

Salinas Valley Water Coalition



P.O. Drawer 2670 • Greenfield, CA 93927
(831) 674-3783 • FAX (831) 674-3835

Central Coast Regional Water Quality Control Board Comments on Proposed Order #R3-2011- 0006 May 4, 2011

Who We Are

- The Salinas Valley Water Coalition (SVWC) is a not-for-profit organization comprised of agricultural landowners, farmers and businesses within the Salinas Valley. The SVWC's primary purpose is to participate in the various governmental processes surrounding our water issues, in an effort to preserve the water rights of its members, protect their water resources and to effect water policy decisions in a manner that provides this protection while sustaining agricultural production and quality of life within the Salinas Valley.
- ***Mission Statement: The water resources of the Salinas River Basin should be managed properly in a manner that promotes fairness and equity to all landowners within the basin. The management of these resources should have a scientific basis, comply with all laws and regulations, and promote the accountability of the governing agencies.***
- We retained the legal services of **HORAN, LLOYD, KARACHALE, DYER, SCHWARTZ, LAW & COOK** – Ms. Pamela Silkwood – to provide a legal opinion pertaining to the proposed Ag Waiver

Legal Issues

- The Proposed Order **oversteps the boundary of legislative authority** granted to the RWQCB and **imposes duplicative regulations** that do not benefit anyone and only results in significant financial impacts to the farming community. Moreover, the tiering system in the Proposed Order, which is based on geographic locations of agricultural lands, **violates the equal protection clauses** of the United States and California Constitutions. Finally, the Proposed Order **fails to protect farmers' proprietary rights** and if implemented as currently drafted, will result in civil actions against the RWQCB. For these reasons, which are described in detail below, the **Salinas Valley Water Coalition requests that your Board reject** the Proposed Order.
- The Coalition further recommends that your Board direct staff to study and establish a scientific basis for developing regulations regarding discharges from irrigated agricultural lands.

Violation of Equal Protection Clauses

- The RWQCB **abused its discretion by arbitrarily classifying agricultural properties** in Tier 1, Tier 2, and Tier 3 **based on their geographic locations in violation of the equal protection clauses of the United States and California Constitutions.** Landowners, who operate agricultural land in proximity to public water systems or surface water bodies, are being punished for the location and size of their land and not because their land operations have impacted water quality. This is particularly distressing since many farmers have actively enrolled in training programs and implemented costly management practices to manage water quality. The tiering system ignores these costly measures implemented by the farmers.

Exceeds Statutory Authority by Regulating Drinking Water

- The Proposed Order **oversteps the limited authority granted to the RWQCB under the California Water Code, Division 7, Chapter 4. Jurisdiction to implement and enforce** the California Safe Drinking Water Act to ensure public water systems deliver a reliable and adequate supply of water **has been granted to the California Department of Health Services. Since 1993, Monterey County Health Department received the Local Primacy Delegation from the California Department of Health Services** and thus, is delegated the authority to regulate public water systems for Monterey County. Other county and city public health departments have also received this delegated authority.

- Specific to the nitrate concerns discussed in the Proposed Order, **the Monterey County Health Department and Monterey County Water Resources Agency have programs in place to address nitrates in groundwater.** Another bureaucratic layer, with additional monitoring requirements when seven (7) years worth of data have already been collected but not sufficiently analyzed for planning purposes, will not solve the problem. Please **let the local agencies work towards a local solution.**
- The Proposed Order also fails to define “public water systems”, which definition is critical to the Proposed Order’s tiering system. The definition of “public water systems” should be consistent with the definition in Health & Safety Code section 116275, which states as follows:
- “Public water system” means a system for the provision of water for human consumption through pipes or other constructed conveyances that has 15 or more service connections or regularly services at least 25 individuals daily.”
- Community water system has a similar definition. These definitions must be part of the Proposed Order to avoid arbitrary application of these terms, particularly due to their significance in the proposed tiering system.
- . Community water system means a public water system that serves at least 15 service connections used by yearlong residents or regularly serves at least 25 yearlong residents of the area served by the system. (Health & Safety Code §116275(i).)