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California Regional Water Quality Control Board Central Valley Region, Order R5-XXXX-XXXX  
Waste Discharge Requirements General Order  
For  
Growers in the San Joaquin County and Delta Area That are Members of a Third-Party Group  
(Order)

As stated the scope attempts to address "irrigated lands" discharges of sort as "The discharges result from runoff or leaching of irrigation water and/or stormwater from irrigated lands."

This is a formidable effort to reduce water contamination of sort. Two issues come to mind. One, as you state in item 52 "The United States Department of Agricultural Natural Resources Conservation Service (NRCS) administers a number of programs related to water quality. Considering what the NRCS does, it would make sense for the State to cooperate with the NRCS to enhance the overall results of the NRCS efforts. Second, your department's efforts center about regulation with no remedy but to transfer money from the land owner as a form of a taking.

Considering the statement 57, "This Order does not authorize violation of any federal, state, or local law or regulation" under the GENERAL FINDINGS heading, how will this Order be implemented as it appears to violate a host of Federal law? Reference the following issues:

This Order is in direct conflict with a United States Act of Congress. Reference the Clean Water Act; Title 33 USC; Section 1362-Definitions; (14) The term "point source" means..... This term does not include agricultural stormwater discharges and return flows from irrigated agriculture." That means it is not lawful for this Order to stand as written for it attempt to control what is exempted by Federal Law. The Congress of the United States has been consistent with the intent to protect "production" for they have historically recognized production as the foundation of our form of society and without it there is no society. The intent of Congress to protect agriculture from unlawful regulation is confirmed with Friends of the Everglades, Florida Wildlife Federation and Fishermen Against Destruction of the Environment v. South Florida Water Management District; "Congress even created a special exception to the definition of 'point source' to exclude agricultural storm water discharges and return flows from irrigation, despite their known, substantially harmful impact on water quality."

This Order also violates the US Constitution for the Order makes a crime of a Constitutional Right. These rights are with Amendment IV; V; VII; IX and XIV Section 1. As well, it violates the Clean Water Act as

mentioned. Several Supreme Court cases confirm the violations of this Order. Ref. *Miranda v. Arizona*, 384 U.S. 436 (1966) "Where rights secured by the constitution are involved, there can be no rule making or legislation which would abrogate them." *Miller vs. U.S.*, 230 F. 486, 489 "The claim and exercise of a constitutional Right cannot be converted into a crime."

Considering the Supremacy Clause, Article VI, Clause II of the US Constitution, what definitive position does the State of California take with this Oder?

The State of California can not own water for the water has been allocated for the beneficial use of the land owners prior to the California State Constitution of 1876. Ref. HR 365, Mining Law of 1866, Section 9. *And be it further enacted*, That whenever, by priority of possession, rights to the use of water for mining, agriculture, manufacturing or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and the decisions of courts, the possessors and owner of such vested rights, shall be maintained and protected in the same; ....

As well water from forest lands is designated to irrigation via the Organic Administrative Act of 1897; "No public forest reservation shall be established, except to improve and protect the forest within the reservation, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States; but it is not the purpose or intent of these provisions, or of the Act providing for such reservations, to authorize the inclusion therein of lands more valuable for the mineral therein, or for agricultural purposes, than for forest purposes." "... All waters on such reservations may be used for domestic, mining, milling or irrigation purposes, under the laws of the State wherein such forest reservations are situated, or under the laws of the United States and the rules and regulations established thereunder. Note, this relates to law prior to the Act. As well, these waters are not to have a reserved right for aesthetic, recreational, wildlife preservation, and stock watering purposes." *United States v. New Mexico*, 438 U.S. 696 (1978). Land Patent allodial title also "grants" the water to the land owner, his heirs and assigns "forever" which is granted by the US Constitution's Article IV, Section 3, Clause II known as the property clause and Acts of Congress.

Considering allodial title of properties by land owners via the constitutional contract known as the Land Patent as authorized in the US Constitution Article IV, Section 3, Clause II known as the property clause, a number of Acts of Congress which nullify all statutes and regulations implemented after the date of the Land Patents, where does the Order derive its "jurisdiction" over a Land Patent?

I noticed with in the introduction to your Order, Findings, SCOPE AND COVERAGE OF THEIS ORDER, (2) the word "may" is used numerous times. The Supreme Court's decision with *City of Dallas v. Mitchell*, 245 S.W. 944, 945-46 (Tex. Civ. App. -Dallas 1922) establishes "The rights of the individual are not derived from governmental agencies, either municipal, state or federal, or even from the Constitution. They exist inherently in every man, by endowment of the Creator, and are merely reaffirmed in the constitution, and restricted only to the extent that they have been voluntarily surrendered by the citizenship to the agencies of government. The people's rights are not derived from the government, but

the government's authority comes from the people..."; is this use of the word "may", not being mandatory but of a "voluntary" nature, an attempt to comply with Dallas v. Mitchell?

Considering the California Constitution, Article III Section 1 recognized the US Constitution as the supreme law of the land, please explain how this Order as written can stand in regard to each of the conflicts with the US Constitution as referenced in this notice.

I also question the "fee" and most sorely contest the potential unreasonable fines. These are no more than extortion. The agents of the Water Quality Control Board are already being paid by the farmers via taxation of many sources, too many to know. Considering the definition of "extortion" in the United State Code Title 18 Section 1951- Interference with commerce by threats of violence (2)- The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right." Money is considered the "property" of the person who earns it, any enforcement action taken in violation of the US Constitution while acting under the "color of law", (that is, the Order) and the threat of unreasonable fines can be defined as extortion as defined here. How do you relate the context of your Order to USC Title 18 Section 1951 as described here?

Having this notice, how will you defend any action taken by this agency under the color of law against a suit against the agency and or directly to an agent of the agency under the United State Code Title 42 Section 1983?

In conclusion, considering that the premise of identifying and reducing water pollution is laudable, if you started over with a new document based on the premise "how may we help you" versus "how may we stop you", the Order may receive a positive review. As it stands, the Order does not pass the smell test as it is held up to the light of freedom and the rights as recognized in the Declaration of Independence as preserved by the Founding Fathers with the most famous document ever penned by mankind, The Constitution of the United States, the contract as ratified between Government and the People.

Thanks you,



David Avila