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SECRETARY FOR
ENVIRONMENTAL PROTECTION

Central Coast Regional Water Quality Control Board

April 17, 2013

Ms. Abby Taylor-Silva
Vice President, Policy and Communications
Grower Shipper Association of Central California
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Dear Ms. Taylor-Silva:

CLARIFICATION OF WATER BOARD'S POSITION ON THE PUBLIC DISCLOSURE OF DATA RELATED TO COOPERATIVE GROUNDWATER MONITORING PROGRAMS

This letter is to follow-up to questions from agricultural representatives regarding the public disclosure of data and data confidentiality related to cooperative groundwater monitoring programs implemented in compliance with Agricultural Order R3-2013-0011 and the associated Monitoring and Reporting Program (MRP).

Water Board Policy Regarding Public Disclosure of Information

California's Constitution provides that the people of California have the right of access to information concerning the conduct of the people's business and that the writings of public officials and agencies shall be open to public scrutiny. In enacting the California Public Records Act, the Legislature stated that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. The fundamental principle of the California Public Records Act is that governmental records shall be disclosed to the public upon request, unless there is a specific reason not to do so.

Generally, all records must be made available to the public upon request. The Legislature also recognized the need to balance the public's right to know against competing constitutional rights to privacy and the government's need to perform its functions in a reasonably efficient manner. Consequently, the California Public Records Act also contains several exemptions from disclosure and incorporates several other statutes that prohibit state employees from disclosing certain types of public records.

It is the policy of the Central Coast Regional Water Quality Control Board (Water Board) to provide all members of the public broad and convenient access to its records and to promptly make the fullest possible disclosure of its records. Some Water Board records are exempt from disclosure under the California Public Records Act (CPRA). For example, Water Code section 13267, subdivision (b)(2) states that the portions of a report that might disclose trade secrets or secret processes may not be made available for inspection by the public, but shall be made available to governmental agencies for use in making studies.

JEFFREY S. YOUNG, CHAIR | KENNETH A. HARRIS JR., INTERIM EXECUTIVE OFFICER

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Item No. 21 Attachment 8
May 30-31, 2013
Agricultural Order: Disclosure Letter

Groundwater Data in GeoTracker

Specifically related to groundwater, Chapter 670, Statutes of 2008, (AB 2222, Caballero) required the State Water Resources Control Board (State Water Board) to make recommendations to enhance the public accessibility of information on groundwater conditions. In response, the State Water Board's Groundwater Ambient Monitoring and Assessment (GAMA) Program prepared a Report to the Legislature in December 2010. The report recommended increasing public accessibility to groundwater information and coordination among groundwater agencies and stakeholders, through sharing and displaying information using the State Water Board's existing internet-based information management system – GeoTracker. The system is available to the public via the Internet and Californians now have access to a Google map-based database that readily provides a wealth of information including results of groundwater quality, groundwater level information, as well as links to published reports for a specific area of interest. Scientists, regulators, water managers, educators and the public can now effectively use these data, and as more data are shared through GeoTracker, the status of groundwater quality in California can be better understood.

Agricultural Order – Cooperative Groundwater Monitoring Program Data

The Water Board manages information for the Agricultural Regulatory Program using GeoTracker. As stated in Condition 65 of the Agricultural Order, in the interest of public health and safety, the Water Board will not make available for public inspection, the precise location or associated farm/ranch name of any groundwater well monitored in compliance with this Order. Consistent with the reporting of groundwater wells on GeoTracker, groundwater well location and data will only be referenced within a one-half mile radius of the actual well location. The Water Board will apply the one-half mile blurring of well location data when providing data in response to a CPRA request and to the display of well locations on GeoTracker.

There is no Water Code authority requiring that the Water Board blur well locations to one-half mile, and Water Code section 13269, subdivision (a) (2) states that "monitoring results shall be made available to the public." As well, under the CPRA, the Water Board must disclose all records unless there is a specific exception applicable to those records. There is no explicit exception for well locations in the CPRA and so the only possible exception would be under the public interest exception where the Water Board must demonstrate that the public's interest in nondisclosure clearly outweighs the public's interest in disclosure. (Gov. Code section 6255.) In GeoTracker, all wells automatically have the location blurred to one-half mile when the information is viewed by a member of the public. The Water Board believes that it can defend the decision to blur the well locations to a one-half mile due to public safety and food safety concerns and will be supported by GeoTracker and the standard practice of blurring well locations to a one-half mile for other regulatory programs. Furthermore, blurring well locations beyond the one-half mile will result in providing inaccurate and poor information to the public, causing the public to make misinformed decisions that can affect drinking water quality, public health, and individual exposure to contaminated drinking water.

Groundwater quality conditions in agricultural areas of the Central Coast region are severe and nitrate impacts to drinking water poses a significant threat to human health¹. Governor Brown

¹ Harter, T., J. R. Lund, J. Darby, G. E. Fogg, R. Howitt, K. K. Jessoe, G. S. Pettygrove, J. F. Quinn, J. H. Viers, D. B. Boyle, H. E. Canada, N. DeLaMora, K. N. Dzurella, A. Fryjoff-Hung, A. D. Hollander, K. L. Honeycutt, M. W. Jenkins, V. B. Jensen, A. M. King, G. Kourakos, D. Liptzin, E. M. Lopez, M. M. Mayzelle, A. McNally, J. Medellin-Azuara, and

signed Assembly Bill 685 on September 25, 2012, establishing a state policy that every Californian has a human right to safe, clean, affordable and accessible drinking water. The bill directed relevant state agencies to advance the implementation of this policy when those agencies make administrative decisions pertinent to the use of water for human consumption, cooking, and sanitary purposes. Maximizing the accessibility of groundwater quality data to the public increases the public's ability to be informed about their drinking water quality. The public has a right to know the nitrate levels in groundwater wells and where wells are potentially contaminated or unaffected by nitrate contamination. This information is necessary for informed decision making necessary to protect drinking water sources and public health. Therefore, the Water Board believes past one-half mile, the public's interest in disclosure outweighs the public's interest in non-disclosure and so the Water Board cannot support any proposal to blur the well locations any further than one-half mile.

Agricultural representatives have requested that the Water Board sign a non-disclosure agreement to keep all data confidential and require the Water Board to not make any disclosures under the CPRA or use the data in any of the Water Board's public reports or presentations. The Groundwater Cooperative Program would provide the public with an annual report with the data aggregated. The basis for the request is the need to protect the nation's food supply from the threat of foreign and/or domestic terrorist attacks. The Water Board must be able to use the data, make the data accessible to the public and cannot sign a non-confidentiality agreement. An aggregate annual report does not satisfy the requirement of Water Code section 13269, subdivision (a) (2) to make the monitoring results available to the public.

The Water Board is considering adjusting the timeframe for which groundwater quality and well location data is made available on GeoTracker to the public. For other regulatory programs, data submitted to GeoTracker by Dischargers is immediately available to the public. The submittal of data to GeoTracker by Dischargers enrolled in the Agricultural Order is relatively new. To ensure the proper and accurate display of data submitted in compliance with the Agricultural Order, the Water Board is considering delaying the posting of this data to the public on GeoTracker. Data submitted to the Water Board would be posted to the regulator-side of GeoTracker immediately for evaluation, but would only be available to the public-side of GeoTracker after a period of months. This delay provides additional time for the Water Board and the Dischargers to verify data accuracy and conduct any necessary follow-up prior to making data broadly available to the public via the Internet on the public side of GeoTracker.

If you have any questions, please contact me at (916) 341-5168 or jjahr@waterboards.ca.gov, or the Interim Executive Officer, Ken Harris at (805) 549-3140 or kharris@waterboards.ca.gov.

Sincerely,



Jessica Jahr
Staff Counsel

T. S. Rosenstock. 2012. Addressing Nitrate in California's Drinking Water with a Focus on Tulare Lake Basin and Salinas Valley Groundwater. Report for the State Water Resources Control Board Report to the Legislature. Center for Watershed Sciences, University of California, Davis. 78 p. <http://groundwaternitrate.ucdavis.edu>.

April 17, 2013

cc:

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