



CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE
A. G. Kowamura, Secretary

September 4, 2007

Mr. Ryan Maughan
Division of Water Quality
State Water Resources Control Board
1011 I Street, 15th Floor
Sacramento, CA 95814

Dear Mr. Maughan:

We appreciate the opportunity to provide comment and recommendations on the developing Monitoring and Reporting Program (MRP) and on the joint State Water Board and Regional Water Board workshop for the implementation of the Irrigated Lands Program (ILP).

The ILP has experienced a positive evolution over the last several years to a more collaborative approach. The Technical Issues Committee (TIC) and the various other committees have provided forums to discuss and resolve issues. We endorse this process and the use of sound scientific principles in the development of the MRP and continued implementation of the ILP.

We also endorse the Memorandum of Understanding (MOU) for the pilot study in Glenn and Butte Counties and encourage its expansion to other counties. Similar to the MOU, cooperative efforts between other entities can assist in achieving the goals of the ILP. We encourage the Regional Water Quality Control Board to expand its partnerships to include the Department, University of California Cooperative Extension (UCCE), and NGO partners, similar to the California Dairy Quality Assurance Program (CDQAP). UCCE brings a wealth of knowledge of management measures and outreach mechanisms that will assist farmers in controlling discharges from their fields. Through interactions with UCCE, all parties will be able to understand the extent and limitations of adopting management measures.

As you may be aware, the Department administers the Fertilizer Research and Education Program (FREP). As a result of legislation sponsored by the fertilizer industry (AB 3063, 1990), a mill assessment on the sales of fertilizer provides funding for research and education projects on the safe handling and management of fertilizers,



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including for water quality protection. Through this funding source, a wealth of information has been gained on management measures to protect water quality. Our staff also participates in professional societies including the California Chapter of the American Society of Agronomy. Through this effort, an annual conference is held where information on current research on agricultural production and environmental management is presented. We invite your staff to participate.

As a general comment, we urge the Board to make basic Basin Plan planning with respect to agricultural dominated water bodies a priority. Although this phase of the ILP has been billed as a data gathering phase, the terminology used by staff in presentations and technical reports refers to "exceedances of Basin Plan water quality objectives." It is premature and erroneous to use this terminology, as the Board has not established the appropriate beneficial uses of these agricultural dominated water bodies. We have commented at length on this issue. Yet four years into the implementation of the waiver for irrigated lands there has been no progress toward this crucial task that is necessary for the Board to carry out its regulatory function. Rather than expand on this issue any further, we attach one set of our comments for your consideration. Briefly, the Board does not have to re-invent the wheel on this issue as the ground work has been laid. Additionally, the work done by your staff in the early 1990s and again in 1995 as part of the advisory task force to the State Water Board on the implementation of the Inland Surface Water Plan was well received by a broad segment of stakeholders, including the USEPA and the environmental community.

With respect to the developing the MRP, we recommend that you not develop a prescriptive, rigid, and one-size-fits-all approach. Coalitions need flexibility to investigate water quality conditions that are unique to their watersheds. In the current MRP, the Board staff appears to be working under the assumption that discharges are continuous point sources and therefore, it is necessary to expand monitoring further upstream until the source is identified. This is an incorrect model. Discharges from any one source is discontinuous and it is futile to "chase" a potential source.

In certain limited circumstances there may be a potential source responsible for the observed water quality impairment. The recent data review suggests this may be possible. Under those circumstances, Coalitions may wish to pursue further studies. However, in most circumstances, the operative model is one of a non-point source. That is, most farm operations may be contributing in a small but significant way to the water quality condition and collectively to the impairment. In this case, Coalitions should opt for expeditious implementation of management measures in priority farms.

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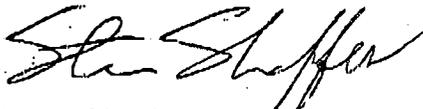
These are farms that border an impaired waterway or which may discharge indirectly to the waterway.

It is also recommended that the Board be mindful of Water Code provisions [§13267(b)(1)] regarding Board requested information and the reasonableness of the request and the benefits to be obtained from that information; requirements to conduct flow monitoring at all monitoring locations in the current MRP come to mind. Such information can not be justified scientifically.

With respect to the relation of the Board and Coalitions, we recommend that the Board view the Coalitions as partners in this process rather than as "dischargers" or holders of the waiver. The Coalitions are made up of a broad section of the agricultural community including Agricultural Commissioners, County Farm Bureaus, Irrigation Districts, Resource Conservation Districts, farmers, NGOs, etc. Collectively, they are not a discharger but facilitate the implementation of the waiver. Their existence provides a benefit to both the farmers and the Board and facilitates the implementation of the waiver. We recommend that the Board not take actions that undermine the Coalitions ability to interact with the farmers and to exclude the Coalitions from enforcement activities on individual farmers.

Thank you once again for the opportunity to provide comment and recommendations. We once again renew our offer to assist in the development of appropriate beneficial uses for agricultural dominated water bodies and our expertise with respect to management measures for nutrient management. If you have any questions regarding these comments, please contact Al Vargas of my staff at (916) 651-0444.

Sincerely,



Steven Shaffer, Director
Office of Agricultural and Environmental Stewardship

cc: Pamela Creedon, RWQCB-5
George Gomes, CDFA
Asif Maan, CDFA
Kent Kitade, CDFA

DEPARTMENT OF FOOD AND AGRICULTURE



May 23, 2003

Mr. Robert H. Schneider
Regional Water Quality Control Board
Central Valley
3443 Routier Road, Suite A
Sacramento, CA 95827

Dear Mr. Schneider:

Thank you for extending the comment period on this very important matter and deferring final action until the July Board meeting. We support the direction the Board provided the staff to work with the stakeholders at developing alternatives for consideration. We would appreciate a seat at that table.

Attached are our comments. We did not directly address the 12 issues enumerated in your May 2, 2003 letter. However, we have detailed five issues of our own and embodied in this discussion we address to some extent most of the issues you raised.

In summary, the Department supports a watershed process approach to addressing water quality issues from irrigated lands. The process should not, however, be prescriptive and should provide as much flexibility to the watershed groups in reaching water quality goals. The Regional Water Quality Control Board should limit its orders to setting goals, milestones, and schedules. The reporting requirements should be minimized and directed at providing verification that the milestones and goals are being met. The RWQCB should include alternative steps in the event that a watershed group fails to make a good faith effort. These alternatives would provide an incentive to the group to diligently work to meeting their obligations. The watershed process and the agricultural community work best when given the flexibility to develop their own solutions. We believe this approach is most consistent with Water Code §13360.

The RWQCB should not prescribe detail-monitoring requirements. Every watershed is unique and watershed and sub-watersheds must be free to use a scientific rationale at developing a monitoring plan for the location, frequency, and parameters to be evaluated. Additionally, the RWQCB should only provide quality assurance requirements for data to be submitted for the verification of compliance with milestones and goals. The level of assurance is dependent on the data quality objectives. While all data collected needs some level of assurance, not all data requires the level that is being requested by the RWQCB. Reporting requirements need to be consistent with Water Code §13267(b)(1). We propose an alternative-monitoring framework for your consideration.

Even more fundamental than the previously discussed issues is the need to develop a policy for water bodies dominated by agricultural flows, and to assign appropriate uses and levels of protection to all waters that may receive agricultural drainage. Beneficial uses have been identified for a limited number of water bodies. By virtue of the so-called "tributary rule", the

California Department of Food and Agriculture

Comments to the Central Valley Regional Water Quality Control Board
on the Proposed Conditional Waiver of Waste Discharge Requirements for
Discharges from Irrigated Lands Within the Central Valley Region

May 23, 2003

Issue 1: Promote the use of the watershed approach, minimizing regulatory involvement and maximize flexibility to the watershed participants.

The RWQCB should focus on results and not process. In doing so, it will provide maximum flexibility to the watershed groups in meeting water quality obligations. The objective of the RWQCB should be to establish goals, milestones, and alternative mechanisms in the event that goals are not met. In essence, this process will show the best results if the RWQCB establishes the goals and milestones, and the accountability mechanisms and lets the watershed groups do the work, on their own terms, in meeting the goals. This approach provides the best mix of...

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RWQCB has designated uses to all of the water bodies. These uses are not necessarily correct. This was recognized in 1991 when the State Water Resources Control Board developed the Inland Surface Water Plan, and as a component of this plan, developed a policy for water bodies whose flows are dominated by agricultural flows. This policy recognized that many water bodies whose flows are dominated by agricultural discharges and supply water have been constructed (artificial channels) or are highly modified natural channels. Unfortunately, the courts overturned the 1991 Plan and the State Board has never developed another one in its place.

Due to the extensive alteration and management of the hydrologic system, agricultural flows provide most if not the only flow in these channels. As such, there are incidental beneficial uses that these flows create or augment. A policy for agriculturally dominated water bodies should recognize the uniqueness of this system and not place priority on the incidental uses at the exclusion of the function for which the channels have been constructed or modified and for which they have served for decades. We suggest for your consideration a framework from which to develop an agricultural water body policy and recommend the RWQCB use the tools provided in the Water Quality Standards regulations (40CFR 131.10) to the Clean Water Act to assign proper beneficial uses.

We appreciate your consideration to our comments and the alternatives we propose.

Sincerely,

Original signed by Daniel Webb

Daniel Webb
Deputy Secretary

cc: Winston H. Hickox, Secretary for Environmental Protection
Arthur G. Baggett, Jr., Chair, State Water Resources Control Board

California Department of Food and Agriculture

Comments to the Central Valley Regional Water Quality Control Board on the Proposed Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands Within the Central Valley Region

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Issue 1: Promote the use of the watershed approach, minimizing regulatory involvement and maximize flexibility to the watershed participants.

The RWQCB should focus on results and not process. In doing so, it will provide maximum flexibility to the watershed groups in meeting water quality obligations. The objective of the RWQCB should be to establish goals, milestones, and alternative mechanisms in the event that goals are not met. In essence, this process will show the best results if the RWQCB establishes the goals and milestones, and the accountability mechanisms and lets the watershed groups do the work, on their own terms, in meeting the goals. This approach provides the best mix of regulatory oversight and the incentives needed for a self-directed watershed approach to work. In Issue 5 we lay out a process for monitoring and implementation that we believe provides for that right combination.

Issue 2: Lack of a Policy for Water Bodies Dominated by Agricultural Flows

California's natural hydrology has been greatly altered through flood control and water supply projects. Water is moved from one watershed to another and from one part of the state to the other. Spring snowmelt and runoff is captured and stored for distribution during the seasonal dry periods. Ninety percent of the wetlands have been drained and the sloughs that once drained those wetlands no longer serve the same function.

Water, from this managed hydrology is conveyed through a complex network of natural stream channels, modified natural channels and man made channels. Most of the alterations, which began in the era of the Miller and Lux Land Company more than 150 years ago, were in place by the late 1960s with the completion of the major elements of the State Water Project. The state's economy and culture has developed as a result of these modifications. It is not reasonable to expect that the natural hydrology and native ecology can be restored.

Agriculture, for its part has flourished and benefited from altering the hydrology. Sloughs that once conveyed flood drainage from wetlands now convey agricultural supply and drainage. Agriculture producers, long-ago altered natural water bodies and constructed additional channels to convey water supply and drainage. The conveyance of irrigation supplies and drainage are intertwined. Flow in these channels provides for incidental beneficial uses such as aquatic habitat that would not otherwise exist or would be diminished except for the flows that agriculture production provides.

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It is also not reasonable to ignore environmental quality. However, the limitations of the modified system need to be recognized. Channels that have been straighten and deepened and which were built to convey drainage cannot support full aquatic life uses, drinking water, or contact recreation. In regulating water quality in the altered hydrologic conveyance, the aquatic life value and other incidental beneficial uses that agricultural production provides should not take priority over the function for which these channels now serve and have served for decades.

The proposals (December 5 and April 24) put forward by the Regional Water Quality Control Board (RWQCB) staff suffer from the lack of recognition of the nature of the altered hydrology and its limitations to meet traditional beneficial uses. Instead, the plan proposes to impose Basin Plan standards on water bodies whose flows are dominated by agricultural flows. The RWQCB needs to develop a policy for water bodies whose flows are dominated by agricultural flows that recognizes and places a higher priority on the function of the water body for which it was constructed or modified over the incidental uses that the water bodies provide as a result of agricultural production.

A policy for water bodies dominated by agricultural flows was in place in the 1991 Inland Surface Water Plan (ISWP). This policy recognized the uniqueness of the agricultural hydrology. The USEPA had agreed in principle with this policy but a few issues remained to be resolved. Unfortunately, the courts struck down the ISWP. In 1994 the SWRCB convened work groups to advise it on managing non-point source issues including irrigation, nutrient management, pesticides, etc. The recommendations of these work groups were never implemented. Again, in 1995, the SWRCB convened advisory task forces on various issues related to the development of the ISWP. One such task force looked at the implementation of water quality standards in agricultural waters. This task force was made up of diverse stakeholders including agricultural and environmental stakeholders, USEPA, SWRCB, RWQCB, US Fish and Wildlife Service, etc. Many excellent consensus recommendations emerge from this process that resemble the agricultural water body policy in the defunct ISWP. Unfortunately, the SWRCB never implemented these recommendations, as it has never developed an ISWP. Instead the SWRCB has developed an implementation plan to the USEPA promulgation of toxic standards for California. This plan, however, does not include a policy for water bodies dominated by flows from agriculture. So nearly a decade later we do not have an agricultural water body policy in place and yet are proceeding with enforcing basin plan standards on water bodies dominated by agricultural flows.

At this stage of the process, the RWQCB has the opportunity to do this right (place the horse before the cart) by establishing a policy that recognizes the uniqueness of water bodies dominated by agricultural flows. Such a framework already exists in the recommendations of the 1995 ISWP – Agricultural Water Bodies Task Force. Among the important elements of the framework is the categorization of water bodies depending on the nature of the water body from natural water body to constructed agricultural drain.

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Beneficial uses and water quality objectives are then assigned according to the category of the water body recognizing the limitations and placing a priority on the function of the water body over the incidental uses. This will ensure that agriculture will continue to function and use the channels, which it created while maintaining flows and improving water quality in those channels to maximize the incidental beneficial uses provided in those channels.

The report of the task force also contains recommendations for implementation based on a hierarchy of protecting the downstream beneficial uses in a natural water body followed by agricultural dominated natural water bodies and lastly the constructed water bodies. The report recommends a two-stage process in which assessment and prioritization is conducted first and then actions by the RWQCB according to the Non-Point Source Plan and the watershed management program. This framework has the advantage of having been developed by a diverse stakeholder group including federal and state regulators and should be further refined through a continued stakeholder process and form the basis by which the RWQCB addresses discharges from irrigated lands.

Issue 3: Recognition of the altered hydrology in the loss of assimilative capacity and the importation of poorer quality water in the main stem streams.

The natural water bodies downstream of the agricultural conveyance system, which are the receiving waters for agricultural discharges, have also been impacted by the modification of the natural hydrology. Flows have been reduced and in some cases eliminated most of the time. This has impacted the assimilative capacity of these water bodies. A case in point is the San Joaquin River downstream of Gravelly Ford to the confluence with the Merced River. In this portion of the river and the reach from the Mendota Pool to the Merced River confluence in particular, the river contains primarily groundwater accretions. These accretions are not able to meet basin plan standards. Thus, the river cannot accept additional discharges without exceeding water quality standards. To complicate matters, riparian water right holders to this portion of the river have traded their water rights for imported water from the Delta via the Central Valley Project. This water is of poorer quality, primarily with respect to trace elements and salinity and at times does not meet water quality objectives. This is the nature of the complex modified and managed hydrology.

The RWQCB needs to take these realities into consideration in designating beneficial uses for these water bodies. This has not been considered under the current designations. The RWQCB should use the tools provided in the Water Quality Standards (40 CFR 131.10) regulations to the Federal Clean Water Act to designate the appropriate uses. These regulations provide a process for designating subcategories of uses, seasonal uses, and for removing designated uses that are not existing uses. Among the factors that can be considered and which may be appropriate are naturally occurring pollutant concentrations, low flow conditions, hydro-modifications, physical conditions, such as

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the absence of appropriate habitat to support all levels of aquatic life, and economic considerations. These tools may also be appropriate for designating uses for the constructed and modified water bodies used to convey agricultural flows.

It also must be recognized that there are limits to the efforts to be undertaken in attaining the uscs. For non-point sources these are limited to the implementation of "cost-effective and reasonable best management practices" (40 CFR 131.10(h)(2)). In the case of the Grasslands By-Pass Area, the farmers, in improving water quality, have undertaken extraordinary measures. These measures include recycling of drainage, alternative cropping systems, irrigation improvements, purchase of additional land for drainage reuse, and studies into treatment systems. Additionally, they have instituted a tiered water pricing structure to encourage conservation and a tradable load program. This has come at a high cost: \$10 per acre for regional improvements and \$10 acre for on-farm improvements. Additionally, the Bureau of Reclamation contributes about \$5 per acre for the regional monitoring. These costs significantly reduce and can often exceed grower profit margins.

Issue 4: The request for information under the Monitoring and Reporting Program must be consistent with the Water Code. Data reporting should be limited to only that which is necessary to meet program objectives.

Section 13267(b)(1) of the Water Code¹ requires the RWQCB to be measured in its request for information. The information should have specific purpose and implied in this is that there should be a connection to water quality improvement. The RWQCB is requesting an inordinate amount of data up-front, including chemical usage, cropping patterns, etc. It is doubtful that with its limited staff the RWQCB will be able to review, compile and utilize this data in a meaningful way. Even with adequate staffing, it is difficult to determine how this data could be used to promote water quality improvements. The RWQCB should limit its data request to data, which it can manage and which can be used to promote water quality improvements. The requests for data should be kept to a minimum so as not to burden the watershed groups with data gathering rather than water quality improvement implementation.

As an example, not all pesticide usage needs to be reported. Some pesticides, because of the method by which they are applied, and their chemical and physical characteristics, may have a low potential to contaminate surface waters (e.g. methyl bromide). The reporting, if at all should come after initial assessment of the watershed has been conducted and through coordination of the County Agricultural Commissioners and the Department of Pesticide Regulation using the existing Pesticide Use Reports.

¹ Water Code §13267(b)(1) - (...The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.

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Issue 5: The Monitoring Program is too prescriptive. Every watershed and sub-watershed is unique and a monitoring program is a site-specific issue.

Every watershed and sub-watershed is unique with respect to cropping patterns, chemical usage, topography, geology and soils, irrigation practices, and other land use practices that can influence the quality of water. A sampling plan is designed according to the questions one is trying to answer. For efficiency and economy, a scientific rationale is used in designing a plan over a statistical design. In a scientifically based design, the existing information is considered along with land uses, geography, land-use practices (cropping, chemical use, irrigation practices, etc.) and any other factors that may influence water quality. Based on these considerations, strategic sampling locations are selected. For example, if one is trying to answer the question of whether water quality has been impacted by farming activities, one may choose to target sampling at outflow locations of the various sub-watersheds. If one or more sub-watersheds is found to be impacted, new questions arise and a new sampling design will need to be developed.

With respect to sampling timing and frequency, this may be event driven such as for storms of certain intensities occurring and during the irrigation season. The frequency of sampling is driven by the data quality objectives, and the statistical considerations needed to adequately characterize the water quality parameters. For constituents to be evaluated, land use factors can be considered in improving the efficiency of the monitoring program. For example, pathogens would not be included in a monitoring program if there were little or no animal agriculture in the watershed. Additionally, surrogate or indicator constituents may be selected to provide efficiency. For example, toxicity testing may be used in-lieu of a broad pesticide screening. If toxicity is found in which a pesticide is suspected then toxicity identification evaluations may be used to hone in on the pesticide.

It is inappropriate and there is no scientific rationale to prescribe general monitoring requirements with respect to the number of samples, frequency, and analytical parameters. One size does not fit all, as every watershed is unique. Monitoring plans must be developed at the local level. The RWQCB should provide as much flexibility as possible and minimize reporting requirements to only those needed to demonstrate compliance or improvements in water quality. Flow monitoring should be reconsidered due to the prohibitive cost of obtaining these data (approximately \$25,000 to establish a new stream gauging station) and its limited value. Flow monitoring can be used to calculate loads and is valuable in being able to discern variations in concentrations due to varying flow levels. However, the RWQCB regulates based on concentration and not load. Load is an issue for Total Maximum Daily Loads (TMDLs) and is beyond the scope of the conditional waiver. Where TMDL issues are involved they should be handled in a separate program. Any flow monitoring should be at the discretion of the watershed group and should be limited to existing flow monitoring stations.

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The level of quality assurance (QA) will depend on the data quality objectives. It is not necessary to maintain a high level of QA throughout all phases of the monitoring. For example, some monitoring may be for internal use such as on-going water quality improvements or assessment of management measures. These data are for internal consumption and only need a minimal level of QA. Data submitted to the RWQCB for the purpose demonstrating compliance or improvement may need to have a higher level of QA.

The Department recommends a phased approach to data reporting and monitoring. The first step of a monitoring effort is the gathering of existing data and evaluation to determine what it reveals about the existing water quality conditions. Depending on the amount and detail of the data available, the next phase may be a cursory review of the land uses including cropping patterns and chemical usage. Based on this information, a monitoring plan can be developed for a level 1 assessment. This will involve monitoring at strategic locations in the watershed including the outflow to the watershed and at primary confluences. This information will allow future actions to be focused in subwatersheds and drainages that may have water quality deficiencies. It will also allow monitoring an implementation programs specific for the issues in the subwatershed to be developed.

A level 2 monitoring program can be developed at this stage. At each phase of monitoring development, a different question is being asked and monitoring design is developed to answer that specific question. At this point in the process an implementation plan will need to be developed and should include outreach, more detail inventory of cropping and chemical usage, inventory of management measures utilized in connection to the parameter in question, along with better definition of the drainage conveyance system. This information can be used to develop a refined monitoring program and to start the promotion and implementation of management measures. A risk evaluation system could also be developed, similar to that used by the Lodi-Woodbridge Wine Grape Growers. This is an excellent tool to make farmers aware of potential areas of concern that need to be considered and addressed.

Level 3 monitoring may be conducted at the farm level by producers using, to the extent possible, field kits and rapid assessment techniques such as nitrogen analysis kits and electro-conductivity meters. These data will have a low level of QC and is designed for educational purposes. Additional data may be collected with a higher level of QC to verify the effectiveness of the management measures. At the same time, water quality data will continue to be collected at the sub-watershed level to track progress toward meeting water quality goals.

Reporting to the RWQCB could be undertaken at each phase and could be restricted to summary reports of steps taken along with water quality data and QA procedures. We

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believe this process to be more efficient and cost-effective, while providing maximizing flexibility and least amount of regulatory burden to producers.