



December 22, 2017

Via Email: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24<sup>th</sup> Floor  
Sacramento, CA 95814

Re: State of California State Water Resources Control Board ORDER WQ 2018 - In the Matter of Review of Waste Discharge Requirements General Order No. R5-2012-0116 for Growers within the Eastern San Joaquin River Watershed that are Members of the Third-Party Group

Dear Ms. Townsend:

California Citrus Mutual appreciates the opportunity to comment on to the second draft of the proposed revisions to the Eastern San Joaquin Agricultural Waste Discharge Requirements (Order).

On behalf of the State's \$3 billion citrus industry and some 2,500 citrus growers, California Citrus Mutual maintains its position that the revised Order is based on a flawed legal reasoning that deficiencies in the R3 Order relative to the Nonpoint Source Policy are true of the existing Order, and therefore, is wholly unnecessary.

Given that the proposed revisions to the Order are precedential in nature and therefore would be applied to the other general orders in the Central Valley Region and statewide, it is of the utmost importance that the State Water Resources Control Board (Board) carefully considers the potential ramifications of making such drastic and far reaching revisions to the original Order.

The original Order adopted by the Central Valley Water Board (CVWB) was developed over a period of years and with significant input from stakeholders. This collaborative effort resulted in a workable solution that achieves the Board's objectives and engages the regulated community in a meaningful and trustworthy process. Part and parcel to the success of the Order was the formation of Third Party Coalitions to collect, aggregate and summarize nitrogen field data by township in order to provide the CVWB with actionable data while assuring that growers' identity be kept confidential. It is this guarantee of confidentiality that resulted in the high level of grower participation in the Third-Party Coalitions and compliance.

The proposed draft revised Order, however, eliminates confidentiality by requiring that non-aggregated field-level data be disclosed directly to the CVWB. The Board states that "access to full field-level data set enables the Central Valley Water Board to verify the accuracy and completeness of the Third Party's calculations and analyses." However, the Board has failed to demonstrate that analyses by the Third-Party Coalitions are inaccurate or insufficient. In fact, according to Dr. Thomas Harter, information aggregated by crop and township is sufficient for assuming potential impacts and understanding trends. There is no evidence that field-level data in and of itself will identify a problem.



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The Board claims that field level data is needed to identify outliers for follow up by the Third-Party and the CVWB if necessary. But, this is already a function of the Third-Party Coalitions under the existing Order and, moreover, the CVWB has the authority to verify the accuracy of the Coalition's report and to require specific data for any purpose. Why does the Board feel that this authority is insufficient for proper oversight when even the CVWB has stated that it is? Neither the Board in the revised draft Order, nor staff in its presentations, has justified that the reporting of field-level data to the CVWB would be superior to the methods adopted in the original Order. The existing Order clearly addresses the issue of outliers without the mass reporting of field level data directly to the CVWB. What is the real motive behind requiring field-level data if not to target individual farmers?

The changes made in the second draft Order relative to allowing field-level data to be reported with anonymous identifiers is a farce. The Board is surely aware that grower identity can never be truly protected when using field-level data via APN identifier. The second draft Order explicitly states, that the anonymous identifier is sufficient, "at least in the early stages of the program" and the program "must have transparency and accountability to the public." What good can come from making a grower's identity public? This supposed "anonymous identifier" is an insulting attempt by the Board to pacify legitimate concerns relative to confidentiality for no constructive gain.

Growers are justifiably concerned that the Board will use the information collected against them. It is evident that Board intends to unmask growers' identity and growers rightfully fear this information will make it into the hands of environmental activists who have stated publicly that they want access to site and farmer-specific data in order to sue farmers. At a public workshop in Fresno on November 27, Board staff acknowledged that there is no way to prevent environmental groups from suing farmers. This may be true, but we argue that making field-level data cloaked only by a thin layer of confidentiality available to the public is an open invitation to activists to bring lawsuits against farmers.

The Board has done nothing to earn the trust of the agricultural community. In the time between the release of the first draft of the revised Order and the current draft, the Board's Office of Enforcement has waged a war against individual growers by issuing clean up and abatement orders as a means to extort growers into paying for clean drinking water programs. For the Board to then propose revisions that undermine this carefully crafted veil of protection without proper justification that such information is necessary to achieving the object is highly suspect.

In addition to the very specific and technical concerns raised by California Citrus Mutual and others in a letter submitted to the Board on December 21, we must make it clear that in our perspective the entire basis for the proposed revised Order is questionable at best and, at worst, a drastic abuse of power. When viewed through a comprehensive lens, it is glaringly obvious that the Board is incrementally expanding its authority and placing new fees and costs upon growers without justification.

The proposed revised Order will undo the significant progress made toward establishing a productive working relationship between industry and the CVWB and sends a clear message that the Board is disingenuous and untrustworthy. If the Board is sincere in its quest to create meaningful, effective policy for protecting water in this State, it will follow the lead of the CVWB and stop placating environmental activists.

Sincerely,



Alyssa Houtby  
Director of Government Affairs