California Sportfishing Protection Alliance
Watershed Enforcers
San Joaquin Audubon
Central Valley Regional Water Quality Control Board
Irrigated Lands Renewal
20 October 2005

Good Morning Chairman Schneider, Board Members.

Bill Jennings, representing the California Sportfishing Protection Alliance, Watershed Enforcers and San Joaquin Audubon.

Since we authored what subsequently became SB 309 and filed our initial petitions, I guess I've addressed this Board 40 or 50 times on this issue. We'll be submitting formal comments but, for the benefit of the new members, I'm going to regress and briefly discuss how we got here.

In 2003, we represented a coalition of more than 200 environmental organizations, with over a million California members, in opposing the waiver. Over three hearings, we submitted 3 briefs and 14 technical assessments by watershed specialists and water quality experts that pointed out that:

1. Waiver conditions were not protective of water quality and lacked accountability.
2. Monitoring requirements were seriously deficient (no edge of field monitoring – most waterways would go unmonitored).
3. There were no goals, performance standards, milestones or timelines - no requirements that would ensure reductions in pollutant loading.
4. The coalitions were "legal fictions," not subject to the Board's enforcement toolbox nor did the coalitions have any legal authority over dischargers they represented.
5. CEQA and Anti-degradation requirements were ignored.
6. Alternatives (like a General Order) were not evaluated,
7. Voluntary efforts had an unbroken record of failure. The only successful programs controlling Ag discharges (rice herbicide and Grasslands programs) were driven by regulatory certainty. And
8. The Board's approach invited noncompliance and would ultimately fail.

We suggested that:

1. A general order would more effective, practical and enforceable.
2. NOIs be submitted directly to the Board.
3. Monitoring be conducted by an independent entity (much as in the Bay where dischargers pay SFEI to monitor).
4. Farm management plans be required, and
5. Requirements to implement BMPs and a process to evaluate their effectiveness were essential.

None of our suggestions were accepted. We appealed, subsequently sued and lost in the trial court. The case is on appeal and I'm not going to discuss it except to mention that the Judge observed that:

1. The waiver approach was new and should be given an opportunity to work,
2. She expected to see this issue again and if the program wasn't working,
3. Her next decision might be 180 degrees different.

Events since adoption have proved us right – the waiver has been a failure – chiefly characterized by coalition intransigence.

As we approach its sunset, the Board doesn't know:

1. Who is participating in the program. Who isn't.
2. Who is discharging what pollutants where.
3. Who has implemented BMPs. Who hasen't.

Nor have coalitions provided:

1. A waterway schematic of the Central Valley (i.e., what are the major, intermediate and minor drainages).
2. The BMPs presently employed in each watershed, how additional BMPs will be identified and implemented or even how BMP effectiveness will be evaluated.
4. The extent of pollution (only 84 monitoring sites have been approved to evaluate almost 18,000 miles of ag dominated waterways). For example, the Sacramento Valley coalition has one approved site for every 150,000 acres.

Indeed, staff cannot point to a single pollution source that has been identified, a single management measure has been implemented or a single pound of pollution that has been reduced as a result of this waiver. Nor can they identify a single enforcement action taken.

We have learned two things.

1. Virtually every Ag dominated waterbody is polluted (for example, the Board's Phase II monitoring of 30 sites revealed that 80% were toxic and 97% violated criteria).
2. Coalitions have failed to comply with many of most basic and explicit monitoring and reporting requirements.

   These blatant failures are amply documented in the:
   a. AMRs sent to each coalition.
   b. Letters requesting membership lists.
   c. Various staff presentations, including the June staff report for the joint State/Regional Board update.

d. EO reports and numerous staff communications.

So where do we go from here?

The bedrock of Porter-Cologne is that everyone proposing to discharge wastes into waterways must:

1. Ask permission.
2. Identify constituents to be discharged
3. Monitor to evaluate impacts
4. Comply with limits or implement measures to reduce or eliminate problems.

This applies to everyone – municipalities, industry, mom-an-pop businesses – everyone except, according to this Board, farmers.

The fundamental question is whether this Board is going to continue to:

1. Cede its statutory responsibility to protect waterways to industry advocacy groups.
2. Ignore the victims of Ag pollution; i.e., an impoverished ecosystem and those who eat contaminated fish, swim in polluted waters or have to pay cleanup costs and higher utility fees.
3. Place Valley agricultural interests, representing about 2.5% of the state's economy (including multipliers), above of the rights of 35 million California's who hold title to these rivers - two thirds of whom rely on these waters for all or part of their water supply.

Staff has proposed a waiver renewal that suggests the affirmative - in that it essentially preserves the status quo.

We appreciate the new provisions that:

1. Specify NOIs must be submitted to the Board, and
2. Require preparation of farm management plans

(However, the timelines are far too long).

Unfortunately, there is still no mechanism that:

1. Enables staff to identify or quantify specific sources of pollution, or
2. Requires implementation and evaluation of BMPs, or
3. Establishes goals, performance standards or milestones.

In other words, there is nothing in the proposal that reasonably ensures reductions in pollutant loading.

Since waivers are expected to implement TMDLs, the lack of requirements to identify mass loads, implement BMPs and quantify load reductions undermines the entire TMDL implementation process.

The proposed waiver rewards those who have sabotaged the existing waiver with a new five-year waiver. Any renewed waiver should sunset when the EIR is scheduled for completion – January 2008.

We're disappointed that staff:

1. Is proposing even less monitoring than the present waiver – gone are requirements to yearly monitor all major drains and 20% of intermediate drains on a rotating basis. Of course, none of the coalitions ever complied those explicit requirements.

2. Failed to present two alternatives – the waiver and the waiver conditions within the context of a general order – so that the Board could compare the relative advantages and disadvantages of each.

3. Ignored an alternative providing for independent third-party monitoring - would eliminate many of the contentious disagreements and noncompliance issues.

4. Declined to recommend a clear stair-stepped enforcement schedule so that everyone would understand the consequences of noncompliance. Presently, there is no downside for intransigence.

The proposed renewal is, like its predecessor, a rabbit-hole allowing the largest source of pollution to Central Valley waters to escape regulatory requirements applicable to virtually every other segment of society.

It's time for this Board to decide whether it is a regulatory agency or a twelve-step program. Whether its mission is to protect water quality or to shield polluters from the law.

We hope you do not again fumble a golden opportunity to protect water quality.