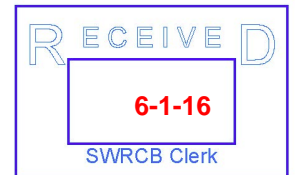


June 1, 2016

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



Re: Comments to A-2239(a)-(c)
(SWRCB Own Motion Review of the Eastern San Joaquin Waste Discharge
Requirements General Order R5-2012-0116)

Ms. Townsend:

This letter is submitted on behalf of the Kaweah Basin Water Quality Association ("Kaweah Coalition") and the Tule Basin Water Quality Coalition ("Tule Coalition"), both of which are members of the Southern San Joaquin Valley Water Quality Coalition ("SSJWQC"). The SSJWQC, on behalf of its members, is a named party to the San Joaquin County Resource Conservation District et al. Petition for Review of East San Joaquin General Order Petition for Reconsideration of Order R5-2012-0116 filed on January 7, 2013 (the SJCRCD Petition). That Petition has been in abeyance while other processes in this matter have proceeded. We are writing now to comment on the extensive proposed rewrite of the East San Joaquin General Order ("Proposed Order") as proposed by the State Water Resources Control Board (the "Board") on its own motion.

The SSJWQC is also a party to a Petition for Review of the Tulare Lake Basin General Order (R5-2013-0120, Petition filed October 18, 2013, SWRCB Petition No. A-2278(c)). That Petition is also being held in abeyance.

As the Proposed Order expressly states on page 8 that it applies statewide, our comments apply to the East San Joaquin Order and to the Tulare Lake Basin General Order. See Draft Order, at 8 ("[O]ur conclusions in this precedential order apply statewide.").

The membership and management of the Kaweah Coalition and the Tule Coalition believe that the Tulare Lake Basin General Order, in its current form, should be given an opportunity to produce results before significant changes to that Order are made. The

Jeanine Townsend
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Proposed Order, if applied to the Tulare Lake Basin General Order, would upend three years of significant and challenging work that is currently being performed by the Coalitions, and would undermine landowner trust in the Coalitions and in the entire Coalition-Based regulatory system.

For this reason alone, the Proposed Order should not be adopted by the State Board. In addition, as explained in further detail below, the Proposed Order contains severe procedural and substantive flaws. Adoption of the Proposed Order as a precedential order with statewide application raises serious due process concerns, particularly with respect to members of the SSJVWQC, whose petition of the Tulare Lake Basin Order is currently being held in abeyance. Moreover, the Proposed Order introduces costly redundancies that threaten the continued viability of a carefully-balanced regulatory program developed over 10 years of stakeholder collaboration.

These comments are in addition to the comments filed by William Thomas on behalf of the SSJVWQC on May 3, 2016, which the Kaweah Coalition and the Tule Coalition support and endorse.

I. GENERAL SUBSTANTIVE CONCERNS

1. Progress Under the Current Tulare Lake Basin General Order Should Not Be Disturbed.

The local Coalitions, including the Kaweah Coalition and the Tule Coalition who submit these comments, have worked for the past three years at complying with the existing Tulare Lake Basin Area General Order. This effort has required a difficult and sustained effort at building trust and participation amongst the served property owners and growers in the service areas of the Coalitions. The local Coalitions have not supported every feature of the current order; however, they have been able to work effectively with Central Valley Regional Board staff in implementing the order despite differences. Results are only now being seen, but they are being seen. For example, the Kaweah Coalition and Tule Coalition have achieved levels of grower participation of 90 percent of the potential landowner base, or more.

The result of this type of participation is an unprecedented level of grower education, data collection, and improvements in general nitrogen management practices, none of which would have occurred but for the creation of the Coalitions for the purpose of implementing the existing General Order. Significant work remains ahead, including work toward the groundwater trend monitoring reports, and the Management Practices

Evaluation Programs, which will further improve nitrogen management practices in the Coalition areas.

All of this work would be threatened if the Proposed Order is adopted, because the Proposed Order features recommendations that would force the Coalitions to return to the growers with an all-new set of reporting forms, and to undertake an all-new grower education effort to inform them of the new level of on-farm reporting requirements. All of this would be coming immediately after the Coalitions have successfully implemented the original General Order requirements, and will be viewed by the grower/members with a high degree of frustration and distrust.

As the Regional Board Chair, Executive Officer, and Regional Attorney explained in ex parte discussions with the State Board, the East San Joaquin General Order was a product of considered analysis to achieve balance in respect to data collection, workload, and costs for farms, coalitions, and the Regional Board. Indeed, the Regional Board representatives even acknowledged that these changes could lead to the demise of water quality coalitions.¹

Subsequent correspondence from the CVRB (copy attached hereto as Attachment 1) explain that the Proposed Order will create redundancies that will undermine the balanced approach developed by the CVRB. As the CVRB explained:

"[S]everal 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.¹

We embrace these concerns expressed by the CVRB, and believe this appropriate balance can be restored to the Proposed Order with the changes recommended in this letter.

II. SPECIFIC SUBSTANTIVE CONCERNS

1. Lack of Cost/Economic and Environmental Impact Evaluation

¹ See State Board Summary of Regional Board Meeting, copy attached as Attachment 1 (reiterating concerns that changes could result in the elimination of coalitions).

The amendments are extensive in scope, impact, and obligation, and all of that points, without a doubt, to additional costs. Yet, the Proposed Order makes a conclusory statement that economic impacts are not significant.

The expanded responsibilities included in the Proposed Order will have dramatic impacts on farmers, the water quality coalitions, and to the Regional Board. Not only are there major new obligations on growers in the field (e.g., monitoring and direct reporting), but also the proposed obligations on coalitions, as well as the Regional Board.

At the farmer level, the newly proposed direct-reporting requirement for Nitrogen Removed analysis, and on-property domestic well testing, just to name two examples, will clearly involve new, and likely substantial, costs to the landowner. The coalitions will have a significant amount of up front costs in revising all of the grower intake forms, providing additional new outreach, education, and training, and ongoing costs associated with collecting, analyzing and reporting on new data points that are required in the Proposed Order. And the Regional Board will no longer just be analyzing somewhat limited surface water data and summarized reports of aggregated data, but will now be dealing with surface and groundwater raw data submitted by thousands of different reporting landowners, and they will be obligated to compile, analyze, and summarize all of that by their staff or contracting these functions out. These fundamental changes will necessitate new environmental analyses as well as new staff and cost analyses. The cost analysis in the staff document does not accurately reflect these additional costs.

In the brief time that the Proposed Order has been available for public review, the Coalitions have not had the opportunity to develop more detailed cost analysis. However, the Central Valley Regional Board has analyzed the costs of the new requirements in the Proposed Order, if applied across the region, and made a preliminary conclusion that there will be \$66 million per year in additional costs to growers, through combined costs incurred by the coalitions and direct grower costs. If applied across the approximately 7 million irrigated acres within the Central Valley region, that equates to an increase per acre of \$9, or a doubling or in some cases tripling of the current costs.

As significant as direct and coalition cost increases are, the Regional Board staff has noted that these projections do not include the State Board fee increase that will certainly be needed to address the Regional Board staff cost increases to cover the additional work load entailed in the Proposed Order. The Regional Board staff did not put a dollar amount on this, but it did estimate that will need to increase from 18.7 Personnel Years to 90 Personnel Years. This will almost certainly cause a four-fold increase in the State Board fee that is charged to coalitions to offset program costs, which currently is set at \$.75 per

acre. Assuming the staff increases to directly correlate with cost increases, it is reasonable to assume that the State Board fee will increase to \$3.50 per acre.

Using any measure, the cost increases of the Proposed Order are significant. This alone raises the potential that the local coalitions, including the Tule and Kaweah Coalitions, will no longer have the grower support necessary for their continued existence.

Unlike the existing ESJ General Order, the substantial revisions contained in the Proposed Order are not covered by any existing environmental or economic analysis by the State Board. While footnote 28, at pages 11-12, of the Proposed Order baldly asserts that the added requirements are "insubstantial," it lacks even a superficial showing of support for this claim.

Before adopting an order that clearly has significant cost implications, the State Board should study, estimate and disclose for public review and comment these additional costs, and conduct the required additional environmental evaluation, including what additional agricultural lands will go out of production as a result of the proposed additions.

2. Reporting Individual Farmer Field Data to the Board and Posting Such Specific Data to the Public Domain.

The proposed order compels the filing of all raw nitrogen field data with the Regional Board and further compels that it all be posted to public databases. See Proposed Order, Section V.C.,D, pg. 23.

Under the Existing Order information such as that contained in the Nitrogen Management Plans are summarized by the growers in the Nitrogen Summary Report, then submitted to the coalitions who aggregate the data on a township basis. The coalitions report such data on a summarized box and whisker chart so the Regional Board can see the levels, the spread of the data, and a relative curve whereby those that lay outside of the norm are identified to the coalition. Using this data, coalitions engage targeted follow-up with outlier operations to audit the data for accuracy and work with the grower to bring his operation into the norm. In this way, the regulatory process effectively induces best management practices to improve water quality. Furthermore, the Regional Board currently has the authority to call up specific data information at any time and for any purpose. Thus, regional oversight is already in place to review individual farm performance as well as coalition follow-up.

Since 2004 coalitions have lifted direct regulatory burdens from individual growers, thus providing valuable interface between the growers, regulatory agencies, and litigious

environmental plaintiffs. The coalitions have been performing the monitoring, data analysis and summary, advising growers accordingly, and submitting data summaries. In addition, coalitions have been aggressively pursuing their membership outreach, submitting GARs, developing the newly required MPEP work plans, and coordinating with many scientific professionals in crafting those reports so as to make those reports meaningful and effective.

The Proposed Order requires all raw data to be submitted to the Regional Boards and to the public domain (including potential environmental plaintiffs). It also requires coalitions to summarize the raw data for reporting to the Regional Boards. This arrangement completely alters (1) the present and 12-year long regulatory structure, (2) relationship between the coalitions and the Regional Board, and (3) the relationship between members and the coalitions.

Directly submitting all this raw data would jeopardize farm operations in several respects. Environmental plaintiffs have been clamoring for years for this site- and farmer-specific data so they can directly sue farmers. At a time when the Central Coast Region is actively pursuing growers with debilitating clean-up and abatement orders, the coalitions should not be forced to facilitate generating additional liability for their constituents.

The Tule and Kaweah Coalitions' growers have asserted that, if the regulatory program is not restructured, they will revoke the coalitions' authorization to deal with either data collection or reporting. If this occurs, the Regional Board will have to deal directly with the land operators in not just well monitoring, but also in all the data reporting, and will be forced to do all the summarizing and analysis and follow-up with the growers.

The Regional Board itself has recognized that the coalitions may no longer be able to provide this assistance to the Regional Board if the Proposed Order is implemented as presently drafted:

"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.

Direct submittal requirements of the Proposed Order is redundant, will remove the willingness of growers to participate in coalitions, and should be deleted from the Proposed Order.

3. Field Level Nitrogen Reporting.

The amended Order would increase the scope of the data reporting significantly. First, it requires individual monitoring specific to each individual field.

"We find that the data required to be reported by the Members to the Third Party is generally appropriate, but direct several revisions, primarily with regard to nitrogen application reporting. With regard to reporting of the data from the Third Party to the Central Valley Water Board, we revise the General WDRs to require reporting of some of the data at a field-level." (Draft Order, p. 20) (Emphasis added.)

This amendment indicates that the State Board is not yet fully aware of the present extent of the monitoring, reporting, and management reported under the existing Central Valley Orders. The Regional Board has expressed similar concerns regarding the workload should this new approach be implemented all at the same time. In Attachment 1, the Board points out that even in the comparatively smaller East San Joaquin coalition area this would involve some 70,000 documents, and would be overwhelming. (Draft Order, pp. 25, 27)

The Regional Board also points out that field level reporting is not now required by the Order or the State's Nonpoint Source Policy and will be counterproductive. In most water board programs, dealing with landscape scope issues, such as is the case with groundwater, representative monitoring rather than individual monitoring is not only adequate, but also vastly more cost efficient.

"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. (Attachment 1)

The additional field level nitrogen reporting requirements should be deleted from the Proposed Order.

4. Nitrogen Applied Less Nitrogen Removed

The Proposed Order introduces the mathematical equation of subtracting the nitrogen removed from the nitrogen applied (A-R) (Appendix MRP4, Section 35), and requires these data points to be supplied directly by the grower/operator/landowner. Quite simply, no one has the data that would be required by this provision, certainly not the individual growers. The Coalitions are currently participating in an effort to develop the scientific data that will allow them, as Coalitions, to accurately reflect the "nitrogen removed" part of this equation. This information will establish standards related to specific crops and the nitrogen removal behaviors of the crops, and apply these ratios to the specific yields, which are currently being reported. However, this information is not feasibly available to the farmer; because of this, no farmer will be able to report, with any degree of accuracy, the "nitrogen removed" part of the information that would be demanded if the Proposed Order is adopted. This will place the reporting farmer/grower/landowner in the position of being forced to report data for which he or she has no accurate source. This recommended measure should be deleted.

5. Management Practices Evaluation Program

The Proposed Order adds additional clarifying provisions to the MPEP program.² The MPEP program is already compelled by the Order; however, the extensive MPEP programs are just being developed at the present time. Because these elements are emerging from the existing order, the Proposed Order's extreme revisions are unnecessary. In fact, the Proposed Order only underscores the CVWB's concern that the State Board has disregarded and pushed aside the delicate regulatory balance it has worked so hard to establish.

As the CVWB has explained, the developing MPEP programs are likely to be more effective than over-relying on the proposed A/R target analysis standing alone. The coalitions are presently working with experts and consultants to finalize a robust MPEP work plan, which is anticipated to be sweeping. Once completed, the work plan renders the State Board's fixation on these single factors (i.e., A/R) far less meaningful. Rather, MPEP will emerge as the more scientific tool to evaluate management practices. The Proposed Order should therefore be revised to emphasize the importance and utility of

² See Attachment B, MRP, page 17, Sect. IV.C. ("The goal of the Management Practice Evaluation Program (MPEP) is to evaluate the effectiveness of irrigated agricultural practices with regard to groundwater quality. A MPEP must address the constituents of concern described in the GAR.") (emphasis added).

the MPEP and how it relates to the A/R and A-R components of the Irrigation and Nitrogen Management Plan ("INMP").

6. Expansion of the Order to Require the Reporting of Farms' Irrigation

The Proposed Order mandates the reporting of farm irrigation. While the Proposed Order does not develop this requirement in detail, it does indicate that it only intends that the farms report irrigation method in the INMP Summary Report. Similarly, in recent meetings with the State Board regarding this issue, staff have underscored that only irrigation method is required to be reported in the INMP Summary Report. Yet the a careful reading of the Proposed Order reveals that it actually goes well beyond that by also requiring reporting of evapotranspiration and crop irrigation.³

This requirement should either be deleted, or it should be expressly stated that irrigation method, and not quantity, is required.

7. Domestic Well Testing

The Proposed Order calls for monitoring and reporting on the quality of all drinking water wells. Thus, if implemented, growers would be required to individually monitor and directly report as to all of their drinking water wells.⁴

For reasons extensively stated by the SSJVWQC comment letter, this requirement far exceeds the scope of this WDRs, and in particular the coalition approach to agricultural regulation, and should be deleted.

IV. LEGAL AND PROCESS ISSUES

1. Treatment of SSJVWQC's Pending Petition

The Proposed Order essentially dismisses all issues raised in the SJCRCD et. al Petition in this matter, to which the Tule and Kaweah Coalitions are parties as members of

³ See (Draft Order, pp. 32-33) ("We first add several required planning elements to facilitate crop irrigation management planning, including consideration of irrigation method, crop evapotranspiration, and anticipated crop irrigation."); see also Attachment B, Appendix MRP4 #12-14 (calling for reporting of irrigation method, crop evapotranspiration, and crop irrigation in inches).

⁴ See Appendix A, p. 31, Sect. VII.E and p. 35, Sect. VIII.D ("Members will be required to conduct testing and monitoring of all drinking water supply wells present on the Members' property. If a well is identified as exceeding the MCL for nitrate, the Member must notify the Central Valley Water Board. That member, or the Central Valley Water Board, must then notify users of the well in a timely fashion in accordance with the elements described in MRP section IV.A.").

SSJWQC. The Proposed Order concludes that all the issues raised in that petition relate primarily to issues under the California Environmental Quality Act that have been addressed by a final outcome of litigation on that topic.

Although it is true that the SJCRCD et al. Petition raises primarily CEQA issues (at least CEQA issues that were ripe at the time the Petition was filed), and those initial CEQA issues have been addressed in litigation that is now final, the Proposed Order significantly changes the scope of the "project" as that term is understood in CEQA. Among other things, the actions that would be required for all Central Valley Agricultural WDRs are significantly different under the Proposed Order than were initially proposed and conceived of by the Central Valley Board, and as a result, the costs are certainly much higher, rendering the economic analysis deficient. This raises entirely new arguments that the economic analysis that was deemed sufficient under CEQA for the earlier order is now deficient.

Whether the substance of a new CEQA claim should be sustained or not is not the issue here; instead, the issue is that the manner in which the State Board is proposing to determine this matter precludes the parties who have raised these issues in a timely manner from raising them effectively here, a serious due process deficiency. That raises significant and obvious due process issues, and we object to the State Board proceeding in this fashion.

2. Issues Pertinent to Pending Tulare Lake Basin Petitions Are Being Determined Without Benefit of Factual Record from Those Petition Proceedings.

The Tule and Kaweah Coalitions, through the SSJWQC have challenged the East San Joaquin Order on legal and precedential grounds, and this Proposed Order addresses specifically that Order. However, the Tule and Kaweah Coalitions have, more directly, also timely filed petitions to challenge the Tulare Lake Basin General Order, which directly pertains to them. Because the Tulare Lake Basin General Order is more directly pertinent to them, the SSJWQC parties submitted significant factual materials that have not been submitted as part of the SSJWQC petition on the East San Joaquin General Order.

Now, if the State Board proceeds to issue a "precedential" order in the East San Joaquin General Order matter, it will essentially be determining the issues raised in petitions related to the Tulare Lake Basin General Order without considering the factual material submitted in support of a pending petition. This again, raises significant and obvious due process issues, and we object to the State Board proceeding in this fashion.

3. "Precedential" Nature of Proposed Order is Confusing and Should be Clarified.

The Proposed Order, at Page 8, reads in part as follows:

The discussed recommendations are appropriate not only for the Eastern San Joaquin Agricultural General WDRs, but also for the next generation of regional water quality control board (regional water board) agricultural regulatory programs statewide, and our conclusions in this precedential order apply statewide (except where a regional water board expressly finds that there are truly significant site-specific conditions that render these requirements inappropriate).

This passage indicates that the State Board has already determined that the recommended changes to the East San Joaquin Order are appropriate "statewide". This appears to be a factual determination. However, the record supporting this Proposed Order is apparently limited to the factual record for the East San Joaquin Order. This is inconsistent at best, and a flawed legal conclusion at worst.

Further muddying the waters is the exception clause, which opens the door to a regional board, such as the Central Valley Regional Board, to expressly find that there are "truly significant site-specific conditions" that render some of the proposed requirements inappropriate. What is "truly significant" and what are "site-specific conditions"? There is no guidance on this. The effect is a confusing level of precedential effect for this Order, which is doubly problematic given the fact that orders on other regions (such as the Tulare Lake Basin Area) already exist and are in varying states of review.

The Kaweah and Tule Coalitions submit that it would be a more reasonable approach for the State Board to indicate that the Proposed Order's recommendations may be applicable to other orders, but that, consistent with their role as the initial determiners of those other orders, the Regional Boards should decide the applicability of the new recommendations based on the particular factual circumstances of each region.

V. CONCLUSION

The Proposed Order as drafted has the potential for doing serious damage to the coalition-based Irrigated Lands Regulatory Program that has been carefully (and painfully) established over the past several years. The breadth of changes that are being recommended, the serious procedural due process problems underlying the Proposed

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Order, and the additional significant costs all threaten to undermine the willingness of coalition participants to continue to participate. The Kaweah and Tule Coalitions are hopeful that the State Board will reconsider the major points outlined above and restore a level of trust and cooperation to the coalition-based regulatory approach.

Respectfully Submitted

PELTZER & RICHARDSON, LC



Alex Peltzer

Attorneys for Kaweah Basin Water Quality Association and
Tule Basin Water Quality Association

AP:is

cc: Donald Ikemiya, KBWQA
David deGroot, TBWQC
R.L. Schafer, TBWQC

Attachment 1
Summary of Meeting, Central Valley Regional
Board, April 12, 2016

**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
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 Wadhvani

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

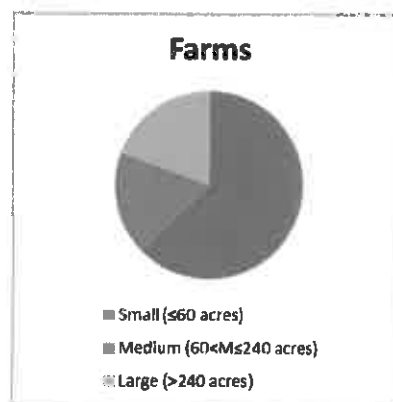
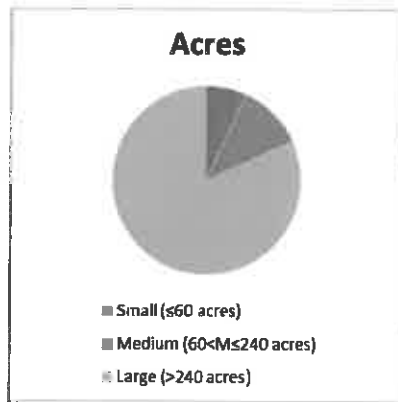
State Water Board’s authority to adopt statewide policies that require greater individual grower accountability or that promote specific means of on-farm nitrogen accounting practices. Adopting such forward-looking policies, rather than mandating changes to existing orders, would give the CVWB and all 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.

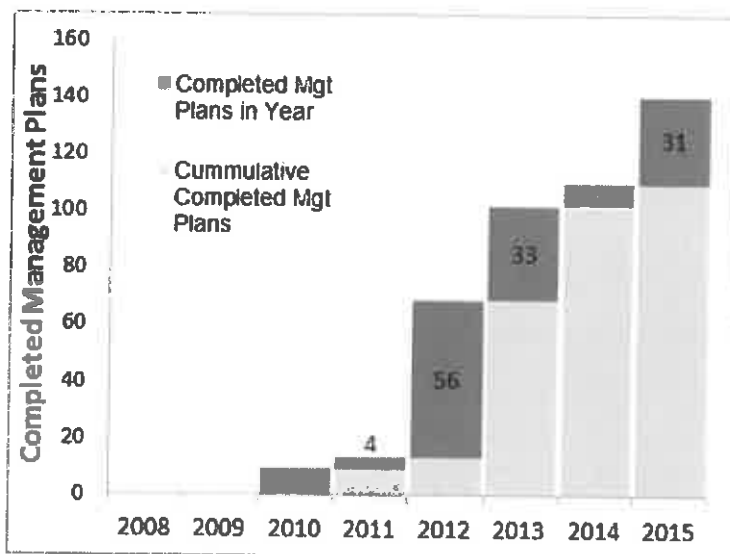


Figure 1: Surface water quality problems successfully addressed

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 included 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 |
| Total | \$ 119.24 | \$ 122.40 | \$ 2.2 million | \$ 17.7 million |

*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.