



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

April 1, 2016

VIA EMAIL ONLY

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Dear Mses. Firestone, Spaletta, and Aguilar and Mr. Jennings:

OWN MOTION REVIEW OF WASTE DISCHARGE REQUIREMENTS GENERAL ORDER NO. R5-2012-0116 FOR GROWERS WITHIN THE EASTERN SAN JOAQUIN RIVER WATERSHED THAT ARE MEMBERS OF THE THIRD-PARTY GROUP, CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD: **SECOND REVISED** NOTICE OF PUBLIC WORKSHOPS AND NOTICE OF WRITTEN PUBLIC COMMENT PERIOD
SWRCB/OCC FILES A-2239(a)-(c)

On February 8, 2016, the State Water Resources Control Board (State Water Board) released a proposed order in the above-entitled matter, along with notice of a public workshop date and written public comment period. On February 23, 2016, the State Water Board received a request from multiple organizations representing the agricultural community to postpone the public workshop date and extend the public comment period, by approximately one month, in order to allow for additional time to review the proposed order and prepare meaningful comments. The State Water Board received a joinder in that request on February 25, 2016, from the Tule Basin Water Quality Coalition and the Kaweah Basin Water Quality Association.

On February 25, 2016, the State Water Board issued a revised notice rescheduling the public workshop and extending the written public comment period. However, the Central Valley Regional Water Quality Control Board (Central Valley Water Board) thereafter informed the State Water Board that the rescheduled public workshop would conflict with a public workshop to be held by the Central Valley Water Board on the same date. The Central Valley Water Board requested that the public workshop be rescheduled once again. On March 10, 2016, the State Water Board received a request from agricultural coalitions representing growers in the

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Central Valley to hold an additional public workshop in Fresno to accommodate more extensive grower participation in the public process.

The State Water Board hereby grants both requests and sets a new Sacramento public workshop date and schedules an additional public workshop in Fresno. The State Water Board additionally hereby extends the written public comment period to the day following the second workshop. The new dates are as follows:

The State Water Board will hold a workshop on the proposed order on **Wednesday, May 4, 2016**, commencing at **9:00 a.m. in the Coastal Hearing Room, Second Floor of the Cal/EPA Building, 1001 I Street, Sacramento, California.**

The State Water Board will hold a second workshop on the proposed order on **Tuesday, May 17, 2016**, commencing at **9:00 a.m. at the San Joaquin Valley Air Pollution Control District, Central Region, 1990 E. Gettysburg Avenue, Fresno, California.**

Interested persons will separately receive agendas for the public workshops. The purpose of these workshops is to solicit oral comments from petitioners and interested persons regarding the proposed order. The State Water Board will take no final action on the proposed order at the workshops.

The State Water Board is also soliciting written comments on the proposed order. Written comments must be received by **5:00 p.m., Wednesday, May 18, 2016**. Please indicate in the subject line, "Comments to A-2239(a)-(c)." Electronic submission of written comments is encouraged. Written comments must be addressed to:

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100
(tel) 916-341-5600
(fax) 916-341-5620
(email) commentletters@waterboards.ca.gov

After consideration of comments received at the workshops and through the written comment period, the State Water Board will schedule the matter for final action at a subsequent State Water Board meeting.

SPECIFIC COMMENTS SOLICITED

The petitions raise a set of complex and challenging issues that are considered in the proposed order. The State Water Board invites comment on both the policy direction expressed in the proposed order and the proposed revisions to Central Valley Water Board Order No. R5-2012-0116 (Eastern San Joaquin Agricultural General WDRs). The State Water Board will review the comments it receives carefully and may make revisions to the proposed order prior to considering adoption.

The State Water Board particularly encourages comments on the reporting requirements established in the proposed order. The State Water Board has a mandate to protect water quality; to do so, it must provide sufficient transparency in any irrigated lands regulatory program to ensure and verify appropriate protections, while, at the same time, maintaining the economic viability of agriculture in California. The State Water Board recognizes that there is a range of reasonable approaches to the reporting requirements of an irrigated lands regulatory program. The State Water Board accordingly invites comment on the reporting requirements of the proposed order and requests specifically that interested persons consider the following reporting alternatives when preparing their comments:

Alternative 1: This is the alternative established in the proposed order. The proposed order would require all growers (Members) to submit information to the coalition (Third Party) on management practices implemented and nitrogen applied to and removed from the field. Starting in 2019, the Third Party would report the full field-level data set identified by field location to the Central Valley Water Board. The field-level reporting to the Central Valley Water Board would allow the Board to develop target three-year ratio values for nitrogen application and removal. It would also allow the Central Valley Water Board to correlate management practice data, nitrogen application data, and water quality data to determine effective and ineffective management practices and associated trends in water quality. The full data set would additionally enable verification of Third Party data summaries and analyses and follow-up actions.

Under this alternative, the proposed order would not institute the requirement to report field level data to the Central Valley Water Board until 2019. The Third Party would report the field-level data for 2016-2018 to the Central Valley Water Board in May 2019. The Third Party would report the field-level data to the Central Valley Water Board annually thereafter. This approach would recognize that, until 2019, the annual data sets will contain partial data because the reporting requirements of the proposed order are phased in over several years. The delayed reporting would also acknowledge the multi-year characteristic of the nitrogen application indicator proposed in the order and allow Members and the Third Party several years to implement the revised nitrogen reporting requirements of the proposed order prior to reporting the values.

Alternative 2: Alternative 2 would consist of the same requirements as Alternative 1, but the requirement to submit field-level management practice implementation data and nitrogen application data by location to the Central Valley Water Board would commence effective the first year of implementation of the revised permit. Although the Central Valley Water Board would receive incomplete data sets in the first two years and would not have the multi-year data required to appropriately analyze the proposed nitrogen application indicator, the Board would be able to use the data to verify Third Party analyses and follow up actions as well as to analyze trends for reporting Members.

Alternative 3: Alternative 3 would differ from Alternative 1 and 2 in that the Third Party would submit most of the field-level data on management practice implementation and on nitrogen application to the Central Valley Water Board without identifying the data by field location or name. An automatic requirement for the Third Party to submit the field-level data identified by name and location to the Central Valley Water Board would be triggered only where (1) the field is located in an area subject to a Surface or Groundwater Quality Management Plan, or (2) where the field has a nitrogen application indicator that is substantially higher than the nitrogen application indicator for similar

fields, in accordance with the metric laid out in the proposed order. This alternative would permit the Central Valley Water Board to follow up and verify Third Party actions where management practices may be ineffective in achieving water quality requirements. The Central Valley Water Board would continue to have the authority to request field location data for additional data points, and possibly the entire data set, at its discretion.

ATTORNEY ASSIGNMENTS

One of the attorneys assigned to this matter, Emel Wadhvani with the Office of Chief Counsel, assisted the Central Valley Water Board in the development of the Program Environmental Impact Report (Program EIR)¹ for the Irrigated Lands Long-Term Regulatory Program. Because the Eastern San Joaquin Agricultural General WDRs rely on the Program EIR for California Environmental Quality Act (CEQA) compliance, Ms. Wadhvani is precluded from reviewing any petition issues raising arguments under CEQA.

Ms. Wadhvani did not represent the Central Valley Water Board during the proceedings for or otherwise participate in the development of the Eastern San Joaquin Agricultural General WDRs.

However, Ms. Wadhvani assisted in drafting Section IV.E., State Antidegradation Requirements, of the Irrigated Lands Regulatory Program Long-Term Program Development Staff Report,² which was circulated as Appendix A to the draft Program EIR. Out of an abundance of caution, Ms. Wadhvani has also been excluded from participating in any determinations on petition issues concerning compliance of the Eastern San Joaquin Agricultural General WDRs with the state antidegradation policy. Tim Regan with the Office of Chief Counsel is the assigned attorney on the antidegradation issues raised in this matter.

Ms. Wadhvani is the primary contact for procedural matters related to these petition proceedings.

PROCEDURAL MATTERS AT THE WORKSHOPS

All comments shall be based solely upon evidence contained in the record or upon legal argument. Supplemental evidence will not be permitted except under the limited circumstances described in California Code of Regulations, title 23, section 2050.6.

To ensure productive and efficient public workshops in which all participants have an opportunity to participate, oral statements will be time-limited. Interested persons are encouraged to speak at only one of the two scheduled workshops to allow time for the Board to hear from as many interested persons as possible. Further, parties and interested persons are encouraged to prepare panel presentations. Petitioners and interested persons proposing a

¹ Available at http://www.waterboards.ca.gov/centralvalley/water_issues/irrigated_lands/new_waste_discharge_requirements/program_environmental_impact_report/index.shtml

² Available at http://www.waterboards.ca.gov/centralvalley/water_issues/irrigated_lands/new_waste_discharge_requirements/program_environmental_impact_report/2010jul_draft_peir/peir_app_a.pdf

panel must contact Ms. Wadhvani with the proposed panel and requested amount of time for presentation via e-mail at Emel.Wadhvani@waterboards.ca.gov by **12:00 noon on Wednesday, April 27, 2016, for the Sacramento workshop, and by 12:00 noon on Tuesday, May 10, 2016, for the Fresno workshop.** Non-panel presentations are expected to be limited to five minutes per speaker.

The State Water Board will circulate an order of proceedings prior to the workshops with final determinations on panels and allotted speaking time based on the number of panels and speakers expected. Any materials to be presented at the workshops, including power point presentations and other visual displays must be submitted to Ms. Jeanine Townsend at the address above by **12:00 noon on Tuesday, May 3, 2016, for the Sacramento workshop, and by 12:00 noon on Monday, May 16, 2016, for the Fresno workshop.**

EXCEPTION TO PROHIBITION ON EX PARTE COMMUNICATIONS

The prohibition against ex parte communications³ does not apply to general waste discharge requirements until a specified date just prior to the State Water Board's scheduled adoption of the general WDRs.⁴ That date will be specified in a future notice. Until that date, interested persons may communicate with State Water Board members regarding the draft order, provided that any oral or written communications between interested persons and board members are disclosed by the interested person within seven days of the communication. More information and sample disclosure forms are available

at: http://www.waterboards.ca.gov/laws_regulations/docs/swrcb_godf_fillin.pdf. There is no disclosure requirement for communications at a noticed board workshop or meeting or submitted as a comment letter in compliance with a public notice.

Additional information regarding this matter, including instructions to join an email distribution list to receive correspondence from the State Water Board regarding this matter, is available at http://www.waterboards.ca.gov/public_notices/petitions/water_quality/a2239_sanjoaquin_ag.shtm. If you have any questions regarding this letter, please contact Ms. Wadhvani at (916) 322-3622 or at Emel.Wadhvani@waterboards.ca.gov.

Sincerely,



Michael A.M. Lauffer
Chief Counsel

cc: See next page

³ Gov. Code, § 11430.10 et seq.

⁴ Wat. Code, §13287.

cc: **[via U.S. Mail only]**

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A-2239 Lyris List