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Comments on the Conditional Waiver of Waste Discharge Requirements for Agricultural Operations in the Watersheds of the San Jacinto River and its Tributaries, Canyon Lake and Lake Elsinore and their Tributaries, Collectively, "The San Jacinto River Watershed", Riverside County, Order No. R8-2016-0003

Specific Comments/Questions

WDR, p. 1, Finding 3; p. 4, Finding 13; p. 6, Findings 20 and 21; p. 9, Finding 48—the Order is extremely broad in scope, covering all irrigated agricultural lands, dryland, fallow land, and agricultural operations. Typically, in other irrigated lands programs throughout the state, only those lands that are irrigated are included (i.e. irrigated pasture is regulated but dryland pasture is not; animal operations are not covered). Is it staff's intent to regulate fields that are entirely dryland or fallow? According to Finding 49, in order to be covered under the Order, the agricultural land must be irrigated and only a portion of the irrigated lands can be fallow or dryland.

WDR, p. 11, Finding 57—What will be considered an appropriate monitoring program designed to characterize of waste discharges as well as an appropriate program to determine efficacy?

WDR, pp. 12-13, Findings 64 and 65—With regard to AgNMPs, is there a template AgNMP or are there specific parameters the Regional Board will require within these plans?

WDR, p. 12, Finding 64—The Order requires the submittal of a BMP reporting program by March 22, 2017 and annually by September 15 thereafter. Is there a template BMP reporting program report or are there specific parameters the Regional Board will require within these plans? Or is the BMP reporting program report just a subset of the AgNMP?

WDR, p. 18, Finding 85—Finding 85 should be rewritten to adequately and appropriately reflect the Antidegradation Policy (State Board Resolution No. 68-16) and its associated requirements for enrolled dischargers with respect to the quality of affected receiving waters. As currently written, Provision 85 states that the Antidegradation Policy requires the quality of all affected receiving waters to be improved. In actuality, the Antidegradation Policy requires that a Regional Water Quality Control Board maintain high quality waters of the state unless the board determines that any authorized degradation is consistent with maximum benefit to the people of the state, will not unreasonably affect beneficial uses, and will not result in water quality less than that described in a Regional Water Quality Control Board's policies (e.g., quality that exceeds applicable water quality objectives). Suggested language to show the Conditional Waiver's consistency with the Antidegradation Policy could include:

The State Water Board Resolution 68-16 *Statement of Policy with Respect to Maintaining High Quality of Waters in California* (Resolution 68-16 or Antidegradation Policy) requires



the Santa Ana Water Board to maintain high quality waters of the State unless the Board determines that any authorized degradation is consistent with maximum benefit to the people of the State, will not unreasonably affect beneficial uses, and will not result in water quality less than that described in the Board's policies (e.g., quality that exceeds applicable water quality objectives). Where a water body is at or exceeding water quality objectives already, it is not a high quality water and is not subject to the requirements of the Antidegradation Policy. The conditions of this waiver will protect high quality waters consistent with Resolution 68-16.

General Comments

Manner of Compliance

A provision should be added to clearly acknowledge that the Regional Board cannot prescribe specific management practices or dictate the manner of compliance (Wat. Code, § 13360.) Examples of language used in other irrigated lands orders acknowledging this point include:

“The board is prevented by Water Code section 13360 from prescribing specific management practices to be implemented. However, it may set forth performance standards and require dischargers to report on what practices they have or will implement to meet those standards.”

or

“This Order establishes on farm standards for implementation of management practices that all Members must achieve. The selection of appropriate management practices must include analysis of site-specific conditions, waste types, discharge mechanisms, and crop types. Considering this, as well as the Water Code 13360 mandate that the Regional Water Board not specify the manner of compliance with its requirements, selection must be done at the farm level.”

or

“The Regional Water Board may not “specify the design, location, type of construction, or particular manner in which compliance may be had with [a] requirement, order, or decree” (Water Code 13360). However, the Regional Water Board still must require the discharger to demonstrate that the proposed manner of compliance constitutes BPTC (SWRCB Order WQ 2000-7).”

The Conditional Waiver's Use of Coalitions is Appropriate and Beneficial

The inclusion of a third-party group structure with coalitions as the intermediary is a vital component for increasing participation and efficiency in reaching water quality objectives. As seen in many other regions, such as the Central Valley, this structure builds trust and strengthens relationships with the grower, as well as with the Regional Board, and is successful in improving water quality, increasing participation, providing water quality education, and fulfilling regional requirements.

In order to strengthen the use of coalitions (which in turn will lead to greater participation and compliance with the Order given the benefits of coalitions and the lack of available Regional Board staff resources), the Order should be revised to specify the difference in reporting requirements for individuals versus members who join a third party group, highlighting that



certain eNOI and reporting components are submitted confidentially to the coalition.

Submittal of Individual Information for Members Participating in a Coalition Group

The CWAD requires that various reports be submitted for approval or annually to the Regional Board. CFBF highly recommends that these plans be kept on farm, available for inspection or submitted to the Coalition Group who can aggregate the information and then send it to the Regional Board. Below, please find a section of the comment letter CFBF drafted regarding the Imperial Valley Conditional Waiver (Colorado Regional Water Quality Control Board) followed by a section from a comment letter to the North Coast Regional Board regarding the same issue:

Farm Bureau Has Potential Concerns Regarding Submittals of WQMPs (Imperial Valley Conditional Waiver)

Notwithstanding the Conditional Waiver's use of coalitions and the mandate to submit Annual Reports for the Coalition Group, QAPP, SWMPR, and quarterly monitoring results, the Conditional Waiver requires the submittal of all individual Water Quality Management Plans ("WQMPs"). (See Provision D. 9, p. 21.) If WQMPs are revised in the future to require the reporting of more detailed and specific information, ¹Farm Bureau requests that this information remain on farm available for Regional Board inspection (see Wat. Code, § 13267(a) for the Regional Board's authority for inspections) rather than being sent to the Regional Board.

The protection of intellectual property, trade secrets, and proprietary information is a vital issue seen in agricultural regulatory programs throughout the state. Farm Bureau believes that for an agricultural regulatory program to be successful, proprietary farm-specific information should be kept on farm and reported only to the Coalition if necessary. Reporting directly to the Regional Board or to any other entity will diminish the Coalition group's effectiveness and purpose. Distortion of this information by others, whether purposeful or unintended, could greatly harm growers in a section, and make them targets for threats, or potentially, environmental terrorism. Moreover, inaccurate characterizations of data and information by others would undermine the program in its entirety by sending a signal to participants that the reporting of information to the third-parties provides no assurance that the information is protected from public disclosure, and in fact, will result in the public reporting of such information at a level that will allow members of the public to, in some cases, readily match the information to a grower directly. This public disclosure defeats the purpose of having the information reported to the third-party versus the Regional Board directly. Rather, the third-party is no more than the Regional Board's "data-gatherer," and there is little benefit provided to the growers in having the third-party play this role.

Keeping information within WQMPs on farm rather than submitting them to the Regional Board does not hinder the Regional Board's ability to regulate water quality nor will it prevent the Regional Board from obtaining information it deems necessary. Water Code section 13267 specifically provides the Regional Board with the authority to "investigate the quality of any waters of the state within its region." (Wat. Code, § 13267(a).) In doing so, the statute further provides the Regional Board with the authority to require "any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge . . . [to] furnish, . . . technical or monitoring program reports which the regional board requires."

¹ Farm specific information, including pesticide application, irrigation practices, crop rotations, etc., are intellectual property, trade secrets, and proprietary information that must remain confidential. (See Wat. Code, § 13267(b)(2).)



Regional Boards throughout the state have adopted this approach. Within the Central Valley, instead of requiring the coalitions to submit each farm evaluation (similar to a WQMP) to the Regional Board, the coalitions use the data from the farm evaluations submitted by their members (each member must submit a farm evaluation to its respective coalition) and develop a summary, compatible with ArcGIS, identified to at least the township level. The Central Valley Regional Board found that this manner of reporting not only gives them an adequate amount of information to protect water quality (with the ability to inspect individual farm evaluations if necessary), but also protects intellectual property, trade secrets, and proprietary information.

*Intellectual Property, Trade Secrets, and Proprietary Information Must Remain Confidential
(North Coast Regional Water Quality Control Board)*

Farm Bureau is concerned about the requirement that Farm Plans must be sent to the Regional Board. Information within Farm Plans contains intellectual property, trade secrets, and proprietary information, much of which has no correlation or nexus to the Regional Board's authority to regulate water quality. Prior to any request for the entire Farm Plan, the Regional Board should make a finding showing the necessity of the data and information required to be submitted and how such data is related to water quality. Such information must remain confidential. The Porter-Cologne Act explicitly provides protection to growers for intellectual property, trade secrets, and proprietary information that may be within a Farm Plan, monitoring report, or technical submittal:

When requested by the person furnishing a report, the portions of a report that might disclose trade secrets or secret processes may not be made available for inspection by the public but shall be made available to governmental agencies for use in making studies. However, these portions of a report shall be available for use by the state or any state agency in judicial review or enforcement proceedings involving the person furnishing the report.

(Wat. Code, § 13267(b)(2).) Thus, the Regional Board must acknowledge that farm specific information, including pesticide application, irrigation practices, crop rotations, best management practices, etc. are intellectual property, trade secrets, and proprietary information that must remain confidential.