



Westlands Water District

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December 21, 2017

Ms. Jeanine Townshend
Clerk to the Board
State Water Resources Control Board
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Transmitted via email to: commentletters@waterboards.ca.gov



Subject: Westlands Water District Comments on Revisions to Waste Discharge Requirements Order No. R5-2012-0116 For Growers Within the Eastern San Joaquin River Watershed That Are Members of the Third-Party Group (SWRCB/OCC Files A-2239(a)-(c))

Dear Ms. Townsend and Members of the State Water Resources Control Board:

The Westlands Water Quality Coalition (hereinafter “Westlands Coalition”) appreciates the opportunity to provide comments to the October 10, 2017 draft to the Waste Discharge Requirements General Order No. R5-2012-0116 for Growers Within the East San Joaquin River Watershed that are Members of the Third Party Group (hereinafter “October 10, 2017 draft”).

The Westlands Coalition is an approved third-party coalition which serves in the implementation of the Western Tulare Lake Basin General Order R5-2014-0001. Westlands Coalition supports the Western Tulare Lake Basin Area Regional Water Quality Control Board Central Valley Region General Order R5-2014-0001 Waste Discharge Requirements (“Western Tulare Lake Basin General Order”) as approved and currently implemented. The Westlands Coalition represents nearly 1,500 members spanning over 490,000 irrigated acres. 95% of the irrigated acres in the Western Tulare Lake Basin boundary are enrolled in the Westlands Coalition.

The Westlands Coalition provided written comments to the first draft on June 1, 2016. The Westlands Coalition appreciates that comments to the October 10, 2017 draft are limited to revisions to the first staff-proposed order. However, the Westlands Coalition maintains the due process concerns expressed in the June 1, 2016 letter and as such, the Westlands Coalition comments in both letters are not intended to exhaust any rights it may have under any future State Water Board proceedings regarding waste discharge requirements for the Proposed Eastern

San Joaquin General Order or any future amendments to the Western Tulare Lake Basin General Order. Though the State Water Board has expressed the revisions to Order No. R5-2012-0116 are precedential and apply to agricultural irrigated lands programs statewide, except where specifically noted, the Westlands Coalition has not received formal notice the Western Tulare Lake Basin General Order will be amended. The Coalition wishes to reiterate that the Coalition and its members expect full notice and comment procedures for incorporations of Order No. R5-2012-0116 to the Western Tulare Lake Basin General Order.

I. Groundwater High and Low Vulnerability Areas.

The Current East San Joaquin River General Order (“Current GO”) adopted by the Central Valley Regional Water Quality Board (“Regional Board”) requires third party coalitions to develop a Groundwater Assessment Report (“GAR”), which requires the coalition to determine high and low vulnerability areas within its jurisdiction. Currently, growers in low vulnerability areas do not have the same reporting certification requirements as high vulnerability areas. Such a distinction is logical and reflects that valuable and finite resources are best served on the high vulnerability areas.

In its June 1, 2016 comment letter, the Westlands Coalition expressed concern that the draft order eliminated the distinction between high and low vulnerability areas. The October 10, 2017 Draft by the State Water Board on its face appears to retain the distinction between high and low vulnerability areas. Instead of eliminating the distinction, the State Water Board will “impose many of the same requirements in high and low vulnerability areas.” (Proposed San Joaquin River Order October 10, 2017 Draft at 24) However, the effect of the language remains the same.

The State Water Board provides that the high and low vulnerability area distinction may “provide for additional time, as specified under each relevant section below, for requirements currently imposed only in high vulnerability areas to also apply to low vulnerability areas” (Proposed San Joaquin River Order October 10, 2017 Draft at 25) and “may continue to be used for prioritization in the context of some groundwater monitoring requirements.” (Proposed San Joaquin River Order October 10, 2017 Draft at 25) The impact of imposing the same requirements on, instead of completely eliminating the distinction, high and low vulnerability basins is a de facto elimination of the distinction. This will result in a preposterous waste of valuable resources for growers, third party groups and coalitions, and the State Water Board.

California Water Code Section 13267(a) provides the State Water Board may investigate the quality of any waters of the state. Water Code Section 13267(b)(1) provides when conducting such an investigation the Regional Board may require technical or monitoring program reports and that “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 these reports.”

In Order R5-2012-0116 Revision 3, referred to as Order R5-2012-0116-R2, Waste Discharge Requirements for General Order For Growers Within the Eastern San Joaquin River Watershed That Are Members of the Third-Party Group, the Central Valley Board provided that technical reports are necessary to evaluate member compliance as consistent with Water Code Section 13267 and that “the requirements for reports and monitoring specified in this Order and attached MRP are based in part on whether an operation is within a high or low vulnerability area.” (Order R5-2012-0116-R2 at 6) Past reasoning from the Central Valley Regional Board is logical, rational and cost-effective. Implicit in past general orders, demonstrated by separate and distinct requirements for high and low vulnerability areas, is that the burden of reports shall bear a reasonable relationship to the need *and* benefit obtained from the reports. (Water Code Section 13267(b)(1))

The Westlands Coalition does appreciate that the Board is “cognizant that the expanded reporting obligations will result in increased costs to the growers in low vulnerability areas and to the Third Party, which must now work with a larger set of growers to assist in form submission and must now collect and analyze a larger set of grower data” and as such “will provide additional time” to meet these requirements and use the distinction for prioritization. (Proposed San Joaquin River Order October 10, 2017 Draft at 25) However, additional time for compliance does not compensate for the immense regulatory burden imposed by the de facto elimination of the distinction and as such creates a burden that bears no reasonable relationship to the need for the reports nor benefit to be obtained from the reports as required by Water Code Section 13267(b)(1).

II. The Submission of Grower Data.

The submission of grower data at the field level is an inefficient use of valuable resources of the State Water Board, Third Party Coalition, and growers and threatens grower privacy. Currently, growers submit data reports to third party coalitions which aggregate the information on a township level. The third party coalition submits the aggregated information to the Regional Board. One of the benefits of third party coalitions is the ability to collect and summarize raw data to provide the regional boards with efficient management practice information. Field level reporting, even with a unique “anonymous” identification system, directly to the Regional Board will remove a primary function and benefit associated with the coalition.

This process protects grower’s individual private field information and decreases regulatory burdens on the Regional Board’s staff and resources. The October 10, 2017 Draft would change this process and require that individual data records, including management practice implementation data, be submitted to the Central Valley Water Board through unique anonymous member identifiers. (Proposed San Joaquin River Order October 10, 2017 Draft at 31)The Draft Order provides:

“the automatic reporting of certain data to the Central Valley Water Board at the field level, rather than only in summary form, is expected to lead to more effective oversight and management of the program by the Central Valley Water Board, as well as provide more transparency for the public.” (Proposed San Joaquin River Order October 10, 2017 Draft at 21)

The Westlands Coalition fails to see how automatic reporting of field level data could lead to more effective oversight and management by the Central Valley Board. Contrary to effective management, such efforts would be duplicative of work conducted by third party coalitions and would, at best, lead to an inefficient use of valuable resources for all members, third party coalitions, and regional water quality boards. The Westlands Coalition respects and appreciates the authority granted by the Legislature to the State Boards to investigate and implement water quality standards and that it may sometimes be necessary to investigate Members to assess individual compliance. (Water Code Section 13267) However, Water Code Section 13267(a)(1) also provides that “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.” Furthermore, Water Code Section 13267(b)(2) reflects the Legislature contemplated the importance of grower privacy in providing that when such a report is requested “the portions of a report that might disclose trade secrets or secret processes may not be made available for inspection by the public but shall be made available to government agencies for use in making studies.” Public transparency and compliance with the Porter-Cologne Act is undeniably a noble and important objective. The Westlands Coalition and its individual growers willingly promote, endorse, and participate in these goals and will continue to do so. The Westlands Coalition likewise hopes the State Water Board will respect grower privacy and the duty of third party coalitions to enable grower compliance.

III. Nitrogen Management Exemption

The Board has made revisions to the nitrogen management provisions to remove the distinction in requirements for high and low vulnerability groundwater areas. The Draft provides that all members must have a certified INMP and must submit an INMP summary report to third party coalitions. (Proposed San Joaquin River Order October 10, 2017 Draft at 37) The Coalition appreciates that the Board has provided a procedure to exempt members, including growers of a particular crop or growers in a particular area, from this requirement. The Draft provides that growers seeking an exemption “shall make a demonstration, for approval by the relevant regional water board, that nitrogen applied to the fields does not percolate below the root zone in any significant amount and does not migrate to surface water through discharges, including drainage, runoff, or sediment erosion.” The term “significant amount” is highly subjective and the Westlands Coalition suggests defining this term.

IV. The Surface Water Monitoring Expert Panel

The October 10, 2017 Draft acknowledges that there are significant differences in surface water monitoring plans throughout the Central Valley and will convene an expert panel to determine a path forward for surface water monitoring in the Irrigated Lands Regulatory Program. In addition to the questions posed by the State Water Board, it is recommended that the expert panel consider the effects of drought on a surface water monitoring program. Ephemeral and intermittent streams on the westside of the Central Valley historically have had consecutive years with little to no flow. A new monitoring program must consider instances where it is impossible to conduct water quality monitoring because of a lack of stream flow in such instances. For example, in Westlands Water District, there are strict provisions and enforced policies in place that prohibit growers from discharging water off a field. The ephemeral waterways within Westlands only contain storm water and therefore can only sustain flows for water quality sampling during wet winter months. The expert panel must consider the variations of surface water plans appropriate for each region in the state.

In general, the Westlands Coalition expresses concern that the State Water Board has not properly accounted for costs associated with regulatory changes. The Westlands Coalition appreciates the momentous task of regulating long term irrigated lands and protecting California's valuable resources. However, the allocation of grower, coalition, and State Water Board resources would be better served by, instead of a blanket approach, targeted efforts that are best implemented at the Regional Board level.

The Irrigated Lands Regulatory Program, as it is approved and implemented currently through the adopted general orders, is designed with the ability to evolve over time. The various Regional Boards, through the coalitions, have the best understanding of the specific regulated region in question. Regional Boards, through coalitions, are in the best position to gather information in a useful way and make it available for regulators. Regional Boards, through Coalitions, are in the best position to determine priorities based on vulnerable areas. Allow the current program to run as its defined in the Current GO, with the evolution guided by regional issues and properly analyzed data.

If you have any questions or concerns, regarding these comments, please contact Charlotte Gallock by email at cgallock@westlandswater.org or by phone at (559) 241-6244. Thank you for the opportunity to provide comments on the State Water Board's Proposed Eastern San Joaquin River General Order.

Sincerely,



Russ Freeman, P.E.
Deputy General Manager – Resources
Westlands Water District