

## State Water Resources Control Board

### EX PARTE DISCLOSURE REQUIREMENTS FOR PENDING GENERAL ORDERS

The prohibition against ex parte communications no longer applies to general waste discharge requirements (including NPDES permits), general waivers and general Clean Water Act section 401 water quality certifications. A “general order” does not name specific dischargers, but instead allows eligible dischargers to enroll. The following information will help the public comply with the requirement to meet statutory disclosure requirements. For more information, see Water Code section 13287 and [http://www.waterboards.ca.gov/laws\\_regulations/docs/exparte.pdf](http://www.waterboards.ca.gov/laws_regulations/docs/exparte.pdf).

#### ***Must I disclose ex parte communications with board members regarding pending general orders?***

You must provide written disclosure if you are in one of these categories:

- Potential enrollees (including their representatives or employees)
- Persons with a financial interest (including their representatives or employees). For a definition of “financial interest,” consult the Political Reform Act (Gov. Code, § 87100 et seq.) and implementing regulations (Cal. Code of Regs., tit. 2, § 18700 et seq.), or the Fair Political Practices Commission website (<http://www.fppc.ca.gov/index.php?id=51>)
- Representatives acting on behalf of any formally organized civic, environmental, neighborhood, business, labor, trade, or similar association

#### ***What must I disclose?***

The attached form lists the information that must be disclosed to document a meeting, telephone call or other conversation. For written communications, a complete copy of the letter or email with all attachments is adequate.

#### ***When is the disclosure due?***

Water Board staff must receive the disclosure within seven (7) working days after the board member receives the communication (generally, the date of a phone call or meeting with a board member).

#### ***Who must receive my disclosure documents?***

Unless the board member(s) provided you with a different contact person, please send your materials to: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

#### ***What will the Water Board do with my disclosure?***

The Water Board is required to post the disclosure on its website and to distribute it via any electronic distribution list for the proposed order. There is no requirement to distribute the disclosure to board members or to prepare responses. If you want to submit written comments or evidence on a proposed general order, you must provide the comments or evidence following the procedure and timelines provided in the notice for the board’s proceeding.

#### ***May other interested persons respond to a disclosure notice?***

The Water Code does not require that interested persons be allowed to respond to disclosure notices. Any such responses should be included in formal comments submitted during the order’s written comment period, included in oral comments at the hearing, or both.

**STATE WATER RESOURCES CONTROL BOARD  
EX PARTE COMMUNICATIONS REGARDING PENDING GENERAL ORDERS  
DISCLOSURE FORM**

*Note: This form is intended to assist the public in providing the disclosure required by law. It is designed to document meetings and phone calls. Written communications may be disclosed by providing a complete copy of the written document, with attachments. Unless the board member(s) provided you with a different contact person, please send your materials to: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)*

***Use of this form is not mandatory.***

1. Pending General Order that the communication concerned:
  
2. Name, title and contact information of person completing this form:  
*Note: Contact information is not mandatory, but will allow the Water Board to assist you if additional information is required. If your contact information includes your personal residence address, personal telephone number or personal email address, please use a separate sheet of paper if you do not want that information posted on our website. However, this information may be provided to members of the public under the Public Records Act.*
  
3. Date of meeting, phone call or other communication:  
  
Time:  
  
Location:
  
4. Type of communication (written, oral or both):
  
5. Names of all participants in the communication, including all board members who participated:
  
  
6. Name of person(s) who initiated the communication:
  
  
7. Describe the communication and the content of the communication. *Include a brief list or summary of topics discussed at the meeting, any legal or policy positions advocated at the meeting, any factual matters discussed, and any other disclosure you believe relevant. The Office of Chief Counsel recommends that any persons requesting an ex parte meeting prepare an agenda to make it easier to document the discussion properly. Attach additional pages, if necessary.*
  
8. **Attach a copy of handouts, PowerPoint presentations and other materials any person used or distributed at the meeting. If you have electronic copies, please email them to facilitate web posting.**



Via email: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

December 22, 2017

Ms. Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
P. O. Box 100  
Sacramento, CA 95812-0100

Re: Eastern San Joaquin River Watershed Agricultural Order  
SWRCB/OCC Files A-2239(a)-(c)

Dear Ms. Townsend:

The Kings River Coalition represents nearly 5,000 grower members covering roughly 770,000 irrigated acres in implementing the WDR General Order for Growers within the Tulare Lake Basin. We have several concerns with the second proposed order as currently drafted that we will outline below, but an overarching concern is the minimal opportunity to review and provide meaningful comments on such a far reaching program. We strongly recommend the postponement of the January 23, 2018 scheduled adoption hearing. This postponement will have no impact on the protection of water quality as the current program is already in place and the proposed changes will not be able to be incorporated for the 2018 growing season. The additional time granted by the postponement will allow for the State Board to make better informed decisions after receiving meaningful input from the affected stakeholders.

### Specific Concerns

#### **1. Drinking Water Well Testing**

The Kings River Coalition remains concerned with the inclusion of drinking water well testing as part of the Irrigated Lands Regulatory Program. We completely understand the State Board's priority for protecting public health, but it is inappropriate to mandate this testing as part of an isolated discharge program that in many cases is not associated with the farming operations. We agree that public health should be a priority of the State Board, but we should be working together to remove current restrictions on State Board oversight of individual domestic drinking water wells through the appropriate legislative processes. We believe that the inclusion of this testing requirement will actually hurt the likelihood of comprehensive legislation being adopted and will give a false sense of security that the water is safe to drink when other naturally occurring contaminants are known to be present in groundwater supplies.

## 2. Member Confidentiality

The ability for Coalitions to work cooperatively with the agricultural community and the State and Regional Boards is largely because there is a foundation of trust. The ability of the coalitions to work cooperatively with growers to improve management practices to protect water quality is best achieved when there is not an immediate fear of enforcement from a regulatory body or frivolous lawsuit that is expensive to defend. Unfortunately, recent actions from the State Board have worked against the spirit of cooperation with the agricultural community. We do however appreciate the changes made in the current proposal that allows for anonymity to be maintained for those members working cooperatively reduce their potential impacts to water quality. We will be supportive of changes that strengthen the ability of coalitions to maintain the privacy of their members' sensitive and proprietary information.

## 3. Uniquely-Situated Category of Growers

The proposed order acknowledges that there may be uniquely-situated categories of growers for whom the requirement for nitrogen reporting is inappropriate. On page 26 of the second draft order, it allows *"a category of growers to be exempted from the nitrogen applied and removed reporting requirements subject to a demonstration that applied nitrogen is not expected to seep below the root zone in amounts that would, even over multiple decades, reach groundwater, and is further not expected to discharge to surface water."*

Growers in the Tulare Lake Bed have made a technical demonstration to remove the municipal and agricultural beneficial uses in the historic lake bed. This technical demonstration was recently approved by both the Central Valley Water Board and the State Board after thorough review through the CV-SALTS stakeholder process. We believe that the Tulare Lake Bed de-designated area should qualify as a uniquely situated category of growers that should be exempted from the nitrogen reporting requirements. In order to make the language clearer on the State Board intentions relating to the Tulare Lake Bed, we recommend a clarification that the nitrogen reporting should not apply to areas with unusable surface or groundwater with de-designated beneficial uses.

## 4. Irrigation and Nitrogen Management Plan (INMP)

The proposed order provides a definition of INMP component (24) and INMP Component (25) in Attachment B. We recommend the following modifications of the definitions in order to avoid reporting confusion and to align the reporting with the initial and ongoing work of the N Removal coefficients. Additions underlined and strikethrough deletions.

### INMP Component (24) – Primary and Secondary Crop Harvest Yield

The crop harvest yield shall be reported for primary harvest, and ~~any~~ any secondary crop harvests shall be identified. The primary harvest shall be reported in crop production units per acre (i.e. lbs/acre of almonds), ~~and shall include all harvested materials removed from the field, including secondary harvests of rice straw or orchard prunings.~~

### INMP Component (25) – Nitrogen Sequestered in Wood of Perennial Crops

The nitrogen sequestered in wood accounts for the storage of nitrogen in woody growth of perennial crops such as almonds, peaches, pistachios, etc. The amount of nitrogen sequestered may vary depending on the age of the crop, so the planting year of perennial

crop stands shall be reported. This sequestered nitrogen shall be included in the nitrogen removed research, or the review of existing research, the most appropriate values for annual nitrogen sequestration for those perennial crops that cover 95% of the acreage in perennial crops for use in the INMP Summary Reports due 1 March 2019~~21~~.

Estimation of the amounts of secondary crop, and of the amount of N removed in primary and secondary crops, along with that sequestered in perennial tissues, shall not be reported by growers. Rather, they shall be estimated by the coalition based on the yield of the primary crop and the age of perennial stands, and included as part of reports to the Regional Board and back to the grower. Reported N removal rates shall include N in all harvested materials removed from the field, including secondary harvests (e.g. almond hulls, fruit culls, rice straw, or orchard prunings) and that sequestered in perennial tissues. It is noted that tools enabling growers and grower advisors to independently estimate rates of N removal are available at [agmpep.com](http://agmpep.com)

#### **5. Surface Water Program**

The Kings River Coalition is a member of the Southern San Joaquin Valley Water Quality Coalition which has an outstanding petition for the Tulare Lake Basin. In response to a review of the East San Joaquin Coalition's surface water program, the State Board has recommended a statewide expert panel to review all surface water programs statewide. We support the East San Joaquin Coalition's assertion that the current monitoring programs are sufficient and that there has not been a valid justification for the recommendation of another statewide expert panel. We also believe that making this a precedential item is inappropriate considering the outstanding Tulare Lake Basin petition and the lack of review of the current monitoring programs being conducted by the seven coalitions operating in the Tulare Lake Basin.

#### **6. Socially Disadvantaged Farmers**

The Kings River Coalition has worked extensively with small acreage, diverse, non-English speaking, socially diverse farmers to implement the current irrigated lands regulatory program. In doing so, it is apparent that the current and proposed regulation is overly burdensome for these small acreage growers. We support alternative certification options and the reduction of some of the reporting requirements for these socially disadvantaged farmers.

Another issue is dealing with language barriers to communicate the order requirements and to provide translation services. Over the past several years, we have held numerous workshops and conducted bilingual radio outreach in partnership with UC Cooperative Extension and the National Resources Conservation Service. However, we are afraid that the late addition that requires the Coalition to provide outreach in multiple language languages will have unintended consequences on the Coalition and the socially disadvantaged farmers we are seeking to serve. We recommend that the State Board refer this issue back to the Regional Board to develop appropriate regulation that avoids unintended consequences.

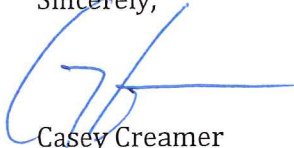
#### **7. Management Practices Evaluation Program (MPEP)**

The Kings River Coalition has been working diligently and proactively with the Southern San Joaquin Valley MPEP Committee in developing a Management Practices Evaluation Program Workplan. The Committee has a conditionally approved MPEP Workplan that was developed to meet the Tulare Lake Basin General Order and in consideration of the Expert

Panel Report. The Workplan focuses attention on the root zone where growers manage and where there is more rapid feedback on the impact of the management practices relating to surplus nitrogen. The Workplan also utilizes the USDA NRCS Soil and Water Assessment Tool to examine the effect of N surplus across the range of cropping and soil conditions that exist in the Central Valley. The second draft proposal aligns with our Workplan concept of focusing on areas where growers can actively manage, but does so in a more simplistic manner. We believe that there should be the flexibility for the State and Regional Boards to consider other scientifically valid approaches in the MPEP and in the evaluation of appropriate AR ranges.

In closing, the Kings River Coalition and its 5,000 members appreciate the opportunity to provide comments and look forward to continuing a constructive dialogue on these important issues.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Casey Creamer', with a long horizontal line extending to the right.

Casey Creamer  
Coordinator

CC/sjs

KRW L17-0041  
File: KRW 308.01