region 1 be pulled into the regulatory net. A narrow program can be constructed to address those handful of high value and high risk crops in the Region, and the Regional Board can continue to use its enforcement powers under the Water Code to deal with the few "bad actors" that may exist (see Water Code Section 13002). Meanwhile, the vast majority of farmers and ranchers in the Region should be left alone and encouraged to continue voluntary efforts through NRCS's EQUIP program, the Regional Board's tailwater grant program, or any of a number of other environmental partnership programs that are working quite effectively in the Region. An educational program could be used as a part of an ag program to help landowners identify areas of concern and potential remediation solutions.

We understand that we are asking the Regional Board to take a couragous stand in adopting a different, more targeted and less intrusive form of ag regulation than is being used in other regions. But, we believe that this approach can be justified for several reasons:

(1) Administrative cost will be substantially reduced, allowing more funds to be used in projects to actually improve water quality.

(2) The proposed aproach will not risk poisoning the well of cooperation between landowners and the Regional Board. We all agree that this cooperation is the key to a sucessful program.

(3) As explained above, Region 1 is unique and its plan would naturally be structured to best meet its unique characteristics.

(4) The Water Code anticipates and encourages different solutions to be tried by the various Regional Boards. (Section 13000). This intent of the Legislature was to account for differences between the regions, but also, such variation in regulatory models will permit the State Board and other Regions to examine the outcome of different plans and pick and chose what works best. The regulation of irrigated ag run-off is a new concept and no one knows for sure what will work and what won't. Why shouldn't Region 1 try a lighter approach and see if it works?

(5) And lastly, the Regional Board has the power to revise and modify the plan if it is not working. Why not try this lighter touch before risking an "us vs. them" mentality in

Region 1?

4. Program Scope and Tierring Must be Focused on Protecting Against Unreasonable Adverse Effects on Beneficial Uses.

Whatever decisions the Regional Board makes regarding the size of the regulatory program or which landowners will be included in the program scope, the Water Code is clear that the focus of the program must be on which beneficial uses, if any, are being unreasonably adversely affected by irrigated agriculture. We reference you to the following Water Code sections:

Section 13050(h) -- "'Water Quality Objectives' means the limits or levels of water quality constituents or characteristics which are established for the reasonable protection of beneficial uses of water or the prevention of nuisance within a specific area."

Section 13050(j) -- "'Water Quality Control Plan' consists of a designation or establishment for the waters within a specified area of all of the following:

(1) Beneficial uses to be protected.
(2) Water quality objectives.
(3) A program of implementation needed for achieving water quality objectives.

Section 13050(l)(1) -- "'Pollution' means an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects either of the following:

(A) The waters for beneficial uses.
(B) Facilities which serve these beneficial uses.

(Empasis added)

Sections 13050(h), (j) and (l) taken together make it clear that the primary, and perhaps the only, goal of a water quality control plan should be the identification of beneficial uses that are being unreasonably adversely affected by irrigated agriculture and if that beneficial use can be reasonably protected. This goal by necessity requires the Regional Board to identify for each sub-basin which beneficial uses if any are being unreasonably adversely affected by irrigated agriculture. The proposed scope and tierring structure make no mention of beneficial uses. Rather, the proposed structure uses ham-handed proxies like slope and miles of road which may or may not have impacts of specific beneficial uses. We suggest that any final scope and tierring be consistent with the Water Code and focus on the condition of and risks to beneficial uses when including, excluding, and tierring landowners in the ag lands program.

Respectfully submitted,

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Ryan Walker

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