

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

Good Afternoon Chairman Schneider, Board Members.

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

Frankly, I'm frustrated.

Four years ago, in an effort to assist in the development a workable plan, we provided extensive comments and the testimony of seven accredited experts. Not one of our suggestions was accepted.

Over the last three years, I've spent countless days reviewing files, held hundreds of conversations with staff and made repeated presentations before the Board regarding the failure of coalitions to comply with many of the most basic requirements of the adopted waiver. I would have been more productive talking to a rock.

In preparation for this hearing, we made a number of suggestions and urged staff to bring forth **both** a proposed waiver and a general order - containing equivalent requirements - so that the relative merits could be evaluated and discussed. All that is before us last year's model with a little additional chrome.

We requested that this item be conducted as a full evidentiary hearing, subject to the rules of perjury and evidence. Rejection of that request ensures that this proceeding remains mired in the tarbaby of conflicting and unsubstantiated claims.

Staff has again brought fourth an unwieldy procedural Taj Mahal containing little substance or accountability.

Cutting through the smokescreen, under the proposed renewal, this Board cannot and will not be able to identify:

1. The bad actors likely discharging the majority of pollutants.
2. The locations, constituents and concentrations discharged.
3. The localized impacts to receiving waters.
4. If any BMPs are effectively employed, or
5. If a single pound reduction in pollutant mass loading has been achieved.

Without knowing who is discharging what pollutants where, the receiving water impacts, the BMPs employed or the reductions achieved; the Board cannot creditably pretend that it is protecting water quality.

The regulatory process has been turned on its head. Instead of protecting waterways from polluters, it now shields polluters from the law.

Waiver proponents have again served up an omelet of distortion and half-truth.

They claim that agriculturally related water quality problems are overstated and limited in significance. Not true.

Virtually every mainstem waterway and numerous tributaries are identified on the 303(d) list as impaired because of agricultural pollutants. Butressing those listings are hundreds of studies by state and federal agencies and universities, many published in refereed literature.

UCD, under contract to the Regional Board, documented pervasive aquatic life toxicity in agricultural drains during 03 and 04 (80% were toxic in 04). Exceedances of water quality standards occurred at 100% of the 24 sites monitored in 03 and 97% of the 30 sites examined in 04.

The cherry-picked sites monitored by coalitions are little different. For example, the Westside San Joaquin Coalition found that 50% of their sites exhibited toxicity and 100% exceeded some standard. 100% of the Rice Coalition's sites were found to be toxic. 47% of the Sacramento Valley's sites revealed toxicity and 74% violated standards.

According to EPA, runoff from agricultural lands accounts for some 40% of the pollution being discharged to U.S. Rivers (compared to 11% & 6% attributable to municipal and industrial sources, respectively). In the Central Valley, Ag's share is significantly higher.

As a result, the mass and diversity of plankton, macroinvertebrate and fish assemblages have profoundly changed. Throughout the Valley, native populations less tolerant of pollution are giving way to pollution-tolerant introduced species.

Pollutant discharges from farms have eliminated assimilative capacity causing industrial and municipal dischargers and water purveyors to spend tens upon tens of millions of dollars annually in increased treatment costs.

The exemption of irrigated agriculture from regulations applicable to virtually every other segment of society has placed our most vulnerable citizens – subsistence fishing communities, the poor and those who recreate in polluted waters – at increasing risk.

Proponents claim substantive progress has occurred. The stark reality is massive noncompliance with the most fundamental of waiver requirements.

Coalitions were mandated to identify their major, intermediate and minor drains and to monitor all major drains, 20% of intermediate drains on a rotating basis and minor drains where downstream exceedances are identified. None have complied.

Coalitions were required to develop implementation plans to track management measures, including a schedule for implementation of BMPs. None have complied.

The astonishing extent of coalition intransigence is revealed in staff's June 05 update assessment, their review of the annual monitoring reports, the conditional approvals and even the recent letter to SacValley - shape up in 30 days or else.

Proponents claim that farmers must be educated and brought slowly into the process. Why?

Are farmers less intelligent than welders, junkyard operators or contractors? They have to characterize their discharge, monitor, develop individual management plans and implement BMPs.

Proponents claim that a voluntary watershed approach is effective.

I've repeatedly challenged this Board to provide a single example of a voluntary or watershed program achieving significant quantifiable reductions in pollutant mass loading. I've yet to receive an example.

Classic regulatory approaches – like the rice herbicide and grasslands programs –have achieved remarkable success.

Proponents claim that a waiver is more economical in staff resources. Nonsense. Staff is already on record as acknowledging that a general order would require equivalent or fewer resources than a waiver.

However, there's little value in flogging a dead horse. Our comments are in the record.

I'll close by observing that:

1. Discharges of polluted water from irrigated lands that violate water quality standards are an unreasonable waste and unreasonable use of water in violation of Section 100 of the CWC and Article Ten Section 2 of the state Constitution.
2. The Regional Board is legally accountable for ensuring compliance with the explicit conditions of a waiver it adopts. Renewal of the waiver – along with continuing noncompliance - places the Board in immediate violation of the law.
3. Collaboration can be a marvelous thing. However, collaboration to avoid compliance and enforcement is a crime.

Prudence and a decent regard for our waters would suggest that the matter be returned to staff with direction to prepare a range of alternatives that could be subsequently considered in an evidentiary proceeding.