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Subject: Groundwater Workplan Concept Paper

Dear Eric:

Thank you for the opportunity to provide input into the Groundwater Workplan Concept Paper. Groundwater protection is a critical issue that affects every aspect of life in California.

At first glance, it appears the focus of the draft Groundwater Workplan is too narrow. It does not appear to integrate across a broad swath of communities, government agencies and stakeholders. The workplan appears to be internally focused and limited to coordination with other natural resource agencies. However, groundwater quality or supply issues often are exacerbated by social or procedural issues that have little to do with natural resources.

For example, if the Groundwater Workplan were implemented as written, it would not address the conditions that created the current overdraft issues in the Paso Robles Groundwater Basin. The overdraft crisis is a result of the combination of recurring, periodic and successive droughts that coincided with urban and rural-residential population growth and simultaneous rapid agricultural expansion. In 2012, only 2 to 4 inches of rainfall fell in the overdraft area of the groundwater basin. The City of Paso Robles grew 31% from 1990 – 2000 and 24% from 2000 – 2010, and meanwhile thousands of acres of vineyards were planted.

Conditions in the Paso Robles Groundwater Basin have been exacerbated by inadequate coordination between state, regional, county and municipal agencies. For example, the state has mandated growth objectives for San Luis Obispo County to which financial incentives are tied. Likewise, the county has few regulations to govern where, when and how many acres of vineyards should be established. Subsequently, county Planning and Development has approved

urban and agricultural development without consideration of whether municipal infrastructure or the water supplies could support growth objectives. It was the lack of integration and foresight that created the overdraft crisis, not the absence of monitoring, data assessment, regulatory trigger thresholds or funding mechanisms.

Quite simply, the draft Groundwater Workplan doesn't address how SWRCB's authority over groundwater protection will be integrated with the State Strategic Growth Plan or Climate Change Adaptation Plan. It appears that the Draft Groundwater Workplan is occurring in a vacuum without adequate input from affected public and/or private interests outside the natural resource arena.

Furthermore, SWRCB is encouraged to create a process by which groundwater data, policies and regulations are objectively evaluated as to their scientific soundness. There are concrete steps that the SWRCB could take to improve the perception that its decisions have been subjected to rigorous and impeccable scientific scrutiny. For example, SWRCB could change the way it reviews data. The process has been to appoint third-party peer reviewers. In the past, there have been instances when only one independent peer reviewer was appointed and that reviewer was the primary expert cited in the peer-reviewed report. This approach taints the perceived scientific integrity of the regulatory process. One solution would be to follow the example of the US EPA. Recently, it created a position called a Scientific Integrity Officer. Such a position within SWRCB or an independent oversight agency would improve the perceived reliability of data and assessments.

Of course, as a member of the agricultural community, I am concerned with impacts to crop production, economic viability and water rights resulting from groundwater protection. Hopefully, SWRCB will rigorously evaluate the risk/cost/benefit of any regulations to groundwater protection as well as the affected communities and businesses.

In fact, after the 2011 adoption of SB 617, there is now a requirement that most state agencies determine if proposed regulations have the potential for significant, statewide adverse economic impact directly affecting California business enterprises. SB 617 establishes a procedure by which the Office of Administrative Law (OAL) can assess costs and benefits of major regulations. Furthermore, as per SB 617, the Department of Finance has adopted regulations, in October 2013, that standardizes impact assessments for major regulations.

I understand that there might be some question about whether SB 617 applies to SWRCB groundwater actions. According to the 2011 Little Hoover Commission report: "Better Regulation: Improving California's Rulemaking Process", SWRCB

is only partially covered by SB 617. SWRCB water quality control permitting activities, through which it enforces the federal Water Pollution Control Act, are exempt. "The exemption, however, does not bar the water board from assessing economic impacts. [In the Little Hoover Commission 2009 study], 'Clearer Structure, Cleaner Water: Improving Performance and Outcomes at the State Water Boards', the Commission recommended using cost-effectiveness tests to prioritize the best alternatives for meeting water quality standards once the board had scientifically determined those standards."

The 2011 Little Hoover Commission further states: "The Porter-Cologne Water Quality Control Act of 1969 requires the water boards to consider the economic consequences of regulations when they set water quality objectives, and states that 'waters of the state shall be regulated to attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible. The statute, however, provides little guidance on how water boards should weigh economic considerations."

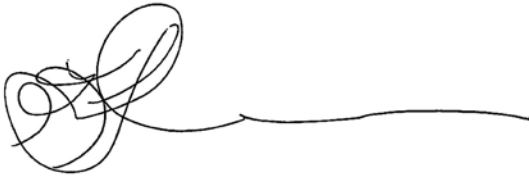
Hopefully, SWRCB will follow the 2013 CVRWQCB example as it develops its Groundwater Workplan. The Central Valley Water Board stated the following in the November 2013 Policy for the Implementation of the Water Quality Objectives for Temperature and Action Plans for the Mattole, Navarro, and Eel River Watersheds: "The Administrative Procedure Act (APA) establishes rulemaking procedures and standards for state agencies in California (Gov. Code, §§ 11340 *et. seq.*) to ensure that regulations are clear, necessary and legally valid. SB 617 appears to amend existing OAL requirements to require a "standardized regulatory impact analysis" for a major regulation [$>$ \$50million - this includes the sum of costs AND benefits]. The Regional Water Board intends to comply with applicable OAL requirements including submittal of a clear and concise summary and a summary of the necessity for the regulatory provision. However, Chapter 3.5 of the APA (as amended by SB617) generally does not apply to the adoption or revision of water quality control plans and guidelines pursuant to Division 7 (commencing with Section 13000) of the Water Code pursuant to Government Code section 11353.

Finally, in regard to the funding opportunities enumerated in the Groundwater Workplan, there are inherent challenges when a regulatory agency provides grant funding to members of the regulated community. The regulated community may become vulnerable to enforcement through information divulged during grant project implementation. Additionally, the grantee may lose negotiation leverage during a regulatory process if it is dependent on grant funding. And finally, if there is not enough oversight, grant funds may be used as a blunt instrument to coerce support from the grantee for desired regulatory outcomes. When possible, SWRCB is encouraged to route grant funding through a non-

regulatory agency such as the Department of Conservation or third-party community foundations. This would create firewalls against potential and improper grant administration.

Thank you again for this opportunity and SWRCB's continued efforts to create transparent policy development and rule making.

Most Sincerely,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal tail extending to the right.

Kay Mercer
President
KMI