



May 31, 2016

SENT VIA EMAIL TO: Commentletters@waterboards.ca.gov

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor (95814)
P.O. Box 100
Sacramento, CA 95815-0100

RE: "Comments to A-2239 (a)-(c)"- State Water Boards Review of WDRs General Order [No. R5-2012-0116] For Growers within the Eastern San Joaquin River Watershed that are Members of the Third-Party Group (the Eastern San Joaquin San Joaquin Water Quality Coalition)

Ms. Townsend and Honorable Members of the Board,

The Westside Water Quality Coalition (WWQC or Coalition) was formed by landowners on the Westside of Kern County to serve as the coordinator and coalition (third-party) group under the Irrigated Lands Regulatory Program (ILRP) for portions of the Tulare Lake Basin. The Coalition and its grower members are subject to "Order R5-2013-0120, Waste Discharge Requirements General Order for Growers within the Tulare Lake Basin Area that are Members of a Third-Party Group," as amended (TLB WDRs). There is significant concern from the Coalition and its grower members that the recommended changes in the draft revised Eastern San Joaquin River Watershed order¹ (ESJ Draft Revised Order or Draft Order) of the State Water Resources Control Board (SWRCB or State Water Board) will set an onerous precedent and undermine the current ILRP program. It is the WWQC's opinion that the referenced changes do not take into

¹ Draft SWRCB Order WQ 2016- [02/08/2016], 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 Issued by the California Regional Water Quality Control Board, Central Valley Region, *SWRCB/OCC FILES A-2239(a)-(c)*.



consideration significant unique regional characteristics over different coalition areas, specifically those of the WWQC. Those unique characteristics are described in numerous published reports and the Groundwater Assessment Report (GAR) prepared by the WWQC and submitted to the Central Valley Regional Water Quality Control Board (CVRWQCB or Regional Water Board). The WWQC believes that a “one size fits all” approach, as proposed in the Draft Order, is not appropriate or prudent.

The ESJ Draft Revised Order includes recommended changes to the Regional Water Board’s Waste Discharge Requirements General Order No. R5-2012-0116 for Growers Within the Eastern San Joaquin River Watershed that are Members of a Third-Party Group (ESJ WDRs). The proposed changes to the ESJ WDRs suggest that State Water Board staff believe that the current ILRP and general agricultural WDRs administered by the CVRWQCB are insufficient. The Coalition disagrees and believes it is premature to judge the success of the ILRP, and is inherently unfair to the Coalition and its members to change or undermine the role of the Coalition midstream. The Coalition, as well as other similar ILRP coalitions throughout the central valley, has invested significant resources in implementation of multiple elements of the existing ILRP WDRs related to groundwater quality. Although the implementation of groundwater elements are in progress, there are several coalition success stories from the existing surface water program which indicate the coalition structure and outreach are vital and effective in significantly addressing water quality issues. In addition, while the basis for some of the State Water Board staff recommendations appear to be the Conclusions of the Agricultural Expert Panel² (Expert Panel), commissioned by the State Water Board, the Expert Panel’s recommendations were not entirely used as intended by the Expert Panel. Several Expert Panel recommendations were left out altogether, with the end result causing some Expert Panel members to openly criticize the direction of the Draft Order as contrary to their intentions.

The ESJ Draft Revised Order includes changes that will directly affect and increase the burden on the growers, the Coalition, as well as the CVRWQCB. It appears that the entire burden of the proposed changes has not been evaluated economically or environmentally, with changes dismissed as “insubstantial”. The practical impacts to ILRP implementation were drastically underestimated in terms of cost, labor, and the ongoing viability of Coalitions and Central Valley farming operations. The changes yielding the most significant impacts are outlined below as related to the various increases to monitoring and reporting requirements:

- Annual submission of field level data identified by location to the CVRWQCB and public databases exposes individual grower members to unnecessary and inappropriate

² Conclusions of the Agricultural Expert Panel, September 9, 2014.



assessment, scrutiny and litigation; undermines the current third party (Coalition) role with growers; and creates a voluminous redundant workload for the CVRWQCB which will undoubtedly translate to higher member costs. The Expert Panel Chair, Dr. Charles Burt, has commented before the California Department of Food and Agriculture that reporting of field-level data to the CVRWQCB and the public is unnecessary for regulatory compliance.

- The expedited timeline to establish target Nitrogen species applied (A) over Nitrogen removed (R) ratios with the first three years of submitted data neglects that A/R ratios cannot be accurately determined for many of the crops enrolled in the Coalition and the specific groundwater impacts related to A/R ratios are un-established. Developing Nitrogen (N) removed coefficients to fill data gaps is a massive undertaking which was not considered in the State Water Board staff's recommendation. Ultimately, the effort will still produce an incomplete quantitative metric for compliance. Regional Water Board staff heavily criticized the (heightened) role of the proposed A/R ratio at the May 4, 2016 State Water Board Workshop.
- Monitoring of individual drinking wells requires members to initiate well sampling and notify affected users. This requirement may be beyond the legal authority of many members leasing acreage, is an undue burden of cost and effort on growers, coalitions, and the CVRWQCB, and is a misuse of the ILRP program framework. These efforts should be more efficiently addressed in another more comprehensive domestic well program and should include independent funding mechanisms.
- The removal of High Vulnerability Areas will cause a dramatic increase in member reporting requirements and disrupts and confuses previous outreach efforts conducted by the Coalitions. As member reporting requirements are no longer focused where they are needed the most, additional burden will be placed on members, coalitions, and the CVRWQCB, stretching already limited resources.

As outlined, the recommended changes in the ESJ Draft Revised Order would cause a significant erosion of growers' confidence in the Coalition structure, a loss of the critical Coalition benefit to the grower, and potentially damage the Coalitions' ability to successfully coordinate all aspects of the ILRP. The success of coalitions is dependent on a relationship of trust and confidence, wherein members financially engage the coalition to support their compliance in a fair and direct manner. This allows members to provide accurate and timely information with confidence that they will not be unfairly targeted. As such, the Coalition is the most efficient structure for compliance. In the event that the ESJ Draft Revised Order results in a loss of support for coalitions, it would compromise the significant data management, technical analysis, and outreach service provided by Coalitions; be devastating to the ILRP; and set the program back significantly.



WWQC believes that the best opportunity to support growers and the fulfillment of the ILRP is to allow the current ILRP WDRs to continue to progress before introducing unnecessary, unproven, and unsubstantiated modifications. The current ILRP WDRs represent years of stakeholder input and effort to produce a workable and effective regulatory program. The ultimate success of the ILRP is dependent on maintaining the balance in member participation, coalition services, and CRWQCB oversight. Despite the intent of the proposed revisions, the current WDR provisions do appropriately maintain this balance.

Thus, the proposed changes should be rejected. At the very least, the issues discussed above must be addressed to alleviate the undue burden on farmers, Coalitions, and the CVRWQCB and to mitigate the threat to coalition viability and the long term success of the ILRP. An ESJ WDRs rewrite should fully address and mitigate for the concerns discussed above, and any rewrite of the TLB WDRs should only be made after consideration of the Tulare Lake Basin record in an appropriate separate proceeding regarding that particular order and area.

In closing, WWQC requests that the SWRCB not adopt the proposed changes to the ILRP in the Draft Order. The existing general order is a better alternative, which more than adequately protects groundwater quality, and the Coalition and its member growers have already invested substantial sums and growers have agreed to fund and participate in the coalitions based on the structure of the existing order. Changing the rules in the middle of the game, as the Draft Order essentially would do, is inherently unfair, possibly unlawful, unnecessary, and will risk threatening the success and continued role of the coalition in the ILRP process. The existing process provides for the coalition's housing and summarizing for Regional Water Board purposes sensitive grower member farm field-level data. Growers signed up for and agreed to participate in coalitions with the expectation that their data would only be used as necessary by the Coalition and Regional Water Board for purposes of the general order; there was no expectation that field-level data was being provided to be made readily available in a public data base or for other purposes.

However, if changes to the ILRP WDRs are made (though an appropriate process), WWQC recommends the following alternative to ensure growers are not unduly impacted and coalitions can continue to provide vital services:

- 1) Remove the requirement to submit full field level data with location information to a public database; instead allow the CVRWQCB to maintain the authority to request this data as technically merited;
- 2) Move the requirement for monitoring drinking water wells to a more appropriate program;
- 3) Remove the requirement for growers to calculate N removed values and keep that responsibility with the coalitions. Increase the allowable timeline to define N removed



coefficients, develop reasonable compliance metrics and targets, and assess the relationship between these values and groundwater impacts; and

- 4) Allow HVA prioritization to phase reporting requirements, focus outreach and education efforts, and ensure resources are used effectively to meet member's needs.

Respectfully,

A handwritten signature in black ink, appearing to read "G. Hammett", is written over a light blue horizontal line.

Greg A. Hammett, PG
Coordinator