January 8, 2017

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Subject: Comment Letter: Order No. R3-2017-0002, Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands

Dear Chris:

Thank you for the opportunity to comment on the proposed Ag Order: R3-2017-0002. Comments below are provided in an effort to ask for clarification, and provide feedback on potential impacts on proposed changes. Hopefully, these comments will be useful as Central Coast Regional Water Quality Control Board (Water Board) works to develop an Ag Order permit that reasonably considers water quality and beneficial uses.

Confusion about the Adoption Process:

Throughout the latter stages of Ag Waiver 2.0, it was communicated to the Central Coast Agricultural (Ag) community by State Water Resources Control Board legal counsel and Water Board Staff that the Ag Waiver Permit R3-2012-2211 would not be extended, but instead, would be re-adopted as a new Ag Order. This is consistent with the Non-Point Source Policy: "Waivers may not exceed five years in duration, but may be *renewed*".

In August 2016, it was Ag's understanding that Ag Order R3-2017-0002 would be "renewed" with few changes to the 2012 Ag Order in an effort to expedite the re-adoption process while pending technical, legal and procedural challenges are addressed over the next couple of years. And since Ag Waiver was presented as an interim step, that was the premise behind proposing a three-year, rather than a five-year, Ag Waiver term.

Agriculture understood the need for expediency and welcomed the effort to reduce the constant uncertainty that has surrounded the Ag Waiver, to date. However, representations of "renewal" were short-lived**.**

In September of 2016, the Water Board began introducing substantial changes into Ag Waiver 3.0, while retaining the majority of the permit conditions and findings from the 2012 Ag Order 2.0. Many of the 2.0 Findings and conditions are out-of-date, or carry obvious biases that resided in the 2012 Ag Order, or contain assumptive or factual errors. This new proposed Order is a hybrid, which retains some of the most concerning parts of the Ag Waiver 2.0, while proposing new and, somewhat, undeveloped conditions

and findings. And as Findings and Conditions should form the basis of a permit, this presents a conundrum about the renewed Order. Consequently, the Water Board may have reached a crossroads where they need to either re-adopt Ag Waiver 2.0 without substantial change or incorporate substantial changes into Ag Waiver 3.0, as proposed, and move towards adopting a new Waiver with updated Findings and Conditions. The latter would not be a renewal of Ag Waiver 2.0, but a completely new Waiver, which is unlikely to happen by the March 2017 adoption deadline as imposed by SWRCB legal counsel.

Perhaps a compromise might be for the the Water Board to renew the current Ag Waiver 2.0 with minimal change, but insert milestones and a deadline to review and update Findings and Conditions to correct prejudicial, out-of-date, or assumptive and/or factual errors?

Finally, there remains confusion about the 2017 Monitoring Reporting Programs (MRPs) that were adopted by the Water Board Executive Officer in late 2016. There remains uncertainty about how these newly adopted MPRS will harmonize with the MRPs to be adopted as part of R3-2017-0002? When does one set of MRPs terminate and the other begin?

Substantive Changes:

As stated above, 2017 proposed Ag Waiver 3.0 (published on December 3, 2016) contains substantive changes, which merit robust discussion and consideration. Examples of substantive changes, includes:

1. ALL Tier 2 and 3 growers with high nitrate demand crops must now report Total Nitrogen Applied. Previously, only growers with a high Nitrate Risk Determination were required to report Total Nitrogen Applied. This modification has increased the number of farms/ranches reporting from about 600 operations to between 1400-1800 operations.
2. An arbitrary trigger for Total Nitrogen Reporting (e.g. the Nitrate Risk Determination) has been exchanged for another arbitrary measure, which is the crop grown.
3. The Anti-degradation policy is inserted
4. Changes to Tier 3 Reporting requirements:
    a. Annual Irrigation and Nutrient Management Plan (INMP) Effectiveness Report
    b. Annual Water Quality Buffer Plans
5. Substantially increasing Ambient Monitoring Requirements by adding pyrethroid and neonicitinoid sampling, analytical and toxicity testing requirements.

Discussion of substantive changes:

1. Increased Total Nitrogen Application Reports will occur at a time when there are fewer, rather than more, qualified technical service providers to assist growers.

2. The Nitrate “Risk” Determination that was included in Ag Order 2.0 was never really about risk. If it had been, it would have considered the probabilities and magnitude of impact to water quality from a specific set of field conditions. Instead, the Nitrate Risk

Determination was a determination of the worst-case scenario. It was an arbitrary calculation that was not based on agronomic principles. Now, this arbitrary calculation is being exchanged for another arbitrary, albeit simplified, measure. The proposed trigger will be the crop grown. Like the previous "Risk" determination, growers will not be provided with regulatory credit for incorporating mitigating factors into their operations. This over-simplification of highly complex systems is unfortunate in that is creates false perceptions about what growers are or are not doing or the actual field-level risk to water quality.

3. An Anti-degradation policy analysis is inserted without a thoughtful and thorough consideration of the nuances of application of this policy to a non-point source program. This will be discussed in further detail in the Findings section.

4. There was no explanation offered for the annual reporting frequency for Tier 3 INMP Effectiveness Reports or Water Quality Buffer Plan, and thus, this new requirement appears somewhat capricious, especially considering that not all growers are enrolled in the Ag Waiver.

Compliance costs vary substantially among Tier 3 operations because the Tier 3 requirements are triggered by diverse on-farm characteristics. What follows, is an attempt to estimate some of costs that Tier 3 growers may be incurring. It should be noted that circumstances, as envisioned by the State Water Resources Control Board (SWRCB) during the Ag Waiver 2012 petition hearings, have substantially changed as a result of seemingly absolute public access to reported compliance information. This, coupled with a strong expectation of lawsuits using grower reported information, compels Tier 3 growers to use the best scientists and lawyers they can retain to prepare Tier 3 reports.

Below, costs for current Tier 3 requirements are discussed. Please note that these costs do NOT include management practice implementation, which are highly individual and variable depending on the scale of practice implemented.

- *Individual Surface Water Monitoring*. In discussions with laboratory personnel, costs estimates for preparation of the Sampling and Analysis Plan and Quality Assurance Project Plan, as well as sampling, analysis, toxicity testing and reporting range from ~$10,00.00 to ~$30,00.00 per year. Average costs are ~$21,000.00 per year. Variability depends on how much work is needed to write and/or update the Sampling and Analysis Plan (SAP). If a grower makes positive changes to his farm/ranch that improves water containment or reduces discharge outfalls, he must update his plans. Thus a grower who has made improvements is financially penalized by having to update his SAP/QAPP. Another factor that drives higher costs is that most growers do not have in-house staff qualified to do SWAMP-compatible surface water monitoring; and therefore, they need to contract with third party sampling crews. Unfortunately, no local samplers are available and growers must hire sampling crews from outside of the area, which increases costs even more.

Additional costs are incurred when an annual Tier 3 Surface Water Monitoring Report has exceedances or toxicity that trigger an additional technical report. Most growers hire the laboratory or a consultant to write these reports. Average costs per annual report are about $4000.00.

Technical Reports are not an adopted requirement of the Ag Waiver 2.0, but are required by Executive Officer discretion. When writing one of these reports, it was interesting to discover little to no direct correlation between management practices and Individual Surface Water Monitoring results at the edge of field/operation. Toxicity or exceedances occurred where they weren't expected and vice versa. This exercise validated the argument that edge-of-field monitoring is not necessarily the best way to gauge the effectiveness of the Waiver conditions. In fact, SWRCB reached the same conclusion in SWRCB WQ 2013-0101 when they wrote, *"The variability in the composition of end-of-field discharges makes it difficult to characterize such discharges through sampling at a limited number of locations and in a limited number of sampling events. Further, even though the surface water discharge monitoring requirements are targeted to the highest risk dischargers, problem discharges and areas are likely to be found outside of the influence of farms operated by Tier 3 dischargers. The better approach may be to rely on receiving water monitoring data and to require the third party monitoring groups administering receiving water monitoring to pursue exceedances with increasingly focused monitoring in upstream channels designed to narrow down and identify the sources of the exceedances."* (SWRCB Order 2013-0101)

- *Irrigation and Nutrient Management Plans and Effectiveness Reporting* costs vary depending on the when the INMP was written and who wrote the INMP: grower, vendor, outside consultant or an in-house Staff person. For example, for one client, who hired an outside consultant to write both his INMP and Effectiveness report, the total consulting costs since mid-2014 is about $64,000.00, which is about $2200/month or $26,000/year. This is likely an underestimate because, initially, Tier 3 compliance tasks were not tracked in detail. Another grower utilized his fertilizer vendor to write an INMP. However, when it was time to write the Effectiveness report, the vendor declined. Subsequently, the client retained an outside consultant and his costs should average about $2500-3000.00/month into the future.

It is interesting to note that in 2014, there were about six consultants or vendors interested in writing INMP and Effectiveness Reports in the Salinas Valley. Of those 6, today, only one remains active. There are a number of Certified Crop Advisors on the Central Coast, but many are declining to do this work. CCAs' concerns about liability because of public access to reported compliance forms and reports is discouraging availability of technical service providers. Shortages of service providers will eventually increase costs even more. It the current trends continue, there may come a time when growers may be unable to procure sufficient qualified technical assistance.

- *Water Quality Buffer Plans (WQPBs)* To date, these costs are difficult to assess. The magnitude will be highly dependent on how many linear feet/miles of property are adjacent to or contain a waterbody impaired for turbidity, temperature or sediment. Some growers completed the requisite WQBP forms without fully understanding the implications of what they were committing to do in the future. Other growers elected to hire a consultant and submit alternative Water Quality Buffer Plans and, currently, are awaiting review and approval by Water Board Staff. Implementation costs remain an unknown.

One important point to make about the WQBP requirement is that it occurs in a patchwork fashion, and consequently, Tier 3 ranches may or may not be located at sites

that will positively or negatively influence water quality or protect beneficial uses.

It is safe to say that average Tier 3 base costs for Individual Surface Water Sampling and INMP programs/reports easily could be between $50,000-60,000.00/year/farm or ranch. Costs will increase depending on the level of required implementation. If a Tier 3 grower has 500-1000 acres then his per acre costs will range from $50-$120.00/acre.

Growers of Central Coast crops are highly competitive. They compete with their neighbors and calculate their costs on a per acre basis. Tier 3 designations are largely predicated on farm/ranch size, thus, if a Tier 3 grower's competitor has a Tier 1 or Tier 2 ranch or is not enrolled in the Ag Waiver, then, there is a competitive advantage for the neighbor, even though that neighbor's threat to water quality may not be substantially different than a Tier 3 ranch.

The proposed Ag Waiver 3.0 Annual reporting frequency for Tier 3 INMP Effectiveness Reports and the WQBPs will substantially increase a grower's average base costs. Additionally, from a perspective of the implementation, the proposed annual frequency does not allow time for the iterative process to occur. It takes time to plan, execute, collect data and adapt. Annual reporting will not capture this process. Please consider returning the reporting frequency to meet Ag Waiver 2.0 requirements of once every four years, or at the very least, reduce the reporting frequency to a period of every 2-3 years to allow for the iterative process to occur between reports.

One final note about Tier 3 farms/ranches is that using size as a criterion seems to be based on a built-in assumptive error that larger farms/ranches will have more discharges proportionate to their larger size. Instead, what is known is that individual farms/ranches have site-specific conditions that dictate whether discharges occur, that determine what kind and the volume of potential discharges, and predicate the type of practices or mitigations that will work. Therefore, it is logical that since farm/ranch size may not be that useful in predicting impacts to water quality, and since there may be an unreasonable nexus between water quality benefits to the costs of Tier 3 compliance; there is justification for re-evaluating all Tier 3 farms/ranches to determine if changed circumstances or a better understanding of ranch-specific characteristics might result in re-designation of Tier 3 Farms/Ranches to a Tier 2. Please consider doing a complete re-evaluation of Tier 3 Ranch designations.

5. *Neonicitinoid sampling, analytical and toxicity testing requirements* will be discussed in the Findings section.

Proposed New Findings: Ag Order

Finding 24. Edits positively clarify the previously circular language pertaining to compliance with TMDL programs.

Proposed New Findings: Attachment A:

As mentioned above, Water Board Staff has inserted a number of new findings in the Order so that the Ag Waiver 3.0 has evolved into more than a simple Waiver renewal process. Unfortunately, some of these new findings demonstrate contain prejudicial,

assumptive or factual errors. Each of the newly proposed findings should be examined for accuracy and objectivity.

Finding 12: Human Right to Water.

This finding would be more balanced if it also reflected the considerable activity that has occurred to address Central Coast drinking water since 2012.

- The Human Right to Water Act was adopted in 2014.
- The Central Coast Groundwater Coalition scientifically characterized drinking water on the Central Coast.
- Individual Growers have provided alternative sources of drinking water or treatment of impaired drinking water wells on their operations.
- Collectively, growers in the Salinas Valley are working towards funding additional drinking water projects.

From an Agricultural perspective, the most disappointing aspect of this issue is the fact that the Environmental Community has rejected offers from the Agricultural community to collaborate, and continues to rely, instead, upon an aggressive and divisive legal solutions.

Findings 22 – 30: Anti-degradation.

Since growers are the ultimate practitioners of Water Board policies or regulations, there is, of course, concern about how Anti-degradation analyses and Best Practicable Treatment and Controls (BPTC) will ultimately be applied to private, agricultural, non-point source dischargers, who have limited capital and no way to recoup regulatory costs. SWRCB states in its Q&A, Resolution No. 68-16, Statement of Policy with Respect to Maintaining High Quality of Waters in California, that "to evaluate the best practicable treatment or control method, the discharger should compare the proposed method to existing proven technology; evaluate performance data, e.g., through treatability studies; compare alternative methods of treatment or control; and/or consider the method currently used by the discharger or similarly situated dischargers."

BPTC can trace it origins to the early Clean Water Act and National Pollution Discharge Elimination System effluent limits; hence, the BPTC approach is designed to address point source discharges. BPCT, in general, utilizes industry or federal standards. An example might be USDA NRCS practices. However, as has been repeated comments, reports and testimony that federal and industry standards often are not applicable on the Central Coast because of differences in climate, resource availability, or cost structures.

Much of the local work done on Management Practices on the Central Coast from 1990 to 2012 involved soft, conservation practices such as vegetated ditches, hedge rows, mechanical weed and pest treatment, and cover crops. However, today, the Water Board has promulgated regulations that require growers to implement hard-core agronomic practices and unfortunately, there currently is no definitive science on these practices for Central Coast Agricultural. The current state of nutrient, irrigation, sediment and riparian habitat technologies on the Central Coast are in the "learn as you go" phase. Today's technology development is dynamic. There are few technical baselines or effectiveness measurements that could be used as BPTC for the purposes of Anti-degradation. Some University guidelines have been developed and local research is

underway but is being constantly modified: what we know today will be different tomorrow. In order to utilize applicable technologies, a regulation would have to be built that is very flexible and adaptive.

One other complicating issue is that many operations are managed as an entire unit; whereas most practices, when researched and extended, focused on a single practice on a single farm/ranch or subset thereof. Often, a technical practice that appears to be ideal will not fit within an operation that consists of many farms/ranches.

In 2013, SWRCB conducted Focused Groups on the State Anti-degradation Policy. When one reads the Environmental Focused group comments about how to relate the Anti-degradation policy to Agriculture, it becomes abundantly clear that while this stakeholder group may have a firm grasp of the legal requirements of the Anti-degradation policy, they are clueless as to how to build an Anti-degradation regulation or implement such regulations to balance resources. Statements such as "The current way agriculture is practiced might not be sustainable" are not helpful. One can only surmise that, in the opinion of some environmental stakeholders, the ultimate BPTC is to eliminate today's agriculture.

Consequently, there is grave concern about how implementable the Anti-degradation BPTC policy realistically will be by either the Central Coast Water Board or the Regulated Community. The questions are: how will the Water Board make the determinations about what BPTCs to use? How will the Water Board Staff determine the level of effectiveness of the BPTC in its ideal state versus in its implemented state? and how will the Water Board build a regulation that has the necessary flexibility and adaptability?

Finding 60: Salinas Valley Groundwater Assessment in the "Harter Report"

Staff states the 2012, University of California, Davis Report titled "Addressing Nitrate in California's Drinking Water" (aka "The Harter Report") "documents severe nitrate contamination in the Salinas Valley and Tulare Lake Basin". An independent hydrogeological evaluation of the report found the following about the Harter Report's Salinas Valley Groundwater Assessment:

> *"The main Harter report and eight associated technical reports are about 1,200 pages long. Of these, only the following are dedicated to analyzing nitrate in groundwater in the project areas:*
>
> - *Ninety-three pages are devoted to describing the occurrence of nitrate in groundwater in Technical Report 4, Groundwater Nitrate Occurrence, for both the Tulare Lake Basin and Salinas Valley.*
> - *About 35 pages of the 93 pages describe the development of a database of nitrate concentrations and well data used to conduct the study.*
> - *The principal chapter analyzing nitrate occurrence in BOTH project areas is only about 50 pages in length. The Salinas Valley is a subset of the 50 pages.*
> - *Thus, the proportion of the final report related to groundwater nitrate occurrence is only about five to eight percent of the total 1200 page report.*

Furthermore, the Harter Report did not rely on data generated by Monterey County Water Resources Agency (MCWRA), the public agency with the most extensive network of private irrigation wells that has been used for ongoing monitoring of groundwater elevations, quality, and extractions in the Salinas Valley for over 20 years. Since the Harter Report did not involve MCWRA, the report is much less detailed and informative than about the Salinas Valley than it could have been.

This is not to say that groundwater and drinking water impairments in the Salinas Valley do not exist. Agriculture acknowledges there are issues and in fact, has taken its role in the groundwater management seriously, as evidenced by actions that are listed in the Finding 12 above. Also, the Agricultural Community has historically and currently leads efforts to improve groundwater recharge and address seawater intrusion through large-scale, visionary projects in the Santa Maria and Salinas Valleys.

Finding 61: Expert Panel

Discussion of the Recommendations of the Expert Panel is woefully lacking. For the sake of Water Board awareness, Expert Panel objectives and recommendations are described below.

The Expert Panel was convened to address 13 very specific questions posed by the State Water Resources Control Board as part of a commitment made to the California Legislature. Also, several of these questions were the result of being deferred during the petition SWRCB WQ 2013-0101.

1. How can risk to or vulnerability of groundwater best be determined in the context of a regulatory program such as the Irrigated Lands Regulatory Program (ILRP)?
2. Evaluate and develop recommendations for the current approaches taken to assessing risk to or vulnerability of groundwater.
3. How can risk to or vulnerability of surface water best be determined in the context of a regulatory program such as the ILRP?
4. Evaluate and develop recommendations for the current approaches taken to assessing risk to or vulnerability of surface water.
5. What management practices are expected to be implemented and under what circumstances for the control of nitrogen?
6. What management practices are recommended for consideration by growers when they are selecting practices to put in place for the control of nitrogen?
7. Evaluate and make recommendations regarding the usage of various nitrogen management and accounting practices.
8. Evaluate and make recommendations regarding the most effective methods for ensuring growers have the knowledge required for effectively implementing recommended management practices.
9. What measurements can be used to verify that the implementations of management practices for nitrogen are as effective as possible?
10. Evaluate and make recommendations regarding the usage of various verification measurements of nitrogen control.
11. Evaluate the relative merits, and make recommendations regarding the usage of, surface water measurement systems derived from either receiving water or a discharge monitoring approach to identify problem discharges.

12. Evaluate and make recommendations on how best to integrate the results of the Nitrogen Tracking and Reporting System Task Force with any above recommendation regarding management practices and verification measures.
13. Evaluate and make recommendations on the reporting requirements to report budgeting and recording of nitrogen application on a management block basis versus reporting aggregated numbers on a nitrate loading risk unit level.

As a result of an intensive and public process, the Expert Panel proposed: "a comprehensive regulatory program that is proactive. [The proposed program] focuses on efforts to minimize the loads of nitrates to the groundwater, without trying to understand all the details of the groundwater itself.

The final Expert Panel recommendations were controversial, for a number of reasons, and have only been partially adopted. The recommendations are as follows:

1. Establishment of coalitions to serve as the intermediate body between farmers and the Regional Boards.
2. Adoption of the A/R ratio as the primary metric for evaluating progress on source control, with eventual impact on the groundwater quality.

$$A/R = \frac{\text{Nitrogen Applied}}{\text{Nitrogen Removed via harvest Nitrogen sequestered in the permanent wood of perennial crops}}$$

3. Development of a very strong, comprehensive, and sustained educational and outreach program. Such a program will require different materials and presentation techniques for different audiences, such as individuals who may need certification, managers of irrigation/nutrient plans, irrigators, and farmers/managers.
4. Creation and implementation of nitrogen/water management plans that are truly plans rather than just a listing of best management practices. These must be customized by features such as crop and locale
5. Reporting of key values (i.e., crop type, acreage, total nitrogen applied, and total nitrogen removed) by farms to the coalitions.
6. Trend monitoring of groundwater nitrate concentrations to track general aquifer conditions over multiple years.
7. Targeted research that will directly help the agricultural community to maintain and/or improve yields while simultaneously decreasing the A/R ratio on individual fields.
8. Use of multi-year reported values and monitored trends by the coalitions to inform the agricultural community of progress, to improve understanding of what is reasonable to attain and expect, and to sharpen improvement efforts

Finding 64: Total Nitrogen Applied Data. It should be noted that there is substantial doubt in the regulated community about the accuracy of the raw data used to produce the Total Nitrogen Applied data.

There is little confidence that the soil nitrate concentrations are representative of field-level nitrate concentrations over time. For example, soil-sampling results are highly variable as there are an infinite number of combinations of row/bed arrangements,

irrigation systems, cropping systems, fertilizer formulations, and soil types. Since nitrate tends to concentrate in the waterfront moving through the soil, the combination of the factors above would dictate where nitrate will be concentrated in any individual bed. A soil sample taken in the wrong place or at the wrong angle could completely overestimate or underestimate the amount of nitrate located in the waterfront. Therefore, if a grower does not obtain a sufficient number of core samples to create a composite soil sample for analysis, then, his sample will not be representative of the nitrate levels in his field.

Similarly, irrigation well nitrate sample only represents the nitrate in the well, which may or may not represent the nitrate in the associated aquifer. Therefore, soil nitrate concentrations and the well water nitrate concentrations represent only a snapshot in time and at a specific geographical or geological point. As stated above, nitrate is concentrated in the waterfront.

In the end, there is concern that Staff and Water Board Members are underestimating the complexity and difficulty of collecting reliable data. From a *field* research point of view, any analysis is only as good as the statistical confidence of any individual data point. A poor quality data point, then, compromises the comparability of the dataset and the final analysis and conclusions.

Finding 83: Neonicitinoid pesticides - The Neonicitinoid class of pesticides is *suspected* to be only one of a combination of many factors, such as hive stress, transport issues, predatory mites, which may impact honey bees and other pollinators.

Finding 84: Neonicitinoid pesticides - Not all the neonicitinoid pesticides listed in this finding are registered for use in California or have Ag labels. Thiaclopird is not registered in California. Dinotefuran is registered only for home, garden, and urban landscape use. Clothianidin is a seed treatment for corn and canola crops, which are not grown on the Central Coast, except for corn that has been grown east of Santa Maria. The same can be said for the pyrethroids. Some of the listed compounds only have urban uses and some are not registered in California.

Of course, environmental laboratory analyses are generally conducted as a suite; therefore, an analysis of all neonicitinoid pesticides would occur if only one were requested. Nevertheless, Agriculture want to confirm that it is not being burdened with urban monitoring requirements because the Cooperative Monitoring Program is convenient.

Finding 85: Neonicitinoid pesticides - No citation was provided for the referenced study and the way the data are presented in this finding creates many questions about the study conclusions. Additionally, it is questionable whether the use of this single study is a sufficient and reasonable basis for the 69% increase in ambient Cooperative Monitoring Program (CMP) costs over 2016.

Finding 86: Neonicitinoid pesticides - What is the concentration of the referenced neonicitinoid pesticide aquatic life benchmark? What is the origin of this benchmark? How was it derived? Is it an official state or federal regulatory standard? Has it been properly peer-reviewed and vetted? Is it in in the Central Coast Basin Plan? Or is it simply a benchmark that has appeared in a research paper and is being propagated into

the regulatory process? Without knowing what the benchmark is, it is not possible to know whether surface and groundwater detections of Neonicitinoid pesticides, which are typically detected in fractions of a part per billion, exceed the benchmark.

Notwithstanding an appropriate aquatic life benchmark, the Water Board Staff may rely on the Basin Plan narrative pesticide standard as justification for increased pesticide monitoring. However, if detection is enough to claim an exceedance of a narrative standard, then, the Water Board is using a zero tolerance approach to water quality compliance that may inappropriate.

One other point needs to be made relative to neonicitinoid pesticides. Discussions with principle scientists at a toxicity laboratory reveal that currently there is not a standard laboratory procedure for analysis or toxicity testing of neonicitinoid pesticides. Without an industry standard, there are no assurances that analytical results are precise, accurate, replicable, defensible or reflective of actual water quality conditions.

Finding 137: Management Practices - Please consider amending the newly added language to read "The 2004 and 2012 Agricultural Orders required dischargers to describe implementation of management practices in the Farm Plan and the 2012 Agricultural Order required dischargers to report *a subset of the Farm Plan's* management practices implemented in an annual compliance form." The proposed language, without amendments, could lead one to expect to find all Farm Plan practices in the Annual Compliance Form.

Finding 153: Grants - Please consider adding information to describe how the $2 million in grant funds have been spent for agricultural-related projects on the Central Coast. If the funds have been spent for on-farm water quality improvement projects, then, why hasn't the agricultural community been informed about the results of the grant projects? Or perhaps, the grant funds have been spent on agricultural water quality research such as the Granite Lab neonicitinoid study? The public and the agricultural community deserve to better understand how grant funds are being spent.

Ag Waiver 2.0, SWRCB Petition Order 2013-0101

There is uncertainty about the continued legal guidance provided by SWRCB WQ 2013-0101 in Ag Waiver 3.0. Staff has indicated that the SWRCB Order will be superseded by the Central Coast Ag Waiver 3.0. However, this might be improper; and therefore, Ag is requesting clarification on this point.

There are several clarifications in the SWRCB Order that provide guidance for Tier 3 compliance. If Ag Waiver 3.0 somehow voids or nullifies SWRCB Order 2013-0101, then, it is respectively requested that these clarifications be inserted in Ag Waiver 3.0. They are as listed

- Sampling of Comingled Waters
- Management of Containment Basins
- Qualitative analysis (versus quantitative analysis) of reductions of loading to surface and ground water (confusion in the petition Order itself)

And for all growers, the following clarifications are useful and need to be clearly reflected in Ag Waiver 3.0.

- Compliance via the iterative process and consideration of multiple factors versus strict adherence to water quality standards/objectives/water quality requirements (as per NPS Policy)

Concerns that carry over from 2.0:

There are a number of concerns that carry over from Ag Waiver 2.0.

- Many Findings in the Ag Waiver Order 2.0 and Attachment A. demonstrate a high-degree of prejudice, and hostility towards the Agricultural Community.
- Many Findings in the Ag Waiver Order 2.0 and Attachment A. demonstrate assumptive or factual errors.
- Vacillation on what are regulatory priorities from Waiver to Waiver creates a sense that growers are constantly chasing a brass ring.
- The Agricultural community repeatedly has expressed concerns about inadequate capacity of the technical service providing community during the development of Ag Waiver 2.0. Capacity has diminished since that time; yet, it appears that technical demands will continue to increase.
- There are inadequate sampling services available on the Central Coast for any type of sampling that does not occur on a routine basis such stormwater or irrigation water at peak maximum flow.
- There is uneven enforcement of administrative compliance between small growers and large growers.
- Public availability of information is causing the following concerns:
    - There are mixed signals about trade secret/proprietary information protection.
    - There are poorly defined transparency and accountability requirements.
    - Aggregated reporting is sufficient for permit effectiveness and enforcement purposes.
    - Staff is unsure about how reported compliance data will be used when it is requested.
    - Since no grower is sure what reported data are divulged to the public, it has increased costs of reporting.
- Concerns about proper public dialog and proper notice:
    - One incident of Tier 3 MRP changes without notice
    - Adding or removing documents to ILRP Web-site without notice
    - Inadequate time to respond to changes to reporting requirements
    - Inadequate pubic involvement. Three examples:
        - The 2017 MRPs were first published as being adopted without previous public input.
        - The 2014 Integrated Report took 6 years to analyze without stakeholder involvement except for a 30 day comment period of the final report
        - The letter announcing the SIP WDR was published and written in such as way that it appeared the WDR was fait accompli.

Concern about the last minute influences to the Ag Waiver 3.0 from the East San Joaquin (ESJRWC) Draft that is scheduled for release in February

It is possible that the ESJRWC Draft WDR Order will be released in late February. This could be a few days prior to the adoption of Ag Waiver 3.0 at the March Central Coast

Board Adoption Hearing. It would not be desirable for the Central Coast Water Board to make last minute changes to the proposed Ag Waiver 3.0 based upon the ESJRWC WDR Order without allowing for public comment.

Conclusions:

In closing, I support an expedited renewal of Ag Waiver 2.0; but am concerned that the hybrid being proposed will exacerbate existing procedural and legal confusion.

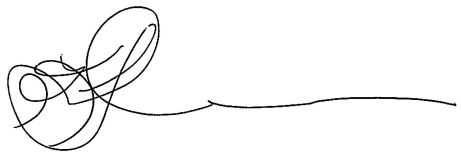
Additionally, I have listed concerns about the new and substantive findings that are being inserted into Ag Waiver 3.0.

Finally, I am requesting that the Water Board consider the following:

- If Water Board proceeds with adoption of the hybrid Ag Waiver 3.0, as proposed, milestones and deadlines should be inserted for updating Findings and Conditions and Compliance Report forms.
- Tier 3 annual reporting of the INMP Effectiveness Report and WQBP should be reduced to a less frequent reporting schedule.
- All Tier 3 ranches should be evaluated to determine if they should be more appropriately designated as Tier 2 ranches.
- Neonicitinoid pesticides should be removed from the CMP Monitoring Program until important technical questions are addressed.
- Water Board could establish a process about how they will consider the East San Joaquin Draft WDR if it is released shortly before the Ag Waiver 3.0 Adoption Hearing.

Again, thank you for your consideration of my comments. I look forward to continued discussions about improving and protecting water quality on the Central Coast.

Most Sincerely,



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