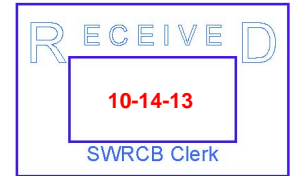


October 14, 2013

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-2000



RE: Comment Letter - Salinas Nutrient TMDLs

Dear Ms. Townsend:

On behalf of our 74,000 farm families and individual members and the Monterey County Farm Bureau, the California Farm Bureau Federation in conjunction with Western Growers and Grower Shipper of the Central Coast (Ag Organizations of the Central Coast) appreciate the opportunity to provide the following comments on the proposed approval of an amendment to the water quality control plan for the Central Coastal Basin to establish total maximum daily loads (TMDLS) in the Lower Salinas River and Reclamation Canal Basin, and the Moro Cojo Slough Subwatershed for nitrogen compounds and orthophosphate (Draft TMDLS).

The Ag Organizations of the Central Coast believe it is premature to approve the Draft TMDLS while significant resources from diverse groups of stakeholders and interests are focused on solutions in nitrate high-risk areas. Although much of this focus is on potential impacts to groundwater used for drinking water purposes, there is a direct connection with the Draft TMDLS under consideration here. First, the Draft TMDLS note that impacts to shallow groundwater may also impact surface water quality via baseflow loading contributions to some of the creeks in question. (See Resolution No. R3-2013-0008, p. 15.) Second, and more importantly, the types of management practices being discussed with respect to protection of groundwater supplies are likely to also be effective practices for protection of surface waters such as those at issue in the Draft TMDLS. Due to the significant overlap between the issues, the Ag Organizations of the Central Coast believe it important for the State Water Resources Control Board (State Board) to consider all related efforts prior to approving the Draft TMDLS.

With respect to groundwater and nitrates, the State Board's February 20, 2013 report to the Legislature made 15 recommendations to address nitrate in groundwater and many of those recommendations are underway.

Recommendation 11 of the report called for the California Department of Food and Agriculture, in coordination with the Water Boards, to convene a Nitrogen Tracking and Reporting System Task Force to identify intended outcomes and expected benefits of a nitrogen mass balance tracking system in nitrate high-risk areas. Key action areas identified by the Task Force are due out this month that will highlight a nitrogen tracking and reporting system to provide meaningful and high quality data to help better protect groundwater quality.

Additionally, recommendation 14 in the Water Board's report to the Legislature stated, "The Water Boards will convene a panel of experts to assess existing agricultural nitrate control programs and develop recommendations, as needed, to ensure that ongoing efforts are protective of groundwater quality." The Expert Panel is expected to be identified and begin its work soon.

Further, the Governor's Drinking Water Stakeholder Group has worked over the past year and a half to identify key issues and make recommendations to the Legislature that will address drinking water problems associated with high nitrates in groundwater for economically disadvantaged communities who rely on groundwater for their drinking water supply.

The Task Force and the Governor's Stakeholder Group are represented by key agricultural and environmental justice organizations, federal, state and local agencies, the California State University system and the University of California, as well as experts and researchers in the private sector. The Task Force, Expert Panel, and the State Board's Order were not in existence at the time in which the Regional Board adopted the Basin Plan Amendment on March 14, 2013, and therefore, these comments could not have been raised before the Regional Board prior to adoption.

Further, the State Board recently adopted, on September 24, 2013, an order which substantially revises the Central Coast Water Board's 2012 Agricultural Order regulating discharges from irrigated lands. This order includes numerous provisions aimed at reducing and preventing nitrate loading of ground and surface waters.

And more directly, the State Board has its own process for evaluating and establishing a *Proposed Policy for Nutrients for Inland Surface Waters of the State of California*, which is currently in process. It is premature for the Central Coast Water Board to be adopting the Draft TMDLS, which include significant numeric targets for biostimulatory substances in advance of the State Board's own policy development. The Ag Organizations of the Central Coast are also concerned with the inclusion of numeric targets for Nutrient Response Indicators that are not pollutants as defined under the Clean Water Act. The US District Court for the Eastern District of Virginia recently ruled that EPA exceeded its authority in establishing a flow-based TMDL¹. This case ruled that EPA cannot use surrogates in place of regulating pollutants. According to the case, EPA is charged with "establishing TMDLs for appropriate pollutants; that does not give them the authority to regulate nonpollutants." The term "pollutant" is defined in the CWA as "dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water." 33 U.S.C., § 1362(6). The Nutrient-Response Indicators included in the Draft TMDLS are not defined as pollutants by the Clean Water Act. As result, such targets should be removed from the Draft TMDLS.

Overall, the Ag Organizations of the Central Coast believe that current efforts to address management practices need to move forward unimpeded by the additional regulatory requirements associated with the Draft TMDLS. The Task Force, the Expert Panel, the Governor's Stakeholder Group and other efforts need to complete their highly technical and complex work before approving the Draft TMDLS. Until this work is completed, it is unknown what discharge levels are reasonable to achieve for irrigated agriculture while maintaining a viable industry in the Central Coast. For these reasons we recommend against approving the amendment to the Water Quality Control Plan for the Central Coastal Basin.

¹ Virginia DOT v. EPA, E.D. Va., No. 1:12-cv-775, 1/3/13

Thank you for considering our views.

Sincerely,

A handwritten signature in black ink, appearing to read "Danny Merkley". The signature is fluid and cursive, with the first name being the most prominent.

Danny Merkley
Director of Water Resources

A handwritten signature in black ink, appearing to read "Gail Delihant". The signature is cursive and somewhat stylized, with the first name being the most prominent.

Gail Delihant
Director, CA Government Affairs

A handwritten signature in black ink, appearing to read "Abby Taylor-Silva". The signature is cursive and somewhat stylized, with the first name being the most prominent.

Vice President, Policy & Communications
Grower-Shipper Association of Central California

cc: Karen Ross, Secretary, California Department of Food and Agriculture