July 15, 2024

San Diego Regional Water Quality Control Board
Attn: Abigail Pashina
2375 Northside Drive, Suite 100
San Diego, CA 92108-2700

Via Email to sandiego@waterboards.ca.gov

Re: Comment - Tentative Order No. R9-2024-0029

To the San Diego Regional Water Quality Control Board, and Region 9 of the United States Environmental Protection Agency:

Please accept these comments regarding Tentative Order No. R9-2024-0029, General Waste Discharge Requirements for Discharges from Commercial Agricultural Operations in the San Diego Region (Tentative Order or Permit). San Diego Coastkeeper (Coastkeeper) is the San Diego region's leading clean water advocacy organization, member supported since 1995. Our mission is to protect and restore coastal and inland waters in San Diego County, using advocacy, community science, and education. Coastkeeper also actively seeks agency implementation of federal, state, and local laws, regulations, and permits; regularly engages in the administrative review and public comment procedures for agency actions; and, where necessary, directly initiates enforcement actions on behalf of itself and its members.

Coastkeeper supports many updates to the new Agricultural Permit, including the mandatory updates to comply with the Eastern San Joaquin (ESJ) Order. However, Coastkeeper requests several revisions to the Tentative Order, including more frequent surface and groundwater monitoring requirements.

Commercial Agriculture's Pollutant Contribution and Need for Regulation

Coastkeeper first emphasizes that commercial agricultural operations pose a significant threat to both surface and groundwater resources. As Finding I.B of the Tentative Order clearly states,

> "because the production of crops requires disturbance of the soil and the use of various agricultural chemicals which can generate discharges of waste, such as nutrients, pesticides, herbicides, fumigants, pathogens, and sediment. If not properly managed, these discharges can degrade water quality, cause or contribute to pollution and nuisance conditions, and adversely affect beneficial uses in surface waters and/or groundwaters in the San Diego Region."[1]

[1] Tentative Order § I.B. *See also* Permit Fact Sheet.

The primary pollutant inputs from such commercial agricultural operations include "(1) nitrate discharges to groundwater and associated drinking water impacts, (2) nutrient discharges (including nitrogen and phosphorus) to surface waters which may lead to harmful algal blooms, (3) pesticide discharges to surface waters that may lead to toxicity issues, and (4) sediment discharges to surface waters that may negatively impact aquatic life."[2] These direct threats to human and ecological health impact everyone, but most disproportionately impact disadvantaged communities and Tribal Nations.[3]

Coastkeeper attended workshops regarding the Tentative Order on August 22, 2023 and April 10, 2024. Coastkeeper is concerned by the many comments during these workshops opining that 1) commercial agricultural growers felt singled out as a group to be regulated; 2) the pollutants regulated by the Permit are found in many locations, and thus are not attributable to commercial agricultural operations; and 3) commercial agricultural operations do not significantly contribute to surface and groundwater pollutant loading.

First, commercial agricultural growers are one group of many that are regulated under various permits issued by the State Water Resources Control Board or this Regional Board. For example, state permits regulate stormwater discharges from certain industrial operations, construction activities, and the California Department of Transportation, and a regional permit governs discharges from Municipal Separate Storm Sewer Systems (MS4s).

Second, simply because certain pollutants are found in areas that lack agricultural operations does not absolve commercial agriculture from significantly contributing to such pollution. In fact, extensive evidence strongly indicates that commercial agriculture is a significant contributor of nutrients, pesticide, herbicides, fungicides, and a host of other pollutants.[4] The watersheds with the highest concentrations of commercial agricultural growers in the San Diego Region include Santa Margarita, San Luis Rey, San Dieguito, and areas of the Carlsbad watershed. Unsurprisingly, numerous waterbodies and waterbody segments in these areas are impaired for pollutants associated with nitrogen, phosphorus, and a wide range of pesticides, toxicity, total dissolved solids, and benthic community effects.

The Regional Board is the agency responsible for protecting surface and ground waters in the San Diego Region,[5] and therefore must regulate commercial agricultural operations with significant potential to contribute these types of pollutants to our ground and surface waters.

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[2] *Id*. § I.D.
[3] *Id*.
[4] *See e.g.*, Rainbow Creek Total Nitrogen and Total Phosphorus TMDLs, *available at* https://www.waterboards.ca.gov/sandiego/water_issues/programs/tmdls/rainbowcreek.html.
[5] Tentative Order § I.A.

Comments Regarding Specific Provisions of Tentative Order R9-2024-0029

Generally, Coastkeeper requests that the Tentative Order be revised to require more surface and groundwater monitoring. Most of the impaired waterbodies within the Santa Margarita, San Luis Rey, San Dieguito, and Carlsbad watersheds have remained impaired for many years, due in significant part to a lack of monitoring data, information, and transparency regarding pollutant loading from commercial agriculture inputs. In short, agricultural operations with the highest pollutant contributions are able to hide behind this lack of data and information. Not only does this negatively impact our region's waters, it is unfair to the commercial growers subject to the Permit which have implemented effective best management practices (BMPs) and contribute the least in terms of pollutant loading.

Groundwater Monitoring

Coastkeeper requests the Tentative Order be revised to include groundwater monitoring with greater frequency. As Regional Board staff has explained, there is a significant lack of groundwater data in the San Diego Region, and as such, expanded well monitoring data is critical to protect human health.

The Tentative Order requires drinking water wells at permittee properties to be monitored annually, unless three years of consecutive data show the nitrate concentration is less than 36 mg/L NO3—N, after which the wells may be sampled once every five years. Coastkeeper requests that drinking water wells be sampled every year regardless of the results for each well. First, the Regional Board itself has emphasized the need for more groundwater data. This additional groundwater well data will only start to paint a picture of aquifer health, and the relationship and dynamics between agricultural pollutant inputs, BMPs, locations, and the movement of pollutants through groundwater. Second, much can change during a period of five years, and as there is already such a dearth of groundwater monitoring data, additional gaps in monitoring are likely to fail to protect human health. Therefore, even if a well shows three consecutive years of a nitrate concentration less than 36 mg/L, the results for this one parameter should not cause a cessation of monitoring for a five-year period.

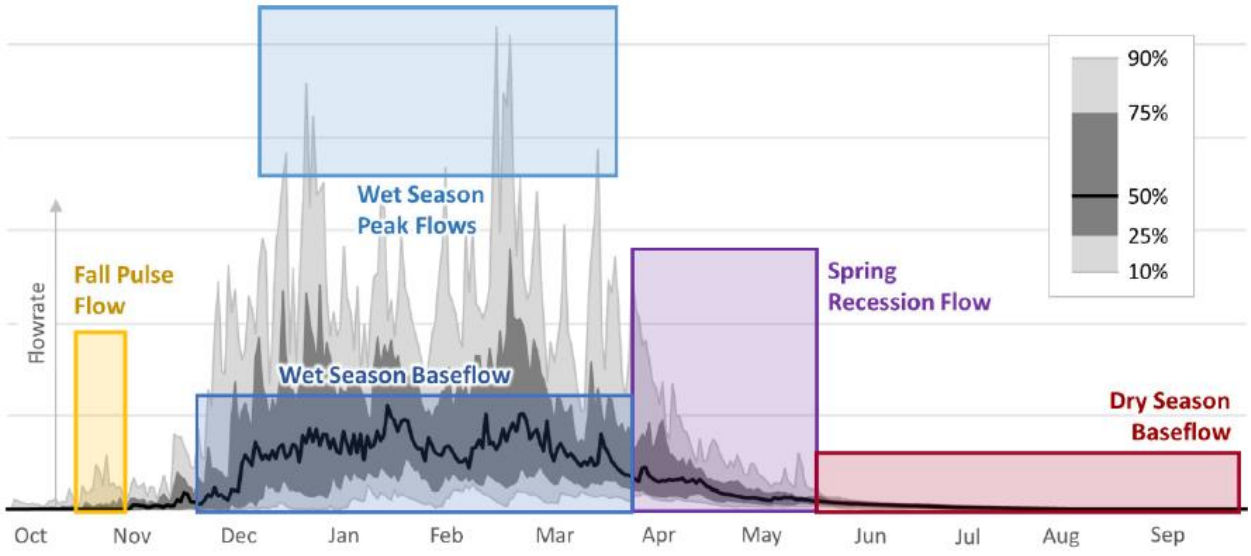
The Tentative Order also requires that all active, non-drinking water supply wells screened in an unconfined aquifer must be monitored once every five years. For the same reasons described above (i.e., the existing lack of data and failure to protect human health), Coastkeeper requests this be revised to require annual monitoring. Furthermore, Coastkeeper disagrees with different monitoring requirements for growers with drinking water wells, and growers that do not use their wells for drinking water. Whether a commercial agricultural operation uses a groundwater well for drinking water has no bearing on whether it impacts the aquifer, and therefore may impact nearby drinking wells. The Permit must require monitoring corresponding to each permittee's potential *impact* to groundwater, not its *use* of the groundwater.

Moreover, many residents of the region who rely on groundwater wells for drinking water supply are vulnerable communities and tribes. As the Tentative Order specifically places an emphasis on protecting these groups, the Permit must include monitoring requirements that ensure their protection.

Coastkeeper also strongly disagrees that Member's groundwater quality data must be publicly reported using "anonymous identifiers." Anonymous identifiers allow the regulated community to hide critical information from not only the regulators, but also from the public. This creates a dangerous situation in which neither the regulating agency, nor the public, can determine who might be responsible for an exceedance of something as critical as a public safety standard for drinking water. Further still, when groundwater monitoring data reveals that drinking water is not safe for consumption, without identifying information, the Regional Board must then conduct additional investigations and monitoring itself, which correspondingly shifts associated additional costs to innocent taxpayers, and not the polluting entity.

Surface Water Monitoring

Coastkeeper requests the Tentative Order be revised to include more frequent surface water monitoring. Tentative Order requires such monitoring be conducted "once during the dry season (May 1 – September 30) and once during the first qualifying storm event of the wet season (October 1 – April 30)."[6] Rather than biannual monitoring, the Permit should require at least quarterly monitoring to better capture the functional flows of the waterbodies of our region. As depicted by the image below, our regional surface waters have five types of functional flows: fall pulse flow, wet season baseflow, wet season pack flows, spring recession flow, and dry season baseflow.



The Tentative Order's requirements for only one dry season sample and one wet season sample fails to capture all of these functional flows, and therefore fails to provide accurate and useful information about the pollutant contribution from commercial agriculture operations, and the health of surface waters. For example, this would allow Third Party Groups to collect dry season samples in August or September, when certain waterbodies may have minimal flow or no flow at

[6] Tentative Order, Attachment B, Monitoring & Reporting Program, Table B-1.

all. These conditions significantly differ from typical May or June spring recession flows. Further, the first QSE of the wet season typically generates a smaller fall pulse flow. Depending on the size of the first QSE of the wet season, a significant amount of precipitation from this QSE may be absorbed into dried out soils with little pollutant mobilization into receiving waters. Coastkeeper understands that the Board is likely seeking to capture pollutant loading from a "first flush," but the first QSE is unlikely to provide such information. Once soils become more saturated during the set season, more run-off, and thus more corresponding pollutant loading into surface water, will occur. Therefore, the Permit should require at least four samples per year to capture conditions from the first QSE (most commonly a fall pulse flow), a wet weather event during middle of the wet season, dry weather spring recession flow, and dry weather dry season base flow.

Coastkeeper also requests the following specific deletions from the Tenative Order:

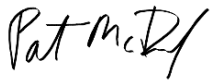
- Delete the following from II.B.4.a.ii.1 of Attachment B: "It may be feasible to combine subwatersheds to establish the surface water monitoring locations based on the location and density of the Member's Operations." There is already a lack of data in most waterbodies near and downstream from high concentrations of Growers subject to the Permit. The region needs more data, not less. Further, the cost of sampling the relatively few monitoring locations compared to 1600 Growers subject to the Permit (which also share the monitoring costs), is negligible.
- Delete "if possible" from II.B.4.a.ii.6 of Attachment B. There are numerous waterbodies that qualify for these requirements. Therefore, "if possible" is superfluous and opens the possibility for abuse.

Management Practice Requirements

Coastkeeper supports the Tentative Order's additions and revisions to clarify requirements for managing stockpiles, soil amendments, waste management, chemical storage, and the new requirements for wastewater pond lining to prevent the discharge of various waste into surface and groundwaters.

Coastkeeper appreciates the opportunity to provide comments regarding the Tentative Order. Please contact me via email at patrick@sdcoastkeeper.org, or phone at 760-525-6838 if you have any questions or need more information regarding our comments. We welcome the opportunity to further discuss our suggestions with Board staff.

Respectfully,



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