



CALIFORNIA  
**FRESH FRUIT**  
ASSOCIATION



AFRICAN-AMERICAN FARMERS of CALIFORNIA



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

December 11, 2017

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

*Re: Comments on 2<sup>nd</sup> Draft of Eastern SJR Watershed General Order (Order), No. R5-2012-0116*

The California Fresh Fruit Association is a non-profit, public policy association whose membership includes the state's producers of permanent crop, fresh fruit commodities (excluding citrus and avocados). Our members farm throughout California covering parts of Lake and Mendocino counties, within the productive Delta farming region, throughout the entire San Joaquin Valley, and in the Coachella Valley.

The Nisei Farmers League, taking its name from the term for 2<sup>nd</sup> generation Japanese-Americans, formed out of a small group of Japanese-American farmers banding together to defend their rights and interests against threats resulting from labor-relations tensions, marketplace boycotts, and state government actions which failed to account for impacts onto minority farmers. The Nisei Farmers League became their voice and today vigorously represents numerous family farming operations within California, and before national regulatory and legislative forums.

The African-American Farmers of California has its roots in California's Central Valley, representing African-American families focused on making fresh, California grown, nutritious foods available to many parts of urban California through farmers' markets throughout the Bay Area and Los Angeles. The African-American Farmers of California embraces its role representing minority farmers, and works to increase interest in farming with the next generation, underscoring the value of making available

nutritious food, while serving as the voice of the African-American farmer, and their communities before state and federal government bodies.

Together, our collective membership will be directly impacted by the proposed changes to the Order as a result of any changes in requirements for those within the San Joaquin River watershed, as well as all others due to the precedential intent of these changes.

The Agricultural Expert Panel (Panel) provided, as a foundation to its recommendations, a reaction to the design of a regulatory construct focused primarily on “investigative and data collection efforts” which emphasize how nitrate moves into first-encountered groundwater, how groundwater moves, and nitrate levels detected in groundwater may relate to surface activity. They said this emphasis will be ineffective. Underlining their opinion of an ineffectively designed regulatory program, the Panel cautioned, “(A)ttempts to completely understand the groundwater and vadose zone characteristics and movement, plus the associated nitrate movement, are extremely expensive, inexact, and do little to solve the problem.”

After further exploring how the proposed changes address exactness, expense, and solutions, we first came away concerned over its lack of clear safeguarding against generating unclear or incorrect conclusions that are likely to result from the examination of annual data sets. As addressed by the Panel, and reinforced later by a May 2016 Fresno workshop technical panel, some of whom had overlapping participation on both the Panel and the technical panel, both remarked that a one year analysis, or year to year comparison, creates a high likelihood of producing misleading results. This concern is reinforced by the proposed Order. For example, the proposal adds a question on the Irrigation and Nitrogen Management Plan Summary Report inquiring whether the Member has been identified in the past year as an outlier for nitrogen application (p.37, redline version), and further provides its reason supporting collection of more granular data as, “allow(s) the Board to exercise reasonable oversight to confirm that the appropriate Members have been identified as outliers for follow up by the Third Party and, if warranted, the Central Valley Water Board,” (p.48, redline version).

On behalf of our membership, we respectfully request a description of how an analysis of the single year ratio is not intended to, will not, and/or has a low likelihood of producing a misleading result or misinterpretation of management practice implementation. This request is made based upon an absence of rationale in the proposed Order. Even after attempting to reconcile the Panel’s sole focus onto multi-year nitrogen measurements to address a potential for an incorrect assumption that would result from a time-limited, single data point, it remains unclear as to how the single-year data point will be used when evaluating a potential for over-application of nitrogen.

Even after acknowledging the proposal’s basis for collecting additional information covering the magnitude for nitrogen over-application, as provided through a pairing the multi-year A/R ratio with an A-R difference value (pounds of nitrogen applied minus pounds of nitrogen removed), any analysis of one-year, or even year to year data, should have a defined lens or filter to reduce the chances of misinterpretation. The multi-year ratio and A-R difference pairing does not, in and of itself, appear to define the useful context of a single year data set. As you know, the Panel emphasized against pre-ordaining credibility onto a time-limited data set and, at present, we do not see its value when viewed through the scope of determining a measure’s reliability for the potential for nitrogen to reach groundwater.

If the Farm Evaluation is the mechanism, as described in the draft Order, for identifying on-farm management practices, it stands to reason there exists no need for a new requirement for individual submission of a new, and separate, Management Practice Implementation Report (MPIR). This Order fails to describe the need for the new report, only to state it serves to “strengthen” the requirements for

management practice implementation data (p.28, redline version) for fields covered by a Surface Water or Groundwater Quality Management Plan. This appears duplicative and unnecessary when there exists a mechanism for member identification of management practices, the Farm Evaluation.

Without providing additional rationale for why there exists a need for a new and separate MPIR, we cannot support this addition. Moreover, if the Farm Evaluation is not a sufficient location for management practice implementation data, then please describe its deficiency and/or why it is not the most appropriate place for the identification of and description of the implementation of management practices. At present, we believe any necessary management practices revelation should be contained within the Farm Evaluation.

Where the proposed order defines the A/R ratio as nitrogen applied to (R) nitrogen removed, we support the definition for R, in the case of perennial crops, as the nitrogen sequestered in the permanent wood (p.41, redline version).

However, we are aware, for instance, of the existing data gaps for many crops including fresh fruits. Therefore, as we have and continue to participate in research efforts to better address data gaps we strongly caution against narrowly relying upon nitrogen removed coefficients, where data and an industry and scientific review suggest further nitrogen removed exploration is warranted, and where, in the case of perennial crops, R is incomplete due to unknown or evolving data for nitrogen sequestered in permanent crop tissues/wood. Here, it is important to underscore the dependency of the Order's ability to exact meaningful nitrogen removed data from the Management Practice Evaluation Program.

We request the Order be amended to give preference to commodity/industry group review before assigning the task of coefficient approval to the Central Valley Water Board Executive Officer (p.44, redline version). Limiting comment to a general comment period, after a coefficient has been established in draft form, does not appear to provide for sufficient exploration and vetting for the purpose of determining whether the coefficient depicts a fair representation, or representative range, of a complex accounting of nitrogen removed and nitrogen sequestered by crop. We suggest outreach be made to industry to discuss the coefficient reflection onto crop nitrogen performance before making the coefficient available for public comment. We are concerned that an opportunity to comment only after the Executive Officer has been asked to review, is too late of an examination window and thus once made public, challenging the data, or adding data or discussing the data set used to create the coefficient will be less likely to result in revision as the interest to approve the coefficient list to further enable the regulatory program to progress will be difficult to overcome. Therefore, we believe inserting a place for industry input into the process before public exposure is a reasonable request.

We remain unclear over the reason for including monitoring and reporting provisions for on-farm drinking water supply wells. As suggested during the May 2016 Fresno workshop, public health jurisdictions in counties where drinking water wells may be at concentrations above the Maximum Contaminant Level appear to serve as an appropriate jurisdiction for addressing on-farm wells used for drinking water. This Order fails to provide additional reasoning, in response to the May 2016 workshop, as to why county government does not have or is not an appropriate jurisdiction, or why a State or Regional Water Board is a more appropriate jurisdiction for addressing these particular private wells.

We support clean drinking water for all Californians, and have committed to directly seek out legislative solutions, but we are concerned by this proposal's lack of response to jurisdiction, feasibility, and capability related questions and comments posed to both staff and the Board during the May 2016 workshop. Additionally, with regard to Footnote 135 (p. 64, redline version) we are concerned by the preliminary decision to expose location information for all private domestic wells used for drinking water. We do not believe this is a thoughtful response to any policy regarding data transparency if the purpose is

to ensure those dependent upon a compromised source have clean drinking water. Instead, monitoring, reporting, notification, and drinking water replacement can be addressed without exposure of exact well location on a publically available database. Further, any general research utility regarding groundwater quality deserves further exploration as to why obscurity at a scale at or up to one mile, is insufficient for mapping, and research reliant upon mapping.

Moreover, additional information is needed in order to understand why government agencies and others need this data source in a publically available format for identifying infrastructure and replacement water supplies. A review of this regulatory program's scope is warranted, and requested, before assigning to the Member a new responsibility for generating data points designed to support future drinking water infrastructure efforts (p. 64, footnote 135, redline version). This appears to be outside of the direct scope of a regulatory program focused on the interaction of farming practices, nitrogen application and removal, and irrigation and nitrogen management in ways designed to affect water quality.

Thank you for the opportunity to provide comment. It is our hope you will carefully review the concerns, suggestions, areas of support, and opportunities for further examination as have been expressed by this comment. To discuss further contact Christopher Valadez ([cvaladez@cafreshfruit.com](mailto:cvaladez@cafreshfruit.com)).

Regards,



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Manuel Cunha, Nisei Farmers League



Will Scott, Jr., African-American Farmers of California