

APPENDIX H

Staff Recommendations for Agricultural Order

ENVIRONMENTAL DOCUMENTS PURSUANT TO CEQA

**CENTRAL COAST REGIONAL
WATER QUALITY CONTROL BOARD**

March 2011





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State of California

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California Environmental Protection Agency

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DRAFT
REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION
RESOLUTION NO. R3-2011-0021

**Certification, Pursuant to the California Environmental Quality Act, of the Final
Subsequent Environmental Impact Report and CEQA, Findings, and Statement of
Overriding Considerations for the Adoption of a Renewal of a Waiver of Waste
Discharge Requirements for Discharges of Waste from Irrigated Lands in the
Central Coast Region (Order No. R3-2011-0006)**

1. The Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board) is the lead agency under the California Environmental Quality Act (CEQA) (Public Resources Code § 21000 et seq.) in connection with its adoption of a waiver of waste discharge requirements for discharges of waste from irrigated lands (Order No. R3-2011-0006) (2011 Agricultural Order).
2. On July 9, 2004, the Central Coast Water Board adopted Order No. R3-2004-0117, Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands, waiving waste discharge requirements for discharges of waste from irrigated lands in the Central Coast Region (2004 Agricultural Order) and adopted a Negative Declaration under CEQA (2004 Negative Declaration). No person filed any legal challenge to the 2004 Agricultural Order or the 2004 Negative Declaration.
3. The Central Coast Water Board has engaged in a lengthy public process to consider renewal of the 2004 Agricultural Order. During most of 2009, the Water Board convened an Agricultural Advisory Group consisting of grower and environmental group representatives to work on updating the Order. On February 1, 2010, the Central Coast Water Board released for public review a Preliminary Staff Draft Conditional Waiver of Waste Discharge Requirements for Discharges of Waste from Irrigated Lands (February Preliminary Staff Draft Order) and received comments and alternative proposals to the Preliminary Staff Draft Order. On May 12, 2010 and July 8, 2010, the Central Coast Water Board held public workshops to provide an opportunity for public comments and recommendations on the renewal of the 2004 Ag Order. Between February 1, 2010 and February 18, 2010, Central Coast Water Board staff held meetings with persons interested in the renewal of the 2004 Agricultural Order, including individuals and representatives of farming groups, environmental groups, and public health groups. On August 16, 2010, the Central Coast Water Board staff held a scoping meeting pursuant to CEQA to receive information about the scope of the proposal and potential environmental effects of a renewal of the 2004 Ag Order. The Central Coast Water Board also received written comments with respect to scoping and other aspects of the renewal of the 2004 Ag Order.
4. On October 14, 2010, the Central Coast Water Board sent to the Office of Planning and Research and each responsible and trustee agency a notice of preparation in compliance with CEQA Guidelines section 15082 (Cal. Code Regs., tit. 14, § 15082) stating that the Board intended to prepare a subsequent environmental impact report (SEIR) and provided those agencies with 30 days to provide comments prior to the release of the SEIR. The Central Coast Water Board received comments from California State Lands Commission (CSLC), the Native American Heritage Commission (NAHC), and the California Department of Transportation (Caltrans).
5. On October 25, 2010, the Central Coast Water Board provided public notice of the availability of a Draft SEIR and a notice of completion of the Draft SEIR to the Office of Planning and Research in compliance with CEQA Guidelines section 15087 (Cal. Code Regs., tit. 14, § 15087). The public notice was provided by noticing on the Board's website, by electronic mail to known interested

persons and agencies, and by publication in a newspaper of general circulation. The State Clearinghouse also distributed the Draft SEIR to state agencies for review. The Draft SEIR and associated documents, including the Staff Report and appendices and proposed Order No. R3-2011-0006, were made available at the time of notice of the availability of the Draft SEIR.

6. Agencies and interested persons were provided a minimum of 45 days for the submittal of comments on the Draft SEIR. The Central Coast Water Board received no comments from public agencies on the Draft SEIR. The Central Coast Water Board received 12 comment letters from interested persons commenting on the Draft SEIR and 116 comment letters from interested persons commenting on draft Order No. R3-2011-0006 and associated documents. These comments are available for public review on the Central Coast Water Board's website http://www.waterboards.ca.gov/centralcoast/water_issues/programs/ag_waivers/ag_order.shtml.
7. On March 1, 2010, the Central Coast Water Board issued a Final SEIR for Order No. R3-2011-0006. The Final SEIR clarifies several issues, including clarification of mitigation measures, and makes minor clarifying edits in response to comments.
8. The Final SEIR consists of the Draft SEIR as revised, the Responses to Comments to the Draft SEIR, and documents referenced and incorporated into the Final SEIR.
9. The Final SEIR identifies no new significant impacts as compared to the Draft SEIR.
10. The Final SEIR identifies the potential significant environmental impacts of the project and, where appropriate, identifies feasible mitigation measures to reduce impacts to a less than a significant level.
11. The Final SEIR has been completed in compliance with CEQA.
12. The Final SEIR has been presented to the Central Coast Water Board and the Central Coast Water Board has reviewed and considered the information contained in the Final SEIR prior to adopting the 2011 Agricultural Order.
13. The Central Coast Water Board has reviewed and considered the information contained in the Final SEIR, and hereby adopts and certifies the Final SEIR.
14. The CEQA Guidelines specify that the lead agency shall not prepare a subsequent environmental impact report unless it determines on the basis of substantial evidence in the light of the whole record that there would be a substantial increase in the severity of previously identified significant effects. (Cal. Code. Regs, tit. 14 §15162(a)(1).) Members of the public and public agencies had suggested that there could be an increase in the severity of previously identified significant effects compared to the 2004 Agricultural Order, so the Central Coast Water Board staff prepared the Draft SEIR to evaluate the potential effects. After review of all the evidence and comments, the Final SEIR concludes that with respect to impacts on Agricultural Resources the adoption of the 2011 Agricultural Order will not result in significant environmental effects and with respect to Biological Resources concludes that reduction in surface water flows as the result of compliance with the 2011 Agricultural Order could result in potentially significant impacts on aquatic life, but that to the extent there is an impact it would likely be short term.
15. With respect to Agricultural Resources, the Final SEIR concludes that adoption of the proposed alternative could result in some economic or social changes but that there was insufficient evidence to conclude that the economic changes would result in significant adverse physical changes to the environment. Commenters speculated that the economic impacts would be so large as to result in large scale termination of agriculture and that land would be sold for other uses that would result in impacts on the environment. No significant information was provided to justify that concern. As described in the Section 2.4 of the Final SEIR, the proposed 2011 Agricultural Order would impose additional conditions on approximately 100 to 300 of the approximately 3000 owners or operators currently

enrolled in the 2004 Agricultural Order. CEQA states that economic or social effects of a project shall not be treated as significant effects on the environment. (Pub. Res. Code § 21083.) The Final SEIR concludes that due to some new conditions, particularly the requirement that some dischargers may implement vegetated buffer strips, could result in loss of land for agricultural production since the buffer strips would generally not produce crops and some land could be converted to other uses. This impact was found to be less than significant and that mitigation could reduce impacts further. The Central Coast Water Board may not generally specify the manner of compliance and therefore, dischargers may choose among many ways to comply with the requirement to control discharges of waste to waters of the state. Even if all dischargers who could be subject to the condition to use vegetated buffers or some other method to control discharges in the proposed 2011 Agricultural Order (Tier 3 dischargers) chose to use vegetated buffers or converted to other uses, the total acreage is quite small compared to the total amount of acreage used for farming and was, therefore, found to be less than significant. In addition, since the land would be used as a vegetated buffer to comply with the Order, this would result in beneficial impacts on the environment, not adverse impacts. Even if the effects could be more severe, they can be mitigated due to actions by dischargers.

16. With respect to Biological Resources, the Final SEIR concludes that wide scale water conservation to comply with the 2011 Agricultural Order could result in lower flows into surface water resulting in impacts on aquatic life. Because the Central Coast Water Board may not specify the manner of compliance and the Order would not direct persons to reduce flows, the Board has insufficient information, after reviewing the entire record, including information provided by resource agencies, to determine the extent to which dischargers would choose to use water conservation to comply and to evaluate potential physical changes to the environment that could result. Wildlife agencies suggested that reduction in toxic runoff would offset impacts due to reduced flows that could occur. In addition, reduction in water use could result in increased groundwater levels that would also result in more clean water recharging surface water. The potential exists for improved base flow conditions in the event that tailwater is allowed to percolate to groundwater, rather than being discharged to surface waterbodies where it is quickly transported downstream. The potential for improved base flow conditions also exists in the event that growers reduce groundwater pumping in an effort to reduce tailwater discharge to surface waterbodies. Consequently, reduced or elimination of tailwater does not necessarily equate to elimination of flow. Furthermore, what flow would be available will be of higher quality, and therefore have a higher potential of supporting desirable habitat, particularly native species.
17. Based on this information, the Final SEIR concludes that the environmental effects on Biological Resources associated with the 2011 Agricultural Order may actually not be significant but that due to the uncertainty associated with evaluating the available information, the Central Coast Water Board is making these written findings.
18. With respect to Biological Resources, there are mitigation measures available to reduce potentially significant environmental impacts to less than significant levels. Potential mitigation measures to prevent reduced flows or to reduce the impact of reduced flows include phasing in management practices that could result in reduced flows; reducing or eliminating conditions in the proposed draft 2011 Agricultural Order with respect to tile drain discharges; and use of riparian buffers that will effectively treat the water to remove pollutants, but not necessarily reduce flows. In some cases, other agencies have the ability to require or implement these mitigation measures and are required under CEQA to consider whether to implement the mitigation measures when they undertake their own evaluation of impacts associated with compliance with the 2011 Agricultural Order, including the Department of Fish and Game, which regulates impacts on endangered species, and the United States Corps of Engineers, that regulates dredge and fill activities. This finding is made pursuant to Title 14, California Code of Regulations, section 15091(a)(2). There are legal considerations that may make infeasible some of the mitigation measures that could be implemented. The Central Coast Water Board may not specify the manner of compliance with its orders and as a result implementation of potential mitigation measures are not under the control or discretion of the Central Coast Water Board. This finding is made pursuant to Title 14, California Code of Regulations, section 15091(a)(3).

- 19. CEQA requires a public agency that makes findings required under section 15091(a) to require mitigation monitoring or reporting. The 2011 Agricultural Order requires reports to evaluate the effectiveness of management practices, including monitoring groundwater and surface water.
- 20. Pursuant to CEQA Guidelines section 15093 (Cal. Code. Regs., tit. 14., § 15093), the Central Coast Water Board hereby finds that the project’s benefits override and outweigh its potential unavoidable significant adverse impacts, for the reasons more fully set forth in the Staff Report and appendices thereto. Specific economic, social, and environmental benefits justify the adoption of this project despite the project’s potential significant adverse environmental impacts. The Central Coast Water Board has the authority and responsibility to regulate discharges of waste associated with irrigated agriculture. Many of those discharges have caused significant widespread degradation and/or pollution of waters of the state as described in the 2011 Agricultural Order and Staff Report and associated reference materials. The 2011 Agricultural Order would result in actions to restore the quality of the waters of the state and protect the beneficial uses, including aquatic habitat. While some impacts could occur due to reduced flows from implementing actions to comply with the Order, the benefits, which include contributing to the present and future restoration of beneficial water uses, and reducing or eliminating pollution, nuisance and contamination, warrant approval of the project, despite each and every unavoidable impact. Upon review of the environmental information generated for the 2011 Agricultural Order and in view of the entire record supporting the need for the 2011 Agricultural Order, the Central Coast Water Board determines that specific economic, legal, social, technological, environmental, and other benefits of this proposed prohibition outweigh the unavoidable adverse environmental effects, and that such adverse environmental effects are acceptable under the circumstances.
- 21. The Final SEIR reflects the Central Coast Water Board’s independent judgment and analysis.

THEREFORE IT IS RESOLVED THAT:

The Central Coast Water Board certifies that the Final SEIR for the adoption of Order No. R3-2011-0006, the Conditional Waiver of Waste Discharge Requirements for Irrigated Agricultural Waste Discharges, complies with the requirements of CEQA (Pub. Resources Code § 21000 et seq.).

CERTIFICATION

I, Roger W. Briggs, Executive Officer, do hereby certify the foregoing is a full, true and correct copy of the resolution adopted by the California Regional Water Quality Control Board, Central Coast Region, on March 17, 2011.

Roger W. Briggs
Executive Officer

FINAL Subsequent Environmental Impact Report

Draft Conditional Waiver
of
Waste Discharge Requirements
for
Discharges from Irrigated Lands,

Order No. R3-2011-0006



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March 17, 2011

State Clearinghouse No. 2010101073

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**FINAL SUBSEQUENT ENVIRONMENTAL IMPACT REPORT
FOR
CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS FROM
IRRIGATED LANDS, DRAFT ORDER NO. R3-2011-0006
March 17, 2011**

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List of Acronyms and Abbreviations

This report contains many acronyms and abbreviations. The following alphabetical list of acronyms/abbreviations used in this report is provided for the convenience of the reader:

2004 Agricultural Order	Conditional Waiver of Waste Discharge Requirements from Irrigated Lands, Order No. 2004-0117
2011 Agricultural Order	Conditional Waiver of Waste Discharge Requirements from Irrigated Lands, Order No. R3-2011-0006
CCAMP	Central Coast Ambient Monitoring Program
CDPH	California Department of Public Health
Central Coast Water Board	Central Coast Regional Water Quality Control Board
CEQA	California Environmental Quality Act
CMP	Cooperative Monitoring Program
CNDDDB	California Natural Diversity Data Base
CWC	California Water Code
DPR	Department of Pesticide Regulation
DWR	Department of Water Resources
FMMP	Farmland Mapping and Monitoring Program
MCL	Maximum Contaminant Level
MPA	Marine Protected Areas
MRP	Monitoring and Reporting Program
NTU	Nephelometric Turbidity Units
RCDMC	Resource Conservation District of Monterey County
SEIR	Subsequent Environmental Impact Report
UCCE	University of California Cooperative Extension

1. Introduction

On July 2004, the Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board or Board) adopted a Conditional Waiver of Waste Discharge Requirements from Irrigated Agricultural Lands (R3-2004-0117) (2004 Agricultural Order). On July 10, 2009 the Board renewed the 2004 Agricultural Order without any substantive revisions for a term ending on July 10, 2009. On July 8, 2010, the Board renewed the 2004 Agricultural Order again without any substantive revisions for a term ending on March 31, 2011. The draft 2011 Agricultural Order is intended to renew the 2004 Agricultural Order and add some new conditions¹. The Central Coast Water Board plans to consider adoption of a conditional waiver of waste discharge requirements at its March 17, 2011 meeting.

The Central Coast Water Board is the lead agency under the California Environmental Quality Act (CEQA) (Pub. Res. Code §§ 21000 *et seq.*) for purposes of approval of the waiver of waste discharge requirements for discharges of waste from irrigated lands. In July 2004, the Board adopted an Initial Study and Negative Declaration² prior to adoption of the 2004 Agricultural Order. CEQA and the CEQA Guidelines state that when a Negative Declaration has been adopted for a project, no subsequent environmental impact report (SEIR) shall be prepared for the project unless the lead agency determines that, among other reasons, changes are being proposed in the project that could involve an increase in the severity of environmental effects identified in the Negative Declaration. (Cal. Code Regs., tit 14 § 15162(a)(1).)

To assist in determining whether an SEIR would be necessary, the Central Coast Water Board staff held a CEQA scoping meeting on August 16, 2010 to receive input from interested persons and public agencies on potentially significant environmental effects of the proposed project. Staff also accepted written comments regarding scoping up until August 27, 2010 in order to allow for comments from those who were unable to attend the meeting and/or for those who wished to submit additional comments. Members of the public and representatives of public agencies provided comments regarding their views on significant environmental effects associated with the adoption of a renewed Agricultural Order. Prior to the scoping meeting in August, 2010, Water Board staff conducted significant public participation activities. In December 2008, staff organized the agricultural advisory group, and met with that group through fall of 2009, utilizing a facilitator for most of the joint meetings. Beginning in November 2009, Central Coast Water Board staff engaged in sessions with interested persons, including representatives of agriculture, environmental groups, and community groups. On May 12, 2010 and July 8, 2010, the Central Coast Water Board held public workshops to provide information and an opportunity to comment on renewal of the 2004 Agricultural Order. In February 2010,

¹ http://www.waterboards.ca.gov/centralcoast/water_issues/programs/ag_waivers/ag_order.shtml

² http://www.waterboards.ca.gov/centralcoast/board_info/agendas/2004/july/item3/index.shtml (see attachment 1 for the Initial Study and Negative Declaration)

Central Coast Water Board staff released a preliminary staff draft order (February Preliminary Draft Order) and provided an opportunity for comment. Following release of the February 2010 Preliminary Draft Order many interested persons submitted proposed alternatives and comments. From November 2009 to February 2011, the Central Coast Water Board staff participated in more than 37 public and private meetings with interested persons and public agencies to discuss and receive information about renewal of the 2004 Agricultural Order.

The Central Coast Water Board issued a Notice of Availability on October 25, 2010 and provided the public with 45 days to submit written comments on the Draft SEIR. The Water Board received 12 written comment letters. Responses to the comments are discussed in Section 7 of this Final SEIR and included as Attachment A to the Final SEIR.

In preparing this Final SEIR, Central Coast Water Board staff reviewed the 2004 Negative Declaration, including the Initial Study (Environmental Checklist), considered the comments received during the public participation process with respect to renewal of the 2004 Agricultural Order, including evidence in the record, written and oral comments, proposed alternatives, and information provided at and following the August 16, 2010 scoping meeting, and comments received on the Draft SEIR. Review of this information did not result in identification of any new environmental effects that had not already been evaluated in the 2004 Negative Declaration. Staff identified two areas included on the Environmental Checklist where there was a potential for an increase in the severity of environmental effects previously identified. These areas are the potential for more severe impacts on agricultural resources due to the potential for an increase in the use of vegetated buffer strips and economic impacts due to new requirements that could take some land out of direct agricultural use and impacts on biological resources due to the potential for a reduction in water flows in surface waters. This Final SEIR evaluates those potential environmental effects.

With respect to Agricultural Resources, the Final SEIR concludes that adoption of the proposed alternative could result in some economic or social changes but that there was insufficient evidence to conclude that the economic changes would result in adverse physical changes to the environment. Commenters speculated that the economic impacts would be so large as to result in large scale termination of agriculture and that land would be sold for other uses that would result in impacts on the environment. No significant information was provided to justify that concern. As described in the Section 2.4 of this Final SEIR, the draft 2011 Agricultural Order would impose additional conditions on approximately 100 to 300 of the 3000 of owners or operators currently enrolled in the 2004 Agricultural Order. CEQA states that economic or social effects of a project shall not be treated as significant effects on the environment. (Pub. Res. Code § 21083.) The Final SEIR concludes that due to some new conditions, particularly the requirement that some dischargers may be required to implement vegetated buffer strips, the Order could result in loss of land for agricultural production since the buffer strips would generally not produce crops and some land could be converted to other uses. This impact was found to be less

than significant³ and that mitigation could reduce impacts further. The Central Coast Water Board may not generally specify the manner of compliance and therefore, dischargers may choose among many ways to comply with the requirement to control discharges of waste to waters of the state. Even if all dischargers who could be subject to the condition to use vegetated buffers or some other method to control discharges in the draft 2011 Agricultural Order (Tier 3 dischargers) chose to use vegetated buffers or converted to other uses, the total acreage is quite small compared to the total amount of acreage used for farming and was, therefore, found to be less than significant. In addition, since the land would be used as a vegetated buffer to comply with the Order, this would result in beneficial impacts on the environment, not adverse impacts.

With respect to Biological Resources, the Final SEIR concludes that wide scale water conservation could result in lower flows into surface water resulting in impacts on aquatic life. The Central Coast Water Board may not specify the manner of compliance so it has insufficient information to evaluate the extent to which dischargers would choose to use water conservation to comply and to evaluate potential physical changes to the environment that could result. Reduction in toxic runoff may offset impacts due to the possibly reduced flows. In addition, reduction in water use could result in increased groundwater levels that would also result in more clean water recharging surface water (an offsetting effect).

Based on this information, the Final SEIR concludes that the environmental effects associated with the draft 2011 Agricultural Order may be significant with respect to biological resources. However, given the uncertainty associated with evaluating the available information, it is possible that the effects may turn out to be less than significant. This Final SEIR provides this information to the public and to the Central Coast Water Board so that it can make an informed decision. In Resolution R3-2011-0006, the Central Coast Water Board has made findings consistent with the CEQA Guidelines (Cal. Code Regs., tit. 14, § 15091) and a statement of overriding considerations (Cal. Code Regs., tit. 14, § 15093).

2. Project Description

2.1. *Project Purpose*

The purpose of this project is to renew the 2004 Agricultural Order with revised conditions. The draft 2011 Agricultural Order (Order No. R3-2011-0006) would regulate discharges of waste from irrigated agricultural lands in a manner protective of water

³ The “less than significant” finding in the final SEIR represents a change from the Nov. 2010 draft SEIR as the Nov. draft SEIR found impacts to Agricultural Resources “less than significant with mitigation.” The final SEIR concluded this change was appropriate because the 2011 draft Agricultural Order’s requirement for riparian buffers was reduced to a very small number (smaller than the Feb. 2010 draft Agricultural Order) and no significant information was provided to suggest the impacts to agricultural resources would be anything more than “less than significant”.

quality and consistent with the Porter-Cologne Water Quality Control Act (Wat. Code Div. 7) and associated plans and policies.

2.2. *Regulatory Requirements*

Persons who discharge waste that could affect the quality of the waters of the state are required to submit a report of waste discharge (Wat. Code § 13260) and obtain waste discharge requirements (Wat. Code § 13263), unless those procedural requirements are conditionally waived by the Water Board (Wat. Code § 13269). The term “waste” is defined in the Porter-Cologne Water Quality Control Act to include sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for purposes of, disposal. (Wat. Code § 13050, subd. d). Waste includes sediment, pesticides, nutrients, plastics, and other materials used and discharged from agricultural operations. Discharge authorization can be in the form of waste discharge requirements or a conditional waiver of waste discharge requirements. Historically, discharges from irrigated agricultural activities have been authorized by a conditional waiver of waste discharge requirements, most recently the 2004 Agricultural Order. Any conditional waiver of waste discharge requirements must be consistent with applicable state or regional water quality control plans (basin plans), including compliance with water quality standards and prohibitions, and must be in the public interest. Waivers may not exceed five years in duration, but may be renewed following a public meeting and may be terminated at any time. Generally, a conditional waiver must include monitoring and dischargers may be required to pay fees. (Wat. Code § 13269.)

Discharges of waste from agricultural operations are generally considered “nonpoint” sources of waste. Consistent with Water Code section 13369(a)(2)(B), the State Water Board adopted the *Policy for the Implementation and Enforcement of the Nonpoint Source Pollution Control Program* (NPS Implementation and Enforcement Policy). This Policy identifies use of waste discharge requirements and waivers of waste discharge requirements as appropriate regulatory tools to address nonpoint source discharges. The Policy requires the regulation of nonpoint sources to meet five key elements, including the goal of achieving compliance with water quality objectives, use of management practices and processes to verify use of management practices, time schedules and milestones to achieve compliance with water quality requirements, feedback mechanisms to achieve compliance, and must identify consequences of failure to comply.

2.3. *Project Location*

The draft 2011 Agricultural Order would continue to regulate discharges from agricultural lands throughout the Central Coast Region. The project area encompasses agricultural areas throughout the entire Central Coast Region; including all or portions of San Mateo, Santa Cruz, Santa Clara, San Benito, Monterey, San Luis Obispo, Santa

Barbara, and Ventura Counties (see Figure 1). Approximately 93% of the irrigated agricultural lands within the Central Coast Region have already enrolled in the 2004 Agricultural Order and would continue to be eligible to be enrolled in the draft 2011 Agricultural Order.

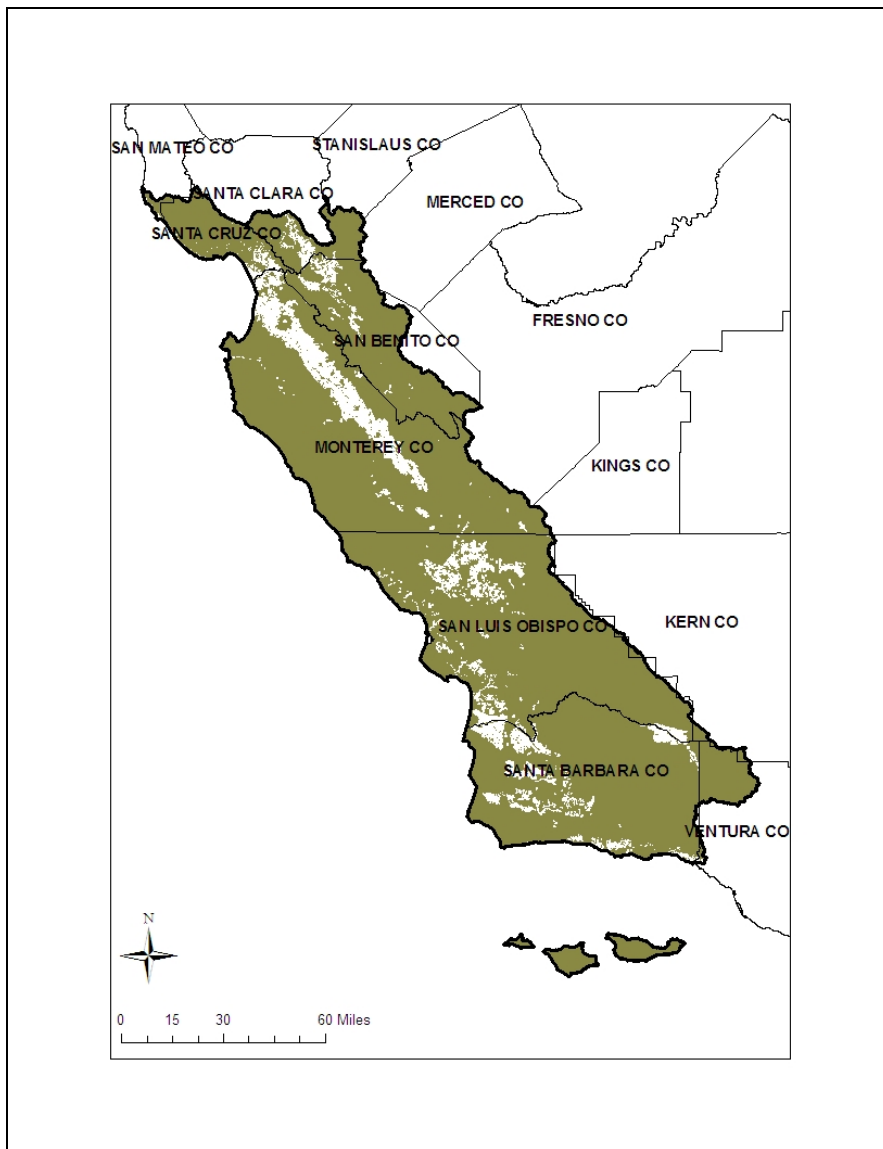


Figure 1. Map showing project area (irrigated agricultural lands are shown in white within shaded areas within Region 3 boundary). Irrigated agricultural lands are identified from prime, state and unique farmland, as identified by the Farmland Mapping and Monitoring Program (FMMP) dataset, 2008.

2.4. Description of the Project (Renewed Order)

Consistent with Water Code section 13269, the 2004 Agricultural Order waived the requirements for dischargers of waste from irrigated lands in the Central Coast Region to submit reports of waste discharge (applications) pursuant to Water Code section 13260(a) and obtain waste discharge requirements pursuant to Water Code section 13263(a), if the discharger complied with the conditions and monitoring requirements of the waiver. Dischargers enrolled by completing a Notice of Intent (NOI) that contained specified information. The 2004 Agricultural Order established two tiers of dischargers. Tier 1 and 2 dischargers were required to complete an education program, prepare an implement a Farm Plan describing management practices to control discharges of waste, and perform individual water quality monitoring or participate in a cooperative monitoring program. All dischargers were required, among other conditions, to comply with water quality control plans, not cause or contribute to exceedances of water quality standards, protect groundwater for its beneficial uses nor cause groundwater to exceed drinking water standards, comply with time schedules, and submit reports.

The draft 2011 Agricultural Order would continue similar conditions. Like the 2004 Agricultural Order all dischargers are required to comply with water quality control plans, not cause or contribute to exceedances of water quality standards, protect groundwater for its beneficial uses, not cause groundwater to exceed drinking water standards, and submit reports. The draft 2011 Agricultural Order also includes the requirement to complete an education program, prepare and implement a Farm Plan describing management practices to control discharges of waste, and perform individual water quality monitoring or participate in a cooperative monitoring program.

The draft 2011 Agricultural Order would establish a new tiering structure that would group farm operations, or dischargers, into three tiers, each tier distinguished by four criteria that indicate threat to water quality: size of farm operation, proximity to an impaired watercourse, use of chemicals of concern, and type of crops grown. Dischargers with the highest threat have the greatest amount of discharge control requirements, monitoring and reporting. Conversely, dischargers with the lowest threat have the least amount of discharger control requirements, individual monitoring and reporting.

As proposed Tier 1 dischargers (approximately 1256 farms and 21% of the total acres) would be subject to conditions slightly less burdensome than the 2004 Agricultural Order. Tier 1 dischargers would be required to prepare and implement a Farm Plan and implement management practices to control discharges of waste and protect aquatic habitat, sample existing groundwater wells, conduct individual or cooperative surface water monitoring, use backflow devices on wells if applying chemicals, and participate in education programs. Tier 2 dischargers (approximately 1367 farms and 25% acres) would be subject to conditions that are about the same as the 2004 Agricultural Order. Like Tier 1 dischargers, Tier 2 dischargers would be required to prepare and implement a Farm Plan and implement management practices to control discharges of waste and protect aquatic habitat, sample existing groundwater wells, conduct individual or cooperative surface water monitoring, use backflow devices on wells if applying chemicals, and participate in education programs. They would also have to submit an annual compliance document and evaluate their nitrate loading. Tier 3 dischargers (approximately 100 to 300

dischargers and 54% of the acres) would be subject to conditions that are more burdensome than the 2004 Agricultural Order. Like Tier 1 and 2 dischargers, Tier 3 dischargers would be required to prepare and implement a Farm Plan and implement management practices to control discharges of waste and protect aquatic habitat, sample existing groundwater wells, conduct individual or cooperative surface water monitoring, use backflow devices on wells if applying chemicals, and participate in education programs. They would also have to submit an annual compliance document and evaluate their nitrate loading and where applicable more aggressively address nitrate and toxic discharges.

The draft 2011 Agricultural Order requires more specific and measurable tracking and evaluation of effectiveness of practices and more comprehensive water quality monitoring (e.g., individual discharges and groundwater) than the 2004 Agricultural Order to assure compliance with Water Code section 13269 and consistency with the State Water Board's Nonpoint Source Policy. The draft 2011 Agricultural Order itself and more descriptions of the requirements and changes from the current 2004 Agricultural Order, incorporated herein by reference, can be found in the Draft Staff Report recommending the Draft Agricultural Order at:

http://www.waterboards.ca.gov/centralcoast/water_issues/programs/ag_waivers/ag_order.shtml .

3. CEQA Authority for the Subsequent Environmental Impact Report

The California Environmental Quality Act (CEQA) Guidelines (Cal. Code Regs., tit. 14, §15162, subd. (a)) specify that when an environmental impact report (EIR) or negative declaration has been prepared, no additional EIR shall be prepared except in these circumstances:

(1) if substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified effects; or,

(2) if substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental impacts or a substantial increase in the severity of previously identified significant effects; or

(3) if new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at

the time the previous EIR was certified as complete or the negative declaration was adopted, becomes available.

This regulation applies if there is a modification of a previous project and the Central Coast Water Board determines, on the basis of substantial evidence in the light of the whole record, that one or more of the conditions identified above exists. In this case, the Central Coast Water Board is proposing to renew the 2004 Agricultural Order, which is the previous project, with clarifications and new conditions. The Central Coast Water Board staff reviewed the Negative Declaration prepared for the 2004 Agricultural Order, prepared a new environmental checklist considering proposed revisions to that Order, comments received during the scoping phase including alternatives proposed by interested persons, comments received from agencies, and other information provided in the record. Based on this information, staff determined that the proposed revisions to the 2004 Order could result in an increase in the severity of certain previously identified environmental effects. See Cal. Code Regs, tit. 14, §15162, subd. (a)(1). In particular, members of the public suggested that implementation of some of the proposed new conditions could result in removing land from agricultural use either to install riparian buffer strips or due to financial impacts that make farming not economical. Some public agencies suggested that implementation of some of the proposed new conditions could result in reduced flows in surface water that could impact aquatic habitat. These environmental effects were previously evaluated in the Negative Declaration for the 2004 Agricultural Order and were found at that time not to be significant. Table 1 identifies the items listed based on the CEQA Environmental Checklist format included in the CEQA Guidelines that are addressed in this Final SEIR based on the requirements of the CEQA Guidelines (Cal. Code Regs., tit. 14, §15162, subd. (a)(1)). Table 1 lists only those areas where there is a potential increase in the severity of environmental effects as compared to the 2004 Agricultural Order and the 2004 Negative Declaration (attachment 1). These items will be discussed in more detail in Section 4 Environmental Analysis. Specific changes proposed to be included in the draft 2011 Agricultural Order can be found at http://www.waterboards.ca.gov/centralcoast/water_issues/programs/ag_waivers/ag_order.shtml .

Table 1. Changes in Environmental Checklist from 2004 Negative Declaration for the 2004 Agricultural Order to the final SEIR for the draft 2011 draft Agricultural Order.

CEQA Checklist Item	2004 Agricultural Order	2011 draft Agricultural Order
2. Agricultural Resources: ...Would the project:		
(a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	Less than significant impact	Less than significant impact*
(c) Involve other changes in the exiting environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use?	Less than significant impact	Less than significant impact*
4. Biological Resources: ...Would the project:		
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	No impact	Potentially significant impact
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by the California Department of Fish and Game or US Fish and Wildlife Service?	No impact	Potentially significant impact
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	No impact	Potentially significant impact
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	No impact	Potentially significant impact
17. Mandatory Findings of Significance:		
a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?	No impact	Potentially significant impact

*While the draft SEIR determined the impacts to be less than significant with mitigation, the final SEIR determined that the impacts remain unchanged from the 2004 Agricultural Order (less than significant impact).

4. Environmental Analysis

This section evaluates the potential adverse environmental effects that could be more severe due to new conditions in the draft 2011 Agricultural Order compared to those identified in the 2004 Negative Declaration with respect to agricultural resources, biological resources.

Like the 2004 Agricultural Order, the draft 2011 Agricultural Order would require persons who discharge waste from irrigated lands that could affect the quality of the waters of the state to comply with the Water Code, the Central Coast Water Board Basin Plan, and the State Water Board's Nonpoint Source Policy by implementing

management practices to control or prevent discharges of waste. As set forth in the 2004 Negative Declaration for adoption of the 2004 Agricultural Order, the adoption of an agricultural order requiring compliance with water quality standards will improve the environment, not adversely impact the environment. Both the 2004 and the draft 2011 Agricultural Order require implementation of management practices to comply. The draft 2011 Agricultural Order would include some more specific conditions that could result in potentially more severe adverse environmental effects with respect to agricultural resources and biological resources as compared to the 2004 Agricultural Order. In particular, with respect to agricultural resources, farmland could be considered to be converted to non-farm uses due to new conditions, such as requiring buffers, or due to economic impacts that result in selling of farmland for other uses. With respect to biological resources, implementation of new management practices that minimize discharge of tailwater or other water from the fields could result in the reduction in flow of water in surface waters that could affect aquatic habitat.

The purpose of the project is to require persons who discharge waste to comply with the California Water Code and applicable plans and policies, including the Central Coast Water Board Basin Plan and the State Water Board Nonpoint Source Policy. According to the Porter-Cologne Act no discharge of waste, whether made pursuant to waste discharge requirements or not, shall create a vested right to continue the discharge. "All discharges of waste into waters of the state are privileges, not rights." (Wat. Code § 13263, subd. (g).)

The Central Coast Water Board may not specify the manner of compliance with its orders; dischargers may comply in any lawful manner. (Wat. Code § 13360). The potential methods of compliance are no different between the 2004 Agricultural Order and the draft 2011 Agricultural Order. The draft 2011 Agricultural Order includes more specific conditions than the 2004 Agricultural Order, but the basic conditions are still the same – dischargers must implement management practices to assure that discharges of waste from their property do not violate water quality standards, adversely impact beneficial uses, or cause nuisance. Management practices are intended to assure that discharges of waste do not harm water quality; they are not intended to cause adverse impacts on the environment. However, due to some of the new conditions proposed in the draft 2011 Agricultural Order, more dischargers may implement management practices that they previously have not implemented. As a result, this SEIR was prepared to evaluate whether the increase in use of management practices or other changes could cause an increase in the severity of adverse environmental effects than was determined in the 2004 Agricultural Order.

The Water Board has not received any specific evidence by commenters and has little evidence in the record to demonstrate conclusively that the draft 2011 Agricultural Order will result in significant adverse environmental effects on agricultural or biological resources. The Water Board staff expects that compliance with the draft 2011 Agricultural Order will result in significant beneficial impacts on the environment. The Water Board must require compliance with water quality standards, consistency with its water quality control plan (Basin Plan), and compliance with the State Water Board's

Nonpoint Source Policy. The existing 2004 Agricultural Order and the draft 2011 Agricultural Order set forth conditions to achieve compliance with the water quality standards, the Basin Plan, and the Nonpoint Source Policy. Compliance with the conditions will result in environmental benefits. There is not sufficient information to determine the scope of any changes in environmental effects and any potential impacts are very speculative. In addition, even if all dischargers take the same actions, the adverse environmental impacts may be less than significant. For example, conversion of prime farmland, even if it occurs, may not result in more severe environmental effects depending on the nature of any new use. The use of vegetated buffer strips is expected to produce significant environmental benefits rather than adverse impacts and reduced discharges of water from farmland may not result in significant adverse environmental effects due to the nature of particular waterbody and or the reduction in discharge of pollutants associated with the reduce discharge of water.

Consistent with the goal of CEQA, this analysis provides information about the potential for adverse environmental effects to provide the Central Coast Water Board with sufficient information to make an informed decision.

4.1. *Agricultural Resources*

4.1.1. *Introduction*

This section describes agricultural land uses in the project area and evaluates the potential environmental effects on agricultural resources as a result of adoption of the draft 2011 Agricultural Order, specifically whether the revisions in the draft Order would convert prime farmland. This evaluation focuses on potential conversion of farmland due to the use of vegetated buffers or due to increased costs associated with compliance with the draft 2011 Agricultural Order. (See Appendix F of Draft Staff Report recommending the Draft Agricultural Order for cost information⁴.)

The November 2010 Draft SEIR concluded that the potential adverse environmental impacts to agricultural resources were *less than significant impact with mitigation*. This Final SEIR concludes that potential adverse environmental impacts to agricultural resources are *less than significant*. This is because the 2011 draft Agricultural Order's requirement for riparian buffers was reduced to a very small number (smaller than the Feb. 2010 draft Agricultural Order) and no significant information was provided to suggest the finding would be anything more than "less than significant." If some dischargers choose to use riparian buffers in order to implement the draft Agricultural Order, these buffers will result in beneficial, not adverse, impacts on the environment.

Agricultural lands within the Central Coast Region account for approximately 540,000 acres of land⁵, according to the State of California Department of Conservation's

⁴ http://www.waterboards.ca.gov/centralcoast/water_issues/programs/ag_waivers/ag_order.shtml

⁵ 539,284.17 acres according to FMMP 2008 (prime, state and unique farmland). This excludes farmland of local importance because these lands are not irrigated.

Farmland Mapping and Monitoring Program (FMMP 2008).⁶ The FMMP identifies and maps important farmland throughout California. Farmland categories relevant to this project include:

- *Prime Farmland* is land with the best combination of physical and chemical characteristics for the production of crops. It has the soil quality, growing season, and moisture supply needed to produce sustained high yields of crops when treated and managed in accordance with accepted farming methods. In addition, the land must have been used for irrigated agricultural production in the last 4 years to qualify as Prime Farmland.
- *Farmland of Statewide Importance* is land other than Prime Farmland that has a good combination of physical and chemical characteristics for the production of crops.
- *Unique Farmland* is land that does not meet the criteria for Prime Farmland or Farmland of Statewide Importance, and that has been used for the production of specific high-economic value crops at some time during the two update cycles prior to the mapping date. This land is usually irrigated but may include nonirrigated orchards or vineyards as found in some climatic zones in California. Land must have been cropped at some time during the 4 years prior to the mapping date.

Farmland that was *not* considered as part of this project was farmland of local importance because these lands are not irrigated and therefore not included in the Agricultural Order. Each County defines farmland of local importance slightly differently; however, all farm lands of local importance within the Central Coast Region are not irrigated.

- *Farmland of Local Importance* is land of importance to the local agricultural economy as determined by each county's board of supervisors and a local advisory committee. Each county defines local importance as follows:
 - Monterey - The Board of Supervisors determined that there will be no Farmland of Local Importance for Monterey County.
 - San Benito - Land cultivated as dry cropland. Usual crops are wheat, barley, oats, safflower, and grain hay. Also, orchards affected by boron within the area specified in County Resolution Number 84-3.
 - San Luis Obispo - Local Importance (L): areas of soils that meet all the characteristics of Prime or Statewide, with the exception of irrigation. Additional farmlands include dryland field crops of

⁶ According to the 2008 California Department of Conservation Report, California Farmland Conversion Report 2004-2006, farm lands in California are decreasing. All counties within the Central Coast region netted a loss in agricultural land during this period with the exception of Santa Clara County.

wheat, barley, oats, and safflower. Local Potential (LP): lands having the potential for farmland, which have Prime or Statewide characteristics and are not cultivated.

- San Mateo - Lands other than Prime, Statewide, or Unique that produce the following crops: oats, Christmas trees, pumpkins, dryland pasture, other grains, and haylands. These lands are not irrigated.
- Santa Barbara - All dryland farming areas and permanent pasture (if the soils were not eligible for either Prime or Statewide). Dryland farming includes various cereal grains (predominantly wheat, barley, and oats), sudan, and many varieties of beans. (Although beans can be high value crops the production areas are usually rotated with grain, hence the decision to include them under Local rather than Unique. Also, bean crop yields are highly influenced by climate, so there can be a wide variance in cash value.)
- Santa Clara - Small orchards and vineyards primarily in the foothill areas. Also land cultivated as dry cropland for grains and hay.
- Santa Cruz - Soils used for Christmas tree farms and nurseries, and that do not meet the definition for Prime, Statewide, or Unique.

Farmland within the Central Coast Region varies from county to county and includes a long list of many crops. Some of the largest income-producing crops include broccoli, lettuces, strawberries and grapes (Monterey County 2009 crop report).

4.1.2. Williamson Act and Farmland Security Zone Contracts

The California Land Conservation Act (Government Code Section 51200 et seq.) of 1965, commonly known as the Williamson Act, provides a tax incentive for the voluntary enrollment of agricultural and open space lands in contracts between local government and landowners. The contract enforceably restricts the land to agricultural and open space uses and compatible uses defined in state law and local ordinances. An agricultural preserve, which is established by local government, defines the boundary of an area within which a city or county will enter into contracts with landowners. The State of California has the following policies regarding public acquisition of and locating public improvements on lands in agricultural preserves and on lands under Williamson Act contracts (Government Code Sections 51290–51295).

(a) It is the policy of the state to avoid, whenever practicable, the location of any federal, state, or local public improvements and any improvements of public utilities, and the acquisition of land therefore in agricultural preserves.

(b) It is further the policy of the state that whenever it is necessary to locate such an improvement within an agricultural preserve, the improvement shall, whenever practicable, be located upon land other than land under a contract pursuant to this chapter.

(c) It is further the policy of the state that any agency or entity proposing to locate such an improvement shall, in considering the relative costs of parcels of land and the development of improvements, give consideration to the value to the public, as indicated in Article 2 (commencing with Section 51220), of land, and particularly prime agricultural land, within an agricultural preserve.

Since 1998, another option in the Williamson Act Program has been established with the creation of Farmland Security Zone contracts. A Farmland Security Zone is an area created within an agricultural preserve by a board of supervisors upon the request of a landowner or group of landowners. Farmland Security Zone contracts offer landowners greater property tax reduction and have a minimum initial term of 20 years. Like Williamson Act contracts, Farmland Security Zone contracts renew annually unless a notice of nonrenewal is filed.

4.1.3. Analysis

The draft 2011 Agricultural Order does not propose or require any person to take agricultural lands out of production. Rather, the draft 2011 Agricultural Order, like the 2004 Agricultural Order, would require growers to comply with the Water Code and the Basin Plan by reducing or eliminating discharges of toxic and other pollutants into surface and groundwater using management practices. The project, as proposed, would require Tier 3 dischargers who are adjacent to waterbodies identified as impaired for temperature, turbidity, or sediment under the Clean Water Act section 303(d) list, to evaluate the use of riparian habitat buffers or other practices to control discharges of waste. Where dischargers choose to install riparian habitat buffers to control discharges of waste, some farm land could be taken out of production. The project, as proposed, would increase the level of compliance for some Tier 2 and 3 dischargers as compared with the 2004 Agricultural Order, which could result in increased costs, including increased monitoring costs, report preparation, nitrate requirements, and potential increase in management practice implementation (buffers).

Riparian Habitat Buffers

The draft 2011 Agricultural Order would continue to require discharges to implement management practices and take other actions to protection waters of the state.

Riparian habitat buffer are one of the methods of compliance a discharger may use in order to comply with the draft 2011 Agricultural Order. For the purposes of this project, a riparian habitat buffer is a vegetated area that helps to intercept pollutants of concern such as sediment, nutrients and pesticides so that they are not carried to a receiving water.⁷ Buffers often shade the receiving water. This can reduce the temperature of the receiving water and is environmentally beneficial for many species. Buffers can also stabilize banks that may be otherwise subject to erosion. Only dischargers posing the greatest threat to water quality (e.g., in Tier 3)⁸ and adjacent to or containing a waterbody impaired by turbidity, sediment or temperature, are required to implement practices, such as buffers, that could result in taking some land out of production.

Dischargers may choose to install riparian habitat buffer strips to comply with the Order, which could result in taking land out of crop production. In general, installing buffers is not expected to have an adverse environmental effect and should have an overall positive environmental impact because buffers will result in eliminating or reducing discharges of waste to waters of the state that have severely impacted the beneficial uses. As discussed further below and in Appendix F of Draft Staff Report recommending the Draft Agricultural Order⁵, if all growers in Tier 3 chose to install buffer strips to comply with the Order, approximately 82 to 233 acres or 0.002 to 0.004% of the 540,000 acres of agricultural lands within the Region, would be taken out of production. Given the total number of acres farmed in the Central Coast Region, the impact on acres farmed is not cumulatively significant even if all 233 acres was converted to some other use. This estimate represents the acreage of land that would be taken out of production if *all* growers chose to install riparian habitat buffers and all of those buffers did not yield any agricultural products. The estimate may be less than this because of alternative means of compliance and/or mitigation. No significant evidence has been provided to support a conclusion that a large amount of agricultural lands would be sold and converted to non-agricultural uses (e.g., urban development) as a result of compliance with the draft 2011 Agricultural Order. See discussion below in "Conversion due to economic pressure". The draft 2011 Agricultural Order does not require the use of buffers; other methods may be used or the discharges may not be significant due to existing practices. In addition, some mitigation measures are identified in this SEIR that would offset potential impacts of land being taken out of production.

The Draft SEIR concluded that the potential adverse environmental effects due to installation of riparian habitat buffers have a *less than significant impact with mitigation*. This Final SEIR concludes that the proposed condition to evaluate use of riparian buffers would have a *less than significant impact* due to the small quantity of acres that could potentially used for riparian buffers even if all Tier 3 growers chose that practice to comply or all 233 acres were converted to other uses. If some dischargers choose to use riparian buffers, these buffers will result in beneficial, not adverse, impacts on the environment.

⁷ Please see Appendix A - Draft Agricultural Order, Attachment A, findings 87-105.

⁸ See Draft Staff Report recommending the Draft Agricultural Order, Section 3.A. for an explanation of the various tiers. http://www.waterboards.ca.gov/centralcoast/water_issues/programs/ag_waivers/ag_order.shtml

As already noted, the Central Coast Water Board cannot specify the manner of compliance and, in this situation, therefore, it cannot require any specific mitigation measures. However, since this Final SEIR concludes that the impact on prime farmland due to the riparian buffer condition is less than significant, the Water Board is not required to identify mitigation measures. There are, however, practices that dischargers may implement other than installation of buffers that would further reduce any potential impacts on prime farm land. Measures to make this potential impact even less significant include:

1. Dischargers could choose to install other practices besides buffers to insure turbidity, sediment and temperature water quality standards are met.
2. Dischargers could plant ground cover, berry bushes and/or fruit/nut bearing trees which would serve as both agricultural land as well as a buffer. The land would not be converted to a non-agricultural use because it would still generate economically viable produce, but would function as a buffer. This buffer containing agricultural land would need to meet the requirements of the Agricultural Order.
3. Dischargers could eliminate any activities that cause erosion, generate sediment, or otherwise may cause or contribute to exceedances of water quality standards for turbidity, sediment and temperature, near a waterbody so may not need to install a buffer.
4. Dischargers may choose to install a riparian habitat buffer and find that it decreases erosion on the farm and serves to help maintain soil and sediment on the farm (2000 Information Manual Riparian Vegetation Management for Pierce's Disease in North Coast California Vineyards).

Sedimentation Basins

Like the 2004 Agricultural Order, the draft 2011 Agricultural Order contains no condition that would require any discharger to install sedimentation basins. However, sedimentation basins are one management practice that could assist growers in complying with water quality standards. Sedimentation basins are structures that receive run-off. These basins have the capability to settle out sediment. The water can either percolate into the ground - if they are unlined - or be used for another use.

No significant evidence has been provided to support a conclusion that a large number of growers would choose to install sedimentation basins in order to comply with the draft 2011 Agricultural Order as compared to the 2004 Agricultural Order resulting in a new significant adverse effect on the environment .

Conversion due to economic pressure

Interested persons have submitted comments with regards to the economic pressure the draft 2011 Agricultural Order would place on them. These interested persons speculated that costs of complying with the draft 2011 Agricultural Order may be so high, that a grower would be forced to sell their land or would be forced out of business

resulting in conversion of prime farmland to other non-agricultural uses. They did not provide specific evidence that this would, in fact, occur. As described above, the draft 2011 Agricultural Order would establish a tiering structure; Tiers 2 and 3 could be required to comply with conditions that are more costly as compared to the 2004 Agricultural Order. Under CEQA, economic or social effects of the project shall not be treated as significant effects on the environment. (Cal. Code Regs., tit. 14, § 15131.). Only physical changes to the environment can be considered significant and there must be a chain of cause and effect from economic or social changes to physical changes. Commenters have stated that the costs are too high, but have not provided a chain of cause and effect to physical changes. As noted above, only Tier 3 dischargers would be subject to a significantly higher level of compliance in the draft 2011 Agricultural Order as compared to the 2004 Agricultural Order. Many dischargers who would tentatively be placed in Tier 3 may demonstrate that they have already implemented practices to reduce their impacts and would be moved to Tier 1 or 2.⁹ In addition, there are many factors, other than costs of environmental compliance, that could result in growers going out of business or selling land, including competition from agriculture in other areas, increases in costs of fertilizers, pesticides and gasoline needed to run operations.

Many of these agricultural lands are in areas that are designated as agricultural lands through City and/or County ordinances. These ordinances typically protect agricultural resources and zoning. Additionally, many of these agricultural lands are in areas directly adjacent to a creek where the land would not be able to be developed into other land uses because of the proximity to a waterbody. Even if a grower succumbs to economic pressure and is forced to sell their land or be forced out of business, the most likely possibility is that the land would be sold to another grower, which would result in a similar environmental impact.¹⁰ Specific local ordinances are not addressed in this Final SEIR.

For some dischargers, the draft 2011 Agricultural Order will result in increased costs of compliance. However, economic effects do not translate into direct physical impacts on the environment, therefore, the economic effects are considered *less than significant*. In addition, dischargers were already required by the 2004 Agricultural Order to implement management practices to control discharges that impact beneficial uses. There are many cost-effective practices growers can implement to comply with the Order.

In conclusion, while the potential exists that a small percentage of agricultural land may be converted to buffers or sold for other uses; the effects are anticipated to be *less than significant*. This Final SEIR was prepared to provide the Central Coast Water Board with information to allow it to make an informed decision about the potential effects.

⁹ See comment letters from vineyard and orchard operators, for example.

¹⁰ 14 CCR section 15382 - A social or economic change by itself shall not be considered a significant effect on the environment. A social or economic change related to a physical change may be considered in determining whether the physical change is significant.

4.2. *Biological Resources*

4.2.1. *Introduction*

This section describes potential impacts on vegetation and wildlife with respect to compliance with the draft 2011 Agricultural Order. In general, information about the implementation of the 2004 Agricultural Order supports the conclusion that the new conditions that could be imposed by the draft 2011 Agricultural Order will result in beneficial effects on biological resources, including reduction of discharge of waste to receiving water and groundwater and overall habitat improvements.

Some conditions of the draft 2011 Agricultural Order could result in reduction or elimination of tailwater, or other releases of water due to other management practices, which could reduce surface water flow. In general, the reduction or elimination of tailwater will have a net positive affect on the environment due to the reduction in discharges of waste to receiving water. There may, however, be periods of time where some species could encounter potentially significant adverse environmental effects due to reduced flow. The following section addresses these potential impacts to species due to reduction of flow.

4.2.2. *Endangered Species Act*

Federal Endangered Species Act

The federal Endangered Species Act does not apply to the State, but this information is included because the Central Coast Water Board has received comments by federal agencies who are required to comply with this federal law. The Endangered Species Act (ESA) protects plant and animal species and their habitats identified by the US Fish and Wildlife Services and National Marine Fisheries (NMFs) as threatened or endangered. Endangered refers to species or subspecies that are in danger of extinction through all or a significant portion of their range. Threatened refers to species or subspecies that are likely to become endangered in the near future.

Section 7 – Endangered Species Act Consultation Process

Section 7 ESA consultation provides a means for authorizing take of listed species for actions by federal agencies. Federal agency actions include activities that are:

- On federal land,
- Conducted by a federal agency,
- Funded by a federal agency, or
- Authorized by a federal agency (including issuance of federal permits and licenses).

Under Section 7, the federal agency conducting, funding, or permitting an action (the federal lead agency) must, in consultation with USFWS or NMFs as appropriate, ensure that its proposed action will not jeopardize the continued existence of an endangered or threatened species, or destroy or adversely modify designated critical habitat. If a

proposed project “may affect” a listed species or designated critical habitat, the lead agency is required to prepare a biological assessment evaluating the nature and severity of the expected effect. The biological assessment is prepared for the proposed action and is submitted to USFWS or NMFs to initiate consultation. In response to a biological assessment, USFWS or NMFs issues a biological opinion, with a determination that the proposed action either:

- May jeopardize the continued existence of one or more listed species (jeopardy finding) or result in the destruction or adverse modification of critical habitat (adverse modification finding), or
- Will not jeopardize the continued existence of any listed species (no jeopardy finding) or result in adverse modification of critical habitat (no adverse modification finding).

The biological opinion issued by USFWS or NMFs may stipulate discretionary “reasonable and prudent” conservation measures. If the proposed action would not jeopardize a listed species, USFWS or NMFs may issue an incidental take statement to authorize the proposed activity and may include appropriate measures to offset the impacts of take.

Section 9 – Endangered Species Act Prohibitions

Section 9 of the ESA prohibits the take of any fish or wildlife species listed under the ESA as endangered. Take of threatened species is also prohibited under Section 9, unless otherwise authorized by federal regulations. Take, as defined by the ESA, means “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct” (Section 3 of the ESA; 16 United States Code [USC] Section 1532[19]). Harm is defined by regulation as “any act that kills or injures the species, including significant habitat modification” (50 CFR 17.3 222.102). In addition, Section 9 prohibits removing, digging up, cutting, and maliciously damaging or destroying federally listed plants on sites under federal jurisdiction. Section 9 does not prohibit take of federally listed plants on sites not under federal jurisdiction. If the project may result in take prohibited by Section 9, this take would need to be authorized through ESA Sections 7 or 10 (providing for the issuance of “incidental take” permits).

California Endangered Species Act

The California Endangered Species Act generally parallels the main provisions of the Federal Endangered Species Act. The CESA (California Fish and Game Code [CFG] Sections 2050–2068) generally parallels the main provisions of the ESA (16 USC 1531–1544) and is administered by the California Department of Fish and Game (DFG). A state lead agency is required to consult with DFG to ensure that any action it undertakes is not likely to jeopardize the continued existence of any endangered or threatened species, or result in the destruction or adverse modification of essential habitat.

The CESA prohibits taking of listed species except as otherwise provided in state law. Unlike the ESA, the CESA applies the take prohibitions to species under petition for listing (state candidates) in addition to listed species.

Section 2081 of the CFGC expressly allows DFG to authorize the incidental take of endangered, threatened, and candidate species if all of the following conditions are met:

- The take is incidental to an otherwise lawful activity,
- The impacts of the authorized take are minimized and fully mitigated,
- Issuance of the permit will not jeopardize the continued existence of the species,
- The permit is consistent with any regulations adopted in accordance with Sections 2112 and 2114 (legislature-funded recovery strategy pilot programs in the affected area), and
- The applicant ensures that adequate funding is provided for implementing mitigation measures and monitoring compliance with these measures and their effectiveness.

The CESA provides that an incidental take permit obtained under the ESA may authorize the taking of the same species if it is listed under the CESA, with no further CESA authorization or approval required (CFGC Section 2080.1).

Regarding rare plant species, CESA defers to the California Native Plant Protection Act (CNPPA), which prohibits importing rare and endangered plants into California, taking rare and endangered plants, and selling rare and endangered plants. State-listed plants are protected mainly in cases where state agencies are involved in projects subject to CEQA. In these cases, plants listed as rare under the CNPPA are not protected under the CESA but can be protected under CEQA.

4.2.3. Analysis

Staff analyzed whether or not there were special status species (threatened or endangered) in the Central Coast Region in areas where there is irrigated agricultural land. See Table 2. Staff used 2008 FMMP data along with 2008 California Natural Diversity Data Base (CNDDDB) and intersected the two layers in order to derive a list and area overlap of irrigated agricultural lands and special status species. The CNDDDB is a program that inventories the status and location of rare plants, animals and insects in California. Staff looked at plants, animals and insects that were listed as either threatened or endangered on both the state and federal level. There were 46 special status species in areas where there were irrigated agricultural lands. These special status species' habitats account for approximately 76,922 acres within irrigated agricultural lands, comprising 14% of the irrigated lands in the Central Coast Region. This overlay only counted the areas where special status species habitat areas directly overlaid irrigated agricultural land. The analysis did not take into account areas downstream from agriculture.

Table 2. Threatened or endangered species that occur on irrigated agricultural lands within the Central Coast Region

Common and Scientific Names	Federal Status	California Status	Geographic Distribution within irrigated agriculture
Bank swallow <i>Riparia riparia</i>	None	Threatened	Thompson Canyon, Moss Landing - <i>Monterey County</i> Moss Landing - <i>Santa Cruz County</i> Chittenden - <i>Santa Benito County</i>
Bay checkerspot butterfly <i>Euphydryas editha bayensis</i>	Threatened	None	Mt. Madonna - <i>Santa Clara County</i>
Blunt-nosed leopard lizard <i>Gambelia sila</i>	Endangered	Endangered	Cuyama, Cuyama Peak - <i>Santa Barbara County</i> Cuyama, New Cuyama - <i>San Luis Obispo County</i>
California black rail <i>Laterallus jamaicensis coturniculus</i>	None	Threatened	Oceano - <i>San Luis Obispo County</i>
California clapper rail <i>Rallus longirostris obsoletus</i>	Endangered	Endangered	Prunedale - <i>Monterey County</i>
California condor <i>Gymnogyps californianus</i>	Endangered	Endangered	Ballinger Canyon - <i>Kern County</i>
California jewel-flower <i>Caulanthus californicus</i>	Endangered	Endangered	New Cuyama - <i>Santa Barbara County</i> Cuyama - <i>San Luis Obispo County</i>
California least tern <i>Sternula antillarum browni</i>	Endangered	Endangered	Oceano - <i>San Luis Obispo County</i>
California red-legged frog <i>Rana draytonii</i>	Threatened	None	Big Sur, Carmel Valley, Moss Landing, Natividad, Prunedale, Seaside - <i>Monterey County</i> Carpinteria, Foxen Canyon, Guadalupe, Lompoc, Los Alamos, Orcutt, Santa Maria, Sisquoc, Tajiguas, Twitchell Dam - <i>Santa Barbara County</i> Chittenden, Hollister, San Felipe, Tres Pinos - <i>San Benito County</i> Chittenden - <i>Santa Clara County</i> Ano Nuevo, Davenport, Santa Cruz, Watsonville West - <i>Santa Cruz County</i> Arroyo Grande NE, Cambria, Cayucos, Lopez Mtn., Morro Bay South, Oceano, Santa Margarita, Santa Maria, Tar Spring Ridge, Twitchell Dam - <i>San Luis Obispo County</i> Pigeon Point - <i>San Mateo County</i>
California tiger salamander <i>Ambystoma californiense</i>	Threatened	None	Gonzales, Moss Landing, Mt. Carmel, Natividad, Palo Escrito Peak, Prunedale, Rana Creek, Salinas - <i>Monterey County</i> Los Alamos, Orcutt, Santa Maria, Sisquoc, Twitchell Dam - <i>Santa Barbara County</i> Hollister, Paicines, San Felipe, San Juan Bautista, Tres Pinos - <i>San</i>

Common and Scientific Names	Federal Status	California Status	Geographic Distribution within irrigated agriculture
			<i>Benito County</i> Mt. Madonna, Mt. Sizer - <i>Santa Clara County</i> Watsonville West - <i>Santa Cruz County</i> San Luis Obispo - <i>San Luis Obispo County</i>
Coho salmon - central California coast ESU <i>Oncorhynchus kisutch</i>	Endangered	Endangered	Ano Nuevo, Davenport, Felton - <i>Santa Cruz County</i>
Gambel's water cress <i>Nasturtium gambelii</i>	Endangered	Threatened	Oceano - <i>San Luis Obispo County</i>
Gaviota tarplant <i>Deinandra increscens ssp. villosa</i>	Endangered	Endangered	Sacate - <i>Santa Barbara County</i>
Giant kangaroo rat <i>Dipodomys ingens</i>	Endangered	Endangered	Cuyama, New Cuyama, Taylor Canyon - <i>Santa Barbara County</i> Cuyama - <i>San Luis Obispo County</i>
La Graciosa thistle <i>Cirsium loncholepis</i>	Endangered	Threatened	Guadalupe, Point Sal, Sisquoc, Surf - <i>Santa Barbara County</i> Oceano - <i>San Luis Obispo County</i>
Least Bell's vireo <i>Vireo bellii pusillus</i>	Endangered	Endangered	Foxen Canyon, San Marcos Pass - <i>Santa Barbara County</i> Chittenden - <i>San Benito County</i> Chittenden - <i>Santa Clara County</i>
Marsh sandwort <i>Arenaria paludicola</i>	Endangered	Endangered	Oceano - <i>San Luis Obispo County</i>
Metcalf Canyon jewel-flower <i>Streptanthus albidus ssp. albidus</i>	Endangered	None	Gilroy, Mt. Sizer - <i>Santa Clara County</i>
Monterey spineflower <i>Chorizanthe pungens var. pungens</i>	Threatened	None	Espinosa Canyon, Marina, Moss Landing, Prunedale, Soledad, Watsonville East - <i>Monterey County</i> Loma Prieta, Moss Landing, Watsonville West - <i>Santa Cruz County</i> San Simeon - <i>San Luis Obispo County</i>
Morro Bay kangaroo rat <i>Dipodomys heermanni morroensis</i>	Endangered	Endangered	Morro Bay South - <i>San Luis Obispo County</i>
Nelson's antelope squirrel <i>Ammospermophilus nelsoni</i>	None	Threatened	Cuyama - <i>Santa Barbara County</i> Cuyama, Shandon - <i>San Luis Obispo County</i>
Nipomo Mesa lupine <i>Lupinus nipomensis</i>	Endangered	Endangered	Oceano - <i>San Luis Obispo County</i>
Pismo clarkia <i>Clarkia speciosa ssp. immaculata</i>	Endangered	Rare	Arroyo Grande NE - <i>San Luis Obispo County</i>
Robust spineflower <i>Chorizanthe robusta var. robusta</i>	Endangered	None	Salinas, Soledad - <i>Monterey County</i> Laurel - <i>Santa Cruz County</i>
San Francisco garter snake	Endangered	Endangered	Ano Nuevo, Franklin Point, Pigeon Point, San Gregorio - <i>San Mateo</i>

Common and Scientific Names	Federal Status	California Status	Geographic Distribution within irrigated agriculture
<i>Thamnophis sirtalis tetrataenia</i>			County
San Joaquin kit fox <i>Vulpes macrotis mutica</i>	Endangered	Threatened	Bradley, Espinosa Canyon, Greenfield, Hames Valley, Paraiso Springs, Pinalito Canyon, San Ardo, San Lucas, Soledad, Tierra Redonda Mountain - <i>Monterey County</i> Cuyama, Cuyama Peak, New Cuyama - <i>Santa Barbara County</i> Hollister, Paicines, Three Sisters, Tres Pinos - <i>San Benito County</i> Cuyama, Paso Robles, Shandon, Shedd Canyon - <i>San Luis Obispo County</i>
San Joaquin woollythreads <i>Monolopia congdonii</i>	Endangered	None	Fox Mountain - <i>Santa Barbara County</i> Cuyama - <i>San Luis Obispo County</i>
San Luis Obispo fountain thistle <i>Cirsium fontinale var. obispoense</i>	Endangered	Endangered	Pebblestone Shut-in - <i>San Luis Obispo County</i>
Sand gilia <i>Gilia tenuiflora ssp. arenaria</i>	Endangered	Threatened	Marina, Moss Landing, Salinas - <i>Monterey County</i>
Santa Cruz long-toed salamander <i>Ambystoma macrodactylum croceum</i>	Endangered	Endangered	Moss Landing, Prunedale - <i>Monterey County</i> Watsonville West - <i>Santa Cruz County</i>
Santa Cruz tarplant <i>Holocarpha macradenia</i>	Threatened	Endangered	Soquel, Watsonville East, Watsonville West - <i>Santa Cruz County</i>
Santa Cruz wallflower <i>Erysimum teretifolium</i>	Endangered	Endangered	Davenport - <i>Santa Cruz County</i>
Seaside bird's-beak <i>Cordylanthus rigidus ssp. littoralis</i>	None	Endangered	Moss Landing - <i>Monterey County</i> Lompoc Hills, Los Alamos, Santa Rosa Hills - <i>Santa Barbara County</i>
Smith's blue butterfly <i>Euphilotes enoptes smithi</i>	Endangered	None	Seaside - <i>Monterey County</i>
Southern steelhead - southern California ESU <i>Oncorhynchus mykiss irideus</i>	Endangered	None	Santa Rosa Hills - <i>Santa Barbara County</i> Cayucos - <i>San Luis Obispo County</i>
Southwestern willow flycatcher <i>Empidonax traillii extimus</i>	Endangered	Endangered	Solvang - <i>Santa Barbara County</i>
Steelhead - Central California Coast ESU <i>Oncorhynchus mykiss irideus</i>	Threatened	None	Ano Nuevo, Davenport, Felton, Laurel, Santa Cruz - <i>Santa Cruz County</i>
Steelhead - south/central California coast ESU <i>Oncorhynchus mykiss irideus</i>	Threatened	None	Carmel Valley, Junipero Serra Peak - <i>Monterey County</i> Chittenden, Mt. Madonna - <i>Santa Clara County</i> Loma Prieta - <i>Santa Cruz County</i> Arroyo Grande NE, Cambria, Morro Bay North, Morro Bay South, Pismo Beach - <i>San Luis Obispo County</i>

Common and Scientific Names	Federal Status	California Status	Geographic Distribution within irrigated agriculture
Tidewater goby <i>Eucyclogobius newberryi</i>	Endangered	None	Marina, Moss Landing - <i>Monterey County</i> Carpinteria, Dos Pueblos Canyon, Sacate, Tajiguas - <i>Santa Barbara County</i> Ano Nuevo, Davenport, Moss Landing, Santa Cruz - <i>Santa Cruz County</i> Cambria, Cayucos, Morro Bay South, Pismo Beach - <i>San Luis Obispo County</i>
Two-fork clover <i>Trifolium amoenum</i>	Endangered	None	Gilroy - <i>Santa Clara County</i>
Vernal pool fairy shrimp <i>Branchinecta lynchi</i>	Threatened	None	Paso Robles, Pismo Beach - <i>San Luis Obispo County</i>
Western snowy plover <i>Charadrius alexandrinus nivosus</i>	Threatened	None	Marina, Moss Landing - <i>Monterey County</i> Moss Landing, Santa Cruz - <i>Santa Cruz County</i> Oceano - <i>San Luis Obispo County</i> Ano Nuevo - <i>San Mateo County</i>
Western yellow-billed cuckoo <i>Coccyzus americanus occidentalis</i>	Candidate	Endangered	Paicines - <i>Santa Barbara County</i>
White-rayed pentachaeta <i>Pentachaeta bellidiflora</i>	Endangered	Endangered	Felton - <i>Santa Cruz County</i>
Yadon's rein orchid <i>Piperia yadonii</i>	Endangered	None	Prunedale, Seaside - <i>Monterey County</i>
Zayante band-winged grasshopper <i>Trimerotropis infantilis</i>	Endangered	None	Felton - <i>Santa Cruz County</i>

Although there are 46 special status species that were identified in agricultural areas, the staff found no conclusive evidence and none was provided by commenters to indicate that any of the species would be affected if some of the growers choose to eliminate discharge. Some of the species that may be affected by reduced flow include: California red-legged frog, Gambel's water cress, La Graciosa thistle, least bell's vireo, marsh sandwort, seaside bird's beak, southern steelhead - southern California, steelhead - Central California Coast, steelhead - south/central California coast, southwestern willow flycatcher, and the tidewater goby. These species were singled out as potentially being affected because of their water requirements either for habitat and/or reproductive purposes.

Reduced flow may have the *potential* to significantly impact these species. However, specific data to support this position were not found. Staff solicited professional opinions from US Fish and Wildlife Service and the California Department of Parks (State Parks) regarding the issue of impact. Both US Fish and Wildlife Service and State Parks opined that there may be potentially adverse effects. US Fish and Wildlife acknowledged that there are a range of possibilities. Reduced flow may benefit native species in the long run, making it harder for invasive species to survive. Reduced flows would likely allow the hydrology to go back to a more natural state and would likely be a benefit; however, it could have negative effects. Those potential negative effects are dependant on many variables including where the flow is reduced, by how much and at what times of the year. State Parks' position was similar. State Parks discussed that there would likely be an adjustment period. They suggested further hydrological analysis in these areas where there are special status species with certain water requirements. Additionally, State Parks suggested mitigation measures such as phasing in implementation of requirements in some areas and adjusting them on a watershed basis.

Irrigated agriculture (and dams and urban development) has modified the Central Coast's natural hydrology. In places where there used to be no water, there is water year round. Plants and animals are opportunistic and will respond to changing environments, including the creation of a new surface water. Currently, many plants and animals are found near agricultural tail water and/or tile drains. Plants and animals were accustomed to the Mediterranean climate in which there was rain in the fall, winter and early spring and there was usually little rainfall late spring, summer and early fall. These plants and animals were accustomed to many of the streams drying up during this dry season and flowing in the wet season. Reducing flow in these agricultural drainages is likely to mimic historic flow regimes.

While there are many plants and animals that are found on irrigated agricultural lands or directly adjacent or downstream, there still may be some negative effects on these organisms because of the high occurrence of water and sediment toxicity associated with agricultural discharges. Additionally, while the plants and animals may be present, excessive levels of pesticides, nutrients and sediment are not desirable for a healthy

environment. Consequently, while the species are present because of the discharged water, continuing to discharge water of low quality is not an environmentally desirable situation.

Staff has data indicating that water flow in surface waters is already being reduced in the Central Coast Region (CCAMP data), potentially due to compliance with the 2004 Agricultural Order, but has no data regarding how this is affecting special status species.

The potential exists for improved base flow conditions in the event that tailwater is allowed to percolate to groundwater, rather than being discharged to surface waterbodies where it is quickly transported downstream. The potential for improved base flow conditions also exists in the event that growers reduce groundwater pumping in an effort to reduce tailwater discharge to surface waterbodies. Consequently, reduced or elimination of tailwater does not necessarily equate to elimination of flow. Furthermore, what flow would be available will be of higher quality, and therefore have a higher potential of supporting desirable habitat, particularly native species.

The Negative Declaration for the 2004 Agricultural Order addressed the issue of the potential for reduced flow and found no impact. Due to comments from federal and state agencies about the potential adverse environmental impacts due to low flows, this issue was reevaluated. There is still insufficient and inconsistent information to conclude whether there will be adverse environmental effects, but there could be some adverse impacts if all dischargers reduced flow. It is more likely that such impacts would be short term, but as described herein, reduced flows could be offset by increased recharge, higher quality of the discharges, and other beneficial impacts of compliance.

This Final SEIR concludes that compliance with the changes proposed in the draft 2011 Agricultural Order could result in reduction in surface water flows that could in turn result in potentially significant adverse environmental effects on biological resources that would be more severe than identified in the Negative Declaration for the 2004 Agricultural Order. Potential mitigation measures to prevent reduced flows or to reduce the impact include phasing in management practices that could result in reduced flows; having dischargers separate clean from polluted wastewater;; and use of riparian buffers that will effectively treat the water to remove pollutants, but not necessarily reduce flows. Because the Water Board may not specify the manner of compliance with the Order, it may not explicitly mandate the use of some of the potential mitigation measures, such as use of riparian buffers.

In conclusion, given the uncertainty with respect to the effects of reduced flows, if they actually occur, the impact may not actually be significant, but this Final SEIR concludes that there will be a significant effect. The Central Coast Water Board will make findings required by the CEQA Guidelines. (Cal. Code Regs., tit. 14, § 15091, 15093.)

To evaluate the effectiveness of mitigation measures, the draft 2011 Agricultural Order requires the dischargers to prepare a Farm Plan that documents the actions taken to comply with the Order, which will provide with respect to the effectiveness of management practices and to monitor water quality.

4.3. *Mandatory Findings of Significance*

CEQA guidelines set forth certain mandatory findings of significance. If the project has the potential to substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, or substantially reduce the number or restrict the range of an endangered, rare or threatened species, the lead agency must make a mandatory finding of significance and complete an EIR.¹¹

Because of the reason explained in Section 4.2. Biological Resources, this Final SEIR changes Mandatory Findings of Significance from *no impact* to *potentially significant impact*.

5. Discussion of Climate Change

Climate change was not addressed in the 2004 Agricultural Order because it was not on the 2004 CEQA Environmental Checklist. Staff finds that the draft 2011 Agricultural Order will have “no impact” with regards to climate change.

There is no evidence to suggest that the draft 2011 Agricultural Order will result in the emission of more greenhouse gases. Agricultural activities use equipment that can result in discharges of air pollutants. However, there is no evidence to conclude that those activities would be more significant based on the draft 2011 Agricultural Order. One commenter suggested that the order would require widespread use of reverse osmosis units, but that is not an accurate representation of the conditions. The 2004 Agricultural Order already required dischargers to implement management practices. On the contrary, staff anticipates that the inclusion of riparian buffers will increase the amount of more permanent vegetation, which can act as a carbon sink and therefore help aid in reducing effects of global warming. However, the amount of additional vegetation will likely be small and will net a slightly positive effect. Additionally, the potential for less fertilizer use (a source a N₂O emissions) may actually reduce emissions.

With regards to additional trips for monitoring, staff does not anticipate these additional trips will contribute greatly to greenhouse gases because the additional monitoring required will not necessarily increase the number or frequency of trips significantly. An individual farm could combine trips associated with their own monitoring requirements

¹¹ 14 Cal. Code Regs section 15065, subd. (a)(1).

and a group of adjacent farms could combine monitoring into fewer trips. In these ways, the farms could minimize fuel use and maximize efficiency.

With regards to energy use, if growers begin pumping less groundwater, energy usage may be reduced and therefore a reduction in emissions may be recognized. Again, staff acknowledges that this contribution may be small, but it would be a positive impact rather than negative.

Overall, staff concludes that there will be no impact on climate change with regards to compliance with the draft 2011 Agricultural Order.

6. Discussion of “No Impacts” Finding

This SEIR addresses only those impacts found to be potentially more severe than previously identified in the 2004 Negative Declaration. See attached 2004 Negative Declaration for discussion of no impacts.

7. Public and Agency Comments

7.1. *Agency Comments*

On October 14, 2010 the Central Coast Water Board issued a notice of preparation to the Office of Planning and Research and to each responsible and trustee agency in compliance with the CEQA Guidelines (Cal. Code Regs., tit.14 § 15082(a)(1).) The Board received comments from the California State Lands Commission (CSLC), the Native American Heritage Commission (NAHC), and the California Department of Transportation (Caltrans).

The CSLC described the scope of its jurisdiction and authority with respect to tidal and submerged lands, and beds of navigable rivers, sloughs, and lakes and that such lands are subject to the Public Trust. The CSLC explained that the Public Trust is a sovereign public property right held by the state or its delegated trustee for the benefit of all the people. The CSLC expressed its concern that alternatives to the waiver (e.g., if the waiver were to lapse or include less stringent conditions) would have a significant adverse impact on biological resources, water quality, recreation, humans, and environmental justice, including cumulative impacts. As described in the Section 8. Alternatives, of this SEIR, the alternative of allowing the 2004 Agricultural Order lapse or an alternative of including less stringent conditions would not be appropriate for consideration because they would not result in compliance with the Water Code.

The NAHC recommended that the lead agency contact the appropriate regional archaeological Information Center for a record search, determine if an archaeological inventory survey would be required, and contact the NAHC for a Sacred Lands File

Check and list of appropriate contacts for consultation. The NAHC described that lack of surface evidence of archeological resources does not preclude their subsurface existence. Implementation of the draft 2011 Agricultural Order should not result in any more land disturbance than is currently occurring under the 2004 Agricultural Order.

Caltrans commented that discharges from irrigated lands place sediment within Caltrans owned drainage facilities on an ongoing basis. This is a cost issue for Caltrans as well as a potential safety issue on the highways. Caltrans encourages Central Coast Water Board to adopt policies that would reduce discharge of sediment into waterbodies. Implementation of the draft 2011 Agricultural Order will reduce discharges of sediment into waterbodies.

7.2. Public Comments

On November 19, 2010 concurrently with the public notice of the draft 2011 Agricultural Order, the Central Coast Water Board provided notice and an opportunity to comment on this Draft SEIR.

The Central Coast Water Board received 12 letters commenting on the Draft SEIR. The comments are posted on the Water Board's website¹². A summary of the comments and responses are set forth in Attachment A to this Final SEIR.

8. Alternatives

The CEQA Guidelines require the agency to identify a reasonable range of alternatives that could feasibly accomplish the basic objectives of the project and could avoid or substantially lessen one or more of the significant effects. As set forth in this SEIR, the staff has identified the possibility of more severe adverse environmental impacts with respect to agricultural and biological resources. The following alternatives have been considered:

8.1. No Project Alternative

The "No Project" alternative would consist of letting the 2004 Agricultural Order lapse and not renewing it. This alternative is not appropriate for consideration because it would not result in compliance with the Water Code in the short term. In the long term it would require each discharger, that is, each owner and/or operator of irrigated lands that discharge waste that could impact the quality of waters of the state, to submit a report of waste discharge to the Water Board and seek waste discharge requirements. That would not meet the project objectives to provide a general conditional waiver that is more efficient and effective in obtaining compliance with the Water Code.

¹² http://www.waterboards.ca.gov/centralcoast/water_issues/programs/ag_waivers/ag_order.shtml

8.2. *Renewing Existing 2004 Agricultural Order for Five Years*

This alternative would consist of adopting the current 2004 Agricultural Order with no substantive changes. This alternative would also not meet the project objectives to provide clarification of the 2004 Order and new conditions to provide for more effective protection of water quality. The Negative Declaration for the 2004 Agricultural Order evaluated the environmental effects of that Order so further evaluation of that alternative is not required in this SEIR. The potentially significant adverse environmental effects are evaluated in Section 4 of this SEIR.

8.3. *Adoption of Waste Discharge Requirements or Prohibitions*

This alternative would consist of adoption of waste discharge requirements, either individual or general, requiring each discharger to be covered. This alternative would be based on a different provision of the Water Code (Section 13260 rather than 13269) but would include compliance requirements essentially the same as the conditions of the 2004 Agricultural Order or the draft 2011 Agricultural Order. Therefore, it is not necessary to further discuss this alternative since the environmental effects would be essentially the same as a waiver of waste discharge requirements.

8.4. *Alternatives Submitted by Agricultural Groups*

Prior to notice of the Draft SEIR, the Central Coast Water Board received two proposals from agricultural interests identified as “alternatives” to the draft 2011 Agricultural Order; the California Farm Bureau Federation and OSR Enterprises. These “alternatives” consist primarily of proposals similar to the 2004 Agricultural Order. These alternatives are discussed in Appendix I of the Draft Staff Report recommending the Draft Agricultural Order.¹³ Because these alternatives are similar to the 2004 Agricultural Order, further environmental review is not required because the environmental analysis required under CEQA was included in the 2004 Negative Declaration.

On January December 3, 2010, the Central Coast Water Board received a new proposed alternative from the California Farm Bureau Federation. The December 2010 January 2011 alternative is also similar to the 2004 Agricultural Order and, therefore further environmental analysis required under CEQA is not necessary because it was included in the 2004 Negative Declaration.

8.4.1. *Alternative Proposed by the California Farm Bureau Federation*

The California Farm Bureau Federation submitted a conceptual proposal for revision of the 2004 Agricultural Waiver to the Central Coast Water Board April 1, 2010¹⁴. The Farm Bureau hopes that the Central Coast Water Board will proceed with development

¹³ http://www.waterboards.ca.gov/centralcoast/water_issues/programs/ag_waivers/ag_order.shtml

¹⁴ Please see http://www.waterboards.ca.gov/centralcoast/water_issues/programs/ag_waivers/docs/ag_order/Alt1.pdf for this alternative.

of a long-term program rather than conditional waivers limited to five-year terms. The proposal focused on six key points: 1) the Farm Plan, 2) Implementation Practices, 3) Education, 4) Monitoring, 5) Groundwater, and 6) Land Use Regulations.

With regards to CEQA, the alternative proposed by the California Farm Bureau Federation is similar in concept to the 2004 Order. Therefore no new environmental review is required. With respect to moving towards a long-term program instead of conditional waivers, staff evaluated many different options to address discharge from irrigated agriculture (e.g., Waste Discharge Requirements, Basin Plan amendment) and determined that continuing with Conditional Waivers provided the most flexibility and efficiency for both the Water Board and the dischargers.

8.4.2. Alternative Proposed by OSR Enterprises, Inc.

Price, Postel and Parma - the law firm representing OSR Enterprises, Inc. - submitted a proposal for recommendations for an agricultural order on March 31, 2010¹⁵. In summary, the "alternative" submitted uses the 2004 Agricultural Order as its baseline, supports Farm Plans being maintained onsite (not at the Water Board), supports confidentiality of sampling results, wants Water Board to defer to Department of Pesticides authority for dealing with pesticide application and supports cooperative monitoring and education.

With regards to CEQA, the alternative proposed by OSR Enterprises, Inc. is similar in concept to the 2004 Order. Therefore no new environmental review is required.

8.4.3. Alternative Proposed by the California Farm Bureau Federation (second version)

The California Farm Bureau Federation submitted a second proposal for revision of the 2004 Agricultural Waiver to the Central Coast Water Board December 3, 2010¹⁶.

With regards to CEQA, the alternative proposed by the California Farm Bureau Federation is similar in concept to the 2004 Order. Therefore no new environmental review is required. With respect to moving towards a long-term program instead of conditional waivers, staff evaluated many different options to address discharge from irrigated agriculture (e.g., Waste Discharge Requirements, Basin Plan amendment) and determined that continuing with Conditional Waivers provided the most flexibility and efficiency for both the Water Board and the dischargers.

¹⁵ Please see http://www.waterboards.ca.gov/centralcoast/water_issues/programs/ag_waivers/docs/ag_order/alt2.pdf for this alternative.

¹⁶ Please see http://www.waterboards.ca.gov/centralcoast/water_issues/programs/ag_waivers/docs/ag_order/ag_%20alt%20proposal_2010dec03.pdf for this alternative.

8.5. Alternative Submitted by Environmental Defense Center, Monterey Coastkeeper, Ocean Conservancy, Santa Barbara Channelkeeper, SurfRider Foundation - Santa Barbara Chapter

The Central Coast Water Board received a proposal from environmental interest groups (Environmental Defense Center, Monterey Coastkeeper, Ocean Conservancy and Santa Barbara Channelkeeper on April 1, 2010¹⁷. identified as an “alternative” to the draft 2011 Agricultural Order. In general, this letter describes support for the February 2010 preliminary draft Agricultural Order and offers some additional suggestions to make the Draft Order even more protective of water quality. Support for the draft Agricultural Order includes clear standards and timelines, inclusion of riparian habitat buffers, individual discharge characterization monitoring and provisions related to groundwater monitoring. Some of those suggestions to improve the Order include: collecting dissolved oxygen measurements at dawn, dischargers to submit complete data to the Water Board and in a “useful format,” stormwater protections should be stronger, and the Order should be better enforced. Specific changes to the draft 2011 Agricultural Order begin on pg. 7 of the submittal.

With regards to CEQA, the alternative proposed by Environmental Defense Center, Monterey Coastkeeper, Ocean Conservancy and Santa Barbara Channelkeeper is similar in concept to the draft 2011 Agricultural Order. This alternative is discussed in Appendix I of the Draft Staff Report recommending the Draft Agricultural Order.¹⁸ Therefore the environmental review is similar to the environmental review evaluated within this SEIR. In comments on the Draft SEIR, these environmental groups stated that the draft 2011 Agricultural Order, “would not result in negative impacts to the environment.” They appreciated the Draft SEIR, but agreed that none of the impacts analyzed would rise to a level of significance.

9. Cumulative Impacts

The lead agency is required to discuss cumulative impacts if the project has possible environmental effects that are individually limited but cumulatively considerable¹⁹. This SEIR evaluated the worst case scenarios with respect to agricultural and biological resources as discussed in Section 4, Environmental Analysis. In other words, staff evaluated impacts on agricultural resources based on every discharger in Tier 3 installing a riparian habitat buffer. Additionally, staff evaluated potential impacts on biological resources based on every discharger eliminating their discharge. Staff does not anticipate that every discharger will install a riparian habitat buffer nor will every discharger choose to eliminate their discharge. Therefore, Section 4, Environmental Analysis already addressed cumulative impacts resulting from all dischargers installing

¹⁷ Please see

http://www.waterboards.ca.gov/centralcoast/water_issues/programs/ag_waivers/docs/ag_order/Alt%203.pdf for this alternative.

¹⁸ http://www.waterboards.ca.gov/centralcoast/water_issues/programs/ag_waivers/ag_order.shtml

¹⁹ CEQA section 21083(b)(2)

buffers and eliminating discharge by evaluating impacts cumulatively rather than individually.

10. Conclusions

As described in this SEIR and the Central Coast Water Board's record for this project, agricultural activities in the Central Coast Region have result in significant adverse environmental impacts due to the discharge of sediment, pesticides, nutrients, and other wastes. The approval of the project – to renew the 2004 Agricultural Order with revisions – will result in substantial beneficial environmental and public health benefits by reducing the discharges of waste to waters of the state and protecting aquatic habitat. The Negative Declaration prepared for the 2004 Agricultural Order did not identify any significant adverse environmental effects. In preparing revisions to the 2004 Agricultural Order and in considering comments received from the public and agencies, staff identified that compliance with revisions to the draft 2011 Agricultural Order would generally not result in new impacts or impacts that are more severe than previously identified. There could be the potential for an increase in the severity of impacts on agricultural and biological resources as described in this SEIR.

The CEQA Guidelines specify that the lead agency shall not prepare a subsequent environmental impact report unless it determines on the basis of substantial evidence in the light of the whole record that there would be a substantial increase in the severity of previously identified significant effects. (Cal. Code. Regs, tit. 14 §15162(a)(1).) Members of the public and public agencies have suggested that there could be an increase in the severity of previously identified significant effects, so the Central Coast Water Board staff prepared the Draft SEIR to evaluate the potential effects. This SEIR concludes that there is not sufficient evidence in the record to conclude whether in fact the potential effects would be more severe than under the 2004 Agricultural Order. Even if the effects could be more severe, they can be mitigated due to actions by dischargers. The adoption of the draft 2011 Agricultural Order or some other alternative with the same or similar conditions is necessary to assure compliance with the Porter-Cologne Water Quality Control Act and associated plans, such as the Central Coast Water Board's Basin Plan and the State Water Resources Control Board's Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program.

Consistent with the CEQA Guidelines, the Central Coast Water Board will adopt findings in a resolution. (Cal. Code Regs., tit. 14, §§ 15091 & 15093.).

11. References

California Department of Conservation Report, 2008, *California Farmland Conversion Report 2004-2006*, Appendix A, http://www.conservation.ca.gov/dlrp/fmmp/pubs/2004-2006/Pages/FMMP_2004-2006_FCR.aspx (November 2, 2010).

California Department of Conservation, Farmland Mapping and Monitoring Program (FMMP), 2008 GIS data, <http://www.consrv.ca.gov/dlrp/FMMP/Pages/Index.aspx> (November 2, 2010).

Central Coast Water Board, Central Coast Ambient Monitoring Program (CCAMP) data on flow reduction, http://www.ccamp.info/2010/view_data.php (November 2, 2010).

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ATTACHMENT A: Responses to CEQA Comments

Responses to CEQA Comments

The following letters contained one or more CEQA comments and were received by January 3, 2011 in response to the November 19, 2010 Public Notice for the Draft Agricultural Order.

Letter No.	Date Received	Association	Representative
5	12/15/2010	COLAB	J. Andrew Caldwell
15	12/28/2010	Ocean Mist and RC Farms	William J Thomas
21	12/8/2010	Sue and Karl Luft	A. Sue Luft
34	12/30/2010	Santa Clara County Farm Bureau	Tim Chiala
79	1/3/2011	California Farm Bureau Federation	Kari E. Fischer
82	1/3/2011	Grower Shipper Association	Richard S. Quandt
83	1/3/2011	California Strawberry Commission	Theresa A. Dunham
85	1/3/2011	Env. Defense Center, Mont. Coastkeeper, Ocean Conservancy	Nathan G. Alley
86	1/3/2011	Rincon Farms, Inc.	Wayne Gularte
93	1/3/2011	Clean Water Action, Community Water Center	Jennifer Clary
94	1/3/2011	Darlene Din	Darlene Din
97	1/3/2011	County of Santa Barbara	Glen Russell
109	1/3/2011	Jensen Family Farms, Inc.	Jensen Family Farms Inc.

Responses to CEQA Comments

Comment ID	CEQA Comment	Response
Comment No. 518 from COLAB. Letter No. 5, p.2.	Another Class One Impact that will arise from these rules is the conversion of prime farm ground to other uses as most farming operations will not be able to withstand implementing these arbitrary and capricious standards. They will be forced by regulatory fiat and economic necessity to convert their lands to other uses. In view of the requirements of CEQA, your board should have to make overriding determinations to effect these impacts upon agriculture as agriculture itself is considered a significant resource by the State. Ag is worthy of the same protection as the water flea you are ostensibly trying to protect at the expense of our farms and ranches.	The CEQA Guidelines specify that economic and social effects of a project shall not be treated as significant effects on the environment. (14 Cal. Code Regs, § 15131, subd. (a).) The Water Board is only required to analyze the physical changes to the environment. The SEIR and the Staff Report analyze the economic costs in great detail. See responses to Letter 79 (Comment No. 497 and Comment No. 500). The proposed Order, as does the 2004 Agricultural Order, requires discharges to comply with the Water Code by controlling or treating discharges of waste to meet water quality standards, using management practices of the discharger's choosing. This requirement is not "arbitrary and capricious;" it is required by the law. Specifically Water Code section 13269 requires any waiver of waste discharge requirements to implement the Basin Plan and other state and regional board plans. The State Water Board's Nonpoint Source Policy requires use of management practices to control discharges.
Comment No. 519 from Ocean Mist and RC Farms. Letter No. 15, p.11.	The economic analysis is hopelessly inadequate to capture the dramatic impact this staff alternative will have on the region's farms and the ripple effect throughout the region's communities. This inadequate economic analysis is insufficient for compliance with either the California Water Code or CEQA.	The CEQA Guidelines specify that economic and social effects of a project shall not be treated as significant effects on the environment. (14 Cal. Code Regs, § 15131, subd. (a).) The Water Board is only required to analyze the physical changes to the environment. The SEIR and the Staff Report analyze the economic costs in great detail. See responses to Letter 79 (Comment No. 497 and Comment No. 500). The comment misstates the conditions contained in the 2011 Draft Order. In issuing a waiver of waste discharge requirements, the Regional Board must include conditions that are consistent with the Basin Plan and other plans, including the State Water Board's Nonpoint Source Plan. The 2011 Draft Order includes conditions requiring compliance with the Basin Plan water quality standards, but it does not mandate any particular management practices. Dischargers may comply in any lawful manner.
Comment No. 520 from Ocean Mist and RC Farms. Letter	Findings 29 through 31 of the staff draft regarding CEQA attempts to avoid any responsibility to do a complete environmental evaluation. This staff draft proposes to avoid a full CEQA and environmental analysis by	Please see the Staff Report, Appendix H and response to Letter 79 (Comment No. 496).

Comment ID	CEQA Comment	Response
No. 15, p.11.	utilizing the negative declaration process.	
Comment No. 521 from Ocean Mist and RC Farms. Letter No. 15, p.11.	The staff draft alternative is by far the most rigorous and thereby regulatorily impacting program even advanced dealing with water quality. The Regional Board staff held a CEQA scoping hearing in San Luis Obispo where the public presented dozens of examples of how this alternative would have significant environmental impacts and economic impacts. There were only a few modest amendments made to that previous version to the staff draft, and in large part these changes increased the environmental impact rather than mitigated the environmental impact of this regulation.	The public presented many examples of how they perceived the Draft Ag Order would have significant environmental impacts and economic impacts at the August 16, 2010 CEQA Scoping meeting. The SEIR evaluates the two main issues brought up at this meeting - lack of flow to comply with the Draft Ag Order and loss of agricultural land due to buffers and/or conversion - in the SEIR. While staff understands that some of the other issues raised at the meeting are valid concerns for the growers, the issues not included in the SEIR were not directly related to CEQA. The Regional Board is not required to revisit issues raised and addressed in the 2004 Negative Declaration except as set forth in the CEQA Guidelines, Cal. Code Regs., tit. 14, § 15162, subd. (a). Also see response to Letter 79 (Comment No. 496).
Comment No. 522 from Ocean Mist and RC Farms. Letter No. 15, p.12.	Clearly, therefore, the record does not support the position that the Regional Board can declare that this program would have a negative environmental impact. The Regional Board cannot casually take such a position merely because the far lesser regulation that was advanced some five years prior were subject only to the negative declaration (and those were never challenged) because this proposed waiver is of an entirely different level of environmental consequence.	The CEQA Guidelines provide for preparation of a subsequent CEQA document only where the Regional Board makes certain findings as set forth in Section 15162, subd. (a). See response to Letter 79 (Comment No. 496).
Comment No. 523 from Ocean Mist and RC Farms. Letter No. 15, p.12.	Furthermore, when the existing waiver was originally promulgated and supported by a declaration of negative environmental impact other regional boards had used that same approach concerning their respective waivers. That is now no longer the case as the Central Valley Regional Board is engaging a full NEPA environmental review on amending its ag waiver even though all of the five alternatives being discussed do not even come close to the significant environmental impact advanced by this proposed Central Coast waiver. Consequently, the Regional Board should pull back this proposed waiver and engage a proper environmental CEQA review with this alternative being one of the several considered alternatives.	The Central Coast Water Board is required to comply with CEQA by evaluating whether its proposed action could have a significant impact on the environment; not to address CEQA the way other Regional Boards have. The Central Coast Water Board adopted a Negative Declaration when it adopted the 2004 Ag Order. Staff thoroughly reviewed the record in this matter and found that some impacts evaluated in the 2004 Negative Declaration could be more severe under the 2011 Draft Ag Order. Therefore, staff prepared a draft Subsequent EIR to evaluate those impacts that could be more severe. The Central Coast Water Board is not required to prepare a completely new EIR. See response to Letter 79 (Comment No. 496).
Comment No. 65 from	Another area where the Draft Agricultural Order oversteps the Regional Board's authority is the	Staff evaluated the potentially significant impacts associated with removing agricultural lands from

Comment ID	CEQA Comment	Response
Sue and Karl Luft. Letter No. 21, p.2.	vegetated buffer requirements, which we do not believe the Regional Board has the authority to require. Not only are the buffer requirements for Tier 3 growers outside the Board's authority, they would remove significant amounts of land from production without appropriate CEQA consideration, would decrease the supply of fresh, safe, local produce, and could potentially pose a food safety threat.	production as required pursuant to CEQA. Please see pgs. 8-14 of the Draft SEIR.
Comment No. 495 from California Farm Bureau Federation. Letter No. 79, p.2.	<p>The commenter noted that the goal of the Conditional Ag Waiver program is to improve water quality over time and that farmers are equally concerned about water quality and the environment. "In order to reach this goal, the primary focus of maintaining and improving water quality over time should remain. To aid in reaching this goal, the Regional Board should evaluate water quality data collected and use such data to implement and adjust management practice implementation."</p> <p>The commenter further stated that the Draft Order would subject the growers to the most rigorous regulatory program in the state, contains duplicative regulation in areas already regulated by the Department of Pesticide Regulation and the California Department of Food and Agriculture, U.S. Fish and Wildlife Service, the Department of Fish and Game, the Army Corps of Engineers, and local agencies. It also contains numerous provisions that are improper, illegal, and exceed the Regional Board's statutory authority and the Draft Order fails to properly concerning impacts to agricultural resources under the California Environmental Quality Act (CEQA).</p>	<p>The Regional Board staff agrees with the commenter's characterization of the general goals of the staff's 2011 Draft Order, and understands that farmers are equally concerned about water quality and the environment.</p> <p>Staff disagrees with the comment that the staff's Draft Order is duplicative of other agencies and that the CEQA document fails to consider impacts on agricultural resources. The Regional Board has authority and the responsibility to implement the Porter-Cologne Water Quality Control Act (Cal. Wat. Code Div. 7), to comply with State Water Resources Control Board plans and policies, such as the State Board's Non-point Source Policy, and to protect water quality. As further discussed in response to specific comments, the 2004 Negative Declaration and the 2011 Subsequent Environmental Impact Report (SEIR) considered impacts on agricultural resources.</p>
Comment No. 496 from California Farm Bureau Federation. Letter No. 79, p.3.	The 2011 SEIR improperly relies on the 2004 Negative Declaration because the 2004 Agricultural Order was a different project. "The CEQA documents describe a conditional waiver of waste discharges for irrigated lands, but the similarities end here. The 2011 Draft Order includes new regulatory concepts, increases the scope of regulatory coverage, has been expanded to cover all irrigated lands growing commercial crops, requires new monitoring and reporting requirements, and encompasses regulation of all discharges to surface waters and groundwater, including tile drains and stormwater. Given the distinct nature of each conditional waiver, the 2004 Order and 2011	The CEQA Guidelines specify that when an EIR or negative declaration has been prepared, no additional EIR can be prepared except in these circumstances: (1) if subsequent changes are proposed which will require important revisions of the previous EIR or negative declaration due to the involvement of new significant environmental impacts not considered in the previous EIR or negative declaration, (2) if substantial changes occur with respect to the circumstances under which the project is undertaken which will require important revisions of the previous EIR or negative declaration due to the involvement of new significant environmental impacts not covered in the previous EIR or negative

Comment ID	CEQA Comment	Response
	<p>Draft Order are separate projects under CEQA and require independent environmental review.”</p>	<p>declaration, or (3) if new information of substantial importance to the project becomes available. (Cal. Code Regs., tit. 14, § 15162, subd. (a).)</p> <p>This regulation applies if there is a modification of a previous project. In this case, the 2011 Draft Order is a renewal of the 2004 Ag Order with modifications. The Subsequent Environmental Impact Report (SEIR) explains that the staff prepared an environmental checklist and reviewed the record to assist in determining whether an SEIR was required. See <i>Friends of Davis v. City of Davis</i> (3d Dist. 2000) 83 Cal.App.4th 1004. Based on that analysis, the staff concluded that revisions contained in the 2011 Draft Order and other reasonable alternatives could result in significant environmental impacts not considered in the 2004 Negative Declaration. (Cal. Code Regs., tit. 14, § 15162, subd. (a)(1).). Therefore, staff determined it was appropriate to prepare an SEIR to address those specific impacts identified.</p> <p>The CEQA Guidelines guiding whether an SEIR must be prepared are intended to address the situation where changes are proposed in a previous project. The changes proposed in the 2011 Draft Order do not make it a new project requiring a full EIR. The Regional Board need only address in an SEIR, the potential new significant environmental effects, not reconsider effects that are not new significant effects. See 43 Cal. App. 4th, 425, 437 (cannot challenge underlying neg dec). It is important to also note that CEQA restricts the powers of agencies to prepare new CEQA documents. See, e.g., <i>Bowman v. City of Petaluma</i> (1986) 185 Cal.App.3d 1065, 1073-1074. (“The intent of section 21166 is] to restrict the powers of agencies ‘by prohibiting them from requiring a subsequent or supplemental environmental impact report’ unless the stated conditions are met. [Citation.]”)</p> <p>The CEQA Guidelines do not provide guidance on when a renewal of a “permit” is a new project. However, case law suggests that the agency should focus on the nature of the project. See, e.g., <i>Gentry v. City of Murrieta</i>, 36 Cal.App.4th, 1359, 1401 (1995). In this case, Water Code section 13269 authorizes the Regional Board to renew an existing waiver. A renewed waiver must</p>

Comment ID	CEQA Comment	Response
		<p>still comply with the other requirements of section 13269, e.g., be consistent with the Basin Plan, include conditions, and include monitoring. The 2011 Draft Ag Order applies to the same types of dischargers and addresses the same types of discharges as the 2004 Ag Order. It also requires the same type of compliance, i.e., development and implementation of management practices to control discharges to protect water quality and monitoring to determine the effectiveness of the practices. Existing dischargers are not required to submit a new Notice of Intent (NOI) to comply, but will be required to update their existing NOI. The Regional Board staff recognized that some of the modifications in the 2011 Draft Ag Order could potentially result in more significant environmental effects than under the 2004 Ag Order and therefore prepared the SEIR to address those potentially more significant effects. The Regional Board is not required to prepare a completely new environmental document.</p>
<p>Comment No. 497 from California Farm Bureau Federation. Letter No. 79, p.6.</p>	<p>The SEIR's analysis of impacts is improper. It fails to analyze the potential impacts associated with loss of agricultural lands taken out of production, cost of compliance, loss of agricultural lands through regulatory takings for the installation of riparian buffers, and the impacts from restrictions on the use of the drains rendering farm land virtually unproductive and thus unusable. CEQA's informational purposes are not satisfied by an EIR that ignores or assumes a solution to potential discharges to waters of the state. Decision makers and the public must be presented with sufficient facts to evaluate the pros and cons of a conditional waiver of waste discharge requirements. By failing to analyze probable impacts and merely concluding that impacts are speculative, the SEIR is improper and the error is prejudicial.</p>	<p>The commenter mischaracterizes the record. The SEIR and documents referenced therein contains a detailed analysis of the potential impacts on agriculture, including potential economic impacts (Appendix F to the staff report). The CEQA Guidelines specify that economic and social effects of a project shall not be treated as significant effects on the environment. (14 Cal. Code Regs, § 15131, subd. (a).) The Water Board is only required to analyze the physical changes to the environment. The CEQA Guidelines state that the EIR may trace a chain of cause and effect from a proposed decision through anticipated economic or social changes resulting from the project to physical changes caused in turn by the economic or social changes, but intermediate economic or social changes need not be analyzed in any detail greater than is necessary. (14 Cal. Code Regs. § 15131, subd. (a).) A waiver of waste discharge requirements must include conditions that require dischargers to comply with the Basin Plan. Compliance with the conditions and the Basin Plan will result in positive impacts on the environment, not adverse impacts. Actions, such as implementation of management practices, to protect waters of the state in compliance with the Basin Plan could result in adverse impacts. Adverse economic costs may not be treated as significant effects on the environment. The commenter's suggestion that some farmers could go out of business due to</p>

Comment ID	CEQA Comment	Response
		<p>the costs is not, in and of itself, an adverse physical change to the environment. The commenter has provided no substantial evidence that economic costs will result in physical changes to the environment, other than speculating that some changes could occur. Because the Water Board cannot generally specify the manner of compliance, the SEIR concluded that it was speculative as to what methods farmers may choose to use to comply. Nevertheless, the SEIR and documents referenced therein provide detailed evaluation of the potential impacts of various methods of compliance, including cost impacts and use of filter strips, and that information is sufficient to inform the decision makers about the potential impacts. It is important to note that even if costs are high, the dischargers have an obligation to comply with the Water Code by controlling discharges that violate water quality standards. There is no right to discharge waste to waters of the state. (Cal. Wat. Code § 13263, subd. (g)). It is within the ability of farmers to control the costs by choosing the manner of compliance that is effective in complying with the Water Code.</p> <p>The 2011 Draft Order does not result in a regulatory taking contrary to the constitutional principles. The 2011 Draft Order does not result in any physical taking of property, but instead sets forth conditions to require compliance with the California Water Code and the Basin Plan to protect waters of the state from documented discharges of waste. The 2011 Draft Order does not result in a taking based on economic impacts. Generally, courts have held that the economic loss to the property as a whole must be extreme. <i>See, for example, Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency</i>, 535 U.S. 302, 319 n.15 (2002) (citing examples of large diminution in value found not to be a taking); <i>Village of Euclid v. Ambler Realty Co.</i>, 272 U.S. 365, 384 (1926) (loss in value of more than 75 percent not a taking); <i>Hadacheck v. Sebastian</i>, 239 U.S. 394, 405 (1915) (loss in value of more than 90 percent not a taking); <i>William C. Haas & Co. v. City & County of San Francisco</i>, 605 F.2d 1117, 1120 (9th Cir. 1979) (95 percent reduction in value not a taking). In addition, setbacks and buffers have been found to be a legitimate land use planning tool. <i>See, for example, Big Creek Lumber Co. v. County of San Mateo</i>, 31 Cal. App.</p>

Comment ID	CEQA Comment	Response
		<p>4th 418 (Cal. Ct. App. 1995) (upholding use of 1000 foot buffer between timber harvesting and residential zoning districts).</p> <p>In this situation, the Basin Plan sets forth an implementation program requiring the minimization of erosion and sediment discharges from nonpoint sources through implementation of management practices, including, for example, filter strips of appropriate width to be maintained between significant land disturbance activities and watercourses, lakes, bays, estuaries, marshes, and other water bodies. See, Basin Plan at page V-13, #4. Consistent with the Basin Plan, the 2011 Draft Order proposes a minimum filter strip in certain circumstances with an option to use other methods of control to prevent discharges of waste that cause water quality problems and includes conditions requiring implementation of management practices to control discharges of waste to waters of the state.</p>
<p>Comment No. 498 from California Farm Bureau Federation. Letter No. 79, p.8.</p>	<p>The SEIR contains an inadequate assessment of significant impacts and effects on the environment. The Regional Board must review all scientific data and facts, especially information collected since the initiation of the 2004 Conditional Waiver, prior to determining the 2011 Draft Order's potential to significantly effect or impact the environment.</p>	<p>The commenter mischaracterizes the record. The SEIR and documents referenced in the SEIR, including the Staff Report, contain a detailed analysis of environmental impacts associated with the 2004 Conditional Waiver. The SEIR was prepared because modifications to the existing waiver could potentially result in impacts that are more significant than previously considered and those potential more severe impacts were reviewed in detail in the SEIR.</p>
<p>Comment No. 499 from California Farm Bureau Federation. Letter No. 79, p.8.</p>	<p>The SEIR's analysis of project alternatives is improper. The SEIR's analysis of project alternatives is inadequate and improper and does not fulfill CEQA's mandates. Such "brief" treatment of so called alternatives is legally deficient, as no project alternatives are fully analyzed, described, evaluated, or provided in detail to allow the public to provide meaningful comments.</p>	<p>See response to Letter 79 (Comment No. 497). In addition, the CEQA Guidelines state that the rule of reason applies to evaluating alternatives and that limited new analysis is required where a previous document analyzed alternatives. See Cal. Code Regs., tit. 14, § 15126.6, subd. (f).</p>
<p>Comment No. 500 from California Farm Bureau Federation. Letter No. 79, p.10.</p>	<p>The SEIR fails to consider significance of social and economic impacts and cumulative effects. The 2011 Draft Order proposes dramatic and severe impacts on the agricultural industry, which will have a significant effect on the economic and social environment of the Region. Such impacts include negative economic consequences, the possibility of eliminating crops produced in the area, loss of jobs, loss of food supply, loss of prime agricultural lands, economic collapse of local communities,</p>	<p>The 2011 Draft Order includes conditions requiring agricultural dischargers to comply with the applicable law, including the California Water Code, Division 7, the Basin Plan, and the State Water Board's Nonpoint Source Policy. As discussed in the response to Letter 79 (Comment No. 497), the CEQA Guidelines do not require an evaluation of social and economic impacts.</p>

Comment ID	CEQA Comment	Response
	<p>changes in the landscape and land uses, loss of wildlife habitat, loss of groundwater recharge areas, as well as other social and economic impacts. In addition to direct impacts, indirect impacts and consequences, these cumulative social and economic consequences are reasonably foreseeable and must be analyzed.</p>	
<p>Comment No. 501 from California Farm Bureau Federation. Letter No. 79, p.10.</p>	<p>Agricultural resources must be considered during environmental review. The CEQA Guidelines, Appendix G, section II, Agricultural Resources require an evaluation of whether the project would convert prime farmland, conflict with existing zoning, or involve other changes in the environment that could result in conversion of farmland to non-agricultural use. The SEIR makes conclusory statements and includes mitigation without authority.</p>	<p>The commenter is incorrect that the SEIR did not consider impacts on agricultural resources. The 2004 Negative Declaration identified impacts on agricultural resources and found them not to be significant. Given the changes proposed in the draft 2011 Agricultural Order, the 2011 draft SEIR evaluated impacts on agricultural resources and found less than significant environmental impacts. Documents referenced in the SEIR, including the Staff Report, Appendix F, provide a lengthy and extremely detailed account of the potential impacts on agricultural. The CEQA Guidelines specify that economic and social effects of a project shall not be treated as significant effects on the environment. (14 Cal. Code Regs, § 15131, subd. (a).) Nevertheless, the SEIR and documents referenced therein provide a thorough analysis of the possible loss of prime farmland, including loss through the implementation of vegetated buffers and from loss due economic impacts. The draft SEIR concluded that the loss due to implementation of vegetated buffers would not be significant because it at worse be a very tiny percentage of the total agricultural acreage. In addition, the use of vegetated buffers would primarily result in beneficial impacts on the environment and not adverse impacts, so the impact would not be significant. See Staff Report at Appendix G. Section 3.1 Importance and Functions of Riparian and Wetland Areas and Appendix D. Section VI. Options for Riparian and Wetland Area Protection Requirements. The other impacts described by the commenter are very speculative without the support of substantial evidence and are social and economic impacts, not physical changes in the environment.</p> <p>The Water Board may not specify the manner of compliance with its orders, and therefore, cannot determine with certainty what methods dischargers will use to comply. The SEIR and documents referenced therein provide a detailed analysis of the possible methods of compliance, the cost to comply, and the potential impacts of those methods of compliance. After reviewing the</p>

Comment ID	CEQA Comment	Response
		<p>comments submitted on the draft SEIR and the draft 2011 Agricultural Order, the draft Final SEIR concludes that the impacts on agricultural resources are less than significant, since the bulk of the comments address economic impacts. See Draft Resolution certifying SEIR.</p>
<p>Comment No. 502 from California Farm Bureau Federation. Letter No. 79, p.13.</p>	<p>The SEIR may conflict with CEQA functional equivalency of the State's Pesticide Regulatory Program. DPR regulatory scheme ensures continuous evaluation of the environmental impacts of registered pesticide products. DPR is required by CEQA to consider the full and reasonably foreseeable environmental context of its actions. Farmers and ranchers must comply with DPR requirements. Farmers should not be held liable under the 2011 Draft Order if those pesticides are detected in groundwater.</p>	<p>The Regional Water Board is a public agency that must comply with CEQA prior to taking a discretionary action that could have a significant impact on the environment. The authority to adopt the 2011 Draft Ag Order or other order regulating discharges from agricultural lands is independent of DPR's authority to regulate pesticide use and its own requirement to comply with CEQA. The 2011 Draft Order does not duplicate or usurp DPR's authority to regulate pesticides.</p> <p>The Water Board has the statutory authority under the Porter-Cologne Water Quality Control Act to regulate the discharges of waste to ground and surface waters. Cal. Wat. Code §§ 13000, et seq. Specifically with regard to pesticides, the term "waste" has been held to include pesticides used for the control of insects, rodents and diseases on farms. (43 Cal. Ops. Atty. Gen. 302, 304 (1964), 48 Cal. Ops. Atty. Gen. 30, 34 (1966)). See also, Water Quality Order No. 2004-008-DWQ, Statewide General National Pollutant Discharge Elimination System Permit for Discharges of Aquatic Pesticides to Surface Waters of the United States for Vector Control, General Permit No. CAG990004. (This permit regulates NPDES discharges, not nonpoint source discharges, but in it the Water Board regulates the discharges of pesticides that leave the treatment area, demonstrating the Water Boards' authority to regulate discharges of pesticides: "This General Permit addresses the application of pesticides to Treatment Areas for the control of vectors. Aquatic pesticides that are applied to waters of the United States in accordance with FIFRA label requirements are not considered pollutants. However, pesticides or by-products that persist in or leave the Treatment Area after a specified treatment period are considered pollutants and require coverage under this General Permit." Fact Sheet at p. 8)</p>
<p>Comment No. 508 from California</p>	<p>The 2011 Draft Order will cause foreseeable negative consequences to the environment, such as use of lined retention ponds could</p>	<p>The 2011 Draft Order does not contain new conditions that would expand the use of lined retention ponds beyond those that might have</p>

Comment ID	CEQA Comment	Response
Farm Bureau Federation. Letter No. 79, p.17.	prevent groundwater recharge.	been used to comply with the 2004 Agricultural Order. Therefore, there was no new potentially significant environmental impact that is required to be considered in the SEIR. The Water Board may only prepare an SEIR consistent with the CEQA Guidelines. (Cal. Code. Regs., tit. 14, §15162, subd. (a).)
Comment No. 525 from Grower Shipper Association. Letter No. 82, p.4.	The Subsequent Environmental Impact Report Understates the Impact to Agricultural Resources and Needs to be Revised and Recirculated. The Environmental Impact Report submitted fails to analyze the impacts of the project and understates the loss of agricultural resources as a result of Water Quality Buffer Plan requirements.	See response to Letter 79 (Comment No. 497).
Comment No. 526 from Grower Shipper Association. Letter No. 82, p.5.	This discrepancy between the proposed project and what was analyzed results in the impacts being severely understated in the Environmental Impact Report. Moreover, the four mitigations identified in the report are not feasible. Those mitigations refer to other practices besides buffers which are identified as sediment basins, cover crops and vegetative roads. These mitigations will result in the loss of even more farmland than riparian buffer strips. They do not mitigate the impacts but actually increase the loss of agricultural land.	The commenter mischaracterizes the SEIR. The SEIR was prepared because there was information in the record to suggest that there could be potentially significant environmental impacts as compared to the 2004 Ag Order. The Regional Board may not specify the manner of compliance with its Orders, but dischargers may comply in any lawful manner, but it must be consistent with the Basin Plan. The Basin Plan includes a requirement that dischargers implement filter strips to protect waters of the state from land disturbance activities. Therefore, the Regional Board has the authority to require buffer strips. In this case, the 2011 Draft Order proposed buffer strips for only a limited group of dischargers and provides alternatives to such use. Dischargers are also free to implement any management practice of their choosing to control discharges of waste to waters of the state. The SEIR identified the potential for agricultural land to be taken out of production and included an extensive analysis of the potential number of acres and the costs of such potential losses. Because the 2011 Draft Order does not mandate the method of compliance, the Draft SEIR could not determine with certainty that all dischargers would in fact choose buffer strips as the method of compliance, but essentially evaluated the worst case situation. The Draft SEIR proposed four mitigation measures (see pg. 13) including buffers. Mitigation measures were included as ways to reduce or eliminate agricultural lands being taken out of production. Specifically, mitigation measure no. 2 - planting ground cover, berry bushes and/or fruit/nut bearing trees - would serve as both a buffer and agricultural land.

Comment ID	CEQA Comment	Response
		Thus, the land would not be taken out of production. Growers may choose the method of compliance that is protective of waters of the state and is the most economical for the discharger. See also response to Letter 79 (Comment No. 497).
Comment No. 527 from Grower Shipper Association. Letter No. 82, p.5.	The findings in the Environmental Impact Report that the percentage of farmland that will be converted to riparian buffers to be less than significant with mitigation is based on a flawed analysis. It does not comply with CEQA. It needs to be revised to fairly disclose the impacts consistent with the Draft Order and MRP being recommended for adoption.	See responses to Letter 79 (Comment No. 497 and Comment No. 500).
Comment No. 528 from California Strawberry Commission. Letter No. 83, p.2.	Findings 29 through 31 regarding compliance with the California Environmental Quality Act (CEQA) are addressed in detail by the California Farm Bureau Federation (CFBF). CSC hereby incorporates by reference CFBF's comments on Findings 29-31 and the Draft Subsequent Environmental Impact Report. Finding 32 incorporates the findings from Attachment A, which are addressed separately in section III below.	Please see responses to the California Farm Bureau Federation Letter 79.
Comment No. 529 from Env. Defense Center, Mont. Coastkeeper, Ocean Conservancy . Letter No. 85, p.12.	The conditional waiver program described in the November Draft Order, while not adequately protective of water quality, would result in some beneficial environmental impacts and would not result in negative impacts to the environment. We appreciate that several potential impacts are analyzed in the Draft SEIR, and we agree that none of these potential impacts could rise to a level of significance.	Staff agrees.
Comment No. 530 from Env. Defense Center, Mont. Coastkeeper, Ocean Conservancy . Letter No. 85, p.12.	The RWQCB approved a Negative Declaration when it adopted Order No. R3-2004-0117 in July 2004. In doing so, the RWQCB noted that the 2004 Order was "designed to reduce discharges of agricultural pollutants and improve water quality." The Draft Order would "not require or allow any changes in practices that could degrade the quality of the environment or have environmental effects that could cause substantial indirect or direct adverse effects on human beings." (2004 Negative Declaration, at p. 34.) The same finding holds true today, with respect to the November Draft Order.	While staff generally agrees with the above, staff concluded that information in the record indicates that some impacts evaluated in the 2004 Negative Declaration with respect to reduced flows could potentially be more significant. Therefore, staff prepared a Draft SEIR to provide full information to the Regional Board.
Comment	The 2004 Negative Declaration provides	Comment noted. See also response to Letter 79

Comment ID	CEQA Comment	Response
No. 531 from Env. Defense Center, Mont. Coastkeeper, Ocean Conservancy . Letter No. 85, p.12.	guidance for analysis of farmland conversion:... The Draft SEIR provides numeric support for a conclusion that agricultural resources will not be significantly affected.	(Comment No. 500)
Comment No. 646 from Env. Defense Center, Mont. Coastkeeper, Ocean Conservancy . Letter No. 85, p.13.	In our August 27 scoping letter, we urged staff to examine an alternative that only implements WDRs, and a separate alternative that utilizes a combination of WDRs, waiver(s) and other tools at the RWQCB's disposal. Page 26 of the Draft SEIR briefly discusses a WDR alternative and concludes that it would function similarly to the proposed Conditional Waiver. We do not wish to bog the CEQA process down in perpetual delay; as noted above, as it is far past time for an updated Conditional Waiver. However, we respectfully disagree with the assessment that individual WDRs would function almost identically to a Conditional Waiver program. For example, while individual monitoring <i>should</i> be an integral part of any Conditional Waiver, under a WDR program more site-specific monitoring would be required, and individual, on-site accountability would be much greater.	The Water Board staff agrees that monitoring in typical waste discharge requirements is generally more site specific. However, Water Code section 13269 explicitly requires waivers of waste discharge requirements to include monitoring; Water Code section 13263 that applies to issuance of waste discharge requirements does not explicitly require monitoring. Also see Staff Report Appendix D. Options Considered for discussion of Waste Discharge Requirements and other tools.
Comment No. 532 from Env. Defense Center, Mont. Coastkeeper, Ocean Conservancy . Letter No. 85, p.13.	Urges staff to examine an alternative that implements WDRs, instead of waivers because of various aspects; individual monitoring being one example. If the SEIR is revised before March 2011, this group requests the WDR alternative be analyzed in greater detail.	The Regional Water Board has directed staff at this time to develop a renewed waiver of waste discharge requirements. However, waste discharge requirements, like waivers of waste discharge requirements, must also implement the Basin Plan and other plans, such as the State Water Board's Nonpoint Source Policy. Therefore, the potential environmental effects of WDRs would not be significantly different than a waiver – the effects would depend on the conditions imposed. The primary differences between WDRs and a waiver are that a waiver may only be for a term of 5 years (which can be renewed) and must include monitoring. WDRs have no specific term limit, but must be reviewed periodically and there is no explicit requirement for monitoring.
Comment No. 533 from Rincon Farms, Inc. Letter No. 86, p.1.	Some provisions of the EIR, if and when ultimately forced upon us farmers, should surely deem the waiver unconstitutional.	In this instance, the commenter seems to be referring to the Draft Ag Order, and not the EIR as the SEIR is the environmental analysis and not the conditional waiver of waste discharge requirements.

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Comment No. 534 from Rincon Farms, Inc. Letter No. 86, p.3.	Speaking of unconstitutional, how dare the EIR to have the nerve to determine that I would have to switch my farm operations to other crops, grazing lands, or dry land farming! The reporters are ignorant of the long term commitments that we have to our landlords and the buyers/shippers of our produce!	The 2011 Draft Order does not require any discharger to change farm operations to other crops, grazing lands, or dry land farming. The Regional Board was required in the Draft SEIR to evaluate possible ways farmers could comply with the Water Code requirement to control discharges of waste that affect the quality of waters of the state. The Regional Board does not specify the manner of compliance, but sets goals of compliance – to comply with water quality standards. Dischargers may choose to comply with the Water Code in any lawful manner.
Comment No. 535 from Rincon Farms, Inc. Letter No. 86, p.5.	Those in your staff who helped draft this current proposal and those who developed the EIR obviously have no understanding of our farming system in the Salinas Valley nor how our nation feeds its people. We have to rent our land over long term commitments of five to ten years with options in order to secure long term relationships with our shipper. To suggest that we change our farming practices to conform to this draft will not necessarily cause farmers to “sell their land” as the EIR mentions because we don’t really own much of it! What is more likely is we would simply get foreclosed on by the banks, shut the business down, go broke, cause a loss of hundreds if not thousands of related jobs, breaking up of family structure and communities; and the state of California as a whole loses the control and stature it has of what kinds of food it produces for this nation.	Staff agrees that staff persons cannot understand the farming system in the Salinas Valley as well as someone who has essentially farmed there his whole life. However, the Regional Board is required by CEQA to consider potential impacts of the 2011 Draft Order, including the possible loss of prime farmland and other impacts on agriculture. To clarify, staff has inserted language, “ <u>or would be forced out of business,</u> ” to the SEIR in order to address that a potential impact might be the loss of business for those who do not own the land they grow on.
Comment No. 536 from Clean Water Action, Community Water Center. Letter No. 93, p.1.	Further, the related Draft Subsequent Environmental Impact Report (SEIR) fails to analyze deficiencies in the November draft order or to compare it adequately with the February proposal. Specifically, the current proposal fails to identify or mitigate continuing polluted discharges to groundwater from most irrigated agriculture, and fails to analyze the related costs to human health of that failure, most notably through the creation of tiers that ignore existing areas of high nitrate contamination.	The Regional Board is required by CEQA to analyze the potential adverse environmental impacts of its action to regulate discharges of waste. The Regional Board prepared a Negative Declaration in 2004 and staff has prepared the draft SEIR in compliance with the CEQA Guidelines (Cal. Code. Regs. Tit. 14, § 15162, subd. (a)). The Regional Board is not required to compare the November draft to the February proposal, but to consider whether the renewal of the waiver would result in new significant environmental effects not analyzed in the 2004 Negative Declaration. The 2004 Ag Order required and the February draft and the 2011 Draft Order would require dischargers to continue to implement and improve management practices to comply with water quality standards, including controlling discharges of nitrate to groundwater. The Regional Board may not specify the manner of compliance with its orders, but can establish

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		the goal, which is to control discharges of waste such that they do not result in violations of water quality standards. This Order does not address cleanup of existing nitrate contamination, but requires efforts to reduce future discharges of nitrates that impact beneficial uses.
Comment No. 537 from Clean Water Action, Community Water Center. Letter No. 93, p.6.	The analysis of the current draft proposal is inadequate because it assumes that the program as described will achieve water quality objectives. However, since the program exerts minimal oversight over operations under 1000 acres, that assumption is not defensible. The analysis should look at the cumulative impact of the reduced requirements for smaller operations, particularly in those areas that already have contaminated groundwater basins.	The 2004 Ag Order and the 2011 Draft Ag Order would waive the requirement that dischargers obtain waste discharge requirements. Consistent with Water Code section 13269(a), the dischargers are required to comply with the Basin Plan, including meeting all water quality standards. Both the current order and the proposed renewal require dischargers to meet water quality standards, including standards to protect groundwater. Under Water Code section 13360, the Regional Board may not specify the manner of compliance; dischargers may comply in any lawful manner. The waivers require development and implementation of management practices to meet water quality standards. The 2011 Draft Ag Order does not exert minimal oversight; it requires all dischargers to implement management practices and demonstrate their effectiveness. The Regional Board is not required to "look at the cumulative impact of the reduced requirements for smaller operations." The Regional Board under CEQA must look at the environmental effects of its action; in this case, the action is to require compliance with water quality standards by implementation of effective management practices. Compliance with such conditions will not result in cumulative impacts. In addition, because the proposed action is to renew the existing 2004 Ag Order, the Regional Board is not required to consider impacts it already considered in the previous order, except in certain circumstances. See response Letter 79 (Comment No. 496)
Comment No. 538 from Clean Water Action, Community Water Center. Letter No. 93, p.6.	In addition, this SEIR fails to analyze the health impact on communities that must rely upon groundwater that remains contaminated because the amended proposal fails to improve groundwater quality to a level that meets drinking water standards. Given this lack of regulation, the SEIR proposal must assume that water quality will not improve in the timeframe (as staff's 2025 schedule for compliance indicates) and may continue to degrade, and analyze those impacts.	Pursuant to CEQA, the existing conditions of the groundwater are considered the baseline environmental conditions on which to base the environmental analysis. The Staff Report documents the existing impacts to groundwater, including nitrate contamination. There is not a lack of regulation of discharges. The 2004 Ag Order and the 2011 Draft Ag Order require dischargers to comply with water quality standards by implementing management practices to protect waters of the state, including groundwater. The Regional Board may not

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		specify the manner of compliance; dischargers may comply in any lawful manner. The 2004 Ag Order and the 2011 Draft Ag Order set forth conditions that comply with Water Code section 13269, including requiring consistency with the Basin Plan to protect beneficial uses. The Regional Board adopted a Negative Declaration in 2004 and is not required to reevaluate that document except as set forth in the CEQA Guidelines. The SEIR evaluates potential new significant environmental impacts not previously addressed. Impacts on groundwater from discharges of waste from agricultural activities are not new impacts. In addition the 2011 Draft Ag Order includes some additional conditions with respect to groundwater than those included in the 2004 Ag Order. See response to Letter 79 (Comment No. 496).
Comment No. 539 from Darlene Din. Letter No. 94, p.1.	The Agricultural Order is in direct conflict with CEQA.	This comment letter was first submitted and dated August 27, 2010, but the SEIR and 2011 Draft Order were not made available for public comment until November 19, 2010. The commenter resubmitted the letter as a response to the SEIR and 2011 Draft Order. It is unclear in the comment, what specific concern the commenter has with the SEIR and 2011 Draft Order with respect to CEQA. Nevertheless, the SEIR and 2011 Draft Order comply with CEQA and the Water Code and are not in direct conflict with CEQA.
Comment No. 540 from Darlene Din. Letter No. 94, p.1.	Alternative revisions of the New Order should be constructed within the proper parameters set forth through the Porter-Cologne Water Quality Control Act and CEQA (California Water Code [CWC] §§'s 13000 et seq.) that are at least feasible to all present and probable future beneficial uses of water within the Central Coast.	The Draft SEIR and the Staff Report evaluate several alternatives to the 2011 Draft Ag Order, including proposals submitted by some members of the agricultural community. The existing 2004 Ag Order and the 2011 Draft Ag Order require dischargers to implement management practices to assure compliance with water quality standards consistent with the Basin Plan. The dischargers may comply in any lawful manner taking into account their own specific circumstances.
Comment No. 541 from Darlene Din. Letter No. 94, p.2.	It has been recognized and established that agriculture is a beneficial use of water, through state and federal policies such as CEQA, the Farmland Protection Policy Act and the National Environmental Policy Act.	The Regional Board agrees that agricultural water supply is a beneficial use. The Central Coast Basin Plan sets forth the beneficial uses, including specifying agricultural water supply as a beneficial use of much of the groundwater and surface water in the Region. Note, that the Regional Board is not allowed by the Clean Water Act to designate waste transport or waste assimilation as a designated beneficial use for any waters of the United States. See 40 C.F.R. § 131.10, subd. (a). The existing 2004 Ag Order and the 2011

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		Draft Ag Order require actions to control discharges of waste that impact beneficial uses, including agricultural beneficial uses.
Comment No. 542 from Darlene Din. Letter No. 94, p.3.	<p>CEQA sets forth guidelines and provides direction that agencies should refer to the 1997 California Agricultural Land Valuation and Site Assessment Model as prepared by the California Department of Conservation an optimal model to use in assessing impacts on agriculture and farmland. It asks agencies to take into account whether a proposed project would:</p> <ol style="list-style-type: none"> 1) Convert prime farmland, unique farmland, or farmland of state-wide importance to Non-agricultural use. 2) Conflict with existing zoning for agricultural use or a Williamson Act contract. 3) Involve other changes in the existing environment, which, due to their location or nature, could result in conversion of farmland to non-agricultural use. <p>California Code of Regulations, Title 14, CEQA Guidelines Appendix G, § II, Agricultural Resources.</p>	The 2004 Negative Declaration and the 2011 Draft SEIR evaluated the impacts of the waivers on agricultural resources consistent with CEQA. See response to Letter 79 (Comment No. 496).
Comment No. 543 from Darlene Din. Letter No. 94, p.3.	The CCRWQCB instead asks "interested persons" to provide information with specificity as to potentially significant environmental impacts, including unavoidable significant adverse environmental impacts associated with the means of compliance	Staff is assuming the commenter means we asked interested persons to provide information on potentially significant impacts instead of following CEQA guidelines mentioned in the previous comment. Staff conducted a CEQA scoping meeting on August 16, 2010 to provide an opportunity for public input on the environmental document staff was going to prepare. CEQA scoping is recommended in the CEQA Guidelines. See Cal. Code Regs., tit. 14, § 15083.
Comment No. 544 from Darlene Din. Letter No. 94, p.3.	The CCRWQB staff does not generate this New Order proposal within the authority in which CEQA and the California Code of Regulations, title 14 sets forth. It seems, (without seeing the actual proposal), that if the New Order the Region 3 Water Quality Control Board is proposing may even be exceeding its authority and abusing it's discretion.	The Water Board has complied with CEQA and the Water Code. The Regional Board is considering the 2004 Negative Declaration and an SEIR. The 2011 Draft Order is required under Water Code section 13369 to include conditions consistent with the Basin Plan and to require monitoring. It is not clear from the comment, in which way the commenter asserts that the Water Board is exceeding its authority or abusing its discretion. See also response to Letter 94 (Comment No. 539).
Comment No. 545 from	I would request that staff responds to the comments provided by the public at the hearing	The Water Board did not hold a public hearing on August 16, 2010, but staff held a CEQA scoping

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Darlene Din. Letter No. 94, p.3.	on August 16th and to evaluative as having impacts that cannot be mitigated.	meeting. In evaluating whether to prepare an SEIR, staff considered the 2004 Negative Declaration, the oral and written comments provided during the CEQA scoping meeting, and the rest of the relevant Water Board's record. The Draft SEIR evaluated certain impacts due, in large part, to the comments received at the scoping meeting.
Comment No. 547 from Darlene Din. Letter No. 94, p.4.	<p>In closing, it is urged that the board keep in mind the various possible conflicts that the staff's proposal could bring about in the New Order. An alternative proposal should be drafted to reflect the concerns with the adverse economic and environmental effect that these policy considerations that would likely be brought about by this New Order. The (new) New Order should be drawn with heed to the dozens of competent, relevant and meaningful responses to the February 1, 2010 Preliminary Draft Staff Recommendations, with special consideration spent on:</p> <ol style="list-style-type: none"> 1) Preliminary Alternative Agricultural Proposal provided by the California Farm Bureau Federation, April 1, 2010 Group 1, FB6. 2) Somach, Simmons & Dunn, April 1, 2010 Group 4, A21. 3) Central Coast Agriculture Water Quality Coalition, Group 4, A24. 4) Western Growers, April 17, 2010 Group 13, A29. 5) Best, Best & Kreiger, March 31, 2010 Group 4, FB6. 6) William Elliot, dated April 1, 2010, Group 6 F47. 	The Draft SEIR includes an evaluation of alternatives, including the preliminary alternative agricultural proposal provided by the California Farm Bureau. Please see pgs. 26-27 in the SEIR.
Comment No. 548 from Darlene Din. Letter No. 94, p.5.	The Ag industry will be adversely affected in a significant economic fashion. After considerable effort has been made in the preparation of these responses containing possible alternative plans as well as various areas of concern, be they economic or environmental, as well as possible conflict with local, state and federal laws that would be brought about in the adoption of the staff recommendations. The production of these letters should not be in vain, they should be read, reviewed, and responded to as according to CEQA, Porter-Cologne, and the California Code of Regulations, in order to form a more reasonable, attainable, and feasible water quality management plan.	Comment noted. The Draft SEIR and Staff Report document and evaluate economic impacts of the 2011 Draft Ag Order consistent with CEQA. See responses to Letter 79 (Comment No. 497 and Comment No. 501). The 2011 Draft Ag Order has been revised in response to comments and the Water Board may direct staff to make other revisions in response to comments.

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Comment No. 549 from County of Santa Barbara. Letter No. 97, p.1.	The SEIR should include a Mitigation Monitoring and Reporting Program (MMRP) required pursuant to CEQA.	The existing 2004 Ag Order and the 2011 Draft Ag Order include a monitoring and reporting program that is sufficient to evaluate the effectiveness of mitigation.
Comment No. 550 from County of Santa Barbara. Letter No. 97, p.1.	The document should also profile the timeline showing the sequence of events for the proposed project since initial adoption of the 2004 Agricultural Order in July 2004 through release of the SEIR.	Please see the Draft Ag Order Staff Report and Staff Report Appendix I for a timeline.
Comment No. 551 from County of Santa Barbara. Letter No. 97, p.1.	The SEIR repeatedly refers to a prior staff report and appendices. The relationship of these documents should be discussed in the SEIR and any appendices used for analysis in the SEIR included in the document.	The SEIR includes a detailed list of documents used to prepare the SEIR and references within the SEIR the Staff Report and appendices. The Final SEIR clarifies the list.
Comment No. 552 from County of Santa Barbara. Letter No. 97, p.1.	There are multiple references in the SEIR when the reference is listed as see "Error! References source no found." This should be corrected to refer to the document title.	The "cross reference" errors were corrected.
Comment No. 553 from County of Santa Barbara. Letter No. 97, p.1.	Figure 1. illustrates a regional map showing the general project area with irrigated agricultural lands with Prime, State and Unique Farmland in white shaded areas. The scale of this map, which includes the Santa Cruz, San Benito, Monterey, San Luis Obispo and Santa Barbara counties makes it difficult to identify the location of affected parcels for this proposed project. CEQA Guidelines Section 15128(a) [sic – actually section 15124(a)] requires that a project description identify the precise location and boundaries of the proposed project shown on a detailed map, preferably topographic. The location of the project shall also appear on a regional map. The SEIR should contain individual detailed maps illustrating the precise location and boundaries of the proposed project for each affected county. Additionally, a table listing all affected Assessor Parcel Numbers (APN's) for each County should be included in the SEIR. In the absence of a detailed map for Santa Barbara County identifying irrigated	CEQA Guidelines section 15124 requires a detailed project description, but "should not supply extensive detail beyond that needed for evaluation and review of the environmental impacts." The proposed action of the Water Board is to renew an existing waiver of waste discharge requirements for discharges of waste from irrigated lands. The SEIR is prepared to address potential new significant impacts associated with revisions to the existing 2004 Ag Order. Given that the Water Board has regulated agricultural discharges under Water Code section 13269 (as revised effective January 2003) for nearly seven years now, and was subject to environmental review in the 2004 Ag Order, the project description in the SEIR is sufficient to evaluate the potential environmental effects of the renewal of the 2004 Ag Order. The SEIR was prepared to address potentially significant impacts consistent with the CEQA Guidelines (Cal. Code Regs. § 15162, subd. (a)). The information provided in the SEIR and the Staff Report

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	agricultural lands, and a listing of all affected APN's analyzed under this SEIR, the County is currently unable to ascertain affected parcels for the proposed project.	referenced therein, provides sufficient information to evaluate environmental effects. Additional information about the parcels affected by the 2011 Draft Ag Order readily available through the County Agricultural Commissioner's Office for each county (Assessor Parcel Numbers that include irrigated agriculture). If Santa Barbara County is unable to obtain this information, you may contact the Central Coast Water Board office and staff can assist with providing the APNs for Santa Barbara County.
Comment No. 554 from County of Santa Barbara. Letter No. 97, p.2.	The SEIR states that the proposed draft 2011 Agricultural Order groups farm operations, or dischargers, into three tiers with various compliance requirements. Countywide detailed maps identifying affected APN's within each distinct tier should be included in the SEIR. In the absence of such detailed maps, the County is unable to ascertain parcels affected by the proposed tier grouping for the proposed project.	The SEIR was prepared to address certain potentially significant impacts consistent with the CEQA Guidelines (Cal. Code Regs. § 15162, subd. (a)). The information provided in the SEIR and the Staff Report referenced therein, provides sufficient information to evaluate environmental effects. See also response to Letter 79 (Comment No. 504), which addresses tiering.)
Comment No. 555 from County of Santa Barbara. Letter No. 97, p.2.	Table 1. Changes in Environmental Checklist from 2004 Agricultural Order to the 2011 draft Agricultural Order should be expanded to include a column that identifies mitigation measures that will reduce impacts to "less than significant" with mitigation for agricultural resources. Furthermore, biological resource impacts and mandatory findings of significance which identify "potentially significant impacts" should clarify if these impacts can be reduced to a level of "less than significant" with mitigation. If mitigations are proposed, these should be included in the table. As currently written, it is not clear whether these impacts are "significant and unavoidable."	The Draft SEIR in Section 4 discusses the potential impacts and possible mitigation measures that could be used to reduce impacts.
Comment No. 556 from County of Santa Barbara. Letter No. 97, p.2.	The SEIR presents contradictory statements concerning environmental impacts resulting from the proposed project, as noted below: [various quotes from SEIR]. Table 1. Changes in Environmental Checklist from 2004 Agricultural Order to the 2011 draft Agricultural Order clearly identifies "potentially significant impacts" and impacts that can be reduced to "less than significant" with mitigation. This information should be reconciled with the above statements to definitively indicate what adverse environmental impacts will result from the proposed project. The SEIR should identify, disclose and mitigate for impacts resulting from this project.	The CEQA Guidelines specify that no additional EIR shall be prepared except in very limited circumstances as set forth in CEQA Guidelines section 15162(a). The 2004 Negative Declaration found no significant impacts. The Water Board staff compared the 2004 Ag Order with the 2011 Draft Ag Order and other potential alternatives and found that there are changes proposed to the 2004 Ag Order that could potentially result in impacts more severe than evaluated in the 2004 Negative Declaration, so chose to prepare an SEIR for the specific impacts identified. Commenters, however, asserted that the effects on agricultural resources would be more severe than under the 2004 Ag Order. Staff does not agree that that is the case, however, since all

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		<p>persons who discharge waste to waters of the state are required to control those discharges to comply with the Basin Plan standards. The 2011 Draft Ag Order does not change the compliance requirements as compared to the 2004 Ag Order. It continues to require use of management practices to comply with the Water Code; and it provides more detail and direction to assure compliance with the Water Code and additional monitoring to determine the effectiveness of the management practices. The Water Board may not specify the manner of compliance with its orders so it can only speculate on what methods growers may choose to comply with the Water Code and the Basin Plan. Among those methods are the use of buffer strips, sediment basins, and reduced water use that were identified in comments and staff review of the record. Those types of compliance methods are not any different than those that would be used to comply with the 2004 Ag Order. Because the 2011 Draft Order includes more specific conditions with respect to buffer strips for certain dischargers (some Tier 3 dischargers), the SEIR evaluates the possibility that all Tier 3 dischargers would use buffer strips to comply and that could have an impact on agricultural resources.</p> <p>The use of sediment basins is not explicitly a requirement of the 2004 Ag Order or the 2011 Draft Ag Order. There is nothing in the record to suggest that use of sediment basins would be any greater under a renewed Ag Order or under the 2004 Ag Order, so no detailed analysis was included. The SEIR has been clarified to address the commenter's concern.</p>
<p>Comment No. 557 from County of Santa Barbara. Letter No. 97, p.3.</p>	<p>The SEIR should include a table illustrating the number of acres of irrigated farmland categorized by Prime Farmland, Farmland of Statewide Importance, Farmland of Unique Importance for each county analyzed in this SEIR.</p>	<p>The SEIR provides a sufficient description of the project area.</p>
<p>Comment No. 558 from County of Santa Barbara. Letter No. 97, p.3.</p>	<p>The SEIR states that potential impacts to Farmland of Local Importance were not considered "because these lands are not irrigated and therefore not included in the Agricultural Order." In Santa Barbara County, many dry farm crop areas have been converted to irrigated crops, especially in the central and northern part of Santa Barbara County. For example, from 1995 to 2005, wine grape</p>	<p>If dry farm lands convert to irrigated agriculture, they would need to enroll in the Draft Ag Order. Staff used the most recent data available and performed analysis on those data.</p>

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	acreage increased more than 12,000 acres while dry farming decreased more than 14,000 acres.	
Comment No. 559 from County of Santa Barbara. Letter No. 97, p.3.	The section discusses the Williamson Act but does not address potential impacts to land enrolled in the Williamson Act. The SEIR should include analysis of the proposed project on lands enrolled in Williamson Act contracts within the project area.	The SEIR provides a sufficient project description and analysis of the potential impacts on farmland.
Comment No. 560 from County of Santa Barbara. Letter No. 97, p.3.	The SEIR references Appendix F of the Draft Staff Report for the Draft Agricultural Order as a source of information regarding analysis of proposed riparian habitat buffers. It is unclear if Appendix F is intended to substantiate the conclusions drawn in the environmental document as this information is not provided as an appendix to the SEIR. Analysis for this section should be included as an appendix in the SEIR with a discussion of the relationship of this information to pertinent sections of the document.	The SEIR references the Staff Report and Appendix F in its discussion of potential impacts. Section 4. E. of the Staff Report explains the relationship between the SEIR and Appendix F for cost related to as related to CEQA. Staff did use Appendix F of the Draft Staff Report as a source of information to evaluate impacts regarding riparian habitat buffers and other potential economic costs and impacts. Staff provided an active link in the report to direct readers to the Appendix instead of directly attaching it to the SEIR.
Comment No. 561 from County of Santa Barbara. Letter No. 97, p.4.	The SEIR should include analysis of the proposed project and recommended mitigation measures for operators that participate in the California Leafy Green Products Handler Marketing Agreements (LGMA). The California Department of Food and Agriculture (CDFA) provides oversight of the LGMA which promotes food safety practices designed to reduce the sources of potential contamination on farms or fields. Recommended methods for compliance with the proposed project include riparian habitat buffers and sedimentation basins. These options should consider compatibility with the requirements of the LGMA for operators in the proposed project area.	The conditions in the Draft Ag Order have been developed with awareness of the LGMA requirements. Staff is not aware of any conflicts with State or Federal regulations. See response to Letter 79, Comment 4.
Comment No. 562 from County of Santa Barbara. Letter No. 97, p.4.	The SEIR acknowledges that agricultural resources and farmland could be converted to non-farm uses due to new conditions, such as requiring buffers, or due to economic impacts that result in selling of farmland for other uses. The document further states that dischargers may choose to install riparian habitat buffer strips to comply with the Order which could result in taking land out of crop production. The SEIR indicates that approximately 82 to 233 acres of agricultural lands would be taken out of production as a result of the installation of riparian habitat buffers. The SEIR should	Appendix F to the Staff Report, which is clearly referenced in the SEIR, adequately explains how the number of acres was developed to evaluate the impacts to agricultural resources. See Staff Report, Appendix, F, Section 2.2.3.1. Spatial Analysis to Support Cost Analysis and Table 8.

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	include a table documenting these 82 to 233 acres, identified by APN's and by county.	
Comment No. 563 from County of Santa Barbara. Letter No. 97, p.4.	Mitigation Measure # 1 Dischargers could choose to install other practices besides buffers to insure turbidity, sediment and temperature water quality standards are met. This measure recommends "other practices" however presents no analysis or information as to what these practices might be and how they would effectively mitigate for the conversion of agricultural resources and farmland. The SEIR should include a description and analysis of these "other practices" with a discussion on their effectiveness in mitigating impacts to agricultural resources.	Persons who discharge waste to waters of the state are required to control such discharges to protect the beneficial uses. They may comply in any lawful manner. The Water Board may not direct the manner of compliance. The Water Board evaluated the environmental impacts of the 2004 Ag Order in the 2004 Negative Declaration. It is not required to prepare an entirely new CEQA document to reevaluate the renewal of the 2004 Ag Order. The SEIR evaluates only new potentially significant environmental impacts, not those already considered in the 2004 Negative Declaration that were found not to be significant. See also responses to Letter 79 (Comment No. 497 and Comment No. 500).
Comment No. 564 from County of Santa Barbara. Letter No. 97, p.4.	Mitigation Measure #2: Dischargers could plant ground cover, berry bushes and/or fruit/nutbearing trees which would serve as both agricultural land as well as a buffer. The land would not be converted to a non-agricultural use because it would still generate economically viable produce, but would function as a buffer. This buffer containing agricultural land would need to meet the requirements of the Agricultural Order. This statement assumes that planting ground cover, berry bushes and/or fruit/nut bearing trees on parcels subject to the requirements of this order would result in economically viable produce. There is no discussion of the cost to install, maintain and harvest these crops. Furthermore, it is unclear if any of these recommended buffer crops would require irrigation and as such be subject to the requirements of the Agricultural Order. Additional analysis of this measure should be included in the document.	The Water Board is not required to evaluate costs in the CEQA document. See responses to Letter 79 (Comment No. 497 and Comment No. 500). In addition, the 2011 Draft Ag Order does not propose to require dischargers to plant ground cover, berry bushes, etc. To comply with CEQA, the Draft SEIR identified possible mitigation measures – these are not required conditions of the Ag Order, since the Water Board may not specify the manner of compliance.
Comment No. 565 from County of Santa Barbara. Letter No. 97, p.5.	The SEIR should further analyze this measure and provide a list of appropriate and acceptable buffer crops, identify cost to install, maintain and/or harvest for potential economic profit, and substantiate how this measure reduces the conversion of farmland or agricultural resources to a level of less than significant.	The SEIR evaluates the worst case situation that all discharges include buffer strips, but is not required to evaluate economic costs under CEQA. Staff Report, Appendix F provides information about the costs of different methods to reduce erosion, which would be the purpose of buffer crops. See responses to Letter 79 (Comment No. 497 and Comment No. 500).
Comment No. 566 from County of Santa	Mitigation Measure #3: Dischargers could eliminate any activities that cause erosion, generate sediment, or otherwise may cause or contribute to exceedances of water quality	The dischargers are required to develop and implement management practices to control discharges of waste to waters of the state, not the Water Board. See response to Letter 97

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Barbara. Letter No. 97, p.5.	standards for turbidity, sediment and temperature, near a waterbody so may not need to install a buffer. The SEIR should identify the types of activities for this measure that cause erosion, generate sediment, or otherwise may cause or contribute to exceedances of water quality standards for turbidity, sediment and temperature, near a waterbody which, when eliminated, effectively mitigate this impact to a level of less than significant. Additional analysis of this measure should be included in the document.	(Comment No. 564).
Comment No. 567 from County of Santa Barbara. Letter No. 97, p.5.	Mitigation Measure #4. Dischargers may choose to install a riparian habitat buffer and find that it decreases erosion on the farm and serves to help maintain soil and sediment on the farm. The SEIR should identify the types of riparian habitat buffers that decrease erosion. There is no discussion of the type of vegetation, maintenance requirements, and/or irrigation needs for buffers that will help maintain soil and sediment on agricultural lands. Furthermore, there is no analysis demonstrating that this measure will effectively mitigate this impact to a level of less than significant. Additional analysis of this measure should be included in the document.	See response to Letter 97 (Comment No. 564).
Comment No. 568 from County of Santa Barbara. Letter No. 97, p.5.	It is unclear if the use of sediment basins is an agricultural resource impact or is presented as a mitigation measure. "Staff does not anticipate the installation of sedimentation basins taking a large amount of land out of production and does not find this impact to be significant." The SEIR should clarify if sediment basins are proposed as a mitigation measure to reduce the conversion of farmland or agricultural resources to a level of less than significant. As a mitigation measure additional discussion should be included which defines the thresholds which trigger the use of a sediment basin, appropriate type, size, level of permanence, cost to install, maintain and/or remove etc.	Sediment basins may be one method of compliance with the Ag Order to reduce discharges of waste to waters of the state, but is not a mitigation measure. See response to Letter 97 (Comment No. 564).
Comment No. 569 from County of Santa Barbara. Letter No. 97, p.6.	It is unclear if conversion of agricultural resources or farmland due to economic pressure is considered an agricultural resource impact. It is possible that the economic burden of new requirements for the draft 2011 Agricultural Order (i.e. fees paid for required studies and monitoring) and compliance (implementation of mitigation measures) may result in some agricultural businesses ceasing	The CEQA Guidelines state that economic or social effects of a project shall not be treated as significant effects on the environment. See Cal. Code Regs. tit., 14, §15131, subd. a). If economic or social changes result in physical changes to the environment, those impacts might be considered in certain cases. Conversion of agricultural resources due to economic pressure is not, therefore, considered a significant

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	operations. This may result in conversion of agricultural land to non-agricultural uses, particularly where those agricultural lands are nearby or adjacent to urban or suburban uses.	environmental impact. There is no significant evidence in the record to support a conclusion that economic or social effects will result in significant adverse physical changes in the environment. Commenters have suggested that may be the case, but have only speculated that growers might go out of business or reduce their business. The 2004 Ag Order and the 2011 Draft Order require dischargers to implement management practices to control discharges of waste to waters of the state. Dischargers are required by law to control such discharges; the 2011 Draft Ag Order does not require new or different management practices than were used to comply with the 2004 Ag Order. Staff has clarified the Draft SEIR.
Comment No. 570 from County of Santa Barbara. Letter No. 97, p.6.	The SEIR presents five activities that operators may adopt to reduce the cost of compliance with the proposed project. No analysis is presented which substantiates the relationship between implementation of these five activities and mitigation for potential loss of farmland and agricultural resources. The SEIR should clarify whether conversion due to economic pressure is an impact and provide additional analysis on measures that will mitigate this impact.	See response to Letter 97 (Comment No. 569).
Comment No. 571 from County of Santa Barbara. Letter No. 97, p.6.	<p>This SEIR acknowledges that the proposed project "...could result in reduction in surface water flows that could in turn result in potentially significant adverse environmental effects on biological resources that would be more severe than identified in the Negative Declaration for the 2004 Agricultural Order." This section also indicates, "Staff finds that implementation of the Order will have a net positive impact on biological resources, including reduction of pollutants in receiving water and groundwater and overall habitat improvements."</p> <p>It is unclear from the narrative presented in this section what impacts were identified and what, if any, mitigation measures are proposed. Table 1. Changes in Environmental Checklist from 2004 Agricultural Order to the 2011 draft Agricultural Order identified potentially significant impacts for Biological Resource areas A, B, C, and D. Table 1 should be expanded to include mitigation measures for potentially significant impacts to biological</p>	<p>The SEIR identified certain species that may be affected by reduced flow and explains why. "Some of the species that may be affected by reduced flow include: California red-legged frog, Gambel's water cress, La Graciosa thistle, least bell's vireo, marsh sandwort, seaside bird's beak, southern steelhead - southern California, steelhead - Central California Coast, steelhead - south/central California coast, southwestern willow flycatcher, and the tidewater goby. These species were singled out as potentially being affected because of their water requirements either for habitat and/or reproductive purposes." (Appendix H, Section 4.2.3, pg. 17) The SEIR also identifies some of the beneficial impacts of reduced flows. The CEQA Guidelines specify that no additional EIR shall be prepared except in very limited circumstances as set forth in CEQA Guidelines section 15162(a). The 2004 Negative Declaration found no impacts. The Water Board staff compared the 2004 Ag Order with the 2011 Draft Ag Order and other potential alternatives and found that there are changes proposed to the</p>

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	resources as well as beneficial impacts.	<p>2004 Ag Order that could potentially result in impacts more severe than evaluated in the 2004 Negative Declaration, so chose to prepare an SEIR for the specific impacts identified, in this case biological resources. Commenters asserted that the effects on biological resources would be more severe than under the 2004 Ag Order. The 2011 Draft Ag Order does not change the compliance requirements as compared to the 2004 Ag Order. It continues to require use of management practices to comply with the Water Code; and it provides more detail and direction to assure compliance with the Water Code and additional monitoring to determine the effectiveness of the management practices. The Water Board may not specify the manner of compliance with its orders so it can only speculate on what methods growers may choose to comply with the Water Code and the Basin Plan. Among those methods are the use of buffer strips, sediment basins, and reduced water use that were identified in comments and staff review of the record. Those types of compliance methods are not any different than those that would be used to comply with the 2004 Ag Order. Because dischargers may comply with the Ag Order in any lawful manner, staff can only speculate as to which methods and how many dischargers might choose to comply in a way that would result in significantly lower flows, that in turn could result in potentially significant environmental effects. The SEIR evaluates the possibility that a significant number of dischargers could implement management practices that could result in reduced flows. The reason for apparent inconsistencies in the SEIR is that it is unlikely that all growers will simultaneously take actions that would result in reduced flows on a particular watershed. In addition, reduced flows with reduced toxicity could be beneficial to the environment. The SEIR identifies benefits of reduced flows on the environment, but not specific mitigation measures. The Water Board will consider specific findings as required by the CEQA Guidelines. The Draft SEIR has been clarified to address the commenter's concern.</p>
Comment No. 572 from County of Santa Barbara. Letter No.	The SEIR recommends that Mandatory Findings of Significance be changed from no impact to potentially significant impact. The SEIR should analyze, disclose, and mitigate for the potentially significant impacts identified in this document.	With respect to biological resources, the SEIR discloses that impacts could be more severe than those evaluated in the 2004 Negative Declaration, but since the Water Board may not specify the manner of compliance, it would only be speculation to determine what methods might be

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97, p.6.		used that could result in the impacts. The SEIR identifies benefits of reduced flows on the environment, but not specific mitigation measures. The Water Board will consider specific findings as required by the CEQA Guidelines.
Comment No. 573 from County of Santa Barbara. Letter No. 97, p.6.	This section contains a discussion that provides no analysis of greenhouse gas emissions associated with the proposed project and recommended mitigation measures. Furthermore, the document concludes that there will be "no impact" as a result of the proposed project. This section should be expanded to include a thorough discussion, analysis, disclosure and mitigation for any adverse environmental impacts associated with greenhouse gas emissions.	Staff did analyze greenhouse gas emissions associated with the proposed project and found there would be no impact on greenhouse gas emissions and may in fact be a beneficial outcome. Staff clarified the Draft SEIR in response to the comment by noting the potential for less fertilizer use and likely less N ₂ O emissions.
Comment No. 574 from County of Santa Barbara. Letter No. 97, p.7.	<p>Pursuant to CEQA Guidelines Section 15128 the SEIR should include a discussion of the issues that were found not to be significant associated with the revisions to the agricultural order. This section states, "This SEIR addresses only those impacts found to be potentially more severe than previously identified in the 2004 Negative Declaration. See attached 2004 Negative Declaration for discussion of no impacts."</p> <p>A new Initial Study or other analysis which explicitly addresses the findings in CEQA Section 15162 is necessary in order to substantiate the conclusion that no other impacts in the 2004 Initial Study and Negative Declaration for the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands remain less than significant. The information as presented in the SEIR is unsubstantiated and conclusory.</p>	The SEIR includes a copy of the 2004 Negative Declaration and checklist and a portion of the checklist revised to identify the topics where new potentially significant environmental effects have been identified. The topics were identified based on comments received at the scoping meeting, written comments submitted to the Water Board, and the record.
Comment No. 575 from County of Santa Barbara. Letter No. 97, p.7.	This section refers to an evaluation of worst case scenarios with respect to agricultural and biological resources as discussed in a document that is not identifiable. The line item listing this document states "Error! Reference source not found." This section should be corrected to include the name of the document used to analyze cumulative impacts and this document should be attached as an appendix to the SEIR. The absence of this information as an appendix of the SEIR precludes substantive review of cumulative impacts.	This section was corrected. The correct reference is Section 4, Potential Impacts.
Comment	The parameters of the CEQ A analysis are too	The CEQA Guidelines preclude the Water Board

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No. 577 from Jensen Family Farms, Inc. Letter No. 109, p.3.	<p>narrow and are intentionally designed to produce a negative declaration rather than a realistic identification and assessment of the significant environmental impacts of the Proposal. Rather than, as it should have and as CEQA demands, consider the impacts on the environment that would be created by use of the two or three specific technologies available by which compliance with such guidelines may be accomplished, the Staff reasoned that the proscription of Water Code § 13360 which precludes the Board from specifying which technologies must be used created a purported lack of knowledge as to what those technologies are so that, in a syllogistically unsound conclusion, it "can only speculate with respect to the extent there could be adverse environmental effects because it is not known with specificity what actions dischargers may take to comply." That is wrong for numerous reasons and, in fact, creates a Catch-22 for the Board: since technological feasibility (the existence of technology by which compliance with the pollution guidelines can be accomplished) is a <u>sine qua non</u> requirement for the Proposal to not be arbitrary and unreasonable, either such technology exists and the Staff must set forth the foreseeable environmental impacts of its use) or no such technology exists in which case the Proposal may not be adopted.</p>	<p>from preparing an SEIR except in certain narrowly proscribed circumstances. See Cal. Code Reg. § 15162, subd. (a). The SEIR evaluates the likely methods of compliance and the potential adverse environmental impacts to the extent required by the CEQA Guidelines. The Water Board is not required to reconsider the 2004 Negative Declaration since the action proposed is to renew the 2004 Ag Order. See also response to Letter 79 (Comment No. 496).</p>
Comment No. 578 from Jensen Family Farms, Inc. Letter No. 109, p.4.	<p>The CEQA analysis of alternatives is facially inadequate in that it fails to include a discussion of the "no project alternative" option.</p>	<p>The SEIR includes a discussion of the "no project alternative." See SEIR at pg. 26, section 8.1. Under the CEQA Guidelines, when the project is the revision of an existing regulatory plan or policy, the "no project" alternative is the continuation of the existing plan or policy. See Cal. Code Regs. § 15126.6, subd. (c)(3)(A). In this case, the "no project" alternative would be the continuation of the 2004 Ag Order. As that Order was already the subject of a Negative Declaration, the Water Board is not required to conduct a new CEQA analysis of that alternative. See Cal. Code Regs. § 15162, subd. (a). The Water Board could consider the "no-project" alternative to be not to renew the 2004 Ag Order at all. However, the Water Board is not required to conduct a detailed analysis of alternatives that do not meet the project objectives. A "no order" alternative does not meet the project objectives to provide a waiver of waste discharge requirements as a mechanism for agricultural dischargers to comply with the</p>

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		Water Code. See Cal. Code Regs. § 15126.6, subd. (f). See also response to Letter 79 (Comment No. 496).
Comment No. 579 from Jensen Family Farms, Inc. Letter No. 109, p.4.	The CEQA analysis, including significant environmental effects of the application of the presently available technological means of obtaining compliance, requires the preparation of a full EIR prior to further consideration of the Proposal and ultimate rejection of the Proposal due to the significant negative impacts on the environment it would create.	See response to Letter 79 (Comment No. 496).
Comment No. 580 from Jensen Family Farms, Inc. Letter No. 109, p.4.	The underpinning of the entirety of the Proposal's reporting and compliance regime is based on what is, in the view of Staff, "administratively convenient" even though "administrative convenience" is a State interest that is inadequate to support such a regime and, in any event, the California Environmental Quality Act, Cal.Pub.Res.Code § 21000 et seq. ("CEQA"), precludes the elevation of administrative convenience over environmental concerns and interests.	Persons who discharge waste to waters of the state are required to comply with the Water Code either by obtaining waste discharge requirements or a waiver of waste discharge requirements. There are approximately 3000 farms in the Central Coast Region that irrigate and discharge waste to waters of the state, including groundwater and surface water. The Water Board could require each individual person to submit an application for (report of waste discharger under Water Code section 13260) and obtain waste discharge requirements or it can adopt a waiver of waste discharge requirements that simplifies the process for complying with the Water Code. The existing 2004 Ag Order and the 2011 Draft Ag Order provide a mechanism for dischargers to comply with the Water Code in a more efficient manner for both the dischargers and the Water Board. Administrative convenience was not a basis for preparing an SEIR, but is one of the reasons for using a waiver rather than issuing waste discharge requirements. The SEIR is consistent with the CEQA Guidelines. See also response to Letter 79 (Comment No. 496).
Comment No. 581 from Jensen Family Farms, Inc. Letter No. 109, p.8.	The Staffs failure to comply with the requirements of Water Code § 13260 not only dooms the environmental analysis but, more tellingly, highlights the intrinsic weaknesses of the CEQA analysis and conclusions contained in the Proposal (which is a matter discussed below). Section 13240, of course, commands the Regional Board to "formulate and adopt water quality control plans [4] for all areas within the region. "... During the process of formulating such plans the regional boards shall consult with and consider the recommendations of affected state and local agencies ..." (Emphasis supplied)	The adoption of an order waiving waste discharge requirements under Water Code section 13269 does not constitute the adoption of a plan under Water Code section 13240. Orders waiving waste discharge requirements must, in fact, assure implementation of plans adopted under Water Code section 13240. The existing 2004 Ag Order and the 2011 Draft Ag Order require dischargers to implement management practices or control or treatment technologies to comply with the Basin Plan. The Water Board complied with CEQA. Staff issued a notice of preparation to the Office of Planning and Research and to each responsible and trustee agency, including the Resources Agency, Department of Conservation; Department of Fish and Game, Region 4; Department of Fish

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		<p>and Game, Region 5; Department of Parks and Recreation; Department of Water Resources; Resources, Recycling and Recovery; California Highway Patrol; Caltrans, District 5; CA Department of Public Health; Department of Toxic Substances Control; Native American Heritage Commission; State Lands Commission; Department of Food and Agriculture; Department of Pesticide Regulation. During the public review period, which was November 23, 2010 - January 6, 2011, staff did not receive any comments from these agencies. Staff did receive comments from Caltrans, California State Lands Commission and the Native American Heritage Commission based on the notice of preparation. Additionally, the 2011 Draft Order and the SEIR have been posted on the Central Coast Water Board's website since November 19, 2010. The Water Board has held several public meetings and workshops and Staff has also held many public meetings and provided notice to public agencies and encouraged their attendance. Additionally, staff has had numerous phone calls and email correspondence with many of the above listed agencies. See the table of public meetings in Section 4 of the Staff Report. Representatives of the Department of Fish and Game and the Department of Pesticide Regulation, along with several other agency representatives, attended an Interagency meeting convened by Water Board staff on April 28, 2010 to provide input on the Draft Ag Order. Additionally, representatives from these two agencies attended the Water Board Public Meeting on September 2, 2010 and provided general descriptions of their authorities relative to the Water Board's authorities, and answered questions from Board members regarding the conditions in the Draft Ag Order. See transcript of the Board meeting discussion in Appendix D of the Staff Report.</p>
<p>Comment No. 582 from Jensen Family Farms, Inc. Letter No. 109, p.10.</p>	<p>The result of Staff's failure to consult other agencies charged with various aspects of pollution control is obvious: it causes an exclusive focus only on matters relating only to water quality and ignores, in their entirety, significant impacts created by the proposal on the air, view, and economic matters (Gust to name three). In that way, the Staff could, quite frankly, write a CEQA analysis recommending only a negative declaration be prepared and which excludes any and all consideration of realistic, foreseeable impacts on the</p>	<p>The Water Board adopted a Negative Declaration when it adopted the 2004 Ag Order. In renewing the 2004 Ag Order, the CEQA Guidelines prohibit the Water Board from preparing a SEIR except in certain circumstances. The SEIR complies with the CEQA Guidelines. See also response to Letter 79 (Comment No. 496). Consistent with the CEQA Guidelines, staff solicited comments from public agencies and based on those comments prepared an SEIR for specific areas where new potentially significant environmental effects were identified.</p>

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	environment as a whole occasioned by the implementation of the Proposal and the compliance therewith by the farming and viticulture industries.	
Comment No. 583 from Jensen Family Farms, Inc. Letter No. 109, p.12.	[The CEQA analysis] focuses entirely on only the purported "direct" impact of the proposal itself without factoring in the Proposal's implementation by the agricultural community in order to comply with the guidelines set by the Board relative to purification of irrigation water running off the land to drinking water purity. It thus creates its own little world where the water is purer but, in the cause of such purity, the remainder of the environment is left to go to hell.	The Water Code requires persons who discharge waste to waters of the state to control the discharges to protect waters of the state for their beneficial uses. The Water Board is required to implement the Water Code and to require compliance with State and Regional Board plans and policies. See Cal. Wat. Code §§13000, 13269. The Water Board is not allowed to authorize waste discharge as beneficial use of waters of the state. The Water Board expects dischargers to make reasonable efforts to comply with the Water Code by participating in the ag waiver program. Dischargers may seek individual waste discharge requirements in groups or as individuals to have a more site-specific program.
Comment No. 584 from Jensen Family Farms, Inc. Letter No. 109, p.13.	The methodology chosen by the Staff is simply stated by it: "The Water Board staff has not received any specific evidence by commenters and has little evidence in the record to demonstrate conclusively that the proposed draft 2011 Agricultural Order will result in significant adverse environmental effects on agricultural or biological resources. The Water Board staff expects that compliance with the proposed draft 2011 Agricultural Order will result in significant beneficial impacts on the environment. The Water Board must require compliance with water quality standards and consistency with its water quality control plan (Basin Plan). The existing 2004 Agricultural Order and the proposed draft 2100 [sic] Agricultural Order set forth conditions to achieve compliance with the water quality standards and the Basin Plan. Compliance with the conditions will result in environmental benefits. As set forth in Water Code section 13360, the Water Board may not specify the manner of compliance with orders of the Board; the discharger may comply with the order in any lawful manner. As a result, the Water Board can only speculate with respect to the extent there could be adverse environmental effects because it not known with specificity what actions discharger may take to comply. There is not sufficient information to determine the scope of any changes in environmental effects and any potential impacts are very speculative." Draft	The CEQA Guidelines state that economic or social effects of a project shall not be treated as significant effects on the environment. See Cal. Code Regs. tit., 14, §15131, subd. a). If economic or social changes result in physical changes to the environment, those impacts might be considered in certain cases. Conversion of agricultural resources due to economic pressure is not, therefore, considered a significant environmental impact. There is no significant evidence in the record to support a conclusion that economic or social effects will result in significant adverse physical changes in the environment. Commenters have suggested that may be the case, but have only speculated that growers might go out of business or reduce their business. The 2004 Ag Order and the 2011 Draft Order require dischargers to implement management practices to control discharges of waste to waters of the state. Dischargers are required by law to control such discharges; the 2011 Draft Ag Order does not require new or different management practices than were used to comply with the 2004 Ag Order. Staff has clarified the Draft SEIR.

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	Order at p. 8. (emphasis supplied). That is sophistic and erroneous.	
Comment No. 585 from Jensen Family Farms, Inc. Letter No. 109, p.13.	This is illustrated by the following example which presents a close analogy to the position taken by Staff: an applicant wants to build a large tallow/fertilizer/pesticide plant powered by an in-house nuclear reactor on the banks of the Salinas River. Under the Staff's analytical framework, as far as this Board is concerned only a negative declaration would be required since the construction of the plant would be beneficial to the environment since acres of farmland would be covered in concrete (and thus not leach nitrates or anything else into the soil and waters of the River), and it would be "speculative" to assume that the plant would be built and/or that it would, after being built, ever operate. Can it reasonably be said that the Regional Board would approve such a project without a full EIR? If not (and the only reasonable answer is that it would not) then no reason exists why what is "good for the goose is not good for the gander" as well. The Board's status as a governmental agency does not place it in a different position than a private-sector entity when it comes to the responsibility and necessity of performing a full and accurate environmental analysis.	The 2004 Ag Order and the 2011 Draft Ag Order require dischargers to develop and implement management practices to control discharges of waste to waters of the state that impact the beneficial uses. The Water Board adopted a Negative Declaration for the 2004 Ag Order. Consistent with the CEQA Guidelines, the Water Board may only consider new significant environmental impacts of changes between the 2004 Ag Order and the proposed renewal of that Order. The SEIR complies with CEQA Guidelines. See also response to Letter 79 (Comment No. 496). The SEIR and the Staff Report and appendices identify reasonably foreseeable means of compliance and the impacts associated with them. It is extremely unlikely that a person would attempt to comply with the Water Code by building a nuclear reactor and if so, the Water Board would not be the lead agency to approve such a project.
Comment No. 586 from Jensen Family Farms, Inc. Letter No. 109, p.13.	As discussed below, Staffs insistence that only concrete effects may be considered is without support in the law for the very simple reason that CEQA looks to the existence of "potential" effects and very much relies on foreseeability of effects rather than their concrete present existence. Further, the position taken by Staff essentially creates a Catch-22 in terms of determining whether the Proposal is arbitrary, unreasonable, and capricious which obtains to the detriment of the Proposal. The promulgation of a pollution regulatory regime requiring compliance (as the Proposal here does) must rest on the concept of "technological feasibility." That is, technology must exist or will exist in the timeframe set for compliance to begin by which compliance with the regulation's guidelines can be accomplished. See... [citations]. If it does not then the regime is arbitrary, unreasonable, and capricious. Since Staff obviously would not want that to happen here, it is safe to say that the Staff is familiar with the 3 primary technological means by which compliance might	The SEIR evaluates the new potentially significant environmental effects of changes proposed in renewing the 2004 Ag Order. Neither the 2004 Ag Order, nor the 2011 Draft Ag Order suggests that a discharger is required to implement reverse osmosis or reverse ion exchange to deal with waste discharges.

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	<p>be achieved (and this is particularly so since they were set out at length in our March 31, 2010 letter to the Board regarding its prior Proposal). Those 3 technologies are: (1) reverse osmosis, (2) reverse ion exchange, and (3) catchment basins located on each farm into which all water drains and from which no water is released that will flow into rivers and other bodies of water of concern to the Board.</p>	
<p>Comment No. 587 from Jensen Family Farms, Inc. Letter No. 109, p.14.</p>	<p>It must be and is reasonably foreseeable or anticipated by the Board that the owners or operators of agricultural lands will use one or more of the just-delineated three technologies in order to comply with the Proposal guidelines for purifying water. That is all that is required for them to be included in the analysis of significant environmental impacts. It is obvious that the Staff chose to not consider them due to the realization of the immensely significant negative impacts on the environment that the use of one or more of these technologies create. That is not what CEQA permits or allows to be done... Thus, the failure to analyze the foreseeable impacts of the three technologies dooms Staffs analysis and requires that it be rejected out of hand.</p>	<p>See response to Letter 79 (Comment No. 496) and Letter 109 (Comment No. 586). The commenter mischaracterizes the requirements of the 2011 Draft Order.</p>
<p>Comment No. 588 from Jensen Family Farms, Inc. Letter No. 109, p.14.</p>	<p>The conclusion of the Staff's Initial Study and Environmental Checklist - if adopted - is inconsistent with and violates CEQA. That conclusion, of course, is that the Proposal is good for the environment and, in "fact" is so "good" that it will not have any negative impact. Ignoring the use of the only technologies by which compliance with the Board's guidelines can be conceivably met, Staff's conclusion is based on a determination, made with regard to the 79 (excluding subparts) sections appearing on the CEQA Environmental Checklist (which is composed of 17 separate categories), that the impact runs the gamut from "no impact" on 75 of them and "less than significant impact" on the remaining 4. Those four deal with the conversion of farmland to non-agricultural use and the effect on the riparian habitat or wetlands. As a result of that conclusion, no Environmental Impact Report ("EIR") on the proposal as it would be adopted, including actions necessary to comply with its terms, would be required in the opinion of the Board. Such a conclusion is both factually and legally incorrect.</p>	<p>See response to Letter 79 (Comment No. 496).</p>

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<p>Comment No. 589 from Jensen Family Farms, Inc. Letter No. 109, p.14.</p>	<p>Indeed, it either fails to recognize or take into account the actual or potential significant environmental impacts on 11 of the 17 categories listed in the CEQA checklist including, notably the following numbered items:</p> <p>(1) Aesthetics (impacts on scenic vistas and resources through, among other things, the construction of numerous and sizeable water treatment facilities (such as large reverse osmosis equipment) on lands abutting or otherwise adjacent to major scenic thoroughfares such as Highway 101, Highway 1 (Pacific Coast Highway), Highway 46 (in San Luis Obispo County), River Road (in Monterey County), Halcyon Road (in San Luis Obispo County), Vineyard Drive (in San Luis Obispo County), and Highways 154 and 246 (in Santa Barbara County);</p> <p>(2) Agricultural resources (the imposition of a 30 foot buffer zone replacing agricultural lands abutting such things as the Salinas River and all streams and sloughs discharging water into the river or Monterey Bay translates directly into the loss of literally thousands of acres of now-fertile and producing agricultural lands);</p> <p>(3) Air quality (additional air pollution arising from the introduction of literally thousands of agricultural land-sited diesel-fueled water treatment facilities, as well as from additional vehicle traffic arising from the need to service such facilities (including the removal of the water purification chemical byproducts as well as the purified water [the latter being available for bottling and commercial sale as drinking water], pollution caused by the construction and working of local facilities to treat the chemical byproducts and to-be-bottled water);</p> <p>(4) Biological resources (the potential loss of discharged water draining into the rivers and bodies of water in the Coastal Region due to the sale, by the farmers either independently or cooperatively, of the drinking-water pure water produced on their lands would directly impact the amounts of water in which protected or "of concern" species live);</p> <p>(7) Hazards and Hazardous Materials (arising from the transport, use or disposal of chemicals</p>	<p>See response to Letter 79 (Comment No. 496). The Water Board is not required to redo the 2004 Negative Declaration, but is only allowed to consider new potentially significant environmental effects not previously evaluated.</p>

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	<p>and other by-products of the water purification process by famers either independently or cooperatively);</p> <p>(8) Hydrology and Water Quality (including those items discussed with regard to biological resources ante, depletion of ground water resources or interference with ground water discharge, alteration of the existing drainage patters);</p> <p>(11)Noise (the addition of noise from the operation of the treatment facilities, traffic related- to the maintenance and care of those facilities as well as transportation of by-products);</p> <p>(12)Population and Housing (including the loss of population that would result from the loss of land presently used for agricultural purposes from imposition of the various buffers and setbacks which would thus displace substantial numbers of people, necessitating the construction of replacement housing elsewhere);</p> <p>(15) Transportation/Traffic (increase in the number and frequency of vehicle usage of the highways and roads due to the need for servicing of the treatment facilities, construction of those facilities, the removal of by-products, and other related matters);</p> <p>(16)Utilities and Service Systems (construction of numerous new water treatment facilities on each farm or tract of land within the Region that presently "discharges" water that will produce the significant environmental effects discussed herein); and,</p> <p>(17)Mandatory findings of significance (cumulative considerable impacts on the environment which will cause substantial adverse effects in terms of income and other matters relating to the human environment).</p>	
<p>Comment No. 590 from Jensen Family Farms, Inc. Letter No. 109, p.16.</p>	<p>Quite simply, the information upon which the proposed negative impact finding is based is woefully incomplete as to the scope of matters considered, and woefully in error regarding the matters it has interpreted and applied as have just been listed and which will be further discussed below. That insufficiency and</p>	<p>Please see response to Letter 109 (Comment No. 581) where staff identified reviewing agencies.</p>

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	<p>incorrectness may, among other factors, be due to the apparent lack of coordination and consultation with other governmental agencies, including those involved in pollution-control matters, as to the actual or likely negative significant affects on the environment posed by the Proposal. As mentioned above, these agencies include the California Coastal Commission (which is charged with responsibility for matters occurring in the coastal zone, an area that is includes within its parameters much of the agricultural lands covered by the Proposal which are located on Monterey County's North Coast, San Luis Obispo County's South Coast), and Santa Barbara County's North Coast), the California Air Resources Board (that has issued regulations dealing with air pollution produced by diesel engines used in agricultural operations), the Monterey Bay Unified Air Pollution Control District (which has also issued Rules dealing with air pollution caused by diesel engines used in agricultural operations), CalTrans, California's Department of Pesticide Regulation, and the federal Environmental Protection Agency (due to the significant amounts of land owned by the federal government and its agencies, including the Department of Agriculture's Old Stage Road operation and Hartnell College's East Campus in Salinas, are of which are located in the Region and directly impacted by the Proposal.)</p>	
<p>Comment No. 591 from Jensen Family Farms, Inc. Letter No. 109, p.16.</p>	<p>At the end of the day, it all comes down to this: consideration of the actual water purification equipment and infrastructure that the Proposal requires farmers to build and install on their lands (with all of the related activities arising from the operation and maintenance of that equipment combined with the need to make up, wherever possible, the significant loss in income occasioned by having to retire a hefty portion of their land due to the 30-foot setoff requirement) combined with just plain common sense clearly shows that the Proposal's impact on the environment would be, at a minimum, potentially significant (with or without any mitigation).</p>	<p>The 2004 Ag Order and the 2011 Draft Ag Order require dischargers to implement management practices to control discharges to protect beneficial uses of waters of the state. The methods of compliance have not changed since the 2004 Ag Order was adopted, so the Water Board is not required to reconsider the 2004 Negative Declaration except as required by the CEQA Guidelines. See response to Letter 79 (Comment No. 496).</p>
<p>Comment No. 592 from Jensen Family</p>	<p>There is, of course, more. All information leads to the conclusion that if this Proposal is adopted as proposed, the Board will violate CEQA by issuing what amounts to nothing more than a</p>	<p>See response to Letter 79 (Comment No. 496). The "fair argument" standard does not apply to the decision to prepare a subsequent EIR. See, e.g., <i>Bowman v. City of Petaluma</i> (1st Dist. 1986)</p>

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Farms, Inc. Letter No. 109, p.16.	negative declaration (or, at the most, the "functional equivalent" of one) when a "full EIR" is required because "substantial evidence of a fair argument" exists that the Proposal and its implementation may result in "significant environmental impacts."	185 Cal. App. 3d 1065, 1073-1074).
Comment No. 593 from Jensen Family Farms, Inc. Letter No. 109, p.17.	In order to make clear the requirements that are not being met by the Proposal's consideration of environmental impacts, Jensen's understanding of the requirements of CEQA should first be iterated. As the California Supreme Court noted in <i>Sierra Club v. State Bd. Of Forestry</i> , 7 Cal.4th 1215, 1233 (1994), "CEQA compels government first to identify the environmental effects of projects, and then to mitigate those adverse effects through the imposition of feasible mitigation measures or through the selection of feasible alternatives." If a project - such as the Proposal and its implementation - does not have feasible alternatives or mitigation measures that can substantially lessen or avoid those effect, the project should not be approved. See <i>Mountain Lion Foundation v. Fish & Game Com.</i> , 16 Cal4th 105, 134 (1997). CEQA is implemented through initial studies, negative declarations and EIR's. It requires a governmental agency - such as the Board in its capacity as Lead Agency on his particular "project" -- to prepare an EIR whenever it considers approval of a proposed project that "may have a significant effect on the environment." <i>Quail Botanical Gardens Foundation, Inc. v. City of Encinatas</i> , 29 Cal.App.4th 1597, 1601 (1994); Cal. Pub.Res. Code § 21100. Thus, if there is no substantial evidence a project "may have a significant effect on the environment" or the initial study identifies potential significant effects, but provides for mitigation revisions which make such effects insignificant, a public agency must adopt a negative declaration to such effect and, as a result, no EIR is required. Cal.Pub.Res. Code §§ 21980(d), 21064. However, the Supreme Court has repeatedly recognized that an EIR must be prepared and a negative declaration cannot be certified :whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact. <i>No Oil Co. v. City of Los Angeles</i> , 13 Ca1.3d 68, 75 (1974).	Comment noted. See also response to Letter 79 (Comment No. 496).
Comment	The Board must include a completed	The State Water Board regulations cited do not

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No. 595 from Jensen Family Farms, Inc. Letter No. 109, p.18.	environmental checklist prescribed by the State, and a written report addressing reasonable alternatives to the proposed activity and mitigation measures to minimize any significant adverse environmental impacts. 23 C.C.R. § 3777(a). The governing regulations further provide that the "board shall consult with other public agencies having jurisdiction by law with respect to the proposed activity and should consult with persons having special expertise with regard to the environmental effects involved in the proposed activity." 23 C.C.R. § 3778. The Board must also "prepare written responses to the comments containing significant environmental points raised during the evaluation process." lib at § 3779.	apply to the adoption of a waiver of waste discharge requirements. Those regulations apply to certified regulatory programs, such as adoption of water quality control plans and policies. The Water Board is not required to prepare an environmental checklist to support a decision to prepare a subsequent EIR. See, e.g., <i>Friends of Davis v. City of Davis</i> (3d Dist. 2000) 83 Cal. App. 4 th 1004, 1018. In this case, the Water Board staff, while not required to, evaluated the checklist for the 2004 Negative Declaration and included a revised portion of that checklist in the SEIR where the information in the record supported the need for considering potentially new significant impacts.
Comment No. 596 from Jensen Family Farms, Inc. Letter No. 109, p.18.	<p>Assuming that the Proposal is certified as CEQA exempt, the preparation and approval process for basin plans is the "functional equivalent" of the preparation of an EIR contemplated by CEQA. It is as true in that instance, as it is where a noncertified program is involved, that in those instances where it is determined that a "negative declaration" is approved that such may not be based on a "bare bones" approach in a checklist. See <i>Snarled Traffic Obstructs Progress v. City and County of San Francisco</i>, 74 Cal.App4th 793, 797 n. 4 (1998). In those instances, judicial review of the certified and noncertified project EIR or negative declaration mirror each other. See <i>County of Santa Cruz v. State Bd. Of Forestry</i>, 64 Cal.App4th 826, 8309 (1998). As was noted in State Water Resources Control Bd. Cases, 136 Cal.App4th 674, 723 (2006):</p> <p>"In a mandate proceeding to review an agency's decision for compliance with CEQA, we review the administrative record to determine whether the agency abused its discretion. 'Abuse of discretion is shown if (1) the agency has not proceeded in a manner required by law, or (2) the determination is not supported by substantial evidence.' 'When the informational requirements of CEQA are not complied with, an agency has failed to proceed in "a manner required by law" and has therefore abused its discretion.' Furthermore, 'when an agency fails to proceed as required by harmless error analysis is inapplicable. The failure to comply with the law subverts the purposes of CEQA if it omits material necessary to informed</p>	The adoption of a waiver of waste discharge requirements is not a certified regulatory program.

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	decision making and informed public participation. Case law is clear that, in such cases, the error is prejudicial.' (Internal citations omitted, emphasis supplied). See also <i>County of Amador v. El Dorado County Water Agency</i> , 76 Cal.App4th 931, 945-946 (1999).	
Comment No. 597 from Jensen Family Farms, Inc. Letter No. 109, p.18.	A review of the environmental impact report presented to the Board reveals that it does not comply with the mandatory provisions for completion of an environmental checklist and report that describes the proposed activity, addresses reasonable alternatives, and sets forth mitigation measures to minimize any significant adverse environmental impacts. What exists is a situation where, if approved in its present form, the Board will merely offer a checklist that denied the project would have any environmental impact and obviously intended its documentation to be the functional equivalent of a negative declaration. Quite frankly, the Board has not considered all significant implications on the environment. Moreover, it is obvious that the proffered checklist that specifies no significant effect on the environment is either the product of insufficient inquiry or is designed to mislead the public in its considerations.	See response to Letter 109 (Comment No. 595).
Comment No. 598 from Jensen Family Farms, Inc. Letter No. 109, p.19.	The incepting point in discussing the significant impact on the environment that the Proposal will have upon its implementation is to describe the type of equipment or machinery that the Proposal requires the owners and operators of agricultural land to install on their land and operate in order to comply with the no-discharge requirements imposed by the Proposal. At no point was this done in the Proposal or related documents, indicating that the size, energy source, and other matters relating to those machines (including removal of the extracted chemicals and residues) was not factored into the environmental impact analysis. That, without more, is a fatal flaw. Current technology in these regards appears to present two different types of equipment: a reverse osmosis unit or a reverse ion exchange unit. Siemans Water Technology Corp. ("Siemans") is one of the prominent manufacturers and distributors of that type of equipment. A review of the various reverse osmosis equipment sold by it - all of which can be located at its official Internet website at www.Siemans.com/water - reveals that the units necessary to do that which	The 2004 Ag Order and the 2011 Draft Order require dischargers to implement management practices to protect the beneficial uses of waters of the state and comply with water quality standards. The methods of compliance have not changed since adoption of the 2004 Ag Order. The Water Board is not required to reconsider the 2004 Negative Declaration except in compliance with CEQA Guidelines section 15162, subd. (a). There is nothing in the 2004 Ag Order or 2011 Draft Order suggesting that dischargers must or are likely to implement this technology to comply with the Ag Order.

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	<p>the Proposal requires to be done (and, particularly in view of the need under the Proposal for the farmer to err on the side of having equipment that has too large a volume than that which has a smaller volume in terms of the amount of water purified per minute) are diesel-fuel powered and quite sizeable.</p>	
<p>Comment No. 599 from Jensen Family Farms, Inc. Letter No. 109, p.19.</p>	<p>One of the Siemens unit models that appear to be a prime candidate for agricultural use (since it has a flow rate of 25 to 150 gallons per hour, respectively) is described as having the overall dimensions (width x depth x height in inches) as follows: 168 x 40 x 78 201 x 41 x 78 196 x 56 x 90 277 x 56 x 91 277 x 58 x 91</p> <p>In other words, these units generally are at least 14 (and as large as 23) feet wide, 3.5 feet to 5.75 feet deep and 6.33 (to 7.6) feet high. That is "one big honking machine." Since such a unit would be needed at each discharge point (and since there are multiple discharge points per field), it can be easily comprehended (but certainly was not by the Proposal) that literally tens of thousands of these units would be placed on farm land in the Region. In each instance, operation of the equipment would produce by-products consisting of chemicals, salts, minerals, and other substances extracted from the water (which would likely have to be stored at least temporarily on site either in large metal storage containers or in lined open air pits in order to avoid leeching into the soil). Of course, the number of units might be marginally reduced by the construction of infrastructure on each farm (such as above-ground pipes) that would more centralize the discharge points. The purified water produced in the process could also be allowed to run off the land or could be retained and stored for sale as bottled water. (A review of bottled water sold in stores and markets in California reveals that a large amount of it, according to the mandated label notation, is the product of reverse osmosis. A trip to Costco and inspection of the Kirkland brand bottled water reveals this to be so.) Since each is a relatively sophisticated piece of equipment, each would require on-site maintenance (on both a routine and special-</p>	<p>The 2004 Ag Order and the 2011 Draft Order require dischargers to implement management practices to protect the beneficial uses of waters of the state and comply with water quality standards. The methods of compliance have not changed since adoption of the 2004 Ag Order. The Water Board is not required to reconsider the 2004 Negative Declaration except in compliance with CEQA Guidelines section 15162, subd. (a). There is nothing in the 2004 Ag Order or 2011 Draft Order suggesting that dischargers must or are likely to implement this technology.</p>

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	<p>needs basis) which would increase vehicle traffic. That increase in traffic would, of course, be made manifold by the increase in traffic occasioned by vehicles removing all of the by-products and sludge produced in the purification process (a particular need in order to avoid any untoward leakage back into the soil or discharge water). The cascading significant environmental impact caused by each unit - and, of course, the cumulative thousands of such units spread all over the 400,000 acres presently in production (although such acreage will be markedly reduced by the 30 foot set off) - was simply overlooked by the Board in its environmental analysis.</p>	
<p>Comment No. 600 from Jensen Family Farms, Inc. Letter No. 109, p.20.</p>	<p>So too was it overlooked that the Board is not the only body charged with being an environmental watchdog in the Coastal Counties. Surprisingly overlooked and apparently (if the Staff Report is to be believed) not included was the California Coastal Commission which is charged with implementation and enforcement of the California Coastal Act of 1976. Cal.Pub.Res. Code § 30000 et seq.. Pursuant to that Act, and specifically Pub.Res.Code § 30214, the Commission is charged with the following matter which most assuredly is impacted by the Proposal: "The maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the areas' agricultural economy." The Commission's jurisdiction includes the Coastal Zone. As defined in Cal. Pub.Res. Code § 30103(a), the coastal zone consists "that land ... of the State of California from the Oregon border to the border of the Republic of Mexico Extending inland generally 1,000 yards from the mean high tide line of the sea. In significant coastal estuarine, habitat, and recreational areas [such as Monterey County, San Luis Obispo County, and Santa Barbara County] it extends inland to the first major ridgeline paralleling the sea or five miles from the mean high tide line of the sea, whichever is less ... " Thus, areas of the Monterey County North Coast -e.g. from Marina to and past Castroville (that represents more than 80 percent of the</p>	<p>The Water Board appreciates your comment with respect to the Coastal Commission. The State Clearinghouse did not include the Coastal Commission when it circulated the Draft SEIR. Following receipt of your comment, staff provided the Coastal Commission with the appropriate documents for their review and comment and have added a contact to the interested persons list for ag regulation. There is nothing in the 2004 Ag Order or 2011 Draft Order suggesting that dischargers must or are likely to implement reverse osmosis technology to comply with the Ag Order.</p>

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	<p>artichokes grown in the world), including the areas around Elkhorn Slough and northward -- subject to the Proposal are all located in the Coastal Zone and thus are also subject to Coastal Commission determinations, particularly regarding the scenic viewshed.</p> <p>The Commission is, in fact, infamous for the zealousness with which it protects scenic views and viewshed of the California coast falling within its jurisdiction. It is difficult to believe that the Commission would not consider the placement of hundreds (and likely thousands) of large Siemens reverse osmosis units on farmland abutting the Pacific Coast Highway to not have a significant impact on that viewshed. Indeed, a coastal development permit is likely required for a farmer to even build such a facility on his land at all. See Cal.Pub.Res. Code § 30106, which defines a "development" subject to that permit to include "on land " the placement or erection of any solid material or structure; discharge or disposal of any gaseous, liquid, solid ... waste; change in the intensity of use of water or of access thereto; construction, reconstruction ... of ... any structure, including any facility of any private, public, or municipal utility"</p>	
<p>Comment No. 601 from Jensen Family Farms, Inc. Letter No. 109, p.21.</p>	<p>The Commission, which is also well known for rejecting projects because the EIR's or negative declarations submitted to it were deemed insufficient (although in comparison to the one done by the Board here such would be considered to the product of placing all considerations under a microscope and producing a tome on environmental impacts), would take great exception to a finding of "no impact" in terms of the traffic and vehicle air pollution that would accompany the installation, maintenance, and off-site removal of byproducts.</p>	<p>See responses Letter 109, (Comment No. 598 and Comment No. 599).</p>
<p>Comment No. 602 from Jensen Family Farms, Inc. Letter No. 109, p.21.</p>	<p>Concern with the scenic views along, for instance, the Highway 101 corridor from Buellton to Prunedale that would be significantly impacted by the placement of purification units all over the highway-adjacent fields was also overlooked by the Board. That such a scenic view exists is undeniable: it strikes something akin to awe to look on either side of Highway One at the long rows of green crops, the grape vineyards, the careful placement of walnut</p>	<p>See responses Letter 109, (Comment No. 598 and Comment No. 599).</p>

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	trees. The same is true when driving along Highway 46 surrounded on both sides by what seems to be miles of vineyards, or while driving to the top of Halcyon Road in Arroyo Grande (where it meets the Nipomo Mesa) and looking out at farm land stretching from the ocean to the bluffs and Highway 101.	
Comment No. 603 from Jensen Family Farms, Inc. Letter No. 109, p.21.	<p>Even more troubling than the failure to consult with the Coastal Commission is the failure to consult with or obtain air pollution information from the California Air Resources Board ("CARB") or the Monterey Bay Unified Air Pollution Control District. Concerned with the amount of emissions being released into the atmosphere by diesel-fueled engines used in agricultural operations throughout California (including the Salinas Valley), CARB issued regulations limiting such emissions. As set forth in CARB Resolution 3-30 (February 26, 2004, CARB had studied the effect of such emission and found:</p> <p>"Excessive diesel exhaust particulate matter emissions for stationary compression-ignition engines, most of which are diesel-fueled, are a significant source of toxic air contaminants which contribute significantly to serious air pollution in communities and across the State."</p> <p>This and other documents providing studies and the views of CARB concerning pollution caused by diesel-fueled engines used in agricultural operations may be found at the CARB's official Internet website at www.arb.ca.gov. Issued pursuant to Cal. Health & Safety Codes § 39666, 17 C.C.R. § 93115 sets fuel and emissions standards for and applies to "any person who owns or operates" "stationary CI engine in California with a rated brake horsepower greater than 50 (>50 bhp)." Section 93115 .2(b). The Monterey Bay Unified Air Pollution Control District, acting pursuant this authority, adopted and issued Rule 1010 which is entitled "Air Toxic Control Measure for Stationary Compression Engines," has as its stated purpose:</p> <p>"to reduce diesel particulate matter (PM) from stationary diesel-fueled compression ignition (CI) engines and consistent with California Health and Safety Code Section 39666(d) is a replacement rule for 17 California Code of</p>	<p>The 2011 Draft Order is a renewal of the existing 2004 Ag Order that was subject to the 2004 Negative Declaration. The CEQA Guidelines set forth the circumstances for preparation of an SEIR. The SEIR evaluates only those potentially significant environmental effects due to changes from the 2004 Ag Order. Both the 2004 Ag Order and the 2011 Draft Ag Order require implementation of management practices to protect the beneficial uses of waters of the state and comply with water quality standards. There is nothing to suggest that dischargers will be required to use the technology you suggest in significant numbers. The Draft SEIR complies with the CEQA Guidelines. Staff does not anticipate that there will be more emissions as a result of implementation of the Draft Ag Order since the Draft Ag Order like the 2004 Ag Order does not specify the manner of compliance and staff does not expect dischargers to use different methods of compliance than those currently used. Please see section 5 - Discussion of Climate Change in the SEIR for more information.</p>

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	<p>Regulations Section 93116 [sic], Airborne Toxic Control Measure for Stationary Compression Ignition Engines."</p>	
<p>Comment No. 604 from Jensen Family Farms, Inc. Letter No. 109, p.22.</p>	<p>Rule 1010.1.1. It applies to, among others, "any person who owns or operates a stationary CI engine in the District with a rated brake horsepower greater than 50 (> 50 bhp)." While Rule 1010, subpart 1.3, specifically exempts agricultural CI engines from the operation of certain emission and fuel requirements and standards (including those for emergency standby diesel fueled CI engines (> 50 bhp), [subpart 3.2], stationary prime diesel-fueled CI engines (>50 bhp), [subpart 3.3], and certain record-keeping, reporting and monitoring requirements, [Subpart 4.1.1 D, it specifically imposes fuel and emission standards on diesel engines used in agricultural operations. I.e.:</p> <p>"No person shall sell, purchase, or lease for use in the District any new stationary diesel-fueled engine to be used in agricultural operations that has a rated brake horsepower greater than 50, or operate any new stationary diesel-fueled engine to be used in agricultural operations that has a rated brake horsepower greater than 50, unless the engine meets all of the following emission performance standards ... "</p> <p>Rule 1010.3.4.1. Serious penalties attach for the failure to register such engines and to otherwise comply with the emission standard. In other words, CARB and the Monterey Bay Unified Air Quality etc. Board have found and taken action pertaining to diesel-fueled engines used in agricultural operations throughout all, or most, of this Region.</p> <p>These regulations and rules were issued due to documented concerns with the air pollution particularly caused by diesel-fueled engines used in agricultural operations (which will now, if the Proposal is adopted, include water purification technologies). While those engines were traditionally used solely for purposes of pumping irrigation water (and were generally limited to a centralized engine per farm), the water purification reverse osmosis engines which each farmer must now install in multiple numbers on his farmland (and which are, in fact, of greater horsepower than generally exists with regard to pump engines) exacerbates the air</p>	<p>See responses Letter 109, (Comment No. 598 and Comment No. 599).</p>

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	<p>pollution problem the CARB and Monterey Bay Unified etc. Board believed it necessary to limit by means of their respective regulations and rules. In light of this already patent concern by the California agencies charged with controlling air pollution and the significant impacts thereon of diesel-fueled engines used in agricultural operations, it defies both common sense and belief that the Proposal found no significant impact. That simply is unsupported and unsupportable. It, however, was ignored by the Staff in making its cavalier and unsupported statement, quoted above, that</p> <p>"The Water Board staff has not received any specific evidence by commenters and has little evidence in the record to demonstrate conclusively that the proposed draft 2011 Agricultural Order will result in significant adverse environmental effects on agricultural or biological resources." Draft Order at p. 8.</p>	
<p>Comment No. 605 from Jensen Family Farms, Inc. Letter No. 109, p.23.</p>	<p>This same point needs to be appreciated in terms of the failure to consult with the federal Environmental Protection Agency ("EPA"). In this instance, however, the failure is even more profound. Like CARB, the EPA has done numerous studies on the environmental impact of diesel-engine emissions used in stationary positions (in which presumably the purification units could be included). See,~, 40 C.F.R. Part 68 (listing stationary non-vehicular engines with emissions standards and referencing supporting environmental studies). Further, since vehicular traffic will no doubt increase in the Coast Counties due to the need for the construction and maintenance of the purification units (including the removal of the chemical, mineral, and other by-products, including purified water suitable for drinking), the EPA should have been consulted as well as to the significant environmental impacts such would have on the air and other areas of pollution concern (including water and the human environment). Indeed, CEQA even contemplates that joint CEQA and NEPA (National Environmental Protection Act) EIR/EIS will be done when appropriate. See 42 U.S.C. § 4321 et seq.; 14 C.C.R. §§ 15170, 15222, 15226 (requiring or encouraging preparation of joint CEQA/NEPA documents). The propriety and need to do so is borne out by reference to significant agricultural activities in, for instance, the Salinas Valley</p>	<p>See responses Letter 109, (Comment No. 598 and Comment No. 599).</p>

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	<p>undertaken by the Department of Agriculture: not only does it have an agricultural facility at Hartnell College's East Campus in Salinas but it also has a significant row-crop operation (which includes a pesticide permit) at its facility on Spence Road/Old Stage Road to the south of Salinas.</p>	
<p>Comment No. 606 from Jensen Family Farms, Inc. Letter No. 109, p.23.</p>	<p>The loss of agricultural land occasioned by implementation of the Proposal is patent and will have a significant environmental impact not only to agricultural resources (as set forth on the CEQA checklist) but on the human environment (in terms of lost agriculture jobs and the attendant affects such will have on the movement of large numbers of persons out of the Salinas Valley). At least in significant part (excluding, of course, the loss in land available to crop growth due to the installation of the water purification units and accompanying infrastructure), the various buffers and setbacks (including primarily the 30-foot set-off due to the presence of impaired surface water body in which no agricultural pursuit may occur) is the source of such impact. It is beyond belief that the impact of that set-off could be treated as negligible when the areas affected by it in, for instance, the Salinas Valley alone is considered.</p>	<p>The SEIR evaluates impacts to agricultural resources. See responses Letter 109, (Comment No. 598 and Comment No. 599) and also response to Letter 79 (Comment No. 496).</p>
<p>Comment No. 607 from Jensen Family Farms, Inc. Letter No. 109, p.23.</p>	<p>The Salinas River is approximately 85 miles long. It has a number of tributaries including [names 16 tributaries]. There are, in addition, literally hundreds of small drainages which, when combined, accounts for thousands of additional miles of water-adjacent land. Esperanza Creek (which is really nothing more than a drainage ditch) in fact runs through Jensen's Esperanza Road ranch and abuts approximately 0.75 miles of land on both sides of the Creek upon which organic asparagus is grown, and is on the list of impaired waters. It is not difficult to imagine the impact of that being done: Literally tens of thousands of acres of now-producing farm land would no longer exist for that purpose. The workers who earn their livings from tending that land would be accordingly terminated. Those workers, particularly in the present economic climate, would have no other employment available to them in the agriculture-centered Salinas Valley. In addition to defaulting on home loans or just walking away from those houses, these</p>	<p>It is unclear from the comment how the organic asparagus farms would be impacted by the 2011 Draft Ag Order. Both the 2004 Ag Order and the 2011 Draft Ag Order require dischargers to implement management practices to protect the beneficial uses of waters of the state and comply with water quality standards. The 2011 Draft Ag Order does not specify the manner of compliance; growers may comply in any lawful manner. There is no requirement to install reverse osmosis units. Appendix F to the Staff Report appropriately addresses costs of the Draft Agricultural Order consistent with Regional Board obligations under the Water Code and CEQA.</p>

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	<p>displaced workers would be forced to move to other regions of the California (or, for that matter, elsewhere in the United States) and find not only new jobs but new homes (thereby requiring expansion of housing and infrastructure in those areas). The cascading affects of such a situation can hardly be overstated but were, incomprehensively, overlooked and completely discounted by the Board in its environmental analysis.</p>	
<p>Comment No. 608 from Jensen Family Farms, Inc. Letter No. 109, p.24.</p>	<p>A partial answer to the enormous economic impact that would occur from adoption and implementation of the Proposal, however, itself poses significant impact on the water resources of the Coast Counties. The goal of the Proposal is to assure that all discharge water would be purified to the purity level of drinking water (including the removal of all sediments). That, of course, assumes that the purified water would be discharged from the agricultural land into, among other places, the Salinas River. There really is no sound basis underlying that assumption. Americans, to our national shame, are addicted to bottled water (the bottles being a great source of pollution to the oceans and rivers as well as the side-of-the-road).lo As the New York Times reported on March 19, 2008 in an article entitled "Rising sale of bottled water triggers strong reaction from US conservationists," bottled water sales in the United States in 2007 were 8.82 billion gallons (having a value of \$11,700,000,000). See www.NYTimes.com. So then why would the farmers of the Central Coast counties - who would have spent large amounts of money on the water purification units and otherwise suffered egregious reductions in their profitability due to the loss of land they could actually farm - not, either individually or on a cooperative basis, seek to store and sell (for human consumption) the water they have purified? That would quite obviously reduce the amounts of water going in to, for instance, the Salinas River. That would lower the water levels and just generally have deleterious effects that make the Proposal's concerns with pollution by discharge water pale in comparison. But that too was ignored or overlooked by the Board.</p>	<p>In issuing a waiver of waste discharge requirements, the Regional Board is required to require compliance with the Basin Plan, which includes protection of designated beneficial uses and compliance with water quality standards. The regulation of bottled water is outside the purview of the Regional Board.</p> <p>See response to Letter No. 109, Comment 599.</p>
<p>Comment No. 609 from Jensen</p>	<p>In spite of attempts to portray Alternative 1 - simply extending the present waiver program - as the "no project alternative," the Staffs efforts</p>	<p>The SEIR includes a discussion of the "no project alternative." See SEIR at pg. 26, section 8.1. Under the CEQA Guidelines, when the project is</p>

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Family Farms, Inc. Letter No. 109, p.25.	<p>are inaccurate and misleading. In actuality, Alternative 1 is not the "no additional regulation alternative." A "No Project" alternative is intended to reflect what would happen absent any Regional Board action. In this case, no action results in no waiver program whatsoever since the 2004 waiver will lapse on its own terms in March 2011. "The no project analysis shall discuss the existing conditions at the time the notice of preparation is published, ... as well as what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services." State CEQA Guidelines, § 15126(e)(2). When the existing conditions include implementation of a program or rule that will expire unless some affirmative action is taken, the "No Project" scenario must consider the expiration of that program or rule and its associated ramifications. See <i>Sherwin-Williams Co. v. S. Coast Air Quality Management Dist.</i>, 86 Cal.App.4th 1258, 1280 (2001)(defendant had properly "defined the "No Project" scenario as "not adopting the proposed amendments to Rule 1113, but instead allowing the expiration of the current product variances for some of the coating categories and maintaining the current version of Rule 1113 as amended by a 1990 court order"). In contrast, when a agency must act affirmatively to extend an existing program or rule, that itself is a project that must be analyzed under CEQA. See <i>Sunset Sky Ranch Pilots Assn. v. County of Sacramento</i>, 47 Ca1.4th 902, 909 (2009)(county's decision to not renew a conditional use permit that was expiring is not a project under CEQ A, but the renewal of the permit would be).</p> <p>The lack of an accurate "No Project" alternative constitutes a fatal flaw. That alternative is a mandatory component of an EIR. The purpose of this requirement is "to allow decisionmakers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project." State CEQA Guidelines, §15126.6(e)(1). In this case, no such comparison is possible because the "No Project" alternative is fundamentally inaccurate.</p>	<p>the revision of an existing regulatory plan or policy, the "no project" alternative is the continuation of the existing plan or policy. See Cal. Code Regs. § 15126.6, subd. (c)(3)(A). In this case, the "no project" alternative would be the continuation of the 2004 Ag Order. As that Order was already the subject of a Negative Declaration, the Water Board is not required to conduct a new CEQA analysis of that alternative. See Cal. Code Regs. § 15162, subd. (a). The Water Board could consider the "no-project" alternative to be not to renew the 2004 Ag Order at all. However, the Water Board is not required to conduct a detailed analysis of alternatives that do not meet the project objectives. A "no order" alternative does not meet the project objectives to provide a waiver of waste discharge requirements as a mechanism for agricultural dischargers to comply with the Water Code. See Cal. Code Regs. § 15126.6, subd. (f). See also response to Letter 79 (Comment No. 496).</p>
Comment No. 611 from Jensen	The Proposal, if adopted and implemented, will result in the regulatory takings of, among other things, the agricultural land contained in the 30-	See response to Letter 79 (Comment No. 497).

Comment ID	CEQA Comment	Response
<p>Family Farms, Inc. Letter No. 109, p.26.</p>	<p>foot buffer zones.</p> <p>The Fifth Amendment of the United States Constitution, made applicable to the States (and its political subdivisions such as the Board by the Fourteenth Amendment) specifically protects private property from governmental incursions by preventing "private property [from] be[ing] taken for public use without just compensation." U.S. Constitution, Amend. V. The "Fifth Amendment's guarantee that private property shall not be taken for a public use without just compensation 'was designed to bar government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." <i>Armstrong v. United States</i>, 364 U.S. 40, 49 (1960). Indeed, James Madison, often described as "the Father of the Constitution," explained that such protection is government's chief responsibility, because, in the words of Arthur Lee, a Founding Father from Virginia, property is the "guardian of all rights." Over the years, the law has distinguished three broad categories of takings: those defined by the governments' powers of eminent domain, those resulting from a "physical invasion" by the government without bringing an eminent domain proceeding,¹⁶ and those resulting from the impact of regulation. The first two, having an older lineage, could be referred to as "traditional takings," and the latter two require a landowner to file an "inverse condemnation" suit seeking just compensation. "While the typical taking occurs when the government acts to condemn property in the exercise of its power of eminent domain, the entire doctrine of inverse condemnation is predicated on the proposition that a taking may occur without such formal proceedings." <i>First English Evangelical Lutheran Church v. County of Los Angeles</i>, 482 U.S. 304, 316 (1987) .. Traditionally, all three categories covered interference with private property "to an extent that, as between private parties, a servitude is taken." <i>United States v. Dickson</i>, 331 U.S. 745, 748 (1947).</p> <p>Of application here, of course, is regulatory takings. Although subject to a long period of evolutionary growth which may prove important in litigation (rather than here), such takings does apply to Jensen. It is settled now that</p>	

Comment ID	CEQA Comment	Response
	<p>Government regulation goes "too far," and effects a total or "categorical" taking, when it deprives a landowner of all economically viable use of his "parcel as a whole." See <i>Palm Beach Isles Assocs. v. United States</i>, 231 F.3d 1354, 1259-1360 (Fed.Cir. 2000) (differentiating categorical takings from partial ones). If the taking is not of the entire parcel as a whole, either temporally or by its metes and bounds, government regulation can still effect a partial taking pursuant to the fact-intensive Penn Central balancing test: i.e., "a court determines when regulation goes "too far" and effects a taking by balancing: (1) the "economic impact of the regulation on the claimant"; (2) "the extent to which the regulation has interfered with distinct investment backed expectations"; and (3) "the character of the governmental action."</p> <p>Applying these factors, Jensen possesses the requisite property interest protected by the Fifth Amendment: a fee simple in agricultural lands subject to the Proposal. So the inquiry then moves on to whether the Board's action constituted a taking" of that interest. The so-called "categorical test" - which applies only in those instances where government action has eliminated "all value" from the land does not apply here since some vestigial value remains (as, for instance, very large parking lots in the middle of the Salinas Valley). The Board's action does, however, deprive the Jensen's of the "highest and best use" of all the property (highly producing agricultural farm land). The takings still occurs and the only affected thing is the amount of compensation that needs to be paid. The regulatory character of the Board's action - based as it allegedly is a myopically narrow concern only with water pollution (even though, as noted, more significant negative impacts arise from the implementation of the Proposal than are affected by the Proposal) - does serve as an adequate excuse or preventative measure that overcomes the partial takings that is affected by the Proposal. See, e.g. <i>Tahoe-Sierra Pres Council v. Tahoe Reg'l Planning Agency</i>, 535 U.S. 301 (2002).</p> <p>The takings here extends to the width and breadth of the Coast Counties and implicates some of the most valuable farmland in the United States, having values from</p>	

Comment ID	CEQA Comment	Response
	<p>approximately \$20,000 an acre to \$50,000 per acre (even in these times of depressed real estate prices). With the legal sufficiency of the Proposal being as tenuous as it is due to the un- and non-considered significant environmental impacts that may be affected by the Proposal, the additional risk that a takings - even if temporary and lasting only one growing season - will occur should cause the Board to reject the Proposal and seek to find other ways to fulfill its statutory mandate.</p>	
<p>Comment No. 613 from Jensen Family Farms, Inc. Letter No. 109, p.29.</p>	<p>In the final analysis, the Proposal is a monument to overreaching by those charged with protecting the water resources of the Central Coast counties. In its attempt to comply with a mandate to control water pollution in the Central Coast, the Board has ignored common sense and, in order to protect the water from pollution, has myopically overlooked or ignored the significant impacts on the environment relative to other areas of concern such as air pollution and the human environment that attend having farmers install water purification units and infrastructure on the land they are left with after losing any ability to effectively or, for that matter, actually farm within buffer and set back areas of, for example, the Salinas River or its tributaries. A regulatory taking of land having sufficient value to bankrupt the most solvent of States will result from the adoption and implementation of the Proposal.</p> <p>The bureaucratic zeal which informed the formulation of the Proposal must be tempered by the requirements of the law, by knowledge of how agriculture works and the geology in this Region, and by common sense. Indeed, the Proposal results only in the conclusion that Staff was activated more by bureaucratic zeal than by recommending actions which would affect protection of the environment as a whole and the continued success of literally the only part of California's economy that has not been totally destroyed by current economic conditions. The Proposal should be rejected and placed on the dust heap of badly thought-out concepts. While protection of California's waters is and remains a laudable goal, that protection can be afforded by other and more soundly thought out means.</p>	<p>Comments noted. Please see responses to Letter 109 (Comment No. 577 to Comment No. 612), which address the commenter's conclusion paragraphs.</p>
<p>Comment No. 516 from</p>	<p>Agricultural representatives submitted an Agricultural Alternative Conditional Waiver</p>	<p>The Agricultural Alternative Conditional Waiver (Ag Proposal) proposes that dischargers continue,</p>

Comment ID	CEQA Comment	Response
<p>California Farm Bureau Federation. Letter No. 79, p.21.</p>	<p>Proposal in response to staff's November 19, 2010 release of the 2011 Draft Order. This alternative represents a fair, reasonable, and legally sound approach to improving water quality while maintaining agricultural viability throughout the Region.</p> <p>The Agricultural Alternative Conditional Waiver submitted by agriculture must be properly analyzed under CEQA as a possible alternative. Therefore, additional environmental review must be completed prior to any Regional Board action on the 2011 Draft Order.</p>	<p>as with the 2004 Ag Order and the 2011 Draft Order, to implement management practices and technologies to control discharges of waste to waters of the state. The Ag Proposal is similar in scope to the 2004 Ag Order. As explained in the SEIR, the Regional Board already evaluated the 2004 Ag Order under CEQA and adopted a Negative Declaration. The CEQA Guidelines specify the circumstances under which an agency must prepare a subsequent or supplemental CEQA document. In this case, the Regional Board staff reviewed the record for this matter and a reasonable range of alternatives and found that it was appropriate to prepare an SEIR to address certain potentially significant environmental effects.</p> <p>The Regional Board is not required to reopen the first CEQA document and reevaluate all the impacts, only those that could be more significant than previously evaluated. In determining what alternatives to evaluate, CEQA requires an EIR to "describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.... An EIR is not required to consider alternatives which are infeasible." (Guidelines, § 15126.6, subd. (a).) In addition, the adequacy of alternatives is evaluated in light of the nature of the project. (City of Rancho Palos Verdes v. City Council (1976) 59 Cal.App.3d 869, 892, 129 Cal.Rptr. 173.) "CEQA establishes no categorical legal imperative as to the scope of alternatives to be analyzed in an EIR. Each case must be evaluated on its facts...." (Citizens of Goleta Valley v. Board of Supervisors (1990) 52 Cal.3d 553, 566, 276 Cal.Rptr. 410, 801 P.2d 1161.)</p> <p>To the extent Ag Proposal requires compliance with the Water Code, the same types of management practices are proposed with the same type of potential environmental effects that were evaluated in the Negative Declaration and SEIR. The SEIR evaluated the potentially significant effects of the methods of compliance and economic impacts, to the extent required, that could be more significant than the 2004 Ag Order. The commenter has provided no evidence that the potential impacts of the Ag Proposal would not</p>

Comment ID	CEQA Comment	Response
		<p>be any different than the 2004 Ag Order or the 2011 Draft Order.</p> <p>The purpose of CEQA is to provide information sufficient to allow the decision maker to make an informed decision. SEIR provides that information. In addition, staff has thoroughly evaluated the Ag Proposal and provided that information to the Regional Board. There are a large number of potential alternatives that could be considered. CEQA requires only that a reasonable range be considered, not that every alternative be considered. See, e.g., Village Laguna of Laguna Beach, Inc. v. Board of Supervisors, supra, 134 Cal.App.3d 1022, 1029. (The City considered a range of alternatives that included within that range, alternatives proposed by interested groups. The court concluded: "Therefore, it must be assumed that decision-makers and the public could make an informed comparison of the environmental effects of those various plans. It is not then unreasonable to conclude that an alternative not discussed in the EIR could be intelligently considered by studying the adequate descriptions of the plans that are discussed. This EIR should 'not become vulnerable because it fails to consider in detail each and every conceivable variation of the alternatives stated.'" (Brooks v. Coleman (9th Cir. 1975) 518 F.2d 17, 19.))</p>
<p>Comment No. 612 from Jensen Family Farms, Inc. Letter No. 109, p.28.</p>	<p>In reviewing and rejecting alternative proposals to the one recommended by the Staff, a constant basis for rejecting other proposals was that too much paperwork and too much work for the Staff would result: e.g., in rejecting Option 10 of the "Options Considered" Appendix D at p. 13, it is stated that individual farm reporting "would likely create a significant work load for Water Board staff ... " No offense, that is what the Staff was created for and that is for what they are paid. It is well-settled administrative convenience of this type is an inadequate State interest to warrant being used to reject or formulate proposals such as this. See, e.g., Natural Resources Defense Council v. EPA, 526 F.3d 591 (9th Cir. 2008).</p>	<p>Staff evaluated alternatives and options based on several criteria, including, but not only, impact on staff resources. Staff also considered focus on severity and magnitude of water quality conditions, efficiency and transparency of water quality improvement, public accessibility of data and information, reasonableness and cost to growers, etc.</p>
<p>Comment No. 502 from California Farm Bureau Federation.</p>	<p>The SEIR may conflict with CEQA functional equivalency of the State's Pesticide Regulatory Program. DPR regulatory scheme ensures continuous evaluation of the environmental impacts of registered pesticide products. DPR</p>	<p>The Regional Water Board is a public agency that must comply with CEQA prior to taking a discretionary action that could have a significant impact on the environment. The authority to adopt the 2011 Draft Ag Order or other order</p>

Comment ID	CEQA Comment	Response
Letter No. 79, p.13.	is required by CEQA to consider the full and reasonably foreseeable environmental context of its actions. Farmers and ranchers must comply with DPR requirements. Farmers should not be held liable under the 2011 Draft Order if those pesticides are detected in groundwater.	<p>regulating discharges from agricultural lands is independent of DPR's authority to regulate pesticide use and its own requirement to comply with CEQA. The 2011 Draft Order does not duplicate or usurp DPR's authority to regulate pesticides.</p> <p>The Water Board has the statutory authority under the Porter-Cologne Water Quality Control Act to regulate the discharges of waste to ground and surface waters. Cal. Wat. Code §§ 13000, et seq. Specifically with regard to pesticides, the term "waste" has been held to include pesticides used for the control of insects, rodents and diseases on farms. (43 Cal. Ops. Atty. Gen. 302, 304 (1964), 48 Cal. Ops. Atty. Gen. 30, 34 (1966)). See also, Water Quality Order No. 2004-008-DWQ, Statewide General National Pollutant Discharge Elimination System Permit for Discharges of Aquatic Pesticides to Surface Waters of the United States for Vector Control, General Permit No. CAG990004. (This permit regulates NPDES discharges, not nonpoint source discharges, but in it the Water Board regulates the discharges of pesticides that leave the treatment area, demonstrating the Water Boards' authority to regulate discharges of pesticides: "This General Permit addresses the application of pesticides to Treatment Areas for the control of vectors. Aquatic pesticides that are applied to waters of the United States in accordance with FIFRA label requirements are not considered pollutants. However, pesticides or by-products that persist in or leave the Treatment Area after a specified treatment period are considered pollutants and require coverage under this General Permit." Fact Sheet at p. 8)</p>
Comment No. 524 from Santa Clara County Farm Bureau. Letter No. 34, p.2.	Another area where the Draft Ag Order oversteps the Regional Board's authority is the vegetated buffer requirements, which we do not believe the Regional Board has the authority to require. Not only are the buffer requirements for Tier 3 growers outside the Board's authority, they would remove significant amounts of land from production without appropriate CEQA consideration, would decrease the supply of fresh, safe, local produce, and could potentially pose a food safety threat.	<p>Water Code section 13269 requires that any waiver of waste discharge requirements be consistent with the Basin Plan. The Basin Plan (page V-13, #4) requires that dischargers maintain "a filter strip of appropriate width, and consisting of soil and riparian vegetation or its equivalent...between significant land disturbance areas and watercourses, lakes, bays, estuaries, marshes, and other water bodies." Therefore, the Regional Board has the authority to require buffer strips.</p> <p>The 2011 Draft Order proposes that certain dischargers implement the use of buffer strips or some other method of control sufficient to prevent</p>

Comment ID	CEQA Comment	Response
		<p>discharges that cause the receiving water to exceed water quality standards. Staff evaluated the potentially significant impacts associated with removing agricultural lands from production as required pursuant to CEQA. Please see pgs. 8-14 of the SEIR.</p> <p>Also see response to Letter 79 (Comment No. 512)</p>

AppendixH1-SEIR-031711-final-3-02-11.DOC

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

**RESOLUTION NO. R3-2004-0118
APPROVING AN INITIAL STUDY
AND
ADOPTING A NEGATIVE DECLARATION
FOR
CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS
FOR DISCHARGES FROM IRRIGATED LANDS**

WHEREAS, the California Regional Water Quality Control Board, Central Coast Region (Regional Board), proposes to adopt Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands; and

WHEREAS, the Regional Board is the lead agency for this project under the California Environmental Quality Act and has conducted an Initial Study in accordance with title 14, California Code of Regulations, Section 15063, entitled *Guidelines for the Implementation of the California Environmental Quality Act*; and

WHEREAS, copies of the Initial Study and proposed Negative Declaration were submitted to the State Clearinghouse on March 23, 2004, and to the Clerks of Monterey, San Benito, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, and Ventura counties, and transmitted to or made available to all agencies and persons known to be interested in these matters and the public notice provided exceeded the legal requirements for such notice; and

WHEREAS, the Regional Board accepted comments for 60 days and has considered all comments; and

WHEREAS, the Regional Board considered all testimony and evidence at a public hearing held on July 8, 2004, in San Luis Obispo, California, and good cause was found to approve the Initial Study and adopt a Negative Declaration; and

WHEREAS, based on the Initial Study, Negative Declaration, and the entire administrative record, the Regional Board finds that adoption of the proposed Waiver has no potential to adversely impact the environment; and

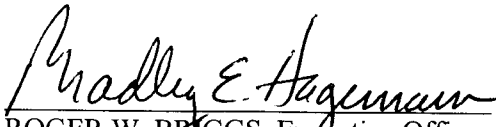
WHEREAS, the Regional Board finds, based on the draft Negative Declaration, including the Initial Study and hearing record, that adoption of the proposed Waiver will not individually or cumulatively have an adverse effect on wildlife, as defined in Fish and Game Code §711.2, or the habitat on which wildlife resources depend;

THEREFORE BE IT RESOLVED, that:

1. The Initial Study is approved and the Negative Declaration for the *Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands* is adopted.

2. The record before the Regional Board contains no substantial evidence that a fair argument has been made that the project may have a significant effect on the environment.
3. The Executive Officer, or designee, is authorized to sign and submit a Certificate of Fee Exemption pursuant to California Code of Regulations, Title 14, Section 753.5(c).

I, ROGER W. BRIGGS, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, Central Cost Region, on July 9, 2004.


FOR ROGER W. BRIGGS, Executive Officer

INITIAL STUDY and
Negative Declaration
For
Conditional Waiver of
Waste Discharge Requirements for
Discharges from Irrigated Lands

Central Coast Regional Water Quality Control Board

Prepared by:

Central Coast Regional Water Quality Control Board
895 Aerovista Place
San Luis Obispo, CA 93401

Contact: Alison Jones, Environmental Scientist, (805) 542-4646

July 2004

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Attachments

1. Draft Order titled “Conditional Waivers of Waste Discharge Requirements for Discharges from Irrigated Lands”
2. Draft Monitoring and Reporting Program titled “Monitoring and Reporting Program No. R3-2004-XXXX for Dischargers Enrolled under Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands”

Project Information Form

Central Coast Regional Water Quality Control Board

Draft Negative Declaration

- 1. Project title:** Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands
- 2. Lead agency name and address:** Central Coast Regional Water Quality Control Board
895 Aerovista Place
San Luis Obispo, CA 93401
- 3. Contact person and phone number:** Alison Jones, Environmental Scientist
(805) 542-4646
- 4. Project location:** Central Coast Region
- 5. Project sponsor's name and address:** Not applicable
- 6. General plan designation:** Not applicable
- 7. Zoning:** Not applicable

8. Description of project: Section 13269 of the California Water Code (CWC) authorizes the Central Coast Regional Water Quality Control Board (Regional Board) to waive waste discharge requirements (WDRs) for a specific discharge or specific type of discharge if the waiver is in the public interest. The waiver must be conditional and may be terminated at any time. The Regional Board may also waive the requirement to submit a report of waste discharge. In 1999, Senate Bill 390 amended CWC Section 13269. CWC Section 13269 specifies that waivers in effect on January 1, 2000, terminate on January 1, 2003, but may be renewed following a hearing. Waivers may only be adopted for a maximum of five years.

The Regional Board proposes to adopt a conditional waiver of WDRs for discharges from irrigated lands, including tailwater, subsurface drainage, and stormwater runoff, and to waive the requirement to submit reports of waste discharge. Irrigated lands include nurseries and soil-floored greenhouses as well as lands planted to row crops, vineyards, tree crops, and field crops. This waiver would be in effect for five years beginning July 8, 2004.

The conditions of the proposed waiver would require all owners and operators of irrigated lands in the Central Coast Region to: 1) enroll with the Regional Board by submitting a Notice of Intent, 2) complete fifteen hours of water quality education, 3) develop a farm water quality management plan that addresses, at a minimum, erosion control, irrigation management, nutrient management and pesticide management, 4) implement management practices in accordance with the farm plan, and 5) conduct individual monitoring or participate in a cooperative monitoring program.

This waiver would set forth two categories of waivers of Waste Discharge Requirements. One category (Tier 1) applies to dischargers who have already completed the education and farm plan development requirements and have begun to implement management practices for their operations. The other category (Tier 2) applies to dischargers who have not yet completed all the requirements for a Tier 1 waiver. Tier 2 waivers would be renewable annually for up to three years.

The conditions of the waiver include timely completion of education and plan development requirements, implementation and reporting of management practices designed to protect water quality, and compliance with all requirements of applicable water quality control plans.

The goal of the waiver program is to manage discharges from irrigated lands to ensure that such discharges do not cause or contribute to conditions of pollution or nuisance as defined in Section 13050 of the California Water Code and do not cause or contribute to exceedances of any Regional, State, or Federal numeric or narrative water quality standard.

Details of the proposed waiver conditions are contained in the attached draft order (*Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands*).

9. Surrounding land uses and settings: The project encompasses approximately 600,000 acres of irrigated agricultural lands in the Central Coast Region, and includes the irrigated lands in the Pajaro, Salinas, Santa Maria, and Santa Ynez River watersheds as well as several smaller coastal streams. Although agriculture (irrigated lands and rangeland) is the dominant land use throughout the Central Coast Region, many watersheds have mixed uses, where agricultural lands are interspersed with rural residential, suburban and urban areas. Salinas, the Region's largest city, has a population of more than 100,000, and lies surrounded by agricultural lands at the base of the watershed of the Salinas River, which drains to Monterey Bay National Marine Sanctuary. The Central Coast Regional Water Quality Control Board has jurisdiction over all of the watersheds listed above, which all drain to the Pacific Ocean. The region includes all or part of the following counties: San Mateo, Santa Cruz, Santa Clara, San Benito, Monterey, San Luis Obispo, Santa Barbara and Venture.

10. Other public agencies whose approval is required: None

Environmental Factors List

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

The environmental resource categories identified below are analyzed herein to determine whether the Proposed Project would result in adverse impacts to any of these resources. None of the categories below are checked because the Proposed Project is not expected to result in “significant or potentially significant impacts” to any of these resources.

Aesthetics	Biological Resources
Hazards & Hazardous Materials	Mineral Resources
Public Services	Utilities/Service Systems
Agriculture Resources	Cultural Resources
Hydrology/Water Quality	Noise
Recreation	Mandatory Findings of Significance
Air Quality	Geology/Soils
Land Use Planning	Transportation/Traffic

Determination

The Central Coast Regional Water Quality Control Board has reviewed the proposed project and has determined that the project, based on the Initial Study attached hereto, will not have a significant effect on the environment. An environmental impact report is not required pursuant to the California Environmental Quality Act of 1970 (CEQA). This environmental review process and negative declaration is done in accordance with CEQA (PRC 21000 et seq.) and the CEQA Guidelines (14 CCR 15000 et. Seq.)

Based on the findings of the Initial Study, the project would not:

- Degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of California history or prehistory.
- Achieve short-term, to the disadvantage of long-term, environmental goals.
- Have impacts that are individually limited, but cumulatively considerable.
- Have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly.

On the basis of this initial evaluation:

- I find that the Proposed Project **COULD NOT** have a significant effect on the environment, and a **NEGATIVE DECLARATION** will be prepared.
- I find that although the Proposed Project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the Project have been made by or agreed to by the Project proponent. A **MITIGATED NEGATIVE DECLARATION** will be prepared.

- I find that the Proposed Project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.
- I find that the Proposed Project MAY have a “potentially significant impact” or “potentially significant unless mitigated” impact on the environment, but at least one effect: 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.
- I find that although the Proposed Project could have a significant effect on the environment because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the Proposed Project, nothing further is required.

No potentially significant impacts were identified.

Signature

Date

Printed Name

Organization

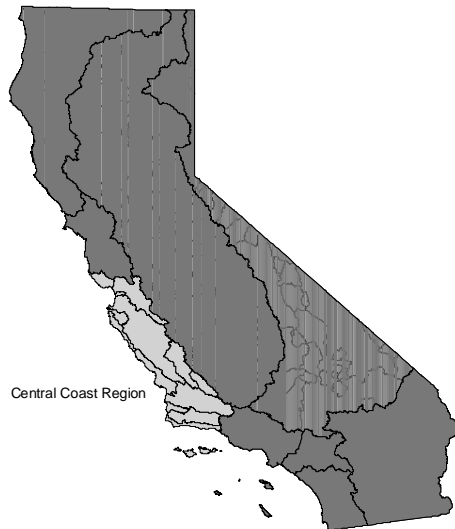
1 Initial Study

1.1 Project Purpose

The purpose of the project is to adopt an Order approving a “Conditional Waiver of Waste Discharge Requirement for Discharges from Irrigated Lands” (Waiver). (See attached Order and Waiver) that would regulate the discharge of waste from irrigated lands, including commercial nurseries and soil-floored greenhouses, consistent with the California Water Code and other goals, policies and objectives of the State of California.

1.2 Location

The Waiver applies to all of the irrigated land within the jurisdiction of the Central Coast Regional Water Quality Control Board.



1.3 Background

Regulatory Requirements

Although discharges that constitute “agricultural return flows” are exempt from regulation through the National Pollutant Discharge Elimination System (NPDES) permit program of the federal Clean Water Act, they are not exempt from the California Water Code. Any discharge from irrigated agricultural activities to surface water or to land, that impacts or threatens to impact water quality, is subject to regulation under Porter-Cologne Water Quality Control Act.

CWC Section 13260 requires persons who are discharging or who propose to discharge waste where it could impact the quality of waters of the State to submit a Report of Waste Discharge. The Regional Board uses the Report of Waste Discharge in preparing Waste Discharge Requirements that regulate the discharges of waste in compliance with the CWC and other applicable laws and regulations. The purpose of this regulatory program is to protect the beneficial uses of the waters of the State.

CWC Section 13269 authorizes the Regional Board to waive Waste Discharge Requirements for a specific discharge or specific type of discharge if the waiver is in the public interest. The waiver must be conditional and may be terminated at any time. The Regional Board may also waive the requirement to submit a Report of Waste Discharge. In 1999, Senate Bill 390 amended CWC Section 13269. CWC Section 13269 now specifies that all waivers in effect on January 1, 2000, were terminated on January 1, 2003, unless renewed following a hearing. All waivers must be reviewed and renewed or revised at least every five years.

In 1983, the Regional Board approved a list of categories of discharge for which waste discharge requirements could be waived, including discharge of irrigation return flows (tailwater) and non-NPDES stormwater runoff. When waivers for discharges from irrigated agriculture were adopted in 1983, little was known about the potential impacts of irrigation tail water and other runoff or the magnitude of groundwater impacts from the use of inorganic fertilizers. Regional Board regulatory effort at that time was largely focused on addressing point source discharges such as wastewater treatment plants and industrial dischargers, and cleanups from spills and leaks. Even though the waiver policy included agricultural tail water as appropriate for waivers, the Regional Board did not issue individual formal waivers for these discharges. The 1983 waivers pertaining to irrigated agriculture were not renewed before January 1, 2003, and have now terminated.

In 1987, Section 319 was added to the Clean Water Act to address nonpoint source pollution, and subsequently the State of California adopted its Nonpoint Source Program in 1988. Although staff resources were extremely limited, the Regional Board began to work with agriculture through the Nonpoint Source (NPS) Program and later the State's Watershed Management Initiative. Since the inception of the NPS program, the Regional Board's emphasis in working with agriculture has been on encouraging proactive efforts to address water quality concerns, and supporting such cooperative partnerships as Monterey Bay National Marine Sanctuary's Plan for Agriculture. The Regional Board has directed grant funding toward increasing educational outreach, and has encouraged efforts toward self-determined compliance with water quality regulations through promotion of ranch and farm water quality management planning short courses throughout the region.

The State's NPS Plan identifies waivers (Tier 2, "Regulatory Encouragement") as an appropriate regulatory tool available to protect water quality from NPS pollution, recognizing the challenges involved in regulating a large number of individual dischargers.

Agriculture in the Central Coast Region

Irrigated agriculture in the Central Coast Region comprises approximately 600,000 acres and more than 100 different crops. There are about 2500 agricultural operations in the region that would be enrolled under this program. Operations range in size from less than ten acres to more than 2000; however, approximately two-thirds of all operations are less than fifty acres. About one-third are less than ten acres. Fewer than 200 operations (less than 8%) exceed 2000 acres. Major crops include vegetable crops (such as lettuce, broccoli, cauliflower, celery, cabbage and spinach), fruits (such as strawberries and wine grapes), cut flowers, and potted plants. Other crops include mushrooms, artichokes, raspberries, asparagus, carrots, onions, snap peas, and many more.

Agriculture is concentrated in several major drainages, including the Salinas Valley and upper Salinas watershed, the Pajaro Valley, the lower Santa Maria River, the Santa Ynez

Valley and the Santa Barbara coastal area, as well as in numerous small drainages throughout the region.

A number of factors make agriculture in the Central Coast region unique. In general, farming is on a smaller scale than in the Central or Imperial Valleys. The Central Coast climate is unique in California and comprises a “niche” in the agricultural industry that distinguishes Central Coast farm products from other areas. The majority of operations are less than 50 acres. There are no large irrigation districts since most operations use groundwater as their water source. Many properties have been held in families for generations and are leased out rather than sold. The area is considered highly desirable, and growth pressures drive up the price of agricultural rents. There is a mixture of owned and leased lands and many operators own some ranches and lease others. Leases can be either short or long term (one year or more than five years), resulting in varying incentive by lease-holders to implement water quality protection.

Crop prices are primarily controlled by the existing market structure. Consolidation in the food industry has resulted in a smaller group of buyers, giving corporate retailers more bargaining power. In addition, local farmers often compete with products from other countries, where the costs of production may be substantially less. The result is that growers often have little control over the price they are paid even though the costs of producing and delivering products continues to rise. Additionally, issues of food safety are increasingly dictating practices growers must use in order to sell crops, and some recommended food safety practices may run counter to water quality protection practices. Because of these and other factors, the agricultural industry is extremely sensitive to cost increases and management practice requirements.

Existing Water Quality in Agricultural Areas

Information available to the Regional Board, including information used in identifying impaired water bodies within the Region in accordance with Clean Water Act section 303(d), indicates that irrigation return water and storm water runoff from irrigated lands contains waste that has impacted water quality in the waters of the State within the Region.

Over the past five years, the Regional Board’s Central Coast Ambient Monitoring Program (CCAMP) has provided information to characterize water quality, support waterbody beneficial use determinations, support waterbody listings for impairment, and to evaluate regional priorities. Under CCAMP, the Region has been divided into five rotational monitoring areas, based on hydrologic units such as the Pajaro River, Salinas River and Santa Maria River. Each rotational area is monitored once every five years. CCAMP performs tributary-based, in-stream monitoring at fixed sites throughout the rotational area on a monthly basis. The same sites are monitored again during the next rotational cycle.

CCAMP data, as well as other data sources, have shown that waterbodies in areas of intensive agriculture often have high levels of nutrients. For example, nitrate in some surface waters is present at levels far in excess of the drinking water standard of 10 mg/L as N (nitrogen). Persistent toxicity has also been documented in some areas of intensive agricultural operations, with its cause being traced to currently applied pesticides. Many surface waterbodies are on the Clean Water Act Section 303(d) list of impaired waters for pollutants associated with agricultural activities, and are scheduled for development of Total Maximum Daily Loads. Of the region’s 178 currently listed waterbodies, about 75 designate agriculture as a potential source. In addition, many groundwater basins underlying agricultural areas in

the Central Coast Region show elevated nitrate concentrations, in some cases well over the drinking water standard.

Existing Efforts by the Agricultural Industry to Address Water Quality Issues

The Central Coast Region has benefited from the proactive approach taken by several segments of the agricultural industry. Notable examples include the Agricultural Water Quality Program of the Coalition of Central Coast County Farm Bureaus (Farm Bureau Coalition) and efforts to promote sustainable wine growing practices by the Central Coast Vineyard Team and the Central Coast Winegrowers Association. Efforts are also underway to promote sustainable practices by Spanish-speaking farmers through the Rural Development Center and the Agricultural Land-Based Training Association (ALBA) in Monterey County.

The Farm Bureau Coalition has been working to address agricultural water quality impacts in areas that drain to the Monterey Bay National Marine Sanctuary, which represents approximately two-thirds of the region. This is a broadly supported cooperative effort that is implementing the Sanctuary's Plan for Agriculture and Rural Lands. The Sanctuary Plan was developed in cooperation with the California State Farm Bureau Federation and the Coalition of Central Coast County Farm Bureaus, the Regional Board and numerous other partners, including University of California Cooperative Extension, the Natural Resource Conservation Service and local Resource Conservation Districts.

Key components of the Sanctuary Plan implementation strategy include formation of grower working groups, and development and implementation of farm water quality management plans. Technical assistance is provided by Farm Bureau watershed coordinators active in each county, as well as all of the other partners listed above. Farm Bureau watershed coordinators provide the Regional Board with annual reports summarizing practice implementation and self-monitoring results by grower watershed working groups.

A small but significant (and increasing) percentage of growers on the Central Coast are participating in the Farm Bureau Coalition's program. As of March 2004, there were 17 active grower watershed working groups and another 17 in the process of organizing. The Regional Board estimates that active participants represent approximately 10% of operations in the region. Participants are often industry leaders who have chosen to be proactive in addressing water quality concerns.

In 1999, the University of California Cooperative Education and the Natural Resources Conservation Service developed and piloted a Farm Water Quality Planning short course in the Central Coast, to provide farmers with the information and resources needed to address water quality issues on their farms. The course provides farmers with information on water quality management practices for irrigation, pesticides, nutrients, and erosion control. Course participants are able to complete a farm water quality management plan by the end of the 15-hour course. In 2001, UC Cooperative Extension and the Farm Bureau Coalition teamed up to offer the short course to members of grower working groups that are implementing the Sanctuary Plan for Agriculture. As of May 2004, more than 500 Central Coast farmers will have completed the course. Funding to support farm water quality planning has come from a variety of sources, including a current Clean Water Act Section 319(h) grant from the Regional Board. The Regional Board has been closely involved in the development of the short course. Regional Board staff, along with UC Cooperative Extension, NRCS, local Resource Conservation Districts, California Department of Fish and Game and others, participate in teaching the classes.

Another industry-led effort has been underway for several years to promote sustainable practices by wine grape growers. There are approximately 100,000 acres of grapes in the Central Coast, representing about 16% of the irrigated croplands in the region. Many of the growers have undertaken an evaluation process to assess irrigation, nutrient management, pest management, and erosion control practices through the Positive Point System developed by the Central Coast Vineyard Team (CCVT). CCVT estimates that approximately 75-100 operations have completed the Positive Point System evaluations and are using them to evaluate management practices and identify opportunities for improvement.

Agricultural Advisory Panel Recommendations

In beginning to develop a replacement for the old waivers, Regional Board staff held a number of informal discussions with several agricultural and environmental groups throughout the Region. After hearing comments during several such meetings, staff concluded that the interests of all concerned would be best served by face-to-face meetings among all parties. The Central Coast Region is relatively small, at least compared to the Central Valley Region, California's other major agricultural Region. This feature made it feasible to convene an advisory group of agricultural and environmental representatives from across the Region. Participants included the Ocean Conservancy, the Central Coast Coalition of County Farm Bureaus, Monterey County Farm Bureau, Jefferson Farms, Santa Cruz County Farm Bureau, San Benito County Farm Bureau, the Environmental Center of San Luis Obispo (ECOSLO), the Environmental Defense Center, Monterey Bay National Marine Sanctuary, the Agricultural Land-Based Training Association (ALBA), the Central Coast Winegrowers Association, San Luis Obispo County Farm Bureau and Cattlemen's Association, Santa Barbara County Farm Bureau, Grower Shipper Vegetable Association of Santa Barbara, and Santa Barbara Channel Keeper. Several other organizations that were contacted felt that their interests were adequately represented but expressed a desire to be kept informed.

Panel meetings were conducted as facilitated discussion sessions. The group adopted ground rules and spent time hearing about the interests and concerns of each of the participants. In this way, a foundation of understanding was built that allowed the participants to discuss ideas and propose solutions in a respectful environment. At the second meeting, the panel agreed on a mission statement, which reads, "The goal of the panel is to assist staff in developing recommendations to the Regional Board for a replacement to the expired waivers that will be protective of water quality, the viability of Central Coast agriculture, and comply with state law."

All panel recommendations were developed by consensus. Although the panel did not have consensus on all aspects of the proposed program, considerable progress was made during the year of panel meetings. The input provided by the panel has been very valuable in helping staff develop the proposed Waiver program. Perhaps even more importantly, a foundation has been laid for future communication between the agricultural and environmental communities across the Central Coast Region, as well as with the Regional Board.

Among the recommendations of the panel are the education and farm water quality plan development requirements, management practice implementation and reporting through a checklist format, and the tiered structure of the waivers, which offer reduced reporting requirements for those meeting all the requirements by the enrollment deadline. The panel also recommends that monitoring focus on currently applied agricultural constituents, make use of existing monitoring resources wherever possible, and be structured on a regionwide, cooperative basis rather than on individual discharge monitoring.

Program Implementation Costs

The Regional Board has attempted to consider costs to both the Regional Board and the regulated community in developing the conditional waivers. Anticipated program implementation costs to the agricultural community include potential fees, management practice implementation, monitoring costs and costs for education. Costs to the Regional Board include staff time for program development, outreach to the regulated community, submittal review, program oversight and enforcement.

The Regional Board has endeavored to develop a cost-effective approach to water quality protection, by focusing on management practice implementation and by developing a regionalized monitoring option that will focus monitoring resources on currently applied agricultural constituents and concentrate monitoring in areas where data already indicates problems associated with agricultural activities. Primary focus during the first waiver cycle will be on performance requirements and use of water quality information to adjust practice implementation. To reduce administrative costs, staff is exploring such data management options as direct monitoring data submittals, web-based enrollment and practice reporting, and coordination with pesticide use reporting.

1.4 Project Description

The Regional Board proposes to adopt a conditional waiver of waste discharge requirements and a waiver of the requirement to submit a report of waste discharge for discharges of waste from irrigated lands. Irrigated lands are lands where water is applied for producing crops and, for the purpose of this program, include, but are not limited to, land planted to row, vineyard, field and tree crops as well as commercial nurseries, nursery stock production and greenhouse operations with soil floors that are not currently operating under Waste Discharge Requirements (WDRs). Fully contained greenhouse operations (those that have no groundwater discharge due to impervious floors) are not covered under this Conditional Waiver and must either eliminate all surface water discharges or apply for Waste Discharge Requirements.

Discharges include surface discharges (also known as irrigation return flows or tailwater), subsurface drainage generated by installing drainage systems to lower the water table below irrigated lands (also known as tile drains), discharges to groundwater, and storm water runoff flowing from irrigated lands. These discharges can contain wastes that could affect the quality of waters of the state.

Discharger means the owner and/or operator of irrigated cropland on or from which there are discharges of waste that could affect the quality of any surface water or groundwater.

Tiered Waiver Structure

Two categories of conditional waivers are proposed, in acknowledgement that a significant number of farmers in the Central Coast Region have already begun to actively address water quality protection by obtaining water quality education, developing farm plans or completing practice assessment tools, and changing their practices to protect and improve water quality.

Tier 1(five-year) waivers are intended for those dischargers that have already completed a minimum of fifteen hours of farm water quality training, have completed farm water quality plans, and have begun the process of implementing management practices to protect water

quality. Tier 1 waivers are valid for five years or the length of time remaining in the five-year waiver cycle.

Tier 2 (one-year) waivers are intended for those dischargers that cannot meet all requirements of Tier 1 by the enrollment deadline of December 1, 2004. Tier 2 waivers are renewable annually for a maximum of three years. A discharger may move from Tier 2 to Tier 1 at any time during the three year period. Tier 2 dischargers that have not met all requirements for a Tier 1 waiver by the end of three years may be required to apply for waste discharge requirements unless they can demonstrate progress toward meeting Tier 1 requirements as well as extenuating circumstances, such as lack of available training classes, that prevented them from meeting all requirements within the allotted time period.

Tiered conditional waivers will provide increased regulatory oversight and focus attention on those dischargers that have not begun to address water quality issues, while allowing those dischargers that are already working toward full compliance with water quality objectives to devote their time and resources to implementing management practices. The time schedule will allow a limited amount of time to meet requirements for education and planning, and allow time for implementation and adjustment of management practices. Dischargers will report current and planned management practice implementation upon enrollment and during the five-year waiver cycle through annual or biennial reports. Waste discharge requirements and enforcement will be reserved for non-compliant dischargers, or if water quality does not improve.

Enrollment

All applicants will be required to submit the following information as part of their Notice of Intent (NOI) to enroll:

- Completed application form
- Copy of map of operation (map should be the same as the one submitted to the County Agricultural Commissioner for Pesticide Use Reporting, or equivalent)
- Completed management practice checklist/self assessment form
- Certificates of attendance at Regional Board-approved farm water quality education courses, if applicable
- Statement of farm water quality plan completion, if applicable
- Election for cooperative or individual monitoring

Waiver Conditions

All waiver holders will be required to meet the following conditions:

1. The Discharger shall not cause or contribute to conditions of pollution or nuisance as defined in CWC Section 13050.
2. The Discharger must comply with all requirements of applicable water quality control plans.
3. The Discharger shall not cause or contribute to exceedances of any Regional, State, or Federal numeric or narrative water quality standard.
4. Wastewaters percolated into groundwater shall be of such quality at the point where they enter the ground so as to assure the protection of all actual or designated beneficial uses of all groundwaters of the basin.

5. Wastes discharged to groundwater shall be free of toxic substances in excess of maximum contaminant levels (MCLs) for primary and secondary drinking water standards established by the United States Environmental Protection Agency or California Department of Health Services, whichever is more stringent; taste, odor, or color producing substances; and nitrogenous compounds in quantities which could result in a groundwater nitrate concentration (as NO₃) above 45 mg/l.
6. The Discharger shall comply with each applicable Total Maximum Daily Load (TMDL), including any plan of implementation for the TMDL, commencing with the effective date or other date for compliance stated in the TMDL. If an applicable TMDL does not contain an effective date or compliance date, the Discharger shall commence compliance with the TMDL's implementation plan no later than twelve months after USEPA approves the TMDL.
7. The Discharger shall allow Regional Board staff reasonable access onto the subject property (the source of runoff and percolating water) whenever requested by Regional Board staff for the purpose of performing inspections and conducting monitoring, including sample collection, measuring, and photographing to determine compliance with conditions of the waiver.
8. The Discharger shall comply with applicable time schedules.
9. This Conditional Waiver does not authorize the discharge of any waste not specifically regulated under this Order. Waste specifically regulated under this Order includes: earthen materials, including soil, silt, sand, clay, rock; inorganic materials including metals, salts, boron, selenium, potassium, nitrogen, phosphorus, etc.; and organic materials such as pesticides that enter or threaten to enter into waters of the state. Examples of waste not specifically regulated under this Order include hazardous materials, and human wastes.
10. Objectionable odors due to the storage of wastewater and/or stormwater shall not be perceivable beyond the limits of the property owned or operated by the Discharger.

Water Quality Monitoring

Water quality monitoring is a requirement of the waiver program. Dischargers will be required to elect a monitoring option during enrollment. They may choose individual monitoring or join a cooperative agricultural water quality monitoring program. The cooperative monitoring program will focus on currently applied agricultural constituents and is designed to provide information on in-stream water quality and detect trends over time. The cooperative monitoring option is proposed as an efficient way to determine the effectiveness of the waiver program at a reasonable cost, as well as to manage large amounts of monitoring data and ensure data quality.

Cooperative monitoring represents a watershed-based approach to meeting monitoring requirements. Fifty sites will be selected throughout the agricultural areas of the region, on main stems of rivers and on tributaries entering the rivers. These sites will be monitored on a regular basis, to see whether implementation of management practices as the result of adoption of the waiver is improving water quality. Sites will be selected in areas where the Regional Board's Central Coast Ambient Monitoring Program and other data have identified water quality problems from nutrients and other constituents that are likely attributable to irrigated agriculture. The cooperative monitoring program allows dischargers to pool resources in order to accomplish required monitoring at a lower cost than individual monitoring. Costs will be distributed based on a number of factors, including type and quantity of discharge, which will be determined by an Agricultural Monitoring Committee working with the Regional Board. The cooperative monitoring approach will also allow for additional resources, such as grant funds, to be utilized to reduce costs to dischargers.

Broad objectives of the cooperative monitoring program are to:

Short Term Objectives

- Assess status of water quality and associated beneficial uses in agricultural areas
- Identify problem areas associated with agricultural activities, where Basin Plan objectives are not met or where beneficial uses are impaired
- Conduct focused monitoring to further characterize problem areas and to better understand sources of impairment.
- Provide feedback to growers in problem areas; require additional monitoring and reporting as necessary to address problems

Long Term Objective

- Track changes in water quality and beneficial use support over time.

The focus of the cooperative monitoring program is on beneficial use protection and waterbody health as opposed to individual discharge (effluent) monitoring. Most of the major creeks and rivers of the Central Coast have designated beneficial uses that include cold and warm water fish habitat, agriculture, wildlife habitat, commercial and recreational fishing, and municipal and domestic supply. Other beneficial uses may also apply. Waterbodies which are not specifically identified in the Basin Plan also have designated beneficial uses, including municipal and domestic supply, recreation, and aquatic life (either for cold or warm water, whichever is applicable).

Impairment to beneficial uses in surface waters may result from conditions including nitrate concentrations which exceed the drinking water standard, toxic chemicals which exceed levels which are safe for human consumption or which cause toxicity or alterations in aquatic community structure, excessive buildup of salts to levels which create problems for irrigation and other uses, low dissolved oxygen levels which are harmful to aquatic life, and algal growth which may cause nuisance or otherwise impair beneficial uses. Some of these impairments are readily assessed through exceedance of numeric criteria. Others are assessed through narrative criteria (e.g. causing nuisance); in these cases a “weight of evidence” approach is desirable, where multiple measures of impairment are employed to determine if narrative objectives are met.

Assessing Program Effectiveness

The Regional Board will use a variety of tools to evaluate the overall effectiveness of the waiver program. Tasks and milestones will include enrollment levels in the two tiers, levels of farm water quality plan completion, levels and types of management practice implementation, and submittals of required reports according to the time schedule established in the waiver order. It is expected that most dischargers will have completed farm water quality plans and be implementing management practices by the end of the first waiver cycle (five years).

Water quality monitoring will be used in conjunction with management practice implementation to determine progress toward meeting waiver conditions. The cooperative monitoring program is designed to detect trends and allow the Regional Board to determine whether water quality is improving. Monitoring program milestones include establishment of a cooperative monitoring entity, development of a Quality Assurance Project Plan,

monitoring program enrollment levels and establishing adequate funding, and submittal of monitoring reports according to the time schedule established in the waiver order.

Staff will review progress on an on-going basis. At the end of the first waiver cycle, the program will be evaluated and revised as necessary as part of the waiver review process.

1.5 *Environmental Setting*

The project encompasses all of the irrigated land in the Central Coast Region, including the Salinas River, Pajaro River, Santa Maria River, and Santa Ynez River Basins, and smaller coastal streams. Agricultural production is a major land use in the Central Coast Region, with more the 600,000 acres of irrigated agriculture and more than 100 different crops produced.

The Central Coast Regional Water Quality Control Board has jurisdiction over a 300-mile long by 40-mile wide section of the State's central coast. Its geographic area encompasses all of Santa Cruz, San Benito, Monterey, San Luis Obispo, and Santa Barbara Counties as well as the southern one-third of Santa Clara County, and small portions of San Mateo, Kern, and Ventura Counties. Included in the region are urban areas such as the Monterey Peninsula and the Santa Barbara coastal plain, prime agricultural lands in the Pajaro, Salinas, and Santa Maria, Valleys, National Forest lands, extremely wet areas like the Santa Cruz mountains, and arid areas like the Carrizo Plain. Some physical characteristics of the Region are listed below:

CENTRAL COAST REGION¹¹

<u>CHARACTERISTICS</u>	<u>NUMBER</u>	<u>MEASURE</u>
Area of Region	11,274 square miles	
Streams	Unknown	2,360 miles
Lakes	99	25,040 acres
Ground Water Basins	53	3,559 square miles
Mainland Coast -	378 miles	
Wetlands and Estuaries	59	8,387 acres
Areas of Special Biological Significance	9	235,825 acres

Topographic features are dominated by a rugged seacoast and three parallel ranges of the Southern Coast Mountains. Ridges and peaks of these mountains, the Diablo, Gabilan, and Santa Lucia Ranges, reach to 5,800 feet. Between these ranges are the broad valleys of the San Benito and Salinas Rivers. These Southern Coast Ranges abut the west to east trending

¹ Water Quality Assessment for Water Years 1986 and 1987, Water Quality Monitoring Report No. 88-1 Water Quality, Division of Water Quality, State Water Resources Control Board, July, 1988.

Santa Ynez Mountains of the Transverse Ranges that parallel the southern exposed terraces of the Santa Barbara Coast.

The trend of the mountain ranges, relative to onshore air mass movement, imparts a marked climatic contrast between seacoast, exposed summits, and interior basins. Variations in terrain, climate, and vegetation account for a multitude of different landscapes. Seacliffs, sea stacks, white beaches, cypress groves, and redwood forests along the coastal strand contrast with the dry interior landscape of small sagebrush, short grass, and low chaparral.

2 Environmental Significance Checklist

This Environmental Checklist has been prepared in compliance with the requirements of CEQA relating to certified regulatory programs.

IMPACT	POTENTIALLY SIGNIFICANT IMPACT	POTENTIALLY SIGNIFICANT UNLESS MITIGATION INCORPORATION	LESS THAN SIGNIFICANT IMPACT	NO IMPACT
2.1 Aesthetics				
Would the Project:				
a) Have a substantial adverse effect on a scenic vista?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Substantially degrade the existing visual character or quality of the site and its surroundings?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

2.2 Agriculture Resources

In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Department of Conservation as an optional model to use in assessing impacts on agriculture and farmland. Would the Project:

a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

IMPACT	POTENTIALLY SIGNIFICANT IMPACT	POTENTIALLY SIGNIFICANT UNLESS MITIGATION INCORPORATION	LESS THAN SIGNIFICANT IMPACT	NO IMPACT
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2.3 Air Quality

Where available, the significance criteria established by the applicable air quality management or air pollution control the District may be relied upon to make the following determinations. Would the Project:

a) Conflict with or obstruct implementation of the applicable air quality plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the Project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Expose sensitive receptors to substantial pollutant concentrations?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Create objectionable odors affecting a substantial number of people?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

2.4 Biological Resources

Would the Project:

a) Have a substantial adverse effect, either directly, or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulators, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US fish and Wildlife Service?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

IMPACT	POTENTIALLY SIGNIFICANT IMPACT	POTENTIALLY SIGNIFICANT UNLESS MITIGATION INCORPORATION	LESS THAN SIGNIFICANT IMPACT	NO IMPACT
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

2.5 Cultural Resources

Would the Project:

a) Cause a substantial adverse change in the significance of a historical resource as defined in §15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Directly or indirectly destroy a unique paleontological resource of site or unique geological feature?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Disturb any human remains, including those interred outside of formal cemeteries?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

2.6 Geology and Soils

Would the Project:

a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
ii) Strong seismic ground shaking?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

IMPACT	POTENTIALLY SIGNIFICANT IMPACT	POTENTIALLY SIGNIFICANT UNLESS MITIGATION INCORPORATION	LESS THAN SIGNIFICANT IMPACT	NO IMPACT
iii) Seismic-related ground failure,, including liquefaction?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
iv) Landslides?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Result in substantial soil erosion or the loss of topsoil?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the Project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform building Code (1994), creating substantial risks to life or property?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

2.7 Hazards and Hazardous Materials

Would the Project:

a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) For a Project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the Project result in a safety hazard for people residing or working in the Project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

IMPACT	POTENTIALLY SIGNIFICANT IMPACT	POTENTIALLY SIGNIFICANT UNLESS MITIGATION INCORPORATION	LESS THAN SIGNIFICANT IMPACT	NO IMPACT
f) For a Project within the vicinity of a private airstrip, would the Project result in a safety hazard for people residing or working in the Project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

2.8 Hydrology and Water Quality

Would the Project:

a) Violate any water quality standards or waste discharge requirements?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of preexisting nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which results in flooding on- or off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Create or contribute runoff water which exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

IMPACT	POTENTIALLY SIGNIFICANT IMPACT	POTENTIALLY SIGNIFICANT UNLESS MITIGATION INCORPORATION	LESS THAN SIGNIFICANT IMPACT	NO IMPACT
f) Otherwise substantially degrade water quality?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
j) Inundation by seiche, tsunami, or mudflow?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

2.9 Land Use and Planning

Would the Project:

a) Physically divide an established community?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the Project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Conflict with any applicable habitat conservation plan or natural community conservation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

2.10 Mineral Resources

Would the Project:

a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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IMPACT	POTENTIALLY SIGNIFICANT IMPACT	POTENTIALLY SIGNIFICANT UNLESS MITIGATION INCORPORATION	LESS THAN SIGNIFICANT IMPACT	NO IMPACT
b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

2.11 Noise

Would the Project result in:

a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) A substantial permanent increase in ambient noise levels in the Project vicinity above levels existing without the Project?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) A substantial temporary or periodic increase in ambient noise levels in the Project vicinity above levels existing without the Project?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) For a Project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the Project expose people residing or working in the Project area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) For a Project within the vicinity of a private airstrip, would the Project expose people residing or working in the Project area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

2.12 Population and Housing

Would the Project?

a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

IMPACT	POTENTIALLY SIGNIFICANT IMPACT	POTENTIALLY SIGNIFICANT UNLESS MITIGATION INCORPORATION	LESS THAN SIGNIFICANT IMPACT	NO IMPACT
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

2.13 Public Services

a) Would the Project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:

Fire protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Police protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Schools?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Parks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Other public facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

2.14 Recreation

a) Would the Project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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b) Does the Project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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2.15 Transportation/Traffic

Would the Project:

a) Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio to roads, or congestion at intersections?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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b) Exceed, either individually or cumulatively, a level of service standard established by the

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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IMPACT	POTENTIALLY SIGNIFICANT IMPACT	POTENTIALLY SIGNIFICANT UNLESS MITIGATION INCORPORATION	LESS THAN SIGNIFICANT IMPACT	NO IMPACT
county congestion/management agency for designated roads or highways?				
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Result in inadequate emergency access?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Result in inadequate parking capacity?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

2.16 Utilities and Service Systems

Would the Project?

a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Have sufficient water supplies available to serve the Project from existing entitlements and resources, or are new or expanded entitlements needed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Result in a determination by the wastewater treatment provider which serves or may serve the Project that it has adequate capacity to serve the Project's projected demand in addition to the provider's existing commitments?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

IMPACT	POTENTIALLY SIGNIFICANT IMPACT	POTENTIALLY SIGNIFICANT UNLESS MITIGATION INCORPORATION	LESS THAN SIGNIFICANT IMPACT	NO IMPACT
f) Be served by a landfill with sufficient permitted capacity to accommodate the Project's solid waste disposal needs?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Comply with federal, state, and local statutes and regulations related to solid waste?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

2.17 Mandatory Findings of Significance

a) Does the Project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number of restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Does the Project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probably future projects)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Does the Project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

3 Thresholds of Significance

For the purposes of making impact determinations, potential impacts were determined to be significant if the Proposed Project would result in changes in environmental condition that would, either directly or indirectly, cause a substantial loss of habitat, substantial conversion of prime agricultural lands, or substantial degradation of water quality or other resources.

Discussion of Environmental Impacts

The analysis of potential environmental impacts is based on possible changes in irrigation management methods and other approaches to controlling agricultural discharges taken in response to the proposed Conditional Waiver of Waste Discharge Requirements for irrigated agriculture. The proposed project will result in more widespread implementation of management practices for irrigation management, erosion control, pesticide management and nutrient management. Potential impacts to biological, agricultural and water resources are discussed below, but are generally found to be of no significance.

2.1 Aesthetics

None of the potential practices described above would alter any scenic vistas, damage scenic resources, degrade the visual character of any site, or adversely affect day or nighttime views.

2.2 Agricultural Resources

The purpose of the Conditional Waiver is to increase the use of management practices that will protect water quality. In some cases, the water quality benefits of a practice are well documented, but in other cases, the effectiveness of a given practice, especially in coastal California crops, is not known. Regional Board has in the past, and will continue, to support research into the effectiveness of various practices. However, there are currently many practices available to growers which will have a beneficial impact on water quality by reducing erosion, improving irrigation efficiency to reduce the amount of water entering state waters from agricultural lands, and reducing the total amount of fertilizer and pesticides applied to crops. The following is a list of typical practices often recommended by University of California Cooperative Extension, Resource Conservation Districts and USDA's Natural Resources Conservation Service to protect water quality by reducing erosion, reducing the amount of fertilizer or pesticides applied, or preventing such constituents from entering waterways or groundwater. Many of these practices may actually improve agricultural resources by reducing the loss of topsoil or improving soil quality, and are likely to be implemented on a more widespread basis than currently, as a result of implementation of the Conditional Waiver:

- Vegetating roads to reduce erosion (cost-benefit analysis available from UCCE; net benefit in representative case due to reduced maintenance costs)
- Planning row arrangements to reduce runoff and erosion (cost-benefit analysis available from UCCE; net benefit in representative case)
- Underground outlet to transport water to bottom of steep slope and reduce erosion (cost-benefit analysis available from UCCE; initial outlay offset by increased yield within about 3 years)
- Tailwater recovery to eliminate surface water discharges of tailwater
- Vegetating waterways (ditches, drainage swales) (cost-benefit analysis available from UCCE; net cost in first year, little cost thereafter)
- Water and sediment control basins (cost-benefit analysis available from UCCE; net cost due to installation cost plus loss of acreage)
- Cover crops to reduce erosion during the rainy season and improve soil quality
- Filter strips (vegetation planted between crops and waterways to remove sediment and other pollutants)
- Hedgerow (a “living fence” of trees and shrubs planted around a field to attract beneficial insects, reduce erosion, stabilize banks and provide wildlife with food and cover)
- Irrigation water management to control the volume, frequency, and application rate of irrigation water in order to optimize the use of water, reduce erosion and decrease pollution of surface and groundwater
- Nutrient management to supply plant nutrients in the right amounts and at the right times to optimize crop yields and minimize loss of nutrients to surface and groundwater by developing a crop nitrogen budget
- Pest management practices to reduce pesticide applications by monitoring pest populations, promoting beneficial insects and other Integrated Pest Management techniques

Conservation practices that could affect the amount of land used for producing crops include vegetating farm roads, installing vegetated filter strips along creeks and at the ends of field rows, planting cover crops, and installing sediment detention basins. The Regional Board has reviewed the potential cost of some commonly used practices that might be employed by growers. Practices vary widely in both their initial installation costs and in long-term costs associated with maintenance and reduced cropping area. In some cases practices can result in improved productivity that will offset costs associated with taking some land out of production for conservation practices. Some practices, such as improved irrigation efficiency and nutrient management, can result in cost savings over time.

The practices described above, or other potential strategies that could be pursued by growers, are unlikely to lead to a conversion of prime agricultural farmland to other uses. Although some land may be vegetated for erosion control rather than planted to crops, the overall land use is still agricultural.

Growers have a wide range of options available to minimize or eliminate water quality impacts. Based on the range of options available, growers should be able to choose an

approach appropriate to their crops and fields that will minimize cost and allow them to continue farming. The availability of federal and state government funds for environmental conservation, as well as settlement funds (e.g. USDA's Environmental Quality Incentives Program, Proposition 40 and 50 funds, and PG&E and Guadalupe settlement funds) should allow growers to offset some of their costs, if they choose an approach that requires a greater capital investment.

2.3 Air Quality

Implementation of some alternative pest management strategies could lead to a reduction in aerial drift, and therefore an improvement in air quality.

2.4 Biological Resources

The proposed Conditional Waiver is designed to improve water quality through the widespread implementation of on-farm management practices that will reduce the amount of sediment, pesticides and nutrients entering the region's waterbodies. Growers must identify practices to address sediment, nutrients, pesticides, and irrigation efficiency in their farm water quality management plans. The goal of the associated monitoring program is to assess beneficial use protection in the agricultural areas of the region. Increased regulation of agriculture through the Conditional Waiver program will reduce impacts to biological resources by reducing exposure to agricultural pollutants.

It is possible that greatly improved irrigation efficiency in some areas will result in reduced flows during the summer. However, many Central Coast streams and rivers would not flow during the summer under natural conditions, and reductions in summer flows will not affect migration and spawning of fish, which are adapted to such hydrologic regimes. Reduced withdrawals of water for irrigation uses in some locations will allow surface and groundwater flows to return to, or more closely approximate, natural flows and will either cause no impact or improve habitat by allowing it to return to a natural state. Improved irrigation efficiency will generally improve habitat conditions for migration and spawning of fish, because of the low overall water quality of irrigation return flow. It is not expected that the Conditional Waiver will result in significant loss of habitat for threatened or endangered species. Practices such as vegetated waterways, hedgerows, and riparian restoration will likely result in increased habitat for many species.

2.5 Cultural Resources

Implementation of the proposed Conditional Waiver is not likely to affect cultural resources. None of the potential practices that growers might implement are likely to change the significance of any historical or archaeological resource, destroy a unique paleontological resource or geologic feature, or disturb any human remains.

2.6 Geology and Soils

Implementation of the proposed Conditional Waiver will not affect the geology of the region and will not expose people to additional geologic hazards. Growers may plant cover crops or buffer strips to increase soil infiltration and reduce runoff, which will likely reduce soil erosion.

2.7 Hazards and Hazardous Materials

The Department of Pesticide Regulation examines hazards posed by pesticides to workers and the public during its regulatory process. Each product is evaluated for potential hazards and any conditions necessary for the safe use of the material are required on the label or in specific regulations. Some of these requirements include use of protective clothing and respirators, use of a closed system for mixing and loading, or special training requirements for workers applying the pesticide. Implementation of the Conditional Waiver should not result in any increased exposure to hazards or hazardous material and may reduce exposure as growers implement pest management techniques that reduce applications in order to minimize potential runoff.

2.8 Hydrology and Water Quality

None of the management practices implemented to reduce discharges of agricultural constituents are likely to result in changes in drainage patterns that would increase erosion or siltation, increase the rate or amount of surface runoff, increase the risk of flooding, contribute to increases in storm water runoff that would exceed the capacity of stormwater drainage systems, or increase the chance of inundation by seiche, tsunami, or mudflow. Management practices will be implemented with the aim of improving water quality by reducing the amount of nutrients and pesticides applied to and/or discharging from agricultural lands. The requirement for all agricultural operations to have a farm plan is intended to ensure that operations are aware of the potential impacts of various practices and to ensure that reducing surface water discharges does not result in increasing groundwater discharges. Growers are required to have nutrient management plans to address both surface and groundwater impacts.

If dischargers elect to implement practices such as sediment detention basins, which could potentially fail and cause downstream problems, the management practices must meet local design standards. Practices designed to slow stormwater runoff and increase filtration by maintaining vegetation may increase recharge and increase stream flow in some areas. Improved irrigation efficiency will also reduce pumping and may reduce overdraft and seawater intrusion in some areas.

2.9 Land Use and Planning

Implementation of the proposed Conditional Waiver should not result in any changes in land use or planning. See discussion of Agricultural Resources, Section 9.4.2, above.

2.10 Mineral Resources

The effect of the proposed Conditional Waiver should be limited to land currently under agricultural production, and there should be no impact to mineral resources.

2.11 Noise

The proposed Conditional Waiver should have no impact on noise in the project area.

2.12 Population and Housing

The proposed Conditional Waiver will likely result in changes in on-farm management practices. Those changes in practices would not directly or indirectly induce population growth in the area, displace existing housing, or displace people. The proposed Conditional Waiver should not have an impact on population and housing.

2.13 Public Services

The proposed Conditional Waiver will not have an impact on public services.

2.14 Recreation

There should be no increase in use of parks or recreational facilities or the need for new or expanded recreational facilities as a result of this proposed Conditional Waiver.

2.15 Transportation/Traffic

The proposed Conditional Waiver will not have an impact on transportation/traffic.

2.16 Utilities and Service Systems

The proposed Conditional Waiver will likely result in changes in on-farm management practices. No wastewater treatment requirements for runoff from agricultural lands have been established by the Regional Water Quality Control Boards. The proposed Conditional Waiver should not result in changes in wastewater treatment requirements.

The proposed Conditional Waiver does not require and should not result in the construction or expansion of new storm water drainage facilities. The most feasible practices for the control of discharges from farms are on-field practices. It is unlikely that alterations in storm drainage facilities would be an effective means of reducing runoff from agricultural areas.

The proposed Conditional Waiver should not result in significant changes in water supply. One of the potential alternative practices that could be used by growers would be the use of cover crops to increase infiltration and reduce surface runoff of water, which may contain contaminants. The use of cover crops may require additional irrigation water, but may also result in reduced evaporation from soil surfaces, resulting in no or

little net change in irrigation water needs. Improved irrigation efficiency, one of the principle means of reducing agricultural discharges, will likely result in water savings.

The proposed Conditional Waiver should not require any changes in wastewater treatment services. The potential practices that could be applied by growers should not result in any changes in the generation of solid waste and therefore should not impact landfill capacity. The potential practices that could be applied by growers should not result in any changes in the generation of solid waste and therefore should not affect compliance with federal, state, or local statutes and regulations related to solid waste.

2.17 Mandatory Findings of Significance

The Conditional Waiver is designed to reduce discharges of agricultural pollutants and improve water quality. The Conditional Waiver does not require or allow any changes in practices that could degrade the quality of the environment or have environmental effects that could cause substantial indirect or direct adverse effects on human beings.

The proposed Conditional Waiver represents the establishment of a comprehensive program to address the impacts of agricultural discharges throughout the Central Coast Region. There are no probable future changes in Regional Board programs that would lead to cumulatively significant impacts when combined with likely impacts from the proposed Conditional Waiver.

Public Participation and Agency Consultation

Interested parties, agencies and the public have been consulted throughout the development of the proposed Conditional Waiver. Regional Board staff met with, or contacted by phone or email, agricultural industry representatives, environmental groups and local entities such as county Resource Conservation Districts and Agricultural Commissioners. The Agricultural Advisory Committee, made up of agricultural and environmental representatives, met for a year to assist staff in developing the program. Staff has consulted with the Department of Pesticide Regulation, University of California Cooperative Extension, and USDA Natural Resources Conservation Service. In addition, the Board held three public workshops at locations throughout the region to hear public testimony prior to completing the draft proposed Conditional Waiver and Initial Study.

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