



CALIFORNIA FARM BUREAU FEDERATION

OFFICE OF THE GENERAL COUNSEL

2300 RIVER PLAZA DRIVE, SACRAMENTO, CA 95833-3293 • PHONE (916) 561-5665 • FAX (916) 561-5691

Sent via E-Mail

AWLaputz@waterboards.ca.gov

May 21, 2012

Adam Laputz
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670-6114

***Re: Comments on the Eastern San Joaquin River Watershed Draft WDR and MRP
for Discharges from Irrigated Lands***

Dear Mr. Laputz:

The California Farm Bureau Federation (“Farm Bureau”) is a non-governmental, non-profit, voluntary membership California corporation whose purpose is to protect and promote agricultural interests throughout the state of California and to find solutions to the problems of the farm, the farm home, and the rural community. Farm Bureau is California’s largest farm organization, comprised of 53 county Farm Bureaus currently representing more than 74,000 agricultural, associate, and collegiate members in 56 counties. Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California’s resources.

Farm Bureau appreciates the opportunity to provide comments on the Eastern San Joaquin River Watershed Waste Discharge Requirements (“WDR”) and Monitoring and Reporting Program (“MRP”) for Discharges from Irrigated Lands and respectfully presents the following remarks.

Landowners and Land Operators

The draft WDR poses an expansion from the previous regulation of irrigated lands by regulating both “landowners and operators of irrigated lands” as well as requiring both to be members of the coalition. (WDR General Order, p. 3, ¶ 10.) The WDR does not include any information to support this change. Given the sufficiency and effectiveness of either the property owner or operator joining the coalition, Farm Bureau suggests

NANCY N. McDONOUGH, GENERAL COUNSEL

ASSOCIATE COUNSEL:

CARL G. BORDEN • KAREN NORENE MILLS • CHRISTIAN C. SCHEURING • KARI E. FISHER • JACK L. RICE

amending paragraph 10 to read: “In order to be covered by this Order, the landowner or operator who has sufficient operation and control of the property must be a Member.”

Discharge Limitations and the Implementation of Best Practicable Treatment or Control

For discharges to high quality surface waters and groundwaters, the draft WDR requires the implementation of Best Practicable Treatment or Control (“BPTC”). (WDR General Order, p. 14, ¶ 1; p. 15, ¶ 1; see also Attachment A to Order, p. 15, “For waste discharges to high quality waters, the Order imposes requirements that will result in implementation of the Best Practicable Treatment or Control (“BPTC”).”) Given the lack of a formal definition of BPTC, implementation of existing management practices should be considered BPTC so long as the amount of degradation that may occur is limited (Attachment A, p. 22) and “a combination of upfront planning and implementation at the farm level, regional monitoring to determine whether trends in degradation are occurring, and regional planning and on-farm implementation when trends in degradation are identified” also transpires. (Attachment A, p. 19.)

Requirement to Monitor All Pesticides Applied or Detected

The draft MRP requires the third party to monitor pesticides “that have been applied and/or detected in a site subwatershed area during all or part of three consecutive years of PUR data.” (Attachment B, MRP, p. 7.) Farm Bureau respectfully asks that the “applied or detected” language be revised to acknowledge that a mere detection alone should not trigger the need to monitor as a detection can occur at levels that are not a threat to water quality.

Aquatic Toxicity Testing

The draft MRP drastically differs from the previous surface water monitoring requirements for toxicity, and requires following the “USEPA chronic testing methods.” (Attachment B, MRP, p. 10.) Since the inception of the irrigated lands program, surface water monitoring has occurred and has utilized acute aquatic toxicity testing. Given that the MRP contains no evidence to indicate that acute testing is no longer adequate, and since chronic testing is more costly, thus triggering the need for a new economic analysis of impacts, Farm Bureau respectfully requests that requirements for “chronic” testing be removed from the WDR and the continuation of surface water acute toxicity testing be added in its place.

Groundwater Vulnerability Designations

As required in the draft MRP, third parties will have to evaluate available information to refine and prioritize high vulnerability designations specific to groundwater. (Attachment B, MRP, p. 13.) High vulnerability areas are defined as “exceedences of water quality objectives for which irrigated agriculture waste discharges are the cause, or a contributing source, or are deemed vulnerable by the Department of Pesticides/State Water Board.” (Attachment B, MRP, p. 14.) This definition is extremely broad. Is the definition limited to current or past contributions? How will a contributing source be determined?

Throughout the region, not all groundwater vulnerability areas are vulnerable due to the use of farming practices. Rather than having an extremely open-ended definition of “high vulnerability areas,” Farm Bureau suggests using the term to describe those areas deemed vulnerable to contamination by the Department of Pesticide Regulation (“DPR”).

In addition to revising the definition of “high vulnerability areas,” the definition of “low vulnerability areas” should be revised to distinguish between those exceedences resulting directly from agricultural pesticide or toxicity uses as opposed to those resulting from various sources.

Development of Pesticide Trigger Limits Should Be the Responsibility of DPR

The draft MRP’s new requirements relating to Pesticide Risk Assessments improperly shifts the regulatory responsibility for developing water quality trigger limits to the third party. Specifically, the draft MRP states:

Trigger limits will be proposed by the third-party through a Monitoring Parameter Report process described in section III.C.3 of this MRP. As part of the Monitoring Parameter Report, trigger limits shall be proposed by the third-party for all parameters that are scheduled for monitoring that do not have a Basin Plan numeric water quality objective or where interpretation of narrative Basin Plan objectives is necessary to ensure the protection of applicable beneficial uses. (Attachment B, MRP, p. 27.)

Rather than shift the burden to third parties, the Regional Board should rely on DPR, the agency mandated by law to protect the public health and environment by regulating pesticide sales and use and by fostering reduced-risk pest management (Food & Agr. Code, §§ 11454, 1154.1 and 12981) to set the trigger limits. Using the scientific processes already in place, the Regional Board should work directly with DPR and use DPR’s prioritization scheme for the evaluation of active ingredients. By relying on the state agency charged with the regulation of pesticides, the process will be more efficient, more cost effective, and will avoid regulatory duplication.

Need for Flexibility and the Acknowledgement of Burdens to Small Farms

As currently drafted, the requirements within the draft WDR and MRP apply to all farms regardless of parcel size, current or past threats to water quality, and implementation of best management practices. By drafting a one-size-fits-all WDR, members are not recognized for positive contributions to maintaining and improving water quality. Additionally, smaller growers unfairly bear the burden of the WDR’s administrative requirements and may be driven out of business. In order to maintain the goals of the Irrigated Lands Regulatory Program while maintaining a viable agricultural industry, flexibility should be included within the WDR as well as the ability to require only a subset of the WDR requirements for members and small farms that bear little risk to water quality.

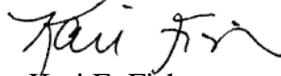
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Thank you for the opportunity to provide our comments and concerns. We look forward to further involvement and discussion with the Regional Board on the Eastern San Joaquin River Watershed WDR and MRP for Discharges from Irrigated Lands.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kari E. Fisher". The signature is fluid and cursive, with a prominent initial "K" and a long, sweeping underline.

Kari E. Fisher

Associate Counsel

KEF:pkh