



# CALIFORNIA FARM BUREAU FEDERATION

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September 13, 2013

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

***Re: Comments on the San Joaquin County and Delta Draft WDRs/MRP for Discharges from Irrigated Lands***

Dear Mr. Jimmerson:

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 San Joaquin County and Delta Draft Waste Discharge Requirements and Monitoring and Reporting Program (collectively “Draft WDR”) for Discharges from Irrigated Lands and respectfully presents the following remarks.

Upon reviewing the San Joaquin County and Delta Draft WDR, as well as the previously adopted Eastern San Joaquin River Watershed WDR and the tentative Tulare Lake Basin Tentative WDR, Farm Bureau is concerned that the general orders are not being individually developed and tailored, but rather are duplications of previously prepared orders with minor revisions. Each coalition represents unique geographic characteristics, including, but not limited, to rainfall, hydrology, drainage, commodities grown, and topography. Given all of these vast differences, each general order should be individually drafted specific to the region it regulates.

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**General Order Page 1, Finding 1—Definition of “Waste”**

The Draft WDR seeks to regulate discharges of “waste” from irrigated lands. As referenced in the footnote to Finding 1, Attachment E defines the term “waste” to not only include the statutory definition found in Water Code section 13050(d), but also adds additional language to include the regulation of “earthen materials..., inorganic materials, organic materials such as pesticides and biological materials” as wastes which “may directly impact beneficial uses...or may impact water temperature, pH and dissolved oxygen.” (Draft WDR, Attachment E, p. 6.) No rationale is provided for the overly broad expansion of a statutorily defined term; as such, the term “waste” should be limited to its definition found in Water Code section 13050(d).

**General Order Page 2, Finding 5—Regulation of Water Quality**

The Draft WDR amends the scope of regulatory coverage by deleting specific provisions limiting the regulation of water traveling through particular structures. (Draft WDR, p. 2.) The current scope of coverage causes concern regarding the regulation of on-farm conveyances and between-farm conveyances, causing potential ambiguity regarding the point of demarcation for regulation; as currently written, the regulation could be read to regulate any water that leaves the root zone whether or not it reaches saturated groundwater. In order to provide clarity, Finding 5 should be revised.<sup>1</sup>

**General Order Page 8, Finding 27—Recognition of Differences; Amendments to Monitoring and Reporting Deadlines**

Farm Bureau appreciates the inclusion of Finding 27 that recognizes the unique topography and geography in the San Joaquin County and Delta area, including the naturally occurring constituents in groundwater, and acknowledges that specific beneficial use designations may be unattainable. Farm Bureau further appreciates that monitoring and reporting under these circumstances may temporarily operate under reduced monitoring and reporting,

**General Order Page 9, Findings 32-36—Compliance with the California Environmental Quality Act**

The Draft WDR relies upon the environmental analysis conducted in the Program Environmental Impact Report (“PEIR”) and concludes that “[a]lthough the Order is not identical to any of the PEIR alternatives, the Order is comprised entirely of elements of the PEIR’s wide range of alternatives.” (Draft WDR, p. 9, ¶¶ 33-34.) Relying on such analysis, the Draft WDR further concludes “the PEIR identified, disclosed, and analyzed the potential environmental impacts of the Order” and the “potential compliance activities undertaken by the regulated Dischargers...fall within the range of compliance activities identified and analyzed in the PEIR.” (*Id.* at ¶ 33.) The Draft WDR is not

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<sup>1</sup> Finding 5 could be potentially revised to state: “This Order is not intended to regulate water in agricultural fields, including, but not limited to, furrows, beds, checks, and ancillary structures, contained on private lands associated with agricultural operations. This Order is not intended to address the lawful application of soil amendments, fertilizers, or pesticides to land.”

within the realm of alternatives analyzed within the PEIR, but rather goes beyond those alternatives as it includes provisions substantially different from elements in those alternatives, especially alternatives 3 through 5. These new components, such as provisions creating end-of-field discharge limitations as well as the farm management performance standards, in addition to the associated costs, do not represent merely a “variation” on the alternatives in the PEIR but rather are elements that were not thoroughly considered previously and are likely to result in the imposition of new burdens on irrigated agricultural operations that would have a significant and cumulatively considerable impact on the environment. Thus, reliance on the PEIR for CEQA compliance is inappropriate.<sup>2</sup>

**General Order Pages 10-11, Finding 39-40—California Water Code Sections 13141 and 13241**

Pursuant to the Water Code, the Regional Board is obligated to consider costs associated with the entire Long-Term Irrigated Lands Regulatory Program, as well as each individual general order, such as the San Joaquin County and Delta WDR. (Wat. Code, § 13141.) Finding 39 incorrectly concludes that any new cost analysis is unnecessary given that “the Basin Plan includes an estimate of potential costs and sources of financing for the *long-term irrigated lands program*.” (Draft WDR, p. 10, ¶ 39, emphasis added.) Although the Basin Plan was amended to include costs associated with the *long-term irrigated lands program*, the Basin Plan Amendment did not include specific costs associated with the San Joaquin County and Delta WDR as it was not in existence at the time nor were the specific program requirements analyzed (such as the templates and individual reporting summarized by the third-party). Given that this Draft WDR proposes new costly regulatory components not previously analyzed during the environmental review stage or when adopted in the Basin Plan, the Regional Board must analyze, evaluate, and estimate all of the costs of these new regulatory requirements.

**General Order Pages 13-14, Provision 50—Nitrogen Management and Control**

Farm Bureau appreciates the acknowledgement of the assessment of nitrogen management and control currently underway by the California Department of Food and Agriculture’s Task Force, as well as the soon to be convened State Water Resources Control Board’s Expert Panel. Given the assessments and recommendations to be made by both processes to determine appropriate nitrogen tracking and reporting systems and management practices, adjusting the nitrogen management plan deadlines to allow for the incorporation of future recommendations is both appropriate and appreciated.

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<sup>2</sup> Farm Bureau also questions the Regional Board’s authority to require mitigation measures within the Draft WDR for farm level activities. Implementation of management practices at the farm level, which is the heart of the WDR, is not subject to a discretionary approval by the Regional Board. (See Pub. Resources Code, § 21080, CEQA generally applies only to discretionary projects.) Mitigation measures that cannot be legally imposed need not be proposed or analyzed. (CEQA Guidelines, § 15126.4(a)(5).)

**General Order Page 17, Provisions III. A and III. B—Discharge Limitations**

The use of “shall not cause *or contribute*” to an exceedance of applicable water quality objectives is overly expansive and creates an unreasonable standard that is undefined, ambiguous, and holds farmers and ranchers liable for even the smallest de minimus contribution. Accordingly, a qualifier should be added before “contribute” or the discharge limitations for both surface water and groundwater should be rewritten to state “wastes discharged from Member operations shall not cause an exceedance of applicable water quality objectives in surface water [or the underlying groundwater], unreasonably affect applicable beneficial uses, or cause a condition of pollution or nuisance.”

**General Order Page 19, Provision IV. B. 7—Nitrogen Management Plans**

Provision IV. B. 7 requires all members to prepare and implement an annual nitrogen management plan. Such plans should analyze “nitrogen” application rather than “nutrient” application. (Draft WDR, p. 19, ¶ 7; see also Attachment A, Information Sheet, p. 28 stating “the Order requires that Members implement practices that minimize excess **nitrogen** application relative to crop need” (emphasis added).) As seen in previous drafts for other WDRs, only members in high vulnerable areas where nitrate is a constituent of concern were required to prepare annual nitrogen budgets and management plans. Rather than requiring all members to prepare nitrogen budgets and plans, as Provision 7 is currently written, the Draft WDR should be revised to allow flexibility in the requirements for those areas that have no or a lower propensity to impact water quality.

**General Order Page 28, Provision VIII. B—Membership (Participant) List**

Farm Bureau suggests an addition to the last sentence of Provision B to specify contact with third-party office contacts must be during normal business hours. For example, potential revised language could be: “Any listed third-party office contact must be available for Central Valley Water Board staff to contact Monday through Friday during normal business hours (except established state holidays).”

**General Order Page 28, Provision VIII. C—Template Requirements for Farm Evaluations, Nitrogen Management Plans, and Sediment and Erosion Control Plans**

Farm Bureau appreciates the inclusion of language to allow third-parties the ability to modify the templates due to coalition-specific issues, including geographic area, the commodities grown, known water quality impairments, the propensity to impact water quality, and the size and scale of farming operations. Such tailoring will allow the Regional Board to obtain the most relevant information specific to the area being regulated while also allowing growers to minimize costs.

**General Order Pages 29-30, Provision VIII. D—Groundwater Quality Assessment Report and Evaluation/Monitoring Workplan**

For similar reasons expressed *supra* regarding Provision 27 on page 8, Farm Bureau appreciates the inclusion of a phased approach for the development of a GAR given the unique conditions in the Delta region and the lack of existing data.

**General Order Pages 33-34, Provision VIII. L—Basin Plan Amendment Workplan**

For similar reasons expressed *supra* regarding Provision 27 on page 8 and Provision VIII. D on pages 29-30, Farm Bureau appreciates the inclusion of a process for the third-party to pursue a basin plan amendment to address the appropriateness of a beneficial use.

**Attachment A, Information Sheet, Pages 24-25—Spatial Resolution of Nitrogen Management Plan and Farm Evaluation Information; Attachment B, MRP, Page 22-23, Reporting Components 17 and 18**

Reporting Components 17 and 18 outline the process in which a third-party will collect data from members and report the data to the Regional Board at the township level. As currently drafted, Farm Bureau supports the reporting at the township level. Reporting at the township level allows coalition groups to properly compare crop data, evaluate nitrogen management trends, and manage the data in an efficient and effective manner. The comparison of data at the field level, with or without the identification of a member's parcel, is not supported and would not result in an efficient use of resources or the ability to assess and evaluate trends.

Reporting Component 18—Summary of Management Practice Information further requires a third-party provide the individual data records to the Regional Board in addition to aggregating and summarizing information collected in the Farm Evaluations. (Attachment B, p. 23.) No explanation is given to support the necessity of needing the individual data records. Rather, the summary of management practices provided by the third-party will be more meaningful than the individual data records and will include the appropriate analysis needed by the Regional Board. Thus, Farm Bureau questions the need for third-parties to submit individual data records and suggests this addition to the management practices information reporting component be removed.

**Attachment B, MRP, Pages 9-10, Provision III. C. 4—Toxicity Testing**

As currently drafted, the Draft MRP's language could be interpreted that both acute and chronic toxicity testing is required for all toxicity tests. (See Draft Attachment B, MRP, p. 9, footnotes 5 and 6 stating that chronic and acute toxicity testing should be completed in accordance with U.S. EPA testing methods.) Since the inception of the Irrigated Lands Regulatory Program, surface water monitoring has occurred and has utilized acute aquatic toxicity testing, with no evidence of any shortcomings. If there is no U.S. EPA acute toxicity testing method of *Selenastrum capricornutum*, Farm Bureau recommends adding language to footnote 6 to specify that the use of chronic testing is appropriate *only* in this circumstance.

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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 Western San Joaquin County and Delta WDR and MRP for Discharges from Irrigated Lands.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kari E. Fisher".

Kari E. Fisher  
Associate Counsel

KEF:pkh