MORRO CREEK RANCH

1800 ATASCADERO ROAD • MORRO BAY, CALIFORNIA 93442 • (805) 772-7974

To: Regional Water Board, 895 Aerovista Place, Suite 101, S.L.O., Ca. 93401
REFERENCE: IRRIGATED AGRICULTURAL WATER DISCHARGE WAIVER
From: Robert S. Staller, Managing General Partner
Morro Creek Ranch, Morro Bay, Ca. 93442

January 16, 2004

Our 348 Acre Avocado orchard lies in a riparian basin, straddling Morro Creek and Highway 41 between Morro Bay and Atascadero, downstream from 15 or 20 smaller irrigated agricultural parcels and also downstream from a popular public campground, Cerra Alto, in Los Padres National Forest and along with 40 to 50 rural home sites, all of which are on septic systems. We are, consequently, the natural downstream recipients of the total cumulative water qualities flowing and percolating on to our property.

1.1 QUERY: Are we, therefore, to be held responsible and liable for this naturally occurring cumulative factor on the natural down stream flow and groundwater situation? How does the Board suggest we handle this? We would surmise that we are not alone concerning these factors. Please clarify and advise.

Respectfully yours,

Robert S. Staller

1.2 Note: We are advised that many farmers and ranchers directly effected by the proposed regulations have not been officially notified as to the date and time of workshops and scheduled meetings concerning the above matter.

(2) alison Item #3 (2)

SLO COUNTY AGRICULTURAL TASK FORCE

P. O. Box 14060 San Luis Obispo, CA 93406 805-547-1024 Fax 805-547-1026 email: slocoatf@aol.com

January 25, 2004

Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

Re: Proposed conditional waiver of waste discharge requirements for irrigated agriculture

Dear Regional Board members,

The San Luis Obispo County Agricultural Task Force ("ATF") is a non-profit, private organization that has been in existence for 10 years. The ATF represents numerous agricultural groups in San Luis Obispo County, among them avocado growers, citrus growers, greenhouse and nursery operations, cattlemen, vineyards and wineries, edible nut growers and vegetable growers. Many of our members are very concerned about the proposed conditional waivers and the impact they will have on their industry.

Their concerns include; how does the plan handle in-flow vs. out-flow? The plan seems to assume all agriculturists are using poor or bad farming practices-wasting water, fertilizer and pesticides. It calls for a reduction in fertilizer and pesticide use, yet most agriculturalists can not 2.1 afford to be wasteful with these products. How will this reduction be calculated? What will the baseline be? This does not take into account that many in agriculture have already, on their own, made many reductions and sacrifices to help with conservation. They have installed modern irrigation systems that prevent any runoff or tailwater and experience no storm water discharge. Why should they have to pay for watershed monitoring? Monthly water testing; how does it work for areas that have long, dry seasons?

The plan also calls for unlimited access to private property. How is this not forfeiture without legal process? It also poses problems for growers who have sensitive orchards and who 2.2 have worked hard to keep out noxious weeds, pests and diseases. The agency given unlimited access can spread noxious weeds, pests and diseases from one operation to another in the course of their inspections.

The requirements for watershed groups are different than those for an individual. If the concerns and objectives are the same, why are the requirements different? If a watershed group decides to participate as a watershed group, what happens to the non-irrigated members of the group? Why should ag shoulder the cost of an entire watershed?

The cost of the proposed toxicity tests is exorbitant. Tests involving the water flea, 2.3 minnow, and algae four times a year currently run in excess of $10,000 annually according to two independent certified labs from which we requested estimates. How can it be confirmed, if these organisms die, that the cause is agriculture? Is it far wiser to encourage and enable farmers to

convert to the most efficient irrigation systems rather than forcing them to pay thousands of dollars a year for monitoring costs?

Since nitrate (N) levels in groundwater often exceed the 1 mg/L trigger you propose BEFORE any fertilizer applications, how can agriculture possibly avoid this trigger? Drinking water carries a standard of 10 mg/L in comparison. Farmers want to comply with regulations but how can they with such unrealistic limits? Furthermore, how can it be concluded that any higher levels are caused by agriculture runoff rather than residential or municipal sources? 2.4

Some irrigated ag operations share percolated water bodies with adjacent non-ag land uses. These property owners may be polluting the same water body. Why should ag be singled out to pay for all the monitoring in the neighborhood? This is especially unfair in sandy areas that have widespread sources that are difficult to trace and lead to a common perched water body. 2.5

A staff report requirement for pesticide and fertilizer reduction is unrealistic for young orchards and vineyards. As trees and vines mature over the years, more pesticide and fertilizer quantities will be needed to match plant growth/size.

It is unrealistic to require pesticide use reduction in California when more pests are being "imported" to the state due to the new free trade agreements. These pests do not bring their endemic controls (beneficial predators and/or chemicals) from their native environments. In the avocado industry, for example, two new pests are controlled in their jungle climate but flourish in dry California climate.

If a watershed or area has no history of water quality problems, the expensive monitoring should not be required. Water quality issues should be addressed in areas where there are existing water quality impacts. The funding for this monitoring should come from existing Regional Board sources. 2.6

Farmers and ranchers are concerned there will not be enough certified 15 hour mandatory water education short courses available to the over 2,500 farmers required to take the course before the 3-year deadline expires. 2.7

If farming is made too costly, the ultimate cost will be to society in loss of prime ag land, converted to other uses such as growth inducing development, not to mention the loss of food production.

Sincerely,

Karen Mansfield

Karen L. Mansfield
Executive Manager, San Luis Obispo County Agricultural Task Force

③

Item #3

Coastal®

February 2, 2004

Alison Jones
Watershed Coordinator
Central Coast Regional Water Quality Program
and Conditional Waivers of Waste Discharge Requirements
895 Aerovista Place
San Luis Obispo, CA 93401

Subject: Proposed Irrigated Agriculture Water Quality Program and Conditional Waivers of Waste Discharge Requirements

Dear Ms. Jones,

Our company farms over 2,000 acres of strawberries in California. We are concerned about the latest waiver documents. We would request a phasing in of the ag waiver
3.1 program using existing water quality monitoring efforts in our region rather than establishing a new monitoring program that will duplicate these efforts. We have worked with our local Ag extension people and the Natural Resources Conservation Service to come into compliance, but we still will have a difficult time complying with the new waivers. Much of the surface water flowing into our fields and our groundwater will not meet your standards. How will the Regional Board consider existing or "background'
3.2 levels of pollutants already in our surface and groundwaters that could be coming from other sources? Thank you for your consideration.

Sincerely yours,

Stuart Yamamoto
Director of Production
Coastal Berry Company,LLC

480 W. Beach Street, Watsonville, CA 95076 • P.O. Box 1570, Watsonville, CA 95077
Main (831) 724-1366 Fax (831) 724-5537 • Sales (831) 724-1369 Fax (831) 722-1407

Box 1, McMillan Cyn Road

(805) 238-3307

White RANCH Co.
GRAIN Shandon, Calif. CATTLE

February 4,2004

Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

Dear Board Members:

I am a concerned rancher about the proposed waivers and new requirements for agricultural operations.

4.1 All monitoring should be done by the Central Coast Regional Water Quality Control Board. Thus there would be a standard set for the entire central coast. Monitoring sites should be at the mouth of area rivers. There should be a site before and after all towns along the streams. This would check runoff from each city. Sites should be monitored at the same time year after year.

4.2 Funding for farm water quality education, outreach and BMP implementation should be paid for by Water Quality Control Board Funds. Not by assessing private landowners.

4.3 Phasing in the effective dates of program should be done after known problem areas are cleaned up. No need in implementing a program that may not even work. Use this program on problem areas first before mandating it on all irrigated farmers. Issue waivers to all those outside the problem areas untill the problem areas are cleaned up. This will give more time for the operations outside problem areas to attend water quality classes and implement BMP.

One of the most important issues you don't want to overlook is, without storm runoff how are going to replentish the area wells, streams for fish and to keep out saltwater intrusion.

Sincerely

Jerold R White

Jerold R. White
Partner

(5)

(5)

Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

February 4, 2004

Dear Regional Board Members:

The Irrigated Agriculture Discharge regulations are, as you well know are very complex and expensive set of regulations to comply with.

Those impacted with the responsibility of complying with these laws represent a very small group of California's population only 2,500 irrigated agricultural operators. This small group is extremely important to the health and well being of California in so many ways because of the land and habitat that they have cared for and nurtured on a daily basis for many years and generations.

5.1 If these impending regulations are imposed on these farmers in an oppressive fashion, too rapidly, too costly, in a way that is confusing, and seemingly insurmountable you are likely to lose many of these farms. They will let the land go fallow, out of production, and sell out to land developers.

When this happens they and their land will go out of your jurisdiction and you will have fulfilled your charter and successfully enforced your regulations but you have failed yourself and this state. It would be a failure of unimaginable magnitude!

Any of these lands that go out of farming and into the urban sprawl that often never seems to end in California, will not support wild life or return in anyway to a more natural habitat, they will be dominated by more homes, condominiums, or office buildings, and malls. These entities can in no way support wild life, native habitats of California, or protections for ground waters.

Farmers have funded research with the University of California to investigate the possibility of using gray water from cities sewage facilities and we have been advised against using these waters because they have been found to contain high rates of unexpected contaminates, like PBCs. And this situation clearly exists because in areas of urban sprawl with high populations it is impossible to control what is dumped in the city drains and what house hold wastes are buried in the yard!

For this reason it is of utmost importance that you conserve the existing family farmers in California as well as its more wild habitats they are both invaluable to this state and inseparable.

5.2 May I suggest that a more equitable approach to enforcement of these laws would be to first ensure the planned education of all of these landowners before stringent enforcement of these regulations.

Then in a forum where all participants are well educated about the issues that are facing much of California's last remaining open habitats we can all work together to determine the most economical and effective ways to enforce these regulations.

Gene Mehlschau,
Gene Mehlschau

Robert Mehlschau,
Robert Mehlschau

1/21 (6)

Ms. Alison Jones
Water Shed Coordinator
Central Coast Regional Water Quality Control Board
895 Aerovista Place
Suite 101
San Luis Obispo, Ca. 93401-7906

February 4, 2004

Subject: Conditional Waiver of Water Discharge Requirements for Irrigated Lands

My name is Allan Jensen, a property owner, and I am from a Third Generation farming family in the Chualar District in the Salinas Valley.

Farming and the Farming Industry has been my life. My career spanned a 32-year (1970-2002) tenure as Director of Farming for the largest Broccoli Shipper in the world. In that period I scheduled and directed the farming and associated costs of farming of over 275,000 acres of Broccoli in the Central Coast area and I personally reviewed over 25,000 grower returns from those acres. I am here to say that the margins from this particular crop are razor thin, if not in the red, in most cases. I have seen costs of $950.00 per acre in 1970 to a whopping $2600.00 an acre today, an increase of 175 %, meanwhile in that same period prices received for our crop have remained virtually unchanged. Increased yields and export volume has been our salvation.

6.1 My concern with this Monitoring and Sampling program are the costs and what it is going to do to our ever-increasing overhead. As everyone may think, we are not this "bottomless pit" of resources and we just simply cannot pass this cost on as we do have competion from other areas. As an example ten years ago our product, Broccoli, was introduced into the export market and it represented about 10-20% of our volume. As small as that may be it was the one area that kept our returns close. Today our export price has dropped from $10.00-12.00 to $8.00-10.00 per carton and our share of that export volume has now been reduced by 30-50% by the product being grown in China.

The industry understands regulations and the need for them. Growers are the ultimate steward of the land and have provided the nation with the cheapest and safest food supply in the world. Our state and local economy depend on us. All we ask is that these regulations be fair and reasonable so that we may continue to be competitive. After all it would surely be a shame to slowly kill the goose that lays the golden egg.

Respectfully,

Allan Jensen

Allan Jensen
Rancho Buena de Esperanza Inc.

7

Central Coast Regional Water Quality Control Board
Replacement for Expired Waivers of Waste Discharge Reports for Agricultural
Workshop – February 5, 2004

Statement of Kaitilin Gaffney, of The Ocean Conservancy and Advisory Panel member.

Good afternoon Board members. I am sorry I am unable to attend the San Luis Obispo workshop but appreciate this opportunity to comment via my colleague from ECOSLO. My comments touch on three issues:

First: I want to reiterate my support for the Advisory Panel process and urge the Board to
7.1 adopt the numerous program recommendations that the Panel has agreed to thus far. Thanks to your staff and the time and effort of all of the Panel members, we have made significant progress over the past several months and I believe we now have the framework for a workable program.

Second: Concerns have been raised about the staff's proposed monitoring program. The
7.2 Ocean Conservancy believes that the proposal by staff describes the bare minimum of what is legally and scientifically defensible. We recognize that your staff has made every effort to pare down the monitoring program in an effort to reduce costs to growers. However, we must emphasize that adequate monitoring is a critical component of the program, is required by State law, and must be scientifically supportable.

Finally, as your know, there is substantial evidence of widespread water quality impairment due to agricultural activities throughout Region 3. Any waiver adopted by this Board must be in the public interest and must result in compliance with the Basin Plan and water quality objectives. The environmental community recognizes that
7.3 compliance will not occur overnight, but the program must include reasonable benchmarks for measuring success, and a plan for program adaptation if compliance is not achieved.

Thank you.

EcoSlo

ENVIRONMENTAL CENTER
OF SAN LUIS OBISPO COUNTY
P.O. Box 1014 San Luis Obispo, CA 93406
Tel.(805)544-1777
Fax:(805)544-1871
info@ecoslo.org

(8)

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5 February, 2004

California Regional Water Quality Control Board
Central Coast Region
895 Aerovista Drive, Suite 101
San Luis Obispo, CA 93401

RE: WORKSHOP TO DISCUSS PROPOSED IRRIGATED AGRICULTURE WATER QUALITY PROGRAM AND CONDITIONAL WAIVERS OF WASTE DISCHARGE REQUIREMENTS

Dear Board and Staff:

Thank you for the opportunity to comment on this issue. I have appreciate being part of the Advisory Panel to the RWQCB, and hope Board members will take the recommendations of the advisory panel into account.

Water quality affects every member of our community. A successful waiver program is crucial to ensure that California's drinking water sources are protected.

The new waivers are required to be issued in the public interest, and must ensure a program that protects beneficial uses of all groundwater and surface water. In order to achieve this goal, the waiver program
8.1 must include benchmarks to demonstrate the success of the program.

A connection needs to be made between the monitoring process and the goal of obtaining water quality standards needed to protect the waters of the State. The monitoring program needs accountability in order to show effectiveness. In order to achieve success in this program, feedback from
8.2 the monitoring must be made immediately available to growers. Follow-up is critical by growers and RWQCB staff in order for growers to understand their effects on water quality and to respond accordingly. Staff must take steps to correct polluted waterways that have been identified by monitoring as a result of this program.

8.3 The monitoring proposal currently proposed by Staff is minimal. The adopted monitoring program must be technically rigorous and scientifically defensible. Scientific experts should be consulted to analyze monitoring, and the monitoring should be conducted on an ongoing basis.

8.4 The program should pay for itself through fees, so that needed staff will be available to make the new program successful.

8.5 The new waiver program should include best management practices, farm plans for pollution management, and short-courses to develop such conditions. Funding for the educational component should be permanently in place. Your staff has identified possible funding sources.

Undoubtedly, there will be problems experienced with any program that the Board adopts, but a plan is needed now in order to come into compliance with state law.

Thank you,

M Leonard

Miranda Leonard
Environmental Health Educator

(9)

UNIVERSITY of CALIFORNIA COOPERATIVE EXTENSION
MONTEREY COUNTY
AGRICULTURE & NATURAL RESOURCES

1432 ABBOTT STREET • SALINAS, CA 93901
PHONE 831.759.7350 • FAX 831.758.3018 • 4-H 831.759.7360 • EMAIL cemonterey@ucdavis.edu

February 5, 2004

Mr. Bruce Daniels
Chairman, CCRWQCB
895 Aerovista Place
San Luis Obispo, CA 93401

RE: Water Quality Monitoring in Monterey County and Recommendations for Irrigated Agricultural Discharge

Dear Chairman Daniels and Members of the Board:

9.1 As Water Resource Professionals who work in the counties of the Central Coast Region, we have observed that the suggested *Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands in the Central Coast Region* misses an important component of farm water quality. **This missing component is irrigation efficiency.**

Background: Tail water run-off from irrigation systems may be responsible for transporting a large portion of sediments, nutrients, and pesticides that cause water quality problems in surface water. Additionally, excessive drainage from irrigation systems can transport nitrate and pesticides into ground water supplies. As irrigation efficiency increases, the portion of irrigation water contributing to run-off and deep drainage decreases. For example, if irrigation efficiency is low, less than 50%, then roughly half of the applied water will either run-off agricultural fields and/or drain below the rooting zone of the crop. If irrigation efficiency is high, greater than 95%, then less than 5 % of the applied water would be lost to run-off or deep drainage. One of the most likely ways that growers can improve farm water quality will be to implement practices that improve irrigation efficiency.

Evaluating irrigation efficiency may help with source assessment, as well as with determining if water quality is improving. If both water quality and irrigation management data are collected and tracked over time, we have a much better chance to determine if the agricultural community is doing their job to help the environment. Also, assessing irrigation management may provide valuable data for determining the extent to which irrigation practices impact water quality. If better irrigation management is shown to improve water quality, then growers will have an incentive to transition to practices that increase irrigation efficiency. Additionally, if we document that growers are improving irrigation efficiency, and the monitoring program does not show an improvement in water quality, then the agricultural community can still be credited for their efforts in complying with the conditional waiver.

In summary, adding an irrigation management component to the agricultural discharge waiver may enable the Regional Water Quality Control Board to better evaluate the cause and effect between agricultural practices and water quality impacts to surface water. If we can show that

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irrigation efficiency improvements will result in the betterment of water quality, then growers will have more incentive to change their irrigation management practices.

Thank you for the opportunity to provide suggestions for enhancing the proposed water discharge requirements irrigated lands on the Central Coast.

Sincerely,

Michael Cahn, Ph.D.
Water Resources and Irrigation Advisor
University of California, Cooperative Extension
Monterey, San Benito, and Santa Cruz Counties

Kathleen Thomasberg
Program Manager II, Water Quality
Monterey County Water Resources Agency

Giulio Ferruzzi, Ph.D.
Agronomist
Natural Resources Conservation Services, USDA

s 9/27 (10)

February 5, 2004

Regional Water Quality Board – Central Coast Region
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906

Dear Sirs,

I wanted to follow-up my testimony at this afternoon's meeting with a letter for the record.

My wife and I own and operate a small farm on Santa Rosa Creek. We purchased the farm in 2001 following my retirement as Head of Research and Development for North America for Zeneca Agrochemicals. Zeneca does approximately $ 1 b in crop protection business annually in North America. In this capacity, I had responsibility of all functions from invention to the generation of data to fulfill regulatory requirements. I, therefore, have considerable knowledge of both pesticide use and regulation.

Our farm operates under the principles of IPM. However, we must occasionally supplement our efforts of good plant health and cultural practices with the use of pesticides. We apply pesticides strictly according to label directions. The EPA, the CDPR and the County of San Luis Obispo have determined that applying pesticides according to label directions is safe. And, these label directions take into account proximity to water courses.

10.1 My experience with Zeneca has shown that testing water quality can be very hazardous and unanticipated errors can occur even for the best of analysts. For example, lipophilic (oil loving) pesticides and water do not mix. These pesticides will coat almost any material to avoid contact with water. Many insecticides and fungicides fall into this group. Their accurate analysis is difficult, at best. Another issue is determining the baseline for analysis. Santa Rosa Creek runs through our farm. When we get a lot of
10.2 rain, there is runoff. However, the Hills behind our farm go on for miles. Therefore, how do you determine where a contaminant is coming from? Especially, when the Creek goes underground for 5 months out of the year? You need years of historical data to begin to approach this problem.

Furthermore and in the absence of seeing any real data, I would be most surprised, indeed dumbfounded, if the water quality of Santa Rosa Creek is not among the highest in the United States. It is teeming with wildlife. We drink the untreated water everyday. So,
10.3 why I might ask are we expected to contribute to a system that minimizes the costs to others because we are farmers? This is simply unjust! Perhaps the law that you are asked to enforce has a few flaws. Or perhaps, the legislators were wise enough to allow some leeway to the enforcers.

To lump us in with high intensity agriculture would be a crime.

Respectfully yours,

Michael D Broadhurst

Michael Broadhurst
6115 Santa Rosa Creek Road
Cambria, CA 93428
(805)924-1260

(11)

Ralph K. And Paula A. Family Partnership
Old Oak Ranch
33601 River Road
Soledad, CA 93960

February 6, 2004

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

Mrs. Sarmento, I and a partner grow Lemons and Avocados on about 200 acres in Monterey County. We lease about 750 acres to other growers.

I would like to make one point in addition to those covered by my comments made during your January 9, 2004 meeting in Salinas.

11.1 **Point: The proposed monitoring of water that is affected by storm runoff will result in significant problems, excessive costs, inaccurate data and a good measure of confusion. In my opinion this storm water monitoring will result in little useful knowledge that will help us in our mutual task of improving water quality. This questionable monitoring of water containing storm flows will only detract from our efforts in protecting water quality.**

Let me explain what I mean. As one travels along Highway 101 in Monterey County and looks to the mountain ranges on each side of our beautiful valley one can see over a hundred natural water ways. These water ways begin in the canyons visible from the valley floor. Some water ways contain only water for a few brief hours during storms. Some will run for one or two days during the heaviest storms. A few may run for longer periods of time. Some water ways result in storm water flow directly onto the edges of an operator's cultivated land and then to the lands at lower elevations operated by neighbors. If one travels on either side of the valley next to the foothills using roadways, such as Metz Road or River Road, one can view evidence of storm water flow adjacent to cultivated lands.

It appears prudent that monitoring requirements be given special consideration for the handling of water containing storm water. Perhaps natural water ways should be identified and placed into categories depending upon the expected duration of storm flow. Monitoring then could be deferred for a period of time for those waters on cultivated lands that contain appreciable storm flows.

You should be careful in adopting monitoring practices that cover waters containing storm water. It is my belief that if careful consideration is not given to this subject you will only divert time and resources that could be better used to help all work toward protecting our water resources.

Again I thank you for allowing me to submit my comments. I wish the Board well in working toward a suitable and practical solution to the task at hand.

Bud Sarmento

Bud Sarmento

(12)

Crown Packing Co., Inc.

P.O. Box 247 • Salinas, CA 93902-0247 • Phone (831) 424-1996 Fax (831) 424-7812

February 23, 2004

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

Subject: Proposed Irrigation Agriculture Water Quality Program and Conditional Waiver of Waste Discharge Requirements

Dear Board Members:

As a farmer in the Salinas Valley for over thirty years I am very familiar with our land's drainage and effects on the neighboring water bodies. As a board member of the Monterey County Farm Bureau I worked with Dr. Holly Price of the National Marine Sanctuary to establish our agricultural water quality program. I believe many other farmers like myself have an excellent understanding of their lands and effects on water discharges.

I would appeal to your board and staff to consider phasing in the agriculture waiver program using the expertise and
12.1 experience of the existing water quality monitoring efforts in our region. It would be much more effective and efficient to build on what has already been started instead of duplicating efforts and creating more wasteful work for both your board and staff, as well as the public.

Of utmost concern to all of us on lands we have farmed for many years is the level of pollutants already in our surface and
12.2 groundwater that are coming from other sources. With so much development and other activities on surrounding properties we are unable to control all the impacts that end up on our properties.

I thank you for the serious work of your board and the additional time you have allowed to develop these agricultural waivers. It is best for all concerned to do it right rather than rush through the process and aggravate those involved instead of accomplishing the goal we all strive for: better water quality and its efficient use.

Thank you.

~~Sincerely~~ yours,

Chris Bunn,
President

(13)

California
AVOCADO COMMISSION

(13)

TOM BELLAMORE
Corporate Counsel &
Senior Vice President

February 27, 2004

Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

Re: Proposed Conditional Waivers of Waste Discharge Requirements for Discharges from Irrigated Lands (Draft Resolution No. R3-2004-OXYZ).

Dear Regional Board:

Enclosed are three copies of written comments prepared by the California Avocado Commission in regard to the above-referenced matter. The comments are submitted on behalf of the estimated 100 avocado growers who operate family farms in San Luis Obispo County. The comments are intended to supplement the oral testimony delivered by Commission representatives at the Board Workshop held on February 5, 2004.

Please consider these written comments in your deliberations and include them in the record of your decision for the Draft Resolution at issue. Thank you for your attention to this matter, and for the opportunity to comment.

Sincerely,

Thomas A. Bellamore

Thomas A. Bellamore
Corporate Counsel & Senior Vice President

38 Discovery, Suite 150, Irvine, CA 92618-3105 ■ 949.341.1955 ■ Fax 949.341.1970 ■ www.avocado.org

COMMENTS OF THE

CALIFORNIA AVOCADO COMMISSION

ON

WASTE DISCHARGE WAIVER PROGRAM DRAFT PROPOSAL

OF
THE CENTRAL COAST REGIONAL WATER QUALITY CONTROL BOARD

Contact:
Thomas A. Bellamore
Corporate Counsel & Senior Vice President
California Avocado Commission
38 Discovery, Suite 150
Irvine, CA 92618
Telephone: 949-341-1955

February 27, 2004

ISSUE

Region 3 waivers of waste discharge requirements (WDRs), as directed by California Water Code § 13269 have expired as of January 1, 2003. New WDRs, applicable to irrigated agriculture: irrigation return water (tailwater) and non-NPDES storm water discharges, are being considered by the California Regional Water Quality Control Board Central Coast Region (Board).

The Board has developed, through the help of the Agricultural Advisory Panel,[1] Proposed Conditional Waivers of Waste Discharge Requirements for Discharges from Irrigated Lands (Draft Resolution No. R3-2004-OXYZ). The Draft Resolution is to be presented to the Board for approval at the Board's March 18, 2004 meeting.

INTRODUCTION

On February 5, 2004, a representative of the California Avocado Commission (Commission) attended a Workshop of the Central Coast Regional Water Quality Control Board (Board), delivering oral testimony regarding Board's Waste Discharge Waiver Program Draft Proposal. These written comments have been submitted to supplement and expand upon that oral testimony.

The draft proposal under consideration by the Board contemplates the monitoring and regulation of waste discharge for agricultural producers within the Board's jurisdiction. The proposal raises compliance and access issues that could have significant financial and recordkeeping impacts on growers in the region. Further, the proposal raises property access issues, which pose unique problems for avocado growers. Full detail on the concerns of San Luis Obispo County avocado growers is provided below to give the Board a better understanding of how such water regulation affects avocado farming.

The California Avocado Industry

The California Avocado Commission is a state government agency which represents the interests of its industry's 6,500 avocado growers and packers. Over 100 of these growers live and work on family farms in San Luis Obispo County. Many of these same growers also farm citrus, cut flowers, and other high value crops.

The Commission has a long history of involvement in water issues affecting California avocado growers. This is because water represents as much as 60% of the cost of growing avocados; it is the growers' most costly production input. Unlike other sectors

[1] The purpose of forming the Agricultural Advisory Panel, which was first convened in March 2003, was to provide RWQB staff with recommendations to be utilized in developing new waste discharge waivers. The Panel is composed of the following organizations: Ocean Conservancy, Central Coast Coalition of County Farm Bureaus, County Farm Bureaus from Monterey, Santa Cruz, San Benito, San Luis Obispo, Santa Barbara, Jefferson Farms, The Environmental Center of San Luis Obispo, Environmental Defense Center, Monterey Bay National Marine Sanctuary, Agricultural Land-Based Training Association, Central Coast Winegrowers Association, Cattlemen's Association, Grower Shipper Vegetable Association of Santa Barbara, Santa Barbara Channel Keeper.

of agriculture, avocados can only be grown in coastal, central and southern California locations from San Luis Obispo to San Diego, where the water supply is limited and costs are high. Consequently, avocado growers are highly efficient water users. Virtually all avocado growers have invested in state-of-the-art micro-sprinklers and drip irrigation systems that apply only as much water as are needed by the trees. It is important to recognize that these practices differ from other types of farming operations that generate significant water runoff.

Avocado growers must also be vigilant to guard against pest and disease infestation. If these occur, operating costs greatly increase and farm operations are placed at risk. One disease—Phytophtora root rot—is particularly invidious because it can be easily transmitted from orchard to orchard by equipment and personnel. This devastating fungus can decimate orchards and render countless acres useless for future avocado plantings. Annual losses due to Phytophtora root rot in California are currently estimated at $22 million. Understandably, growers are greatly concerned about unescorted access to their properties which might unknowingly spread this disease.

Avocado growers pride themselves on being responsible stewards of the environment. The industry has received acclaim for its innovative techniques in integrated pest management resulting in some of the lowest pesticide use by any agricultural commodity in California. The industry also provides positive environmental and societal benefits, through the creation of habitat and open space, a welcome contrast to our increasingly urban landscapes. The Commission requests that the Board consider these unique aspects of avocado farming when it develops its final Resolution.

COMMISSION COMMENTS ON THE BOARD'S DRAFT RESOLUTION

Monitoring

Growers in the region are concerned about the Waste Discharge Requirement (WDR) contained in the Draft Proposal that mandates participation in a monitoring program. Three types of monitoring programs are under consideration: 1) Individual; 2) Group; and/or 3) Watershed. Monitoring frequency remains an open question; however, a monthly program is favored by Staff.

Of foremost concern is the cost of monitoring for individual growers. Based on quotes obtained by growers, costs could reach as high as $15,000 per year if a monthly testing requirement is established. At a meeting of Board held on February 5, 2004 (Workshop), board member Bruce Daniels stated "individual monitoring is not being proposed – even though it has been mentioned by staff." Based on this comment and others made at the Workshop, it appears that the Board has already decided that the estimated cost of individual monitoring makes it cost prohibitive and therefore not a viable option. The Commission supports this position.

13.1

Growers are also concerned about group/watershed monitoring programs. These programs have the potential to force growers to 'pick up the tab' of adjacent non-

agricultural land users who share the same watershed for discharge monitoring. Small farmers must not end up paying a disproportionate share of monitoring costs.

Growers are concerned that the Board may implement monitoring requirements that are excessive and unnecessary. The Commission supports developing of a plan that waives all or most of the cost of monitoring for "low threat" users or charges a higher monitoring fee to those users deemed a 'high threat.' The Commission also supports implementation of a third tier which would relieve or phase-in those users pre-determined to be a "low threat." Avocado growers already monitor water quality as a routine part of their cultural practices. The Commission believes that initial water quality data can and should be provided through monitoring systems already in place. "Low threat" users can and should be pre-qualified as such by: 1) use of existing data provided by the Central Coast Ambient Monitoring Program; or 2) current data provided by existing State quality control reporting mechanisms; or 3) those growers who self-monitor as part of their current management practices. Monitoring should only be conducted where an apparent problem exists with a watershed or where there is a particular "high-threat" discharger.

Detection of any improvement within a watershed could take years. Consequently, the value of monthly monitoring and reporting is questionable. Since only drastic improvements to watersheds that are considered "high-threat" would show improvements on a monthly basis, the Commission supports exclusions or waivers from monitoring for those who: 1) eliminate or reduce tailwater discharges by use of micro-irrigation systems; 2) have met the 15-hour educational requirement, and 3) can prove, based upon existing water quality data, current farming practices and implementation of a farm water quality plan, such that they qualify as a "low threat" discharger.

Recommendations

13.2
- Monitoring should be conducted only in problem areas
- Growers should be recognized, via waivers or exclusions, as "low threat" contributors to local water quality problems

13.3
- A third tier should be created to accommodate pre-qualification of "low threat" dischargers

Waste Discharge: Nitrogen

Growers are concerned about the toxicity level indicators currently listed in the monitoring requirements. Program guidelines indicate that a "weight of evidence" indicator (test threshold) of nitrogen (N) greater than 1mg/l at any test site will result in additional testing at the site or in the watershed.

In the Commission's view, this threshold is too low. Uncontaminated wells used for
13.4 potable water in the Coastal Region currently pump at 1mg/l (N). The "weight of evidence" indicator, therefore, is unrealistic and should be raised. According to growers, water that tests at levels above 1mg/l is still deemed in compliance with general potability

standards (10mg/l) and therefore deemed safe. The same concerns hold true for phosphates, despite the absence of a "weight of evidence" indicator for this compound.

Due to the nature of groundwater in the region most groundwater pumped for irrigation already exceeds the state drinking water standard of 10mg/l prior to fertilizer load. Since it cannot be concluded that higher levels of nitrogen (N) are produced as runoff from agriculture, as opposed to residential or municipal runoff, the Commission requests that the application of a standard take into consideration non-agricultural runoff and individual/group/watershed farm management practices.

Growers also expressed concern about the affects their leaching programs will have on test results. Although leaching is considered a best management practice for avocado
13.5 growing, it could skew test results if nitrogen monitoring takes place after leaching irrigation has been applied; the same can also be said for fertilizing. Currently, the proposed monitoring program has no mechanism in place which takes reasonable grove management practices into consideration.

Recommendations

- Standards should be more in keeping with current water/nitrogen levels required by the City and the State.
- The monitoring program should include testing schedules that do not conflict with individual/group/watershed farm management practices.

Regional Board Access to Monitored Property

The Board has proposed having access to each discharge property at any time for the purposes of monitoring program compliance. The Commission believes that unlimited government access to private property amounts to unwarranted intrusion raising serious
13.6 legal issues. This is also the espoused view of the San Luis Obispo Agricultural Task Force.

Equally dangerous is the possible impact of unlimited access on tree health. Avocados are highly susceptible to pests and diseases such as the avocado thrips and the root rot fungus. These deadly phytosanitary threats are unknowingly transmitted with the movement of equipment and personnel. The problem costs California avocado growers as much as $22 million annually. Pests and diseases transmitted from property to property by workers conducting inspections could also promote the increased use of chemicals. Increased use of chemicals would in turn affect water quality in the watershed and possibly the discharger's status in the WDR Tier system.

Recommendations

- All monitoring and program staff must obtain permission from the grower prior to entering and inspecting any property.

- Individual growers must be given advanced warning of monitoring and program staff inspections so that a pre-approved time and location for entry onto the property can be arranged and to allow time for growers to implement the necessary preventative decontamination measures.

Records Management

The Draft Proposal requires each grower to submit a management practices checklist and a farm water quality plan. In addition, the Draft Proposal also requires that "dischargers shall furnish the Regional Board, within a reasonable time, any information that the Board may request to determine compliance with this conditional waiver resolution and that the "discharger shall allow the Regional Board or its authorized representatives to inspect any operations or practices and have access to any records pertinent to the conditional waiver and to sample or monitor for the purposes of assuring compliance with the conditions of the waiver."

The Commission is greatly concerned about the forced disclosure of proprietary information. Information contained in the checklist and farm water quality plan reflects the growers' business strategy for raising his crops at maximum productivity—specifically, overall water usage, irrigation schedules, nitrogen and fertilizer applications, and pruning practices. Such information, if made public and available to competitors, could harm a grower's ability to remain competitive in the market. Records management and confidentiality are key components to remaining competitive in the market for any industry and farming is no exception. To require growers to divulge propriety information, such as their management practices and farm water quality plans, jeopardizes a grower's entire farming operation. A related issue is the release of information into the public domain that could later be used against growers by those with nefarious motives.

13.7 Staff commented at the Workshop that only a checklist, rather than actual grower records, would be required. Nonetheless, the Draft Proposal calls for a "self-assessment" and "farm water quality plan completion" statements, without giving adequate detail about what must be included. The Commission finds such requirements vague and overly broad.

Recommendations

- The Board must expressly and specifically state the requirements of the checklist, farm water quality plan, and related statements, so that growers know precisely what information is needed to comply with recordkeeping requirements, and the form in which it is to be submitted
- The Board must also state where the information is to be kept and who will have access to the information.
- Prior to enrollment in the Waiver Program, a grace period should be established which would allow growers to explore the protections afforded by qualifying their management practices as 'trade secrets.'

(14)

Coalition of Central Coast County Farm Bureaus

"The Coalition of Central Coast County Farm Bureaus represents six County Farm Bureaus in the development and implementation of voluntary, cost-effective, producer-directed programs to protect water quality in the greater Monterey Bay watershed."

April 7, 2004

Mr. Jeffrey Young, Chairman
Regional Water Quality Control Board
Central Coast Region
895 Aerovista Place, Suite 101
San Luis Obispo, California 93401

ATTN: Mr. Roger Briggs, Executive Officer

RE: CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS FOR DISCHARGES RELATED TO IRRIGATED AGRICULTURAL LANDS – **Comments on the Initial Study and Negative Declaration**

The Coalition of Central Coast County Farm Bureaus (Coalition) represents members of six County Farm Bureaus in the development and implementation of voluntary, cost-effective, producer-directed programs to protect water quality in the greater Monterey Bay Watershed. For nearly 6 years, the Coalition has been actively implementing the Monterey Bay National Marine Sanctuary's *Agriculture and Rural Lands Action Plan*; the growers involved in our voluntary program have been and will continue to be critical to the success of water quality protection efforts on the Central Coast. The Coalition encourages the Central Coast Regional Water Quality Control Board (CCRWQCB) to consider our comments outlined below on the "*Initial Study and Negative Declaration For Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands.*"

The Draft Initial Study and Negative Declaration falls short of adequately assessing the environmental impacts of the following: (I) the Establishment of an Agricultural Monitoring Committee, (II) Agricultural Resources, (III) Biological Resources, and (IV) Conflicting Regulatory Mandates.

(I) Proposed Agricultural Monitoring Committee

The Draft Monitoring and Reporting Program and Negative Declaration calls for the designation of an Agricultural Monitoring Committee to further develop the monitoring protocol. According to the Draft Monitoring and Reporting Program and Negative Declaration, the Agricultural Monitoring Committee would
14.1 be charged with developing a fee structure and finalizing the requirements of a monitoring protocol. The Agricultural Monitoring Committee recommendations would, presumably, be incorporated into the monitoring program at the discretion of CCRWQCB Staff without an environmental review process and without approval of the Board at a public hearing. This process bifurcates the monitoring program from both the environmental review process and public hearing process. Additionally, this process removes the Board's responsibility and ability to analyze the costs of the monitoring program and ensure that there is a reasonable relationship between the cost of the program and the monitoring services rendered thereof. We have significant concerns about the CCRWQCB adopting an environmental review document that assesses environmental impacts to a program that is only partially developed. We further question the legality of the Board's decision to defer policy development to a committee. We encourage the formation
14.2 of a committee to advise Staff on the development of the Monitoring and Reporting Program; however, this should be done prior to the Board adopting the Monitoring and Reporting Program and associated environmental compliance document. The Monitoring and Reporting Program adopted by the Board should be a complete program and the adoption of the program must include both an environmental review and public review process. The environmental compliance documents adopted by the Board should assess cumulative environmental impacts to the entire Ag Waiver program, and cannot do so if the program has not been fully developed.

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(II) Agricultural Resources – Section 2.2 (a)

14.3 The Negative Declaration does not adequately address the potential impact of the Ag Waiver regulation on the conversion of agricultural land. There are potentially significant impacts not only on the conversion prime agricultural land, but also unique farmland, and farmland of statewide importance. Page 30 states:

> "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. It is possible that some marginal farmland may no longer be economically viable due to increased costs associated with practice implementation and monitoring, but the Conditional Waivers should not impact prime agricultural farm lands. Although some land may be vegetated for erosion control rather than planted to crops, the overall land use is still agricultural."

This statement is of particular concern in that it mischaracterizes the requirements of CEQA and interjects non-definitive terms such as "marginal lands." CEQA looks beyond just the conversion of "prime agricultural land" and thus environmental impacts must be considered with respect to a broader class of lands. Specifically, CEQA requires assessment of the project to convert prime farmland, unique farmland, farmland of statewide importance, as well as other impacts on, or conversions of, farmland. The use of the term "marginal lands" expels an aura of indifference and ignorance. Clearly, if state agencies such as the Department of Conservation, Department of Food and Agriculture, local planning commissions, or land use agencies were consulted, this type of fictitious land description would not appear.

Page 30 of the Initial Study also states that "[i]n some cases practices can result in improved productivity that will offset costs associated with taking some land out of production for conservation practices." It is unclear what study or academia provided the information to support this statement. Irrespective, the qualifying terms "in some cases" needs to be better defined because CEQA is supposed to look at the environment in the vicinity of the project, as it exists before the commencement of the project, form both a local and regional perspective. Given this requirement and the fact that CEQA is not intended to be a mere costs benefit analysis, further explanation or study is necessary to ensure informed decision-making. For example, hydrological analysis of rain events, topography, and soils on the agricultural lands of the Pajaro Valley determined that, in order to meet the CCRWQCB's proposed 25-year storm water
14.4 engineering standard, 5% of the farmable land in the Pajaro Valley would have to be converted to storm water detention basins. How will storm water detention basins spanning 5% of the lands in the Pajaro Valley result in improved productivity?

(III) Potential Impacts to Biological Resources - Section 2.4

14.5 In areas where water does not flow year-round, irrigation runoff provides the source of water supply to sustain riparian vegetation. The CEQA document does not adequately address the unintended environmental consequences of reducing irrigation runoff and the result of declining water supply to riparian and wetland areas throughout the Central Coast. The draft document improperly assumes that all persons that would be required to meet the waiver's conditions would implement management practices in one form or another. Absent from the analysis is the alternative to not irrigate or capture all drainage, thus removing a person from coverage under the waiver.

The reasons for not irrigating are numerous and may include an inability to financially meet the waiver requirements or submit a report of waste discharge and meet its future provisions. Once land is not irrigated, a land use conversion occurs (e.g. from Prime agricultural land to grazing or other) and depending on local variables, the land may not be suitable for the commercial production of food or fiber. In turn, this would remove the economic viability of the land forcing the owner to either sell the land or incur substantial pecuniary losses. It is unclear if the CCRWQCB contemplated this effect.

Not irrigating is a potential viable option for landowners and a ready market exists for the purchase of agricultural lands. As the CCRWQCB admits on page 10, "agricultural industry is extremely sensitive to cost increases and management practice requirements." The management practice requirements are irrecoverable fixed and variable costs to the farming operation as "growers often have little control over the

price they are paid even though the costs of producing and delivering products continues to rise." (See Initial Study page 10). In addition to the irrecoverable costs associated with management practice requirements, the growers will incur significant water quality monitoring costs and possibility fees associated with project management. The cumulative effects of incurring *or* avoiding these costs were never discussed in detail, nor were their impacts analyzed.

(IV) Conflicting Regulatory Mandates – Section 2.9(b)

Currently, growers are required to comply with Food Safety regulations and certification standards. The CCRWQCB's Ag Waiver regulation requires the implementation of "management practices," many of
14.6 which are in conflict with Food Safety regulations. The implementation of management practices that are detrimental to food safety are both a public health concern and a serious economic impact to the industry. We encourage (as previously requested) the CCRWQCB to fully assess the economic and public health impacts of this regulation as well as caucus with Department of Food and Agriculture and private food safety certifiers to ensure that regulatory mandates are not in conflict and will not result in significant human health and economic impacts. Additionally, several regulatory agencies (Ca Dept of Fish and Game, US Army Corps, US Fish and Wildlife Service, local counties, etc.) must review management practice designs and issue permits prior to implementation. The Board should assess both the feasibility and unintended consequences of management practice implementation accordingly.

General Comments on the Draft Order and Monitoring and Reporting Program

The Coalition actively served on the Agricultural Advisory Panel (Advisory Panel) along with other agricultural and environmental representatives. The goal of the Advisory Panel was to develop recommendations, based on consensus among all participants, for CCRWQCB Staff to utilize in the development of the Ag Waiver program. We are greatly disappointed that critical components of the Ag Waiver Program do NOT represent a consensus among Advisory Panel Members and furthermore do not incorporate the primary concerns and recommendations of the agricultural representatives on the Panel.

Monitoring and Reporting Program –

The Panel was not allowed adequate time to develop recommendations on the Monitoring and Reporting Program; as a result, Panel members did not attain consensus on several components of the Monitoring and Reporting Program, including: constituents and frequency of monitoring, selection of
14.7 monitoring sites, and cost allocation. The Monitoring and Reporting Program is by far the most important component of the Ag Waiver program to all agricultural interests on the Panel; however, the Monitoring and Reporting Program was mostly developed in a vacuum by CCRWQCB Staff, rather than with input from the Panel.

Because the monitoring proposal prepared by Staff largely ignores the concerns and suggestions that agricultural industry representatives communicated over the last year on the Panel, twenty-three (23) agricultural associations prepared and submitted a monitoring proposal to the CCRWQCB on March 19, 2004. The tremendous effort extended by these 23 agricultural associations to develop (and agree upon) a viable Monitoring and Reporting Program clearly demonstrates the agricultural industry's intent to continue our proactive approach to water quality protection. The monitoring proposal directly addresses our concerns with the various staff reports and monitoring proposals, including: (1) the scope and cost of staff's proposed monitoring program, and (2) liability implications of the monitoring requirements on existing voluntary water quality programs. We have proposed viable solutions to these concerns. Our
14.8 proposal directly builds upon the work of the Advisory Panel, and offers solutions to those items that the Panel was unable to attain consensus on. The proposal is attached. To increase the likelihood of grower participation in the Ag Waiver program, we highly suggest that the CCRWQCB incorporate the suggestions from the agricultural industry in the development of the Monitoring and Reporting Program.

14.9 Another area of concern is the statutory authority for the monitoring program. It is unclear whether the Regional Board relies on Section 13267 of the California Water Code for monitoring, or, if Section 13269

is solely being relied upon. If Section 13267 is the basis for the monitoring requirements, the draft document needs to be refined to address provisions such as access and reasonableness. For example, as drafted the monitoring requirements conflict with the explicit statutory provisions regarding inspections and access (refer to Section 13267(c) and Part IV, numeral 6, of the Draft Conditional Waiver for Irrigated Lands).

Non-dischargers and Changes in Discharge Over Time –

The industry has repeatedly requested that CCRWQCB Staff develop a process for an operation to become certified as a non-discharger. Thus far, CCRWQCB proposes to enforce the regulation by comparing a list of enrollees to a list of agricultural producers on the Central Coast. Many operations, however, do not discharge irrigation or storm water runoff and do not contribute to water quality impairment. How will the CCRWQCB assess compliance without some certification or notification process for non-dischargers? An
14.10 operation could chose not to enroll, but under the current proposed program, an operation that doesn't enroll is assumed noncompliant. Equally important, growers who enroll in the waiver program will be working to eliminate impacts to water quality over time. Upon an operation successfully eliminating its impact to water quality, how will the operation become recognized as a clean operation? It is unclear if the CCRWQCB has contemplated the effect (with regard to fees and enforcement) of a small number of initial enrollees and/or a declining number of enrollees over time. If the CCRWQCB is unable to certify agricultural operations for "no discharge" (as done for other industries), at minimum, we request a box on the Notice of Intent for operators to check that reads along the lines of: "The operation does not have storm or irrigation water runoff that deleteriously impacts water quality."

Check List of Practices –

We have serious concern about the proposed "check list of practices." Panel members repeatedly
14.11 expressed concern about the checklist and did not obtain consensus on this matter. Presumably, the CCRWQCB will utilize the checklist to create a database of all practices being implemented on the Central Coast. Management practices are not necessary on all plots of land; would an operation be deemed out of compliance if it does not implement management practices? How could the CCRWQCB assess why a given practice is not implemented by a given operation (or if a practice is necessary for water quality protection)? If the number of practices decreases, will the Board attribute this to noncompliance? If a grower removes a practice, will the Board consider this an act of noncompliance? What happens if, as is quite likely with the increased costs associated with this regulation, land is taken out of production or fallowed and the
14.12 number of practices decline over time? The checklist of practices is clearly an ineffective tool in assessing the effectiveness of the Ag Waiver Program, and thus, is merely additional bureaucratic paperwork.

Economic Impacts -

The CCRWQCB has not adequately assessed the overall and cumulative economic impacts and reasonableness of the Ag Waiver regulation with respects to Sections 13000 and 13141 of the California Water Code. There is no bottom-line analysis of the cumulative costs of short courses, practice implementation, monitoring, compliance paperwork, etc on small, medium, and large operations. The CCRWQCB has not addressed the ramifications of low enrollment on the per-acre costs for enrollees. For
14.13 example, what happens if only a small percentage of growers enroll in the monitoring program? Will the entire program costs be distributed to those who enroll, resulting in a huge economic burden of the first few enrollees? Is it equitable or legally sound for growers in San Mateo County who farm in unimpaired watersheds to pay for monitoring that will be conducted in other counties that they do not farm in or impact? Why should farmers who are not impacting water quality pay for the monitoring program? In order to ensure enrollment, the program must answer these questions and have a fair cost allocation, as discussed in the attached monitoring proposal. The economic impact of the implementation of management practices should also be analyzed, with particular focus on food safety regulations (as mentioned in *Conflicting Regulatory Mandates* above).

Storm Water –

The Draft Ag Waiver program requires management practices to be engineered to contain 25- year storm events. Currently, the USDA Natural Resources Conservation Service often engineers practices for 10-year storm events because 25-year containment is often economically infeasible, even with Federal cost share programs. The 25-year storm event engineering standard places an extreme financial burden on small acreage operations as well as operations in areas with high land values. A hydrological analysis of rain events, topography, soils, and agricultural lands in the Pajaro Valley determined that, in order to meet the proposed 25-year standard, 5% of the farmable land in the Pajaro Valley would have to be converted to storm water detention basins. The 25-year standard not only results in serious economic impact, but will also serve as a disincentive to implement storm water management practices. We request the CCRWQCB conduct an independent cost study on the economic impacts of installing storm water practices for 25-year storm events. We suggest replacing the proposed 25-year standard with the following: "For each storm, the goal of these combined practices should be to minimize storm water runoff for the first half inch of rain and to reduce runoff for the first two inches of rain. There is no requirement to reduce storm water runoff that enters the farm from off site, but the occurrence of such runoff does not change the requirement for runoff generated on site."

14.15

Ground Water –

The Advisory Panel did not attain consensus on the inclusion of ground water in the Waiver program; yet, the document is replete with references to ground water and fails to adequately define the issue. For example, did staff consider such documents as *California's Groundwater* Bulletin 118 Update 2003, or contact local entities, public, private, or otherwise? A cursory review of available materials, such as Bulletin 118, would have revealed information to help further define the issue. Bulletin 118 notes that groundwater accounts for 83% of the total supply of agricultural and urban water on the Central Coast. Furthermore, Bulletin 118 contains the results of a regional study on groundwater quality. The study was conducted from 1994 through 2000 and sampled more than 700 public supply wells. The results indicated that constituents were detected at levels above the drinking water MCLs less frequently than is generally projected. For example, nitrates were detected above the MCL in less than 10% of the tests. This type of information is significant and essential in prioritizing efforts of both staff and effected parties. Considering the oblique references to groundwater, and the lack of adequate information in the staff report to make an informed decision, we request that the materials be removed, or further defined such that the Board's intentions and goals are clear and articulate with respect to this important issue.

14.16

The Link to Water Quality Impairment –

Some streams and watersheds in the region are listed as impaired water bodies; however, many are impaired for constituents that are not related to current agricultural practices. Because the cause of the water quality impairment is often not agriculturally-related, and the sources of impairment have not been scientifically assessed, the CCRWQCB's approach to regulating agriculture places an unreasonable burden on farming operations throughout the Central Coast. As the proposed regulation mandates, the agricultural industry should not be required to incur the cost of additional regulation and monitoring in areas that are not impaired due to current agricultural practices. Furthermore, the CCRWQCB should not impose additional regulation upon the industry in areas that have not had credible (peer-reviewed) scientific assessments, which effectively identify the relative source(s) of impairment. The TMDL processes underway throughout the Central Coast are highly flawed and are by no means scientifically credible, let alone accurate, assessments of water quality impairment. It is not reasonable or equitable for the agricultural industry to bear a disproportionate cost of ensuring that watersheds meet water quality standards, particularly in watersheds where the water quality impacts are undoubtedly the result confounding factors, such as urban, residential, and other land uses. In many watersheds throughout the Central Coast, the CCRWQCB has presumed without scientific substantiation that IF there is water quality impairment in a watershed where agriculture is present, THEN that impairment is partially or fully the result of agricultural activity. This logic is not only flawed, but calls into question the credibility and intent of the regulation.

14.17

14.18 Based on the information discussed above, the Coalition of Central Coast County Farm Bureaus requests the Regional Board to go back and answer, as well as further review the effects associated with implementing this program. As duly recognized in the Initial Study and Negative Declaration, significant progress has and continues to occur on the Central Coast with respect to water quality. While the details of this program are being finalized, the Coalition continues to fulfill its commitment as defined in the Sanctuary's Agricultural Plan. The Coalition looks forward to further refining the draft waiver in hopes that it can compliment the numerous successful accomplishments by agricultural industry to date.

Sincerely,

Kirk Schmidt, Vice Chair
Coalition of Central Coast County Farm Bureaus

Cc: Congressman Sam Farr, Senator Bruce McPherson, Central Coast Ag Task Force, Central Coast Wine Grower's Association, Grower-Shipper Association of Central California, Grower-Shipper Vegetable Association of Santa Barbara and San Luis Obispo Counties, Independent Growers' Association, Monterey County Cattleman's Association, Monterey County CattleWomen's Association, Monterey County Farm Bureau, Monterey County Vintners and Growers Association, Salinas River Channel Coalition, Salinas Valley Chapter of California Women for Agriculture, Salinas Valley Water Coalition, San Benito County Cattleman's Association, San Benito County Farm Bureau, San Luis Obispo County Farm Bureau, San Mateo County Farm Bureau, Santa Barbara County Cattleman's Association, Santa Barbara Flower and Nursery Growers' Association, Santa Barbara County Farm Bureau, Santa Clara County Farm Bureau, Santa Cruz County Farm Bureau, and the Southern San Luis Obispo and Santa Barbara County Watershed Coalition

(15)

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April 27, 2004

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

Dear Board Members:

The San Luis Obispo County Farm Bureau appreciates the opportunity to be able to bring to the Board's attention the concerns and inadequacies we see in the Initial Study and Negative Declaration for the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands within the jurisdiction of the Central Coast Regional Water Quality Control Board.

But first, the San Luis Obispo County Farm Bureau would like to express our appreciation to the Regional Water Quality Control Board staff for their tireless work on the Waiver.

It is in the spirit of having a program adopted that will function and be successful that we offer the following comments and requests.

Project Information Form

Page 5, paragraph 1: The "Description of the project in the Draft Negative Declaration states that the "dischargers" have three years to complete the requirements listed on page 4. The Initial Study does not address the Regional Water Quality Control Board's ability to fulfill the necessary requirements that make it possible for the "dischargers" to meet the waiver program's requirements, which is a Regional Water Quality Control Board
15.1 responsibility. Neither the Plan nor the Initial Study address funding to enable Cooperative Extension to continue the Plan's mandated 15-hour short courses. There is
15.2 no mechanism for certifying/authorizing additional entities so there is sufficient facilitation of these short courses. The Initial Study does not address the lack of staff to
15.3 implement the required program, thus placing in jeopardy the ability of the agricultural community to comply with the 3 year completion requirement. *The impact to the*
15.4 *irrigated agricultural producers, because the Water Board infrastructure is not*

adequately addressed, will make it problematic for producers to complete the requirements of the proposed program within the prescribed 3 year time period. The potential for conversion of agricultural land to non-agricultural uses or discontinued agricultural use of agricultural land is significant.

1 Initial Study

Page 9, Agriculture in the Central Coast Region: The Initial Study recognizes that approximately 2/3 of the 2,500 agricultural operations are less than 50 acres. This means that 1,666 growers operate less than 50 acres. Further, the Study states that 1/3 of all growers, 833 have less than 10 acres. *The impact to the growers with the limited*
15.5 *Regional Water Board infrastructure (staff and funding) to facilitate the program, and the unknown cost of implementation of the program, has a significant potential to cause conversion of the land to non-agriculture uses or discontinued agricultural use of the land for over 1,666 growers on prime, unique farmland and farmland of statewide importance.*

Page 10, Agriculture in the Central Coast Region: The Initial Study recognizes that "local farmers often compete with products from other countries where the costs of production may be substantially less". *The Initial Study acknowledges the competitive*
15.6 *loss to Central Coast farmers from other areas. Neither the Initial Study nor the Negative Declaration researched or addressed the impact of the cost increases caused by the conditional waiver. The potential for the plan implementation costs causing conversion or non-agricultural use of the land is significant.*

Page 11, Existing Efforts by the Agricultural Industry to Address Water Quality Issues: Although the Initial Study recognizes the organized, proactive efforts of such entities as the 6-County Farm Bureau Coalition, it completely ignores the long standing individual efforts of many agriculturalists working with the NRCS, the RCDs or just on their own. Many of these agriculturalists have invested thousands of hours and countless dollars in unacknowledged conservation practices. In the Initial Study the report represents only the organized agricultural operators, incorrectly stating that only 10% of
15.7 the operations in the Central Coast are proactive in conservation practices. *The impact to those operators who <u>have</u> invested many hours and dollars in conservation practices and which, because they are not recognized in the Waiver Plan, the Monitoring Plan, the Initial Study, and the Negative Declaration is significant. The lack of recognition and inclusion of this segment of the irrigated agricultural industry in the Initial Study and the Negative Declaration may discourage continued agricultural use of the land as the producers face even greater costs and more time spent in order to prove that they are already meeting the required water quality standards.*

The effect of this waiver requirement may cause an impact to the very biological resources the Plan wishes to protect.

Page 12, Agricultural Advisory Panel Recommendations: Many of the points addressed in the Initial Study reflect the Agricultural Advisory Panel Recommendations,

but not all accurately address the points in this section. Some of those points are addressed here, others later in this review.

15.8 1. The Panel did not reach consensus on the "checklist format" or even the contents of the checklist.

2. The Panel has not come to a consensus as to the monitoring structure, as there are still unanswered questions as to how the process will work, physically and financially. Members of the panel agreed that the regionwide structure appeared more economically feasible then other proposals, but the agricultural members asked that there be pilot projects that will demonstrate the actual monitoring needs, costs and the best process for appropriate and feasible monitoring, before requiring monitoring in areas where there are no known discharge issues.

15.9

Page 13, Program Implementation Costs: Although the Initial Study addresses costs in generalities, the vagueness of the section creates a serious inadequacy in the study. As costs are a major concern and component of the whole Conditional Waiver, it is critical that this portion of the study <u>thoroughly addresses</u> the issue. The Initial Study presents no hard facts regarding costs only a vague anticipation of the costs. The Agricultural Advisory Panel was unable to reach any conclusions as to the real costs for the region wide program as cost presentations made to the panel range from $100 or $500 for properties under 10 acres to $1,000 to $5,000 for properties over 1,000 or 2,000 acres. Now the waiver document has proposed a fee of $2 per acre which was never presented to the Advisory Panel.

15.10

In the process of determining the costs of monitoring, the fact that not all 2,500 growers will enroll in the program in the first, or even second or third years, was not factored into the increased cost to those who do enroll, in either the monitoring program or the Initial Study.

15.11

Neither the Monitoring Plan nor the Initial Study addressed the fact that farms may include both irrigated and non-irrigated agriculture. There was no distinction that <u>only the irrigated land would be assessed</u> in this program. This is a critical issue, as many farms in San Luis Obispo County have a limited number of irrigated acres, but a large amount of non-irrigated land. As an example, if there are 10 acres of irrigated land and 500 acres of non-irrigated land (if the draft monitoring proposal of $2/acre is assumed), would we assume that the cost to the landowner/operator would be $20 or $1,000

15.12

There is a potentially significant impact to agricultural resources (i.e. to conversion or non-agricultural use) because of the unanswered monitoring costs in both the monitoring program and the Initial Study.

15.13

Page 13, Project Description: The Initial Study, in this section and elsewhere include groundwater in the "discharges". The Agricultural Advisory Panel did not come to consensus regarding the inclusion of groundwater in the conditional waiver. The Initial Study does not adequately address the impact of adding groundwater to the waiver requirement. It does not address the implementation and costs. *There is potential for a*

15.14

significant impact to agricultural resources and biological resources unless there is a thorough and complete study relating to the cost inclusion of groundwater to the waiver.

Page 14, Tiered Waiver Structure: The Initial Study states that Tier 2 "dischargers" must meet the Tier 1 waiver conditions within 3 years unless they can demonstrate "extenuating circumstances, such as a lack of available training classes...". Because of the lack of funds, staffing and current cutbacks in state budgets, the potential for "extenuating circumstances" is probable. Without the assured availability of funds and infrastructure, upon the adoption of the Conditional Waiver, to facilitate the Waiver, there is a real potential that the Regional Board's own responsibilities to the program will be unable to be met. *This lack of a determination of the ability to assure the agriculturalist the ability to comply with the waiver can present a significant potential that the land will not be used for agricultural purposes, as the landowner will be confused as to what is required.*

15.15

Page 14, Enrollment: Neither the Waiver Plan nor the Initial Study take into account that there are growers within the Central Coast who, because they do not use regulated pesticides, are not within the County Agricultural Commissioner's Pesticide Use Reporting data. Throughout the course of the Agricultural Advisory Panel's discussions, the Pesticide Use Reporting list was to be the contact list for notification of the industry's irrigated agricultural producers. *There is a flaw in the program in that those not included in the 100% Pesticide Use Reporting list may not be aware or be contacted about the new regulation. Without this issue being addressed, the program could continue to have an impact on the biological resources that the program is being developed to address.*

15.16

Page 14, Enrollment: The "practice checklist/self assessment form" as stated previously, has not been approved by consensus of the Agricultural Advisory Panel. The checklist that has been available does not properly reflect what is needed, what has been accomplished, and what will be accomplished in the future on the operations. The checklist that has been available for panel members to see presents a format that requires a continually increasing number of conservation practices. As stated before, those who have been proactive may have already achieved the requisite level of compliance and no new measures are required. Further, there are those properties where practices on the checklist are not appropriate (i.e. where there is no irrigated water runoff, or there is a cover crop that already prevents erosion, or where the land is of a type that there is no storm water runoff). Because the checklist has a cumulative scoring process, those who have been, and are doing, the best in conservation practices may actually be penalized. *Neither the waiver requirement nor the Initial Study address this issue and this can lead to an actual negative impact on the grower and agricultural uses could be curtailed or the conservation practices discontinued.*

15.17

Page 15, 5: Again, the "wastes discharged to groundwater..." is written into the Initial Study. As stated in this review, relating to page 13, Project Description, *there is potential for a significant impact to agricultural and biological resources unless a thorough and complete study relating to the inclusion of groundwater to the waiver requirement is done.*

Page 15, 8: "The discharger shall comply with applicable time schedules". Although on page 14, Tiered Waiver Structure, the Initial Study presents the caveat relating to "extenuating circumstances", this section removes that caveat and actually creates a
15.18 significant impact to the agriculturalist who is unable to meet the program requirements due to lack of program availability. *This section presents a potential impact for continued agricultural production and the conversion of agricultural lands to non-agricultural uses as the landowner/operator doesn't want to be in violation of the regulations, but is unable to receive the needed education or support that the program is supposed to offer. Thus he doesn't want to take the chance of being in violation so he quits production.*

Page 15, Water Quality Monitoring: The Initial Study states that the costs will be based upon a number of factors. The Draft Monitoring Program proposes a fee of $2.00 per acre, with no consideration as to the "type and quantity of discharge". The Initial
15.19 Study and the Draft Monitoring Program are in conflict. *As the cost of monitoring may be the most impacting portion of the waiver requirements, the cost of the monitoring should be absolutely clear and the consequences of levying the fee addressed in the Environmental Review.*

Page 15, Water Quality Monitoring: Both the Monitoring Program and the Initial Study propose an Agricultural Monitoring Committee as the entity that assesses the monitoring fee. The make up of the Agricultural Monitoring Committee is not addressed; the monitoring fees and specifications are not addressed in either the Monitoring Program
15.20 or the Initial Study. *There is a potential loss of agricultural land to agricultural uses, because this Committee, its duties, abilities appear to be undefined. The monitoring program, fee structure, approval of a "monitoring committee" and all other processes relating to the monitoring program, including environmental review, must be brought before the Central Coast Regional Water Quality Control Board for full public hearings and approval.*

2: Environmental Significance Checklist:

2.1 Aesthetics:
a) and c): A potentially significant impact to scenic vistas and existing visual character is
15.21 entirely possible because of the requirement in the Conditional Waiver on page 8 that "Structural practices such as...sediment detention basins to detain a 25-year storm event" has at least two major aesthetic impacts:

1) The size of a 25-year storm can be classified as a storm which produces from 1 to 7 or more inches of rain in a 24 hour period. If the agricultural operation is 10 acres, in a region where a 25-year storm event would have 7 inches of rain in 24-hours, you would need a catchment covering 1.45 acres at a depth of 4 feet to detain the water produced in the storm. *There would definitely be a significant visual impact from this size detention basin.*

2) The second issue with this 25-year storm detention basin requirement is that

the Waiver does not limit the discharge to the discharge generated on the
15.22 subject property. As written, a property that received water from offsite run-off would now be subject to an even larger detention basin, because of the increased volume of water accumulated from offsite rain. As an example, if the property is 10 acres, but the watershed drains a non-agricultural area of 20 acres (i.e. an urban development) then, based upon the draft waiver, the agricultural operator would have to detain the amount of water from the full 30 acre watershed. *This is now not only a scenic/aesthetic impact, but also a significant agricultural resources impact because now the detention pond will be significantly larger and more costly.*

2.2 *Agricultural Resources:* There are numerous issues creating significant impacts on agricultural resources that we have already addressed in this letter regarding the proposed
15.23 waiver and monitoring program. They have not been adequately addressed in the Initial Study and the Negative Declaration. *We believe that the impacts to agricultural resources must be addressed and resolved before any approvals can be made on these requirements.*

To further address the concern with the waiver requiring a detention pond for a 25-year storm, using the example of the operation above, there will be a long list of permit
15.24 requirements from the local grading permits, to state Fish and Game review, to the federal level with U. S. Fish and Wildlife and the Army Corps of Engineers. *The permit time and cost requirements to obtain permission to build a detention pond of the magnitude necessary to hold a 25-year storm could create a significant impact to the agricultural resources. This issue alone could cause the conversion of agricultural land to non-agricultural use.*

2.4 *Biological Resources:* There are a number of impacts to biological resources that "reduced flows during the summer" (page 31) have not been adequately researched or addressed in the Initial Study or Negative Declaration.

b) As written, portions of the draft waiver state that, (page 13, Part III, 2.) "irrigation efficiency improvement should be used to minimize wastewater generation" and (page 30 of the Negative Declaration) "greatly improved
15.25 irrigation efficiency in some areas will result in reduced flows during the summer". In areas where there are only ephemeral streams or little or no year round surface water, the reduction or elimination of irrigated runoff can impact the health and future presence of established riparian vegetation. *If conservation or reduction in the use of irrigated water reduces the water available to sustain riparian vegetation then there is a significant impact to "biological resources" The Initial Study and the Negative Declaration do not adequately address this impact.*

c) If the landowner/operator is required, in a heavy rainfall area, to build a
15.26 detention dam to meet the demands of a 25-year storm event, then there will be significant dirt removal and hydrological interruption along with other

impacts to the biological resources. *The Initial Study and the Negative Declaration does not adequately address the required dirt removal or Interruption of hydrological impacts to the biological resources.*

f) The creation of a detention pond and some of the other conservation practices have a potential to be in conflict with county grading ordinance and Coastal Commission Policy. *There is a likely conflict with the Coastal Commission Policy relating to agricultural development, especially in HCPs, and the San Luis Obispo County Local Coastal Plan where Phase I was recently adopted.*

15.27

2.6 *Geology and Soils:* Unfortunately, the explanation on page 32 of the Negative Declaration does not address the detention pond requirement that is in the conditional waiver.

a) Once again, the requirement of the 25-year storm event detention pond has a significant potential for exposing people or structures to risk of loss, injury or death. *Structures, such as large detention ponds, are classed as attractive nuisances and because of the risks to people, especially children, require very expensive insurance coverage. Neither the Initial Study nor the Negative Declaration researched or addressed this potentially significant impact.*

15.28

2.17 Mandatory Findings of Significance: As addressed above, there are a number of places in the Conditional Waiver and the Draft Monitoring Program that will create "changes in practices that could degrade the quality of the environment..." Of course the prime example is the detention ponds, which have the high potential to create aesthetic, biological, agricultural and geological impacts. *Because of the many concerns and inadequacies addressed in this review of the Initial Study and Negative Declaration, there are findings of significance that require more thorough research and review.*

15.29

The San Luis Obispo County Farm Bureau urges the Central Coast Regional Water Quality Control Board to not approve the Initial Study or the Negative Declaration. We urge you to find that there are significant impacts and address those impacts through a complete Environmental Impact Report.

Sincerely,

Joy Fitzhugh
Legislative Analyst

Grower-Shipper Association
of Central California

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Our Members: Partners Producing Prosperity

STATE OF CALIFORNIA RWQCB RECEIVED MAY 3 - 2004 WATER QUALITY

(16)

VIA FACSIMILE TRANSMISSION
April 30, 2004

Central Coast Regional Water Quality Control Board
895 Aerovista Place
San Luis Obispo, CA 93401
Fax: (805) 543-0397

Re: CEQA-Comments on the Proposed Irrigated Agriculture Water Quality Program and Conditional Waivers of Waste Discharge Requirements

Dear Board Members:

The Grower Shipper Association of Central California is submitting the following additional comments for your review and consideration. GSA represents some 300 growers, shippers, packers, processors and other businesses affiliated with, or connected to, the agricultural industry in the California Counties of Monterey, Santa Cruz and San Benito. Our members are still very concerned about the current proposed changes in the irrigated agriculture water quality program and conditional
6.1 waiver of waste discharge requirements. The current proposed Ag Waiver program will eliminate or reduce the economic viability of some farm land. Additionally, agricultural land put under pressure may indeed be defined as Prime, Unique, or farmland of Statewide Significance. Reduced economic viability from the unknown and ongoing costs of this project could leave any parcel of farm land open to development pressures and the inevitable conversion to non-agricultural uses. Conversion of farm land has a significant impact on the environment according to CEQA

6.2 The CCRWQCB has not adequately assessed the overall and cumulative economic impacts of the Ag Waiver regulation on the agricultural industry. There is no bottom-line analysis of the cumulative costs of short courses, practice implementation, monitoring, compliance paperwork, etc. on small, medium, and large operations. The CCRWQCB has not addressed the ramifications of low enrollment on the per-acre costs for enrollees. For example, what happens if only a small percentage of
6.3 growers enroll in the monitoring program? Will the entire program costs be distributed among those who enroll, resulting in a huge economic burden of the first enrollees?

A primary concern within the agricultural community is both the direct and indirect costs, and the socioeconomic impacts,
6.4 associated with the implementation and administration of this program. We request that a full economic analysis be completed for the program.

If you have any questions, or I can be of further assistance, please do not hesitate to contact me.

Sincerely,

James W. Bogart

James W. Bogart
President & General Counsel

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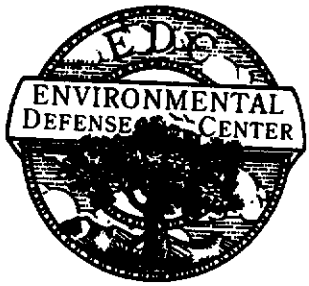

April 28, 2004

Mr. Jeff Young, Chair
Central Coast Regional Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906

RE: ***Initial Study and Negative Declaration For Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands***

Dear Chairman Young and Members of the Board:

The Environmental Defense Center (EDC) is a non-profit, public-interest environmental law firm working to protect the environment, health and quality of life for residents on California's Central Coast. EDC has been involved with the Agricultural Advisory Panel convened by your staff for the last year, and respectfully submits the following comments to the Regional Board.

As you know, the proposed Conditional Waiver has been a collaborative effort between local growers, environmental organizations, and agency staff aimed at protecting and improving water quality throughout the Central Coast region. The EDC has carefully reviewed the *Initial Study and Negative Declaration For Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands* and offers the following comments.

EDC believes that the proposed program stands to benefit water quality if adopted and implemented as proposed by your staff. A key component of this program, on which our support hinges, is the adoption of a required monitoring program to be implemented throughout the entire region. Monitoring is a legally required component for conditioned waivers and is the only way to accurately assess agriculture's impact to waters of the State and this program's impacts and effectiveness. Without an adequate monitoring program, potentially significant negative impacts to water quality may go unnoticed as a result of the use of new chemicals, application methods, etc. If changes are made which weaken the program's critical monitoring component, there may not be an effective way to ensure that agricultural runoff water quality does not decrease, resulting in significant water quality impacts. Such a change would require recirculation of the Draft ND, or, if the impact cannot be mitigated to less than significant, preparation of an Environmental Impact Report (CEQA Guidelines Section 15073.5).

17.1

While EDC supports the program as currently crafted, the ND describes the project in a way that is unclear. This interferes with the public's understanding of the proposed project, its environmental effects and its ability to fulfill the Board's water quality

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objectives. Under CEQA Guidelines Section 15124, a project description must include enough information to be able to evaluate the impacts. The ND states under *Project Description* Section 1.4, page 14, that the Board "may" require discharge requirements for agricultural operators who do not fulfill the program's tiered requirements. There is
17.2 no discussion of what would trigger the Board to require such permits, and as a result the project description is vague; it lacks the detail needed for the public to evaluate the program's ability to protect the beneficial uses of the State's waters. Having participated in the stakeholder process, EDC believes that the Board's intent is that it shall require waste discharge permits when agricultural dischargers fail to implement the program's basic measures, and other factors such as "extenuating circumstances" and demonstrated progress towards meeting Tier 1 requirements have been considered.

The ND should be revised prior to your hearing to replace "may" with "shall" under Section 1.4, page 14, in order to provide sufficient detail for the public to be able to understand how the program will work and to ensure enforceability (e.g., when and if the Board will require permits for agricultural landowners who do not cooperate with the program). Otherwise, the program description lacks the clarity needed to comply with CEQA, and to ensure effectiveness of the program.

Finally, EDC notes that any changes that could reduce the effectiveness of the proposed
17.3 monitoring or reporting requirements, or reductions in other requirements that may result in significant impacts to environmental resources, may require additional CEQA review. EDC will submit detailed comments about the program itself within the next month.

Thank you for your consideration.

Sincerely,

Eric Cárdenas, CCEHP Program Director,
Environmental Defense Center

(18)

May 27, 2004

Mr. Jeff Young, Chair
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906

RE: ***Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands***

Dear Chairman Young and Members of the Board:

The Environmental Defense Center (EDC) is a non-profit, public-interest environmental law firm working to protect the environment, health and quality of life for residents on California's Central Coast. EDC has been involved with the Agricultural Advisory Panel convened by your staff for the last year, and appreciates the efforts of all participants involved in the process.

The Regional Board is currently tasked with the responsibility of coming up with a program to protect water quality from agriculturally-based pollution while giving growers options and/or incentives to help protect their investment. While the latter point is not legally required, but is a goal that most support, the former is the law and the Regional Water Quality Control Board (RWQCB) must now take steps to make sure that the law is being enforced.

18.1 In order to accomplish these dual goals, the EDC believes that a *conditional waiver* is the most appropriate tool for protecting waters of the State from agricultural runoff and associated impacts. Automatic waivers of Waste Discharge Requirements (WDR's) for farmers are no longer an option, since substantial evidence exists which documents high levels of nitrates, pesticides, and other water pollutants thought Central Coast waterways. Because conditional waivers provide very specific steps to be followed and carry with them the power of enforcement while still allowing flexibility to growers, EDC believes that the adoption of a conditional waiver program is superior, and more legally defensible, than anything currently in place.

Critical Components of a Conditional Waiver

The Advisory Panel convened by your staff in March 2003 made significant headway in developing a program that not only addresses water quality impacts, but which also offers incentives to growers to take proactive steps to protect public resources. These incentives include a tiered structure whereby those in the highest tier pay less for the program, report with less frequency, and are given flexibility to employ new management techniques.

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This incentive-based approach notwithstanding, ***EDC believes that the following components are critical for any conditional waiver finally adopted:***

a) **Monitoring**- Monitoring by individual farmers and/or watershed groups must be included in this program. Monitoring should occur with enough frequency to make results meaningful. Monitoring results should be kept on file and made available to the public and RWQCB. Monitoring should target any substances that can harm waterways and wildlife. Monitoring should be cost effective and should not overly penalize growers who are reducing agricultural runoff from their properties. Monitoring should focus on currently impaired areas as well as other areas where runoff impacts may be significant.

b) **Farm Water Quality Short Courses**- All growers applying for this waiver must take continuing education classes to further their knowledge of sustainable farming, or Best Management, techniques that will contribute to reduced water quality impacts.

c) **Farm Plan**- Growers must provide RWQCB staff with farm plans that detail all Best Management Practices (BMP's) currently or soon to be in place, location of all farm properties, pesticides to be used and activities to be undertaken on that property within the next year.

d) **Appropriate Fee Structure**- A fee structure that allows the program to pay for itself is essential. Fees can be based on parcel size, inputs vs. outputs, etc.

a) **Monitoring**- As mentioned in our letter commenting on the Negative Declaration (April 28, 2004), a key component of this program on which EDC's support hinges is the adoption of a required monitoring program to be implemented throughout the *entire* region. Monitoring is a legally required component for conditioned waivers and is the only way to accurately assess agriculture's impact to waters of the State and this program's impacts and effectiveness. Without an adequate monitoring program, potentially significant negative impacts to water quality may go unnoticed as a result of the use of new chemicals, different application methods, etc. Many have mentioned in past hearings that monitoring in and of itself will not enhance water quality. While this is true, monitoring is the only tool available to help determine where problems exist, to what degree, and the potential sources of those problems. With monitoring results in hand, steps can be taken better protect water quality in impacted areas.

18.2

EDC is not as concerned with what type of monitoring program a grower chooses to participate in (watershed vs. individual) so long as the methodology is conducted according to an approved Quality Assurance Project Plan (QAPP) and has been approved by RWQCB staff. Monitoring should be conducted at a frequency that enables changes in water quality to be detected. To conduct too little monitoring in a given area could render the monitoring program useless. Staff's recommendation of two tests during the rainy season and two tests during the dry season is an absolute minimum. A more appropriate monitoring program would consist of monthly monitoring for sediment, fertilizers, pesticides and nutrients. Monitoring for pesticides *should* be conducted in

18.3

areas where pesticide impairment is suspected, and *must* be conducted at any site that reveals high levels of toxicity as a result of initial monitoring efforts.

The cost of water quality monitoring should not disproportionately affect small farmers, since smaller farms tend to use less inputs, making their impact on local waters potentially less of a burden than that of a larger farming operation. At the same time, monitoring must not only focus on currently impaired areas where larger farms exist, but also in areas that have been omitted from previous monitoring efforts. If monitoring
18.4 results show that certain farms or watersheds are consistently coming up "clean," monitoring costs should be adjusted for those areas, reflecting the positive contributions of those growers to local waters.

Lastly, monitoring results must be provided to RWQCB staff upon request, and reviewed by the Board when appropriate. Further, under section 13269 of the California Water Code, these results must also be made available to the public.

18.5 In short, monitoring must be all-inclusive, region-wide, and must test for any substance that has the ability to degrade waters of the State. Monitoring fees should be based, as much as possible, on farm size, management practices, and/or the nature of chemical and nutrient inputs, etc.

b) **Farm Water Quality Short Courses**- The Advisory Panel convened by your staff was in agreement that continuing education courses should be a requirement of any program aimed at improving water quality. These courses have been/can be provided by
18.6 any number of resources including UC Davis, UC Sustainable Agriculture Research Program, Cal Poly San Luis Obispo, and others. The goal of these courses is to provide growers with more tools to maintain a sustainable operation that minimizes water quality impacts. Growers should be required to take a minimum of five hours per year of farm water quality education.

c) **Farm Plan**- In order for RWQCB staff to understand the nature of the agricultural operations participating in the program, all participants must submit farm plans to Regional Board staff. These maps must take into account all farms for any given owner/operator and indicate Best Management Practices (BMP's) that are occurring on
18.7 each of those farms. Farm plans must be kept at a central farm location for agency review, should document a list of BMP's that will be considered for future implementation, and should list pesticides proposed for use on various farms in the coming year. Finally, the farm plans should document other efforts being taken by growers that support water quality protection (ie. Integrated Pest Management programs, water quality courses taken, etc.).

d) **Fee Structure**- In order for the conditional waiver program to be successful and for staff to be effective at overseeing and enforcing the provisions of the waiver, an
18.8 appropriate fee structure must be included. Waiver fees and monitoring costs have been suggested by your staff, but do not take into account different sized farms, the role of the State Board in setting waiver fees, etc. Nonetheless, the inclusion of fees that enable your

staff to fulfill its duty in supervising this program is essential. Not only must staff have the resources available to monitor and evaluate the program on an ongoing basis, but they must also have the ability to undertake enforcement action when necessary. As mentioned above, costs for certain portions of this program could be altered when necessary to reflect positive or negative impacts to water quality.

Compliance with CEQA

With the above-listed components included in a final conditional waiver, EDC believes that the proposed program could stand to greatly benefit water quality if adopted and implemented by the Board and your staff. While this is true, EDC has concerns over language found in the Draft Negative Declaration which describes the project in a way that is unclear. This unclear language interferes with the public's understanding of the proposed project, its environmental effects and its ability to fulfill the Board's water quality objectives.

Under CEQA Guidelines Section 15124, a project description must include enough information to be able to evaluate the impacts. The Draft ND states under *Project*
18.9 *Description* Section 1.4, page 14, that the Board "may" require discharge requirements for agricultural operators who do not fulfill the program's tiered requirements. There is no discussion of what would trigger the Board to require such permits, and as a result the project description is vague; it lacks the detail needed for the public to evaluate the program's ability to protect the beneficial uses of the State's waters. Having participated in the stakeholder process, EDC believes that the Board's intent is that it shall require waste discharge permits when agricultural dischargers fail to implement the program's basic measures, and other factors such as "extenuating circumstances" and demonstrated progress towards meeting Tier 1 requirements have been considered.

As we mentioned in our letter dated April 28, 2004, the EDC requests that the language in the Draft ND be modified prior to final action by your Board to replace "may" with "shall" under Section 1.4, page 14, in order to provide sufficient detail for the public to be able to understand how the program will work and to ensure enforceability. The ability to enforce the program's various provisions is of crucial importance, as is the language that will guide regional staff and Board members is the decision-making process. Otherwise, the program description lacks the clarity needed to comply with CEQA, and to ensure the program's effectiveness.

Conclusion

The EDC appreciates the substantial time and effort that has been put into creating this proposed program. With the inclusion of the components listed above, the plan provides an appropriate method of protecting water quality from the threats posed by agricultural sources of pollution. A strong **monitoring component, farm water quality short courses, farm plans,** and **appropriate fees** will help ensure the success of this new program. We are hopeful that your Board will take the recommendations above into account when making a final decision on this issue.

Thank you for your consideration.

Sincerely,

Eric Cárdenas, CCEHP Program Director,
Environmental Defense Center

(19)

Working For The People Who Work The Land
SANTA CRUZ COUNTY
Farm Bureau

April 30, 2004

Mr. Jeffrey Young, Chairman
Regional Water Quality Control Board
Central Coast Region
895 Aerovista Place, Suite 101
San Luis Obispo, Ca. 93401

Faxed – 3 Pages and emailed

Attn: Roger Briggs, Executive Officer

RE: CEQA Review: Significant Economic Impact Agriculture Waiver

Dear Mr. Young,

The Santa Cruz County Farm Bureau has members throughout Santa Cruz and North Monterey Counties who farm irrigated lands, as tenants or owners, with numerous crops, varying topography, soils, and rainfall. The diversity of their operations is reflected in the large number
19.1 of varieties of organic and conventional vegetables and fruits grown in the county. This diversity of operations requires any regional program to contain sufficient flexibility to allow these divergent agricultural interests to continue to operate commercial farms successfully.

The current proposed Ag Waiver program will eliminate or reduce the economic viability of some farm land, not just marginal land, but land defined as prime, unique, or farmland of statewide significance. Reduced economic viability from the unknown and ongoing costs of this
19.2 project could leave any parcel of farm land open to development pressures and the inevitable conversion to non-agricultural uses. Conversion of farm land is a significant impact on the environment according to CEQA.

Mandated Practices: Included in the CEQA documents are several provisions suggesting mandatory agricultural practices. **One in particular will be overwhelming in its economic impact on local agriculture.**

The largest crop in Santa Cruz County and Pajaro Valley, by acreage and dollar volume, is strawberries. The crop is planted in the fall, remains vegetative through the winter, and is
19.3 harvested from April through October, when the process starts again. One of the practices listed in the CEQA documents is the construction of a basin sufficiently large to hold the water from a 25 year rain event. Along the east side of the Pajaro Valley this would be 6" of rain in 24 hours

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(20

Monterey County Farm Bureau

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April 30, 2004

Mr. Jeffrey Young, Chair
Central Coast Regional Water Quality Control Board
895 Aerovista Place
San Luis Obispo, CA 93401

Re: CEQA Comments on the *Initial Study and Negative Declaration For Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands.*

Dear Mr. Young,

The Monterey County Farm Bureau has members throughout the county who own or farm irrigated lands of numerous crop types, of acreages ranging from 20 to 1,000s, of varying topography, soils, and rainfall. We have worked diligently to inform our membership about agriculture's role in preventing non-point source pollution of surface water over the past six years first by becoming a charter member of the Coalition of Central Coast County Farm Bureaus (CCCCFB), and then by developing a county Water Quality Program. Together the six county Farm Bureaus of the Coalition lead the state in involving farmers and ranchers in proactive water quality protection.

Two members of the Monterey County Farm Bureau Board of Directors participated in the 14 month long collaborative process designated by the Regional Board staff as the "Ag Panel." Many of our members have made presentations to your Board and written letters providing specific examples of how an agricultural discharge waiver and the proposed monitoring program will impact farming. Monterey County farmers have a proven track record of doing their part in protecting water quality.

20.1 We request the Board consider our previously submitted Central Coast Regional Monitoring Program (CCRMP) proposal which was signed by 23 agricultural industry organizations in 8 counties throughout Region 3 (see attached). We also support the comment letter prepared and submitted by the Coalition of Central Coast County Farm Bureaus on April 30th, 2004.

This letter outlines our specific concerns with the "*Initial Study and Negative Declaration For Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands,*" as a review of the "*Proposed Conditional Waiver of Waste Discharge Requirements for Discharges From Irrigated Lands*" and "*Draft Monitoring and Reporting Program.*"

After a thorough analysis of this environmental review document, we believe the Negative Declaration greatly under-estimates environmental impacts, as defined by the California Environmental Quality Act (CEQA). We also believe there are additional un-defined potentially very significant impacts that are not reviewed under CEQA and therefore preclude the public from making a complete assessment of the "project".

Section 2.2 Agriculture Resources –

According to this Negative Declaration, the project will have a less than significant or no impact on agriculture resources. **Page 30, paragraph 2 states, "It is possible that some marginal farm land may no longer**
20.2 **be economically viable <u>due to increased costs associated with practice implementation and monitoring</u>..."** We are in enthusiastic agreement with your staff, and ask the Board to acknowledge that the current project <u>will</u> eliminate or reduce the economic viability of some farm land. However we would add-that the land put under

pressure may indeed be defined as Prime, Unique, or farmland of Statewide Significance. Reduced economic viability from the unknown and ongoing costs of this project could leave any parcel of farm land open to development pressures and the inevitable conversion to non-agricultural uses. Conversion of farm land has a significant impact on the environment according to CEQA. In southern Monterey County, much of the land defined as "marginal" is currently in grape and vineyard production as well as other crops. Grapes are an extremely important contributor to Monterey County's agriculture-based economy. In northern Monterey County, lands defined as "marginal" are managed by small scale, family farmers caring for the land with very narrow profit margins. Small farms also play a critical role in the local economy and community. Where agricultural operations are abandoned, unmanaged land will contribute adverse impacts to the environment, including harboring pest species and health hazards and diminishing air and water quality.

20.3 **On page 30, paragraph 2 the statement that, "...Conditional Waivers should not impact prime agricultural farm lands..."** is not strongly supported in the text. In a staff report prepared by Regional Board staff, it was stated very clearly that a complex set of challenges face farmers on the Central Coast as income is dictated by global supply and demand as well as the local weather. A "good" year for farming is inevitably making up for previous (or upcoming years) when the farmer pays to farm the crop. This is true regardless of the ground being defined as "prime" or "marginal."

20.4 **Unknown impacts on the long-term viability of the farming unit that have gone un-reviewed by this Negative Declaration.**

It is critical to the well-being of farmers and the lands they manage on the Central Coast that additional costs to the farmer from this project are of known magnitude and scope. Farmers will want to know, once they enroll in the waiver program and implement practices that protect water quality and their efforts are evidenced through monitoring, **how much longer and at what cost will they pay into the program in comparison to farmers who have not implemented practices?** The costs of reporting, implementing practices, and monitoring will have significant impacts on agricultural resources, which in turn affects economic competition among farmers, the survivability of individual farm operations, and the future use or abandonment of a property that may lead to pest, public health, air and water quality problems. Without a clear answer to this critical question, this program cannot predict the level of participation and the success of the project. *The Negative Declaration does not satisfactorily address this uncertainty.*

20.5 **"Low threat" discharge, page 4, paragraph 20.** There is no difference between the requirements for Tier 1 and "low threat." Yet this category is offered with the further undefined benefit of "reduced monitoring and reporting requirements." *Since there are now farmers who contribute little or no threat to water quality how will they qualify for this category?*

20.6 **Cost of participation in a monitoring program. Page 6, paragraph 32 sets the total cost of a cooperative monitoring program at $1.2 million based on $2.00 per acre.** This allocation of cost is without foundation. It assumes a high level of participation. Farmers will recognize that, if not enough farmers are enrolled for the monitoring entity to function, those few who have enrolled risk being penalized for participation by paying for the entire program, at a cost that could be significantly higher than the $2 per acre. The program lacks either a guarantee that all farmers or all acreage can be enrolled up front or within a reasonable time to distribute the cost in an equitable and affordable manner. Without some other guaranteed funding mechanism to make up the full, up-front cost, the program risks imposing significant cost per farm. Farmers will understand this risk and will be deterred from enrolling, which will precipitate the problem. Greater costs will increase the probability that some farms will convert to non-agricultural uses or will fail, producing the environmental effects associated with these changes. *Neither the program nor the Negative Declaration satisfactorily consider the alternatives associated with levels of enrollment and distribution of costs. This renders all cost-related environmental impacts entirely unpredictable and beyond the ability of this Negative Declaration to measure or to adequately mitigate.*

20.7 **The Regional Board proposal for a cooperative monitoring program overseen by a non-profit entity** brings up another set of unknown and un-reviewed potentially significant impacts. The greatest of these is whether it is legal for a non-profit entity to collect fees associated with a regulation. The corollary to this question is whether the charge to farmers is a fee or a tax since monitoring sites (and the information gathered from them) would be paid for

by all but will not be distributed evenly across the region. These uncertainties expose the program to legal challenge that could undermine it. *The Negative Declaration fails to analyze a) the potential for this fee process to be found illegal, b) alternatives in case it is found to be illegal, c) consequences to the program and to the environment.*

20.8 **The checklist of practices as described on page 4, paragraph 19** of the Draft Conditional Waiver establishes an unrealistic expectation that growers/landowners implement an unending stream of practices for every reporting period. Management of runoff is a process of discovering what works best for a particular piece of land and within the available budget. Once a grower/landowner finds the combination of practices that work best in for a given farm, there may be no need to implement more practices over time. *If this is the intention, it needs to be made clear in the final waiver language.*

20.9 **A conflict with other, existing regulation including public health concerns** is not addressed by the project and has the potential for far-reaching impacts on agriculture and the environment. California farmers are committed to protecting the public's health and continuously improving food safety methods. Some on-farm management practices, encouraged for protection of water quality, may conflict with the guidelines provided to growers by food safety and mosquito and vector control specialists. Vegetation in and around field edges and standing water are two examples of such water quality protection practices. Disease and vector problems present real threats, such as West Nile virus, sleeping sickness, and encephalitis, to humans, domestic animals and wildlife. *Additional scientific research is needed to better understand health risks. The farmer must have flexibility in choosing the management practices that best suit the operation and do not compromise their commitment to the public for food safety.*

20.10 **The cost of practice implementation with the requirement for designing to the 25 year storm will have significant impacts on agriculture. Page 8, paragraph 41 of the Draft Ag Waiver** states a requirement to detain the 25 year storm or the 100 year storm where there "could be a threat to public safety." The amount of land that would be taken out of production would have a major impact on agricultural operations. According to the Resource Conservation District of Monterey County (RCDMC), the 25 year storm is quite rare and expensive to manage because of structural and engineering costs. For these reasons, their partner technical assistance agency USDA Natural Resources Conservation Service designs for the 10 year storm for Monterey County. In addition to the cost of materials and time to implement practices, waiver holders would be required to find some portion of their farm land to remove from production and locate a basin. Add to the list of unknown costs and un-reviewed impacts, lost production income and sunk rent.

We concur with the suggestion made by RCDMC to replace the proposed 25-year standard with the following: "For each storm, the goal of these combined practices should be to minimize storm water runoff for the first half inch of rain and to reduce runoff for the first two inches of rain. There is no requirement to reduce storm water runoff that enters the farm from off site, but this does not change the requirement for runoff generated on site."

20.11 Monterey County Farm Bureau, on behalf of our hundreds of members who represent families of both small and large agricultural enterprises, asks that you carefully consider our comments and conduct a more thorough review of the project before adopting the Conditional Waiver and Monitoring and Reporting Program.

Sincerely,

Bob Martin
President

Roger Moitoso, Chair
Water Committee

(21)

CALIFORNIA FARM BUREAU FEDERATION

GOVERNMENTAL AFFAIRS DIVISION

1127-11TH STREET, SUITE 626, SACRAMENTO, CA 95814 · PHONE (916) 446-4647

April 30, 2004

Alison Jones
Central Coast Region
California Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

RE: *Initial Study and Negative Declaration for Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands*

Dear Ms. Jones:

The California Farm Bureau Federation appreciates the opportunity to submit comments on the above referenced *Initial Study and Negative Declaration for Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands* (Initial Study).

It is my understanding that the comment period for the Initial Study has been extended past today's date. However, CFBF considers the following comments to be important for your early consideration, and so I am submitting them today. If we have further comments, we will submit them prior to the close of the comment period.

The following comments focus on potential deficiencies in the Initial Study. I do not wish these comments to reflect negatively on the overall approach that I have seen taken by the Central Coast Board in addressing this very difficult issue. There is much to approve of in the proposed Conditional Waiver, and both you, your fellow staff members who have worked on this issue, and the Board members are all to be complemented for your deliberative and thoughtful handling of this matter. The nature of the public comment process perforce requires us to focus on disagreements, and there are a few in connection with the Initial Study. But CFBF looks forward to addressing these issues amicably and would be happy to discuss these comments with you at any time mutually convenient.

Initial Study Comments

CEQA's main objectives include, but are not limited to: disclosing to decision makers and the public, the significant environmental effects of proposed activities; identifying ways to avoid or reduce environmental damage; preventing environmental damage by requiring implementation of feasible alternatives or mitigation measures; and to disclose to the public reasons for agency approval of projects with significant environmental impacts. The Initial Study, as prepared by the Central Coast Regional Water Quality Control Board (Regional Board), encompasses many of these objectives, however, Farm Bureau believes that many of the elements of the Initial Study merit further consideration based on information that is not

currently included in the Initial Study. If the objectives listed above are to be accomplished, additional information must be gathered and presented to ensure that there is adequate consideration given to this projects potential effects and cumulative impacts. Two of these elements are listed below.

Agricultural Resources

The discussion and conclusions drawn in connection with the proposed regulation's impact on agricultural resources raises several questions which cast some doubt on the defensibility of the conclusion that the proposed regulation will have only insignificant impacts on agricultural resources.

"Marginal Farmland"

21.1 How does the Regional Board define the term "marginal farmland," and what is the significance of this term in the Board's analysis. CFBF is not aware that this term has any meaning either on a technical level or as a term of art under CEQA or the Williamson Act. Since the discussion concludes that it is likely that so-called 'marginal land' will be converted from agricultural uses due to the costs imposed by the proposed regulation, it is necessary for the Board to explain what farmlands it considers 'marginal,' and why. Further, it is necessary for the Board to address how much 'marginal farmland' it expects will be converted by the costs of the proposed regulation, explain how it concludes that such level of conversion will not result in a significant impact to the Regions' agricultural resources.

Prime and other Important Farmland

21.2 The Board should also explain in greater detail its determination that Prime Farmland, as opposed to 'marginal farmland' will not be subject to conversion to non-agricultural uses as a result of the proposed regulation. Prime Farmland is not defined in terms of economic profitability. It is therefore unclear how the Board concludes that Prime Farmland as such is unlikely to be converted to non-agricultural uses, while some acreage of those lands the Board has classified as 'marginal' will be converted. Furthermore, there is no mention to the potential impacts to, or conversion of unique farmland or farmland of statewide importance. Both land uses are prevalent within the project area and as equally likely to be subject to the potential effects of the project.

Critical data is available to the Regional Board from the California Department of Conservation's *California Farmland Conversion Report 1998-2000.* CFBF specifically highlights the data in Appendix B of the *Report*, including Table B-2 that lists inventories of Prime Farmland and other categories of farmlands by county as of 2000. Table B-3 provides a regional summary of important farmland acreage, and shows that in the year 2000 for the four Central Coast counties of Monterey, San Benito, San Luis Obispo, and Santa Barbara, there were 323,431 mapped acres of Prime Farmland, along with another 79,451 acres of Farmland of Statewide Significance and 88,998 acres of Unique Farmland.

Table C-1 in Appendix C of the same report also reflects conversion of 1,061 acres of Prime Farmland to Urban and Built-Up Land in the four above listed counties from 1998 to

2000. The same table reflects the conversion of nearly 1,700 acres of Prime Farmland in Santa Clara, much of which may have occurred in Region 3. Conversion of 100 acres of prime farmland is typically considered a significant impact under CEQA.

This information indicates that there may be a considerable continuing conversion pressure on Prime Farmland, and that increased costs and regulatory requirements resulting from the proposed waiver may in fact result in conversion of more than 100 acres of Prime Farmland, unique farmland or farmland of statewide importance region-wide. The Board's estimates indicate over 800 farms within the region that are between 10 and 50 acres in size. Of these many hundreds of farms, a conversion of between 2 and 10 individual farms (i.e. between ¼ of 1% and 1 ¼ % of these small farms) would result in the conversion of 100 acres or more of irrigated farmland.

As indicated above, California Department of Conservation figures show more than 320,000 acres of Prime Farmland just in four of the counties located within the Central Coast Region. It must be considered likely that out of all this acreage, much more than 100 acres will
21.3 be taken out of production by tailwater collection ponds, stormwater detention basins, buffer and filter strips, and potentially other practices. The Regional Board has estimated that there are between 2,500 and 3,000 irrigated farms in the Region which would be subject to the proposed regulatory program. It is likely that at least 100 of these farms would install tailwater and/or storm water detention basins of at least 1 acre in size.

The Board has estimated that 8% of the Central Coast Region farms (approximately 200 farms) exceed 2,000 acres in size each. The total acreage of these farms would thus be over 400,000 acres. The installation of adequately sized tailwater ponds on just half of these farms
21.4 would probably remove well over 100 acres of Prime Farmland from crop production. 2000 acres is roughly 3 1/8 square miles. Assuming a square farm, and one edge to which water on the farm drains, a ten-foot wide buffer or filter strip would be approximately 1.75 miles long. This buffer for one farm would be slightly more than 2 acres, and use of such buffers on all of these 200 farms would remove over 400 acres of Prime Farmland alone from crop production.

These data and analysis indicate that the Board needs to take a closer look at the question of whether the proposed regulation will have a significant impact on agricultural resources. In
21.5 taking this closer look, the Regional Board is well advised to consult closely with agencies such as the California Department of Conservation, the California Department of Food and Agriculture, the University of California's Cooperative Extension, the United State Department of Agriculture and the Natural Resources Conservation Service, and the relevant County Planning Departments and Agricultural Commissioners and Resource Conservation Districts.

Biological Resources

Many of the management practices that would be implemented to comply with the proposed regulation would result in changes to the timing and amount of tailwater discharges to
21.6 riparian corridors and isolated wetlands that have no other sources of water during the summer and fall months. The Initial Study improperly assumes a proposed 'natural condition' in which the existing return flows are not present, rather than properly characterizing the existing environmental baseline (i.e. the existing timing and volume of summer and fall tailwater) and

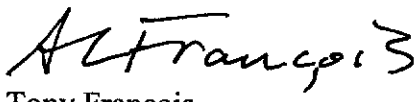
analyzing the effects of the proposed regulation on those existing conditions. Under CEQA, environmental review must include a description of the environment in the vicinity of the project, as it exists before the commencement of the project, from both a *local* and *regional* perspective.

Further, the proposed regulation applies to storm water run-off from irrigated lands, providing an incentive to farmers on relatively flat ground to eliminate storm water runoff (through engineering methods) and thereby avoid the Board's regulatory jurisdiction entirely.
21.7 Even absent such efforts, the proposed regulation includes requirements that may result in implementation of management practices to control erosion and storm water quality that may change the timing and volume of storm water runoff. The Board should be addressing these hydrologic and in turn the biologic effects of these impacts on the existing environmental conditions within the region.

Conclusion

CFBF would be happy to discuss these issues with you, and looks forward to amicable resolution of any difference of views.

Sincerely,



Tony Francois
Director, Water Resources

cc: John Hewitt, CFBF
Central Coast County Farm Bureaus

N. ISAKSON CONSULTANT MANAGEMENT SERVICES

Transmitted via Facsimile and Email

Mr. Jeffrey Young, Chair
Central Coast Regional Water Quality Control Board
895 Aerovista Place
San Luis Obispo, CA 93401

30 April, 2004

Re: CEQA Comments on Initial Study and Negative Declaration for Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands

Dear Mr. Young and Members of the Board;

These comments are submitted in behalf of Stephen Jensen and Jensen Family Farms, third generation Salinas Valley farmers. The Jensen Family farm north and west of Chualar and have actively participated in various agricultural programs within Monterey County including completing the Farm Water Quality Program, working with, and having served as a Director, of the Monterey County Water Resources Agency. The Jensen Family believes it is important to maintain a healthy environment in order to maintain and support a healthy, productive, agricultural industry. The Jensen Family participated in the development of the Monitoring and Reporting Proposal submitted to you on March 19, 2004 by 23 agricultural organizations.

The Jensen Family fully supports the comments submitted by Monterey County Farm Bureau and the Coalition of Central Coast County Farm Bureau and we offer the following comments on the Initial Study and Negative Declaration for Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands:

22.1 1. **The Initial Study and Negative Declaration fail to analyze the potential impact to the riparian vegetation along the tributary streams and rivers that is supported by water leaving land in the form of runoff from storms and irrigation events. The regulation of discharge from irrigated agricultural operations will mean a reduction and possibly the elimination of irrigation and storm water discharge. There is the potential for significant impacts to riparian corridors currently supported by this water source.**

22.2 2. **The Initial Study and Negative Declaration fail to analyze the potential salt build-up on farmlands from the implementation of the proposed Monitoring and Reporting Program and this effect on agricultural production because of the lack of drainage. According to CEQA impacts to prime farmland are considered significant.**

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22.3 3. The Initial Study and Negative Declaration fail to analyze the State and County's role in the proposed monitoring program, specifically their contribution to runoff. Are their monitoring efforts effective in managing their own runoff and if not what is the impact to the community from their failure to manage such stormwater runoff?

22.4 4. The Initial Study and Negative Declaration fail to analyze the potential impact to ag and the loss of prime ag land, if they can't meet the proposed standards and can no long farm. These impacts must be considered.

22.5 5. The Initial Study and Negative Declaration does not consider the potential significant adverse impacts that will occur from the implementation of the proposed Monitoring and Reporting Program. Specifically, the Board lacks the authority to require the formation of a non-profit entity to implement a 'cooperative' monitoring program. The monitoring program will necessitate individual monitoring because of this lack of authority, and the significant impacts to the agricultural industry and prime farmlands because of this have not been adequately considered in your analysis.

22.6 6. All fees and charges associated with the implementation of the proposed monitoring and reporting program must be proportionate to benefit received as required pursuant to Proposition 218. The formation of a non-profit entity to assess fees to the landowners will not shield the RWQCB from the voting requirement of Proposition 218. Proposition 281 requires a detailed engineers report to evaluate and identify the benefits conferred to lands to which the fee and/or charge will apply, and requires a majority vote of the landowners. Your analysis has failed to consider the failure of such a vote and its environmental impact.

7. The conditions of the Waiver require that all "wastewater percolated into the 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 groundwater of the basin." Your Initial Study and Negative Declaration do not identify such 'designated beneficial uses' and therefore has not adequately evaluated the impacts to such uses. Further, your proposed monitoring and reporting program does not address the monitoring of percolated groundwater and therefore, it difficult to understand what the potential impacts are from this condition, including the impacts to farmlands because of the implementation of this condition.

22.7

22.8

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22.9 The Jensen Family does not believe the proposed Monitoring and Reporting Program has been adequately evaluated, is not feasible nor will it be implementable. A full Environmental Impact Report should be completed and the proposed monitoring and reporting program submitted to you on March 19, 2004 by the 23 agricultural organizations should be evaluated as an alternative. The Jensen Family believes that proposed program is feasible and implementable and is environmentally superior. Failure to complete such an analysis will result in significant non-participation of your proposed program and has the potential to create significant adverse impacts.

Thank you for your consideration of these comments,

Nancy Isakson

Nancy Isakson for Jensen Family Farms

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Transmitted via Facsimile

Mr. Jeffrey Young, Chair
Central Coast Regional Water Quality Control Board
895 Aerovista Place
San Luis Obispo, CA 93401

30 April, 2004

Re: CEQA Comments on Initial Study and Negative Declaration for Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands

Dear Mr. Young and Members of the Board;

The Salinas Valley Water Coalition (SVWC) appreciates the opportunity to comment on the above referenced documents. The Salinas Valley Water Coalition (SVWC) is a non-profit organization whose members worked with other agricultural organizations in developing a monitoring proposal submitted to the Central Coast Regional Water Quality Control Board (CCRWQCB) on March 19, 2004. The SVWC and its members have always taken a pro-active position with regards to water issues and have worked with the Monterey County Water Resources Agency and other local agencies in developing many of the local monitoring programs. Many of the SVWC members have already completed the Farm Water Quality Planning Course. They are good stewards of the land and understand the concern about water quality and its potential impact to others and the environment. They are committed to continuing to work with other organizations and agencies in water quality protection.

The SVWC believes that it is only by working together that we will be able to provide water quality protection. The SVWC believes that monitoring can be an important tool, however, to be effective it must be coupled with education and outreach programs, and most importantly, it must have the support of the agricultural community. We appreciate the time and resources the CCWRQCB staff has expended in developing their proposed Monitoring and Reporting Program, however we believe it falls short of what is needed to obtain the support and participation of the agricultural community. We encourage you to seriously consider the Monitoring and Reporting Program presented to you on March 19, 2004 by 23 agricultural organizations. 23.1

The SVWC fully supports the comments submitted by Monterey County Farm Bureau and the Coalition of Central Coast County Farm Bureau and we offer the following comments on the Initial Study and Negative Declaration for Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands:

1. **We are concerned that the Initial Study and Negative Declaration fail to comply with the basic requirements of CEQA in that it does not serve as a full-disclosure analysis of the potential environmental impacts of the Conditional Waiver of Waste Discharge, in part because it does not adequately evaluate the conditions of the waiver. CEQA states that decision-makers must be adequately informed of all impacts so they may make an informed decision. Specifically, it does not adequately evaluate the required monitoring and reporting program.** 23.2

2. We believe the required monitoring and reporting program has the potential to have impacts that are individually limited but cumulatively considerable. These impacts have not been considered. The Initial Study and Negative Declaration do not consider the impacts to individual farming operations because of the level and extent of the proposed monitoring program as well as the cost of complying with the program. These impacts have the potential to be significant particularly when considered cumulatively. We believe there is the potential for prime agricultural lands to be converted to other uses as a direct or indirect result of the proposed monitoring program. This is considered a significant adverse impact according to CEQA.

3. Your analysis is based on the assumption that all landowner and/or operators will participate in 'cooperative' monitoring program to be implemented by some yet-to-be-determined non-profit. Your analysis fails to consider the impacts region-wide if the
23.3 majority of the landowners/operators fail to do participate and therefore are required to do individual monitoring. The cost differences are substantially greater and has the potential to place a greater burden on the individual, small farm; this is in turn could create substantial environmental impacts. Your analysis fails to consider the significant environmental impacts from the lack of participation in the monitoring program.

We believe it is in the Board and the community's best interest to have as many participants as possible and therefore believe the program must be designed in such a way
23.4 as to accommodate this participation. The SVWC believes the Board should prepare a full EIR on your proposed monitoring and reporting program and should include the proposed program submitted to you on March 19, 2004 from the 23 agricultural organizations as an alternative. We believe the ag community has demonstrated its willingness to participate in a monitoring program such as the one submitted. We do not believe you will achieve the same level of participation and therefore monitoring, with your proposal and therefore, believe the ag community's proposal to be environmentally superior. A full EIR will be able to evaluate this.

4. Your Initial Study states that "it is possible that some marginal farm land may no long be economically viable due to increased costs associated with practice implementation and
23.5 monitoring, but the Conditional Waivers should not impact prime agricultural farm lands. Although some land may be vegetated for erosion control rather than planted to crops, the overall land use is still agricultural." This is not true. Erosion control is a management tool, but it is not an agricultural use. Loss of productivity of prime agricultural farmlands to erosion control will be considered a significant adverse impact according to CEQA.

5. Waiver condition #5 requires "Wastes discharged to groundwater shall be free of toxic substances in excess of maximum contaminant levels (MCLs) for primary and secondary drinking water standards". The Initial Study and Negative Declaration do not adequately
23.6 evaluate the impact to the agricultural community from implementation of the condition. It fails to inform the decision-makers of how the implementation and enforcement of this condition will occur, and the significant adverse impacts to prime farmland resulting from the implementation. Your failure to consider the significant impacts to prime farmland is a significant liability to the community and exposes the Board to substantial liability as well.

6. We continue to be very concerned about the proposed Monitoring and Reporting Program. There are too many unanswered questions and because of this, a true evaluation of

potential CEQA impacts is difficult, and we believe a full Environmental Impact Report must be prepared.

23.7 The SVWC is also very concerned about the funding of the proposed monitoring and reporting program. All proposed fees must be based on benefit conferred to the lands and/or contribution of identified impact(s). All fees must be proportionate to benefit received. It is difficult to understand how the CCRWQCB can require the formation of a single non-profit entity to implement the proposed monitoring and reporting program, and at the same require this non-profit entity to assess the individual landowners or operators.

23.8 The Salinas Valley Water Coalition wants to continue to work cooperatively with agricultural organizations and your staff to developing a program that can be supported by the agricultural community. We respectfully state that the Initial Study and Negative Declaration is inadequate and a full Environmental Impact Report must be completed to adequately evaluate the impacts to the agricultural community and the potential impacts to the community and quality of life.

Thank you for your consideration of our comments,

Nancy Isakson

Nancy Isakson, Consultant
For Ralph Riva, Chair Salinas Valley Water Coalition

(24)

EcoSlo

30 April, 2004

ENVIRONMENTAL CENTER OF SAN LUIS OBISPO COUNTY

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Chair Jeff Young and Members of the
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906

RE: Initial Study and Negative Declaration for Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands

Dear Chairman Young and Members of the Board:

On behalf of the Board of Trustees and members of the Environmental Center of San Luis Obispo County (ECOSLO) please accept these comments regarding the Initial Study and Negative Declaration for Conditional Waiver of Waste Discharge Requirements for Discharge from Irrigated Lands (Conditional Waiver Program). ECOSLO has been a part of the Agricultural Advisory Panel for the past year. We are dedicated to protecting and enhancing the natural environment and human well-being through community-based action, advocacy and education.

The Environmental Center appreciates that the proposed Conditional Waiver has been a collaborative effort between agricultural interests, environmental organizations and agency staff to protect the water quality of the Central Coast region. We have reviewed the Initial Study and Negative Declaration for Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands, and have concerns about the Board's approval of the Negative Declaration (ND) and the Conditional Waiver Program as proposed by Board staff.

24.1 The Conditional Waiver Program requires all owners and operators of irrigated lands in Region V to enroll in the program, complete water quality education units, develop a farm plan, implement best management practices, and conduct monitoring. ECOSLO supports these programmatic measures to protect water quality, and believes that grower compliance with these measures would improve Central Coast water quality. However, there is indication that thousands of California growers (in the Central Valley, for example) have failed to comply with new state regulations monitoring pollution, citing confusion about what is expected of them. While the proposed Region V Conditional Waiver 24.2 program is not identical to the Central Valley waiver program, the Central Coast Regional Water Quality Control Board must take pains to assure that growers completely understand what is expected of them.

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www.ecoslo.org
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As proposed, the waiver plan claims to have negligible or non-existent impacts to existing water quality. However, we know that agricultural runoff will continue to impact water quality. We would like to believe the proposed Waiver Program is a first step to protecting water quality on the Central Coast. Please note that any changes to the proposed waiver program may require re-circulation of the Negative Declaration, or an Environmental Impact Report. 24.3

Additionally, ECOSLO would like to direct specific comments to the portion of the ND (page 14). It is important that the Board include specific language stating that owner/operators who have not fulfilled the requirements of the proposed Conditional Waiver Program **shall** require waste discharge requirements, once considerations toward "extenuating circumstances" have been made. 24.4 The Conditional Waiver Program should include specific benchmarks for measuring the success of the program. 24.5 Owner/operators who do not participate in the Conditional Waiver Program must be brought into compliance with the law, and should fulfill the waste discharge requirements as necessary. Therefore, the ND should be revised in this manner prior to the Board hearing on July 8, 2004.

In determining whether agricultural discharge to the Waters of the State would have negligible or non-existent impacts to existing water quality, it is crucial that the ND accurately reflects the potential for water degradation posed by the Conditional Waiver. 24.6 Monitoring is perhaps the most important tool that the Regional Board can use to determine the efficacy of the Conditional Waiver Program. Monitoring should be frequent and tied to the crop production of the area. 24.7 Testing in already recognized 303 (d) impaired waters is only part of the picture. In order to maintain water quality throughout the region, testing must be widespread and comprehensive. 24.8 While budget constraints may be a hindrance to this objective the Clean Water Act must prevail.

ECOSLO anticipates submitting detailed comments about the program itself prior to the May 21, 2004 deadline.

Thank you for your consideration.

Sincerely,

Pamela Heatherington

Pamela M. Heatherington
Executive Director
ECOSLO

Miranda C. Leonard
Environmental Health Educator
ECOSLO

(25)

Southern San Luis Obispo and Santa Barbara Counties
Agricultural Watershed Coalition
P.O Box 1440
Santa Maria, California, 93456
(805) 928 - 4950 *office* (805) 928 - 2201 *fax*

Mr. Jeffrey Young, Chairman
Regional Water Quality Control Board
Central Coast Region
895 Aerovista Place, Suite 101
San Luis Obispo, California 93401

ATTN: Mr. Roger Briggs, Executive Officer

RE: CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS FOR DISCHARGES FROM IRRIGATED LANDS

The Southern San Luis Obispo and Santa Barbara Counties Agricultural Watershed Coalition ("the coalition") has taken a proactive approach to address watershed issues along the Central Coast. Members of the coalition have served on the Central Coast Regional Water Quality Control Board's Ag Advisory Panel. The goals were to help develop recommendations based on consensus among all participants, for CCRWQCB Staff to utilize in the development of the conditional ag waiver program. Since the recent publication of the CCRWQCB Staff Report, we
25.1 were greatly disappointed that critical components of the conditional ag waiver program *did not* reflect consensus among the Ag Advisory Panel Members.

The current monitoring proposal prepared by staff disregarded the concerns and suggestions by the entire Ag Advisory Panel. Specifically, there is no mention of the suggested pilot monitoring
25.2 programs mutually agreed upon by the panel. We believe that these pilot monitoring programs are crucial in guaranteeing the success of the conditional ag waiver program. Twenty-three agricultural associations prepared and submitted a monitoring proposal, which incorporated the pilot monitoring program. The effort made by these 23 agricultural associations clearly demonstrates our intent to continue a proactive approach to water quality improvement. The initial purpose was to encourage voluntary grower participation in the conditional ag waiver program. It is critical the pilot monitoring program be incorporated in the development of the proposed monitoring and reporting program.

Sincerely,

Kevin Merrill

Kevin Merrill, *President*
Southern San Luis Obispo and Santa Barbara
Counties Agricultural Watershed Coalition

Jeff Young (26)

Friends of the Sea Otter

Founded in 1968 by Margaret Owings & James Mattison, Jr.
Dedicated to protect and defend a rare and threatened species

May 17, 2004
Chair Jeff Young and
Members of the Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

RE: Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands

Dear Chair Young and Members of the Regional Board:

We at Friends of the Sea Otter are pleased to submit the following comments in support of the proposed Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands for the Central Coast Region.

Our organization represents 3,000 members in California and advocates for the interests of the Southern Sea Otter, a Federally threatened species. Water quality and healthy near-shore ecosystems support fertile kelp forests and the sea otter. Runoff and groundwater contamination can have a long-term impact on the health of the sea otter population. *We recommend the Central Coast Regional Water Quality Control Board to take immediate action to implement the comprehensive proposed program to reduce agricultural runoff and improve water quality.*

Our specific recommendations follow:

26.1 1. Require all farmers to develop water quality farm plans and use best management practices to prevent pollution runoff.
26.2 2. Mandate culturally appropriate water quality education and provide necessary technical assistance for farm plan and monitoring compliance.
26.3 3. Monitor agricultural pollutants in water, including pesticides and nutrients, to track long-term changes in pollution and ensure program effectiveness.
26.4 4. Ensure the financial viability of the program through a reasonable fee system so that adequate staff will be able to administer and enforce the program.

Irrigated Land and Pollution

For decades, irrigated landowners received exemptions from California Regional Water Quality Board waste discharge requirements, however all existing waivers expired January 1, 2003. Senate Bill 390 (1999) authorizes the Regional Board to waive WDRs, if certain conditions are met. The proposed conditional waivers take full advantage of the opportunity to improve water quality through a comprehensive program of education, planning, and monitoring.

Administrative Offices
Phone: 831-373-2747
Fax: 831-373-3749

Honorary Board
Jane Goodall, J.J. Ebaugh
Robert Lyn & Ulani Nelson
Randy Puckett, Robert Redford
Nathaniel P. Reed, Russell Train

Education and Retail Center
Phone: 831-642-9037
Toll Free: 800-279-3088

125 Ocean View Boulevard, Suite 204, Pacific Grove, California 93950
seaotters.org info@seaotters.org

Friends of the Sea Otter

Founded in 1968 by Margaret Owings & James Mattison, Jr.

Dedicated to protect and defend a rare and threatened species

Waivers

The proposed waiver conditions are intended to regulate discharges from irrigated lands, promote the public interest, and protect the waters' beneficial uses. The proposed conditional waiver system is a tiered system that creates incentives for education, farm planning and monitoring. The system gives "credit" to growers who have been proactive in protecting water quality through fewer reporting requirements and costs. The incentives built into the conditional waivers will encourage dischargers to participate in education and planning practices that may improve the water quality.

The Southern Sea Otter

Water quality is a growing concern for the sea otter. Pesticides, fertilizers and herbicides have been found in otter food items such as crabs and mussels. Chemicals like PCB and DDT (which are no longer used on fields, but remain in the environment) are found in otter tissue samples.

The agricultural waiver system offers a progressive plan to encourage long-term planning, education and monitoring to decrease runoff and prevent pollution at the source. These efforts are crucial to ensure the health of our ecosystem and the longevity of the central coast agricultural industry. Friends of the Sea Otter commends the Water Board in their effort to encourage discharger participation in the effort to prevent pollution, and looks forward to seeing the full adoption of the conditional waiver system.

Thank you for your consideration of these comments.

Sincerely,

D'Anne Albers
Executive Director
Friends of the Sea Otter

Administrative Offices
Phone: 831-373-2747
Fax: 831-373-3749

Honorary Board
Jane Goodall, J.J. Ebaugh
Robert Lyn & Ulani Nelson
Randy Puckett, Robert Redford
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125 Ocean View Boulevard, Suite 204, Pacific Grove, California 93950
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MORRO CREEK RANCH
1800 ATASCADERO ROAD • MORRO BAY, CALIFORNIA 93442 • (805) 772-7974

(27)

May 18, 2004

Board Members
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

Following letters to members dated January 2, 2004, and January 16, 2004, on February 8, 2004, I participated in the Workshop and testified as follows:

27.1 I briefly described my background and experience plus my skepticism regarding the "co-op/coalition" approach concerning testing and monitoring. I also analyzed the costs burden specific to the draft documents dated December 29, 2003, particularly on Page 4, Table 4, Attachment 2 (copy attached). I likewise directed attention to the proposed listed monitoring options.

Historical data affirms that the rare times farmers/ranchers willingly join to establish any formal, sustaining co-op enterprise is to create a single crop commodity marketing association. Then, they might also incorporate within the crop co-op/coalition organization, a cooperative purchasing mechanism.

The "agri-cooperative's" objective is to achieve higher prices by avoiding and discouraging individual producers competing in the marketplace. It is simply a tool for economic survival – a strategy to pool their production, block-marketing their crop in an orderly manner via the co-op structure, i.e., Sunkist Citrus, Sun Maid Raisins, Calavo, Cal-Cot, Blue Diamond almonds, Diamond Walnut, etc., etc. However, even this economic imperative is so fragile that these and other marketing co-ops begin to fragment and disintegrate once commodity prices begin to rise. As the essential ingredient of mutual economic advantage is lacking in this particular instance, to expect farmers/ranchers to organize, maintain and sustain any manner of formal structure to collect, monitor or test as specified and required per the draft, you can understand why I question the "co-op/coalition" approach.

Then as to individual testing, effort and cost: Our 348-acre Morro Creek Ranch (200-plus acres planted to Hass variety avocados) performs semi-annual soil, water, leaf petiole and soil amendment tests and analysis with several certified laboratories. Consequently, we submitted the draft (see attached) to Creek Environmental Labs and Fruit Growers lab. Each laboratory independently

27.2 costed out the fee for the required analysis: The annual cost - $15,450 for Creek Environmental Labs and $15,498 for Fruit Growers Lab (see attached).

To put these costs in proper perspective, my farming operations would have to generate an additional $258,333 with a six percent net of all expenses to pay the $15,500 annual testing expense. Few agriculture operations net a six percent return on crop sales on an annual basis.

However, if we could prevail on the RWQCB to convince the IRS and Franchise Tax Board to defer $25,000 of taxable income over the next 10 years and allow us to invest it at six percent per annum, at the end of 10 years we could possibly accumulate and invest the $250,000 to fund the testing costs specified.

27.3 On a more serious, constructive and practicable note, shouldn't we jointly explore the possibility of engaging the services and otherwise qualified, professional personnel of our local Upper Salinas – Las Tablas Resource Conservation District, and with your encouragement and help, designate and assign them the lead agency, granting sufficient supplemental funding to take on this group/watershed and/or region-wide water quality monitoring/testing? (see Exhibit A).

Sincerely

Robert S. Staller

Robert S. Staller

Luba B. Staller

Luba B. Staller

Table 4

Constituent	Units	Sample Type	Reporting Limit	Minimum Frequency of Sampling and Analysis
Nitrate as N	mg/L	Grab	0.1 mg/L	Monthly
Total ammonia	mg/L	"	0.1 mg/L	"
Orthophosphate as P	mg/L	"	0.01 mg/L	"
Chlorophyll a	ug/L	"	1.0 ug/L	"
Dissolved oxygen	mg/L	"		"
Temperature	°C	"		"
Total dissolved solids	mg/L	"	10 mg/L	"
pH	pH Units	"		
Turbidity	NTUs	"	0.5 NTU	"
Flow	CFS			"
Water toxicity *Ceriodaphnia dubia* (7-day chronic) *Pimephales promelas* *Selenastrum capricornutum*				Twice during wet season (Oct 15-March 15) and twice during dry season (May 15-Oct 15)
Sediment toxicity *Hyalella azteca* (10-day)		Composite		Spring (March 1 – April 30)
Benthic invertebrate assessment		California Rapid Bioassessment Protocol		Spring (March 1 – April 30), concurrent with sediment sampling

QUALITY ASSURANCE PROJECT PLAN (QAPP)

Each watershed group must have a quality assurance project plan that describes how data will be collected and analyzed to ensure that data is consistent with State and Regional Board monitoring programs and of high quality. The watershed group shall develop a Quality Assurance Program Plan (QAPP), consistent with the State's Surface Water Ambient Monitoring Program (SWAMP) QAPP and approved by the Regional Board's Quality Assurance Officer. A draft QAPP template will be available through the Regional Board's website. All sampling methodologies and data collection shall be conducted consistent with SWAMP and the Central Coast Ambient Monitoring Program (CCAMP). All data analysis shall be conducted by a laboratory certified by the Department of Health Services. All data will be submitted in electronic format to the Regional Board, in a format compatible with SWAMP.

The QAPP will include a watershed map showing monitoring sites, site-specific information, project organization and responsibilities, description of analytical techniques, data quality objectives, and other standard quality assurance information.

Option 3: Region-wide Cooperative Water Quality Monitoring

The focus of region-wide cooperative monitoring for the Conditional Waivers will be on beneficial use protection and waterbody health as opposed to individual effluent (discharge) monitoring. In order to accomplish this, the proposed cooperative monitoring program is

CREEK ENVIRONMENTAL LABORATORIES, INC.
141 SUBURBAN ROAD, SUITE C-5 • SAN LUIS OBISPO, CA 93401 • (805) 545-9838 • FAX (805) 545-0107

Fax

To:	Bob Staller/Morro Creek Ranch	**From:**	Orval Osborne, Laboratory Director
Fax:	772-7402	**Date:**	1-16-04
Re:	WQCB tests	**Pages:**	~~1~~ 2

•Comments: I am pleased to offer the following quote for analytical services. Please call with any questions or comments. Prices include sample containers, coolers and ice. Client collects samples and brings them to the lab. Or contract for lab sampling at $50/hour.
Client determines Temperature and Flow.

Creek Labs Constituents:
$25 Nitrate
$30 Total Ammonia
$30 Orthophosphate as P
$75 Chlorophyll a
$20 Dissolved Oxygen
$25 Total dissolved solids
$10 pH
$10 Turbidity
$225 Monthly subtotal,
x 12 months
$2,700 annually with Creek labs

TOXICITY TESTS:
$2,600 Water Toxicity, chronic, 3 species
x 4/year = $10,400 annually

$550 Sediment toxicity, 1/year

$1800 Benthic invertabrate, per site, includes sampling by lab, 1/year
$12,750 Toxicity SubTotal

$15,450 Annual Total

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Table 4

Constituent	Units	Sample Type	Reporting Limit	Minimum Frequency of Sampling and Analysis
Nitrate as N	mg/L	Grab	0.1 mg/L	Monthly
Total ammonia	mg/L	"	0.1 mg/L	"
Orthophosphate as P	mg/L	"	0.01 mg/L	"
Chlorophyll a	ug/L	"	1.0 ug/L	"
Dissolved oxygen	mg/L	"		"
Temperature	°C	"		"
Total dissolved solids	mg/L	"	10 mg/L	"
pH	pH Units	"		
Turbidity	NTUs	"	0.5 NTU	"
Flow	CFS			"
Water toxicity *Ceriodaphnia dubia* (7-day chronic) *Pimephales promelas* *Selenastrum capricornutum*				Twice during wet season (Oct 15-March 15) and twice during dry season (May 15-Oct 15)
Sediment toxicity *Hyalella azteca* (10-day)		Composite		Spring (March 1 – April 30)
Benthic invertebrate assessment		California Rapid Bioassessment Protocol		Spring (March 1 – April 30), concurrent with sediment sampling

Creek Labs

client

Sub

QUALITY ASSURANCE PROJECT PLAN (QAPP)

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The QAPP will include a watershed map showing monitoring sites, site-specific information, project organization and responsibilities, description of analytical techniques, data quality objectives, and other standard quality assurance information.

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The focus of region-wide cooperative monitoring for the Conditional Waivers will be on beneficial use protection and waterbody health as opposed to individual effluent (discharge) monitoring. In order to accomplish this, the proposed cooperative monitoring program is

TGL ENVIRONMENTAL

ANALYTICAL CHEMISTS

FAX

TO: Mr. Bill Struble, Erwin Farms & Nurseries
TEL NO: 805 481 4330
FAX NO: 805 481 9768

FROM: Denis Barry, (805) 392 2032

DATE: January 14, 2004

SUBJECT: Price Quote No: SP011504.01 –Monitoring program

Dear Mr. Struble:

I refer to your fax to our Darrell Nelson regarding the above. Hereunder is the price quote you requested. Please use the "SP" number above for further reference to this quote.

TABLE 4 (ATTACHMENT 2 OF JAN 9, 2004 WORKSHOP)

OPTION 2: WATERSHED GROUP MONITORING REQUIREMENT PER TABLE 4

$15,498/YR.

EPA Method/ Constituent	Price per sample	TABLE 4 YEARLY COST
Monthly		
Nitrate AS N	$25.00	
Ammonia	$34.00	
Phosphate	$25.00	
Chlorophyll	$75.00	
Dissolved Oxygen	$21.00	$249 x 12 mo = $2988
Temperature	$5.00	
Total dissolved solids	$23.00	
pH	$21.00	
Turbidity	$20.00	
Toxicity		
Water toxicity (per event) FLEA $785, FLATHEAD MINNOW $935, GREEN ALGAE $815	$2,535.00	x 4 SAMPLES/YR = $10,140
Sediment toxicity	$535.00	x 1/YR = $535
Bonthic Invertebrae assessment (per site)	$1,835.00	x 1/YR = $1,835
		TOTAL PER YEAR $15,498

NOTE : ABOVE COSTS DO NOT INCLUDE PROFESSIONAL SAMPLING/COLLECTION COSTS

Corporate Offices & Laboratory
P.O. Box 372 / 553 Corporation Street
Santa Paula, CA 93061-0372
TEL: (805) 392-2000
FAX: (805) 525-4172
CA NELAP Certification No. 01110CA
CA ELAP Certification No. 1878

Office & Laboratory
2600 Stagecoach Road
Stockton, CA 95215
TEL: (209) 942-0181
FAX: (209) 942-0423
CA ELAP Certification No. 1645

Field Office
Visalia, California
TEL: (559) 734-9473
FAX: (559) 734-8435
Mobile: (559) 737-2309

"EXHIBIT A"

Upper Salinas-Las Tablas Resource Conservation District

65 Main Street, Suite 108, Templeton, CA 93465 / (805) 434-0396 / fax 434-0284

A Technical Service Provider

May 13, 2004

Mr. Robert Staller
Morro Creek Ranch
1800 Atascadero Road
Morro Bay, CA 93442

RE: Possible water quality monitoring services for farmers.

Dear Robert,

Thank you very much for your input at the San Luis Obispo County Task Force meeting last week. There were a number of interesting discussions, including permit coordination and water quality monitoring. As we mentioned, the Upper Salinas-Las Tablas RCD has one of only two State approved water quality monitoring programs in the County. Our Quality Assurance Project Plan (QAPP) was approved by the State Water Resources Control Board May 2002. We are in the process of updating our QAPP to add additional parameters.

As you described, I think there is a good opportunity for the RCD and the farmers to join together for the purposes of obtaining water quality monitoring data. The RCD is an unbiased third party agency that provides services to both landowners and agencies. We have the capability to provide water quality monitoring. We conduct some field study analysis (such as dissolved oxygen, pH, temperature, turbidity, conductivity, suspended sediment, stream flow, odors, nitrates and phosphates). We have monitoring equipment for these studies. We also obtain field samples for separate lab analysis. In the past, we have used the County and private labs for evaluation of surface water samples.

When we do this work for landowners, the information is considered confidential. We also obtain watershed-wide samples for use in reports to the RWQCB and SWRCB. Perhaps, now is the time for the farmer groups to promote a cooperative effort with our RCD as an option to the measures

being proposed by the RWQCB for irrigation runoff. This would be a cost-effective way to provide each farmer with needed information about the runoff coming from his or her property. Our fees are kept low because we are a local public agency similar to a non-profit organization.

Sincerely,

Donald J. Funk
Executive Director

CC US-LT RCD Board

(28) (28)

From: <aka321@juno.com>
To: <ajones@rb3.swrcb.ca.gov>
Date: 5/19/04 7:06PM
Subject: Please protect Central Coast waters from agricultural pollution

Dear Ms. Jones,

28.1 Please protect our water quality by acting on the recommendations from the advisory panel convened by RWQCB and implementing Best Mangagement Practices for farmers. A conditioned waiver should be adopted.

Our water should be monitored for nitrates, sediment, and pesticide toxicity, and we must be
able to determine the source of pollutants.

No other industry has enjoyed as many exemptions from State and Federal clean water laws as agriculture has. Farms are important to us all. It's time for them to help clean up the precious resource we all depend on -- water.

Thank you,

Amy Anderson
Santa Maria, CA

(29)

SIERRA CLUB
FOUNDED 1892

SANTA LUCIA CHAPTER
P.O. Box 15755 • San Luis Obispo, California 93406
Phone: (805) 543-8717 • Fax: (805) 543-8727
http://www.sierraclub.org/chapters/santalucia

May 21, 2004

Jeff Young, Chair
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

Comment of Sierra Club-Santa Lucia Chapter on The Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands

Dear Chairman Young,

For decades, state agricultural operations have received a waiver from the requirements of the California Water Code and an exemption from the Federal Clean Water Act. This was due to the mistaken belief that agricultural discharges were not a threat to the environment and that voluntary actions by growers were sufficient to avoid egregious pollution.

Today, with 30% of the agricultural chemicals used in California listed by the EPA as known carcinogens or reproductive toxins, 16 million pounds of pesticides per year covering Central Coast farmland -- most of it washing into the Monterey Bay National Marine Sanctuary -- and 44 segments of our rivers, creeks and estuaries listed as unsafe for fishing, swimming, or drinking due to agricultural pesticide pollution, that time of innocent belief in harmless agricultural discharge is no more. Fortunately, the waivers that have permitted a heavy toxic flow into California's waterways since 1983 have likewise expired.

29.1 With that expiration has come a historic opportunity to use present knowledge to correct past mistakes and ensure a livable future. A regulatory program of conditional waivers is necessary to curb the impacts on surface and groundwater of the Central Coast's 2,500+ agricultural operations, covering some 600,000 acres of cropland under irrigation. The Regional Water Board should require that agricultural waste discharges to groundwater be free of toxic substances in excess of maximum contaminant levels for primary and secondary drinking water standards, and that the discharger not cause or contribute to conditions of pollution or nuisance as defined in the California Water Code.

Sincerely,

Tarren Collins
Chair, Santa Lucia Chapter of Sierra Club

(30) (30)

The Otter Project

May 21, 2004

Chair Jeff Young
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

RE: Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands

Dear Chair Young and Members of the Regional Board:

Please accept the following comments on behalf of The Otter Project, our board of directors, and our 4000 members (many of which live on the Central Coast).

While we commend the staff/stakeholder process involving conservation and farming groups, we do not feel the consensus plan goes far enough to adequately protect the public interest.

Generally, we feel waivers should not be given and that agricultural operations, like most other industry, should be required to secure waste discharge permits.

We realize our preferred option - waste discharge permits -- may not be realistic. At the very least we feel that the waiver program must include:

- Enforcement
- Timelines and environmental benchmarks
- Thorough monitoring

30.1 The waiver program should have a strong statement (and the underlying political will) of prompt and strict enforcement. Enforcement is good for the producers and good for the environment. Without enforcement, the producers that *do* comply with waiver requirements will find themselves at a competitive disadvantage as the producers that do not comply will have lower costs. Enforcement of waiver requirements will take political will. Fees, charged to the producers, should be adequate to cover the cost of enforcement.

The Otter Project, Inc.
A Nonprofit Organization
3098 Stewart Court
Marina, CA 93933
Tel/Fax 831-883-4159

30.2 The waiver plan should include environmental targets and a timeline to reach those targets. The public good requires environmental improvement, not just effort. Conditions on impaired waters should improve according to a prescribed timeline. If improvement is not seen, additional conditions should be put on waivers to facilitate recovery.

30.3 The monitoring program should be enlarged: sites should be added and more detailed tests should be conducted. Again, we feel an improved monitoring program will be good for the producers - if improvements of environmental conditions are not documented, there will be public outcry against agricultural practices and the waiver system.

The past twenty years of agricultural exemptions under the Porter-Cologne Water Quality Control Act have resulted in widespread degradation of California's waterways, including the coastal watersheds and ocean waters of the Central Coast. As evidenced by the 2002 Clean Water Act Section 303 (d) list, dozens of waterbodies in the Central Coast region are "impaired" due to agricultural pollutants including sediment, nutrients, and pesticides. Meaningful and immediate regulation is needed to prevent this massive source of water pollution from continuing to negatively affect water quality in violation of state law.

In the Central Coast region, agricultural pollutants have been measured at levels that far exceed water quality standards and are known to compromise beneficial uses. Recent studies suggest that pesticide pollution is likely causing ecological damage in the Salinas River. Nutrient over-enrichment, which can lead to toxic algal blooms and fish kills, is a widespread problem in the Central Coast. Nitrates from fertilizer applications have contaminated groundwater in the Santa Clara, Salinas and Pajaro valleys, rendering hundreds of wells unfit for drinking water supply and many Central Coast waterbodies exceed drinking water standards for nitrate. Some areas of the Central Coast also remain high in DDT and other extremely toxic organochlorine pesticides that have been banned for decades. These "legacy" pollutants remain in the soil and can be released into the environment during extreme winter rain events with devastating effects on the ecosystem.

The Otter Project is involved in this process because sea otters are dying along our Central Coast. Otters are dying of a wide variety of diseases. Our otters, listed as Threatened under the Endangered Species Act, are carrying huge burdens of DDT. Studies have found a correlation between level of DDT found in sea otter tissues and disease.[i ii] DDT levels found in sea otter tissues are highest near the Pajaro and Salinas rivers (graph attached). The farm discharge practices, controlled by the conditions on these waivers, directly impacts runoff and the amount of contaminant reaching our oceans.

The Central Coast Regional Water Quality Control Board has had since 1999 to prepare for adoption of a program to replace "waivers" of waste discharge requirements for agricultural. Farmers throughout the Central Coast region have been discharging pollutants without a waiver or a permit, in violation of state law, since January 1, 2003. It is therefore critical that the Central Coast Regional Water Quality Control Board take action no later than its July 8, 2004 meeting.

We urge the Central Coast Water Quality Control Board to create a regulatory program that will protect sea otters, water quality, and the public interest.

Sincerely,

Steve Shimek
Executive Director

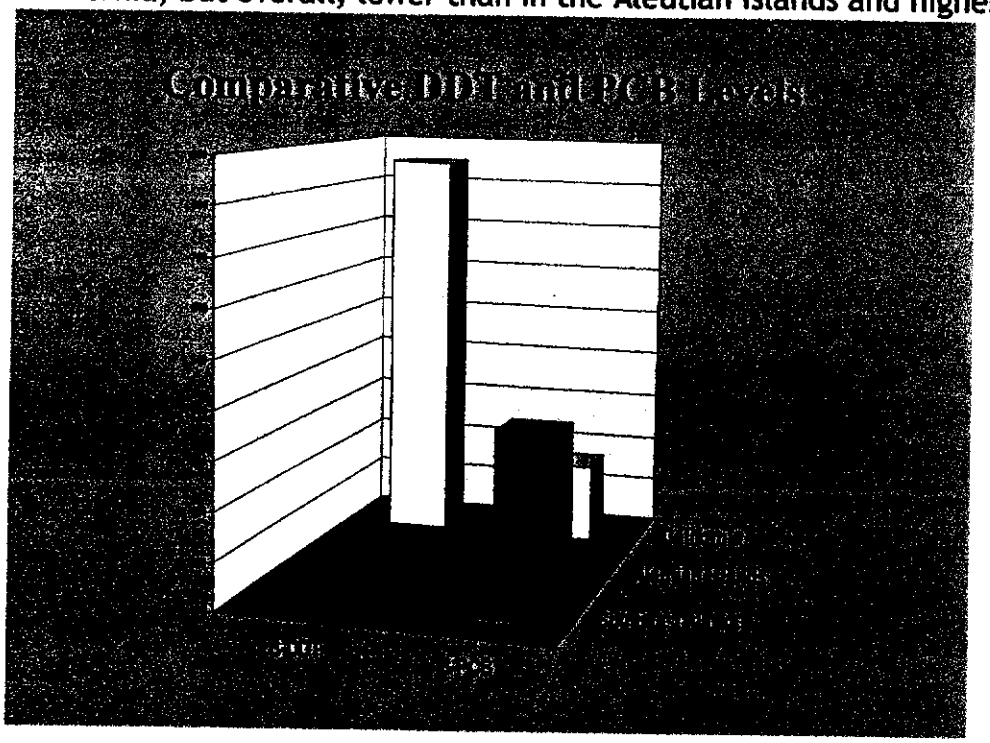
---

[i] Kannan, K., N. Kajiwara, M. Watanabe, H. Nakata, N. Thomas, M. Stephenson, D. Jessup, S. Tanabe. 2004. Profiles of polychlorinated biphenyl congeners, organochlorine pesticides, and butyltins in southern sea otters and their prey. Environmental Toxicology and Chemistry 23(1):49-56

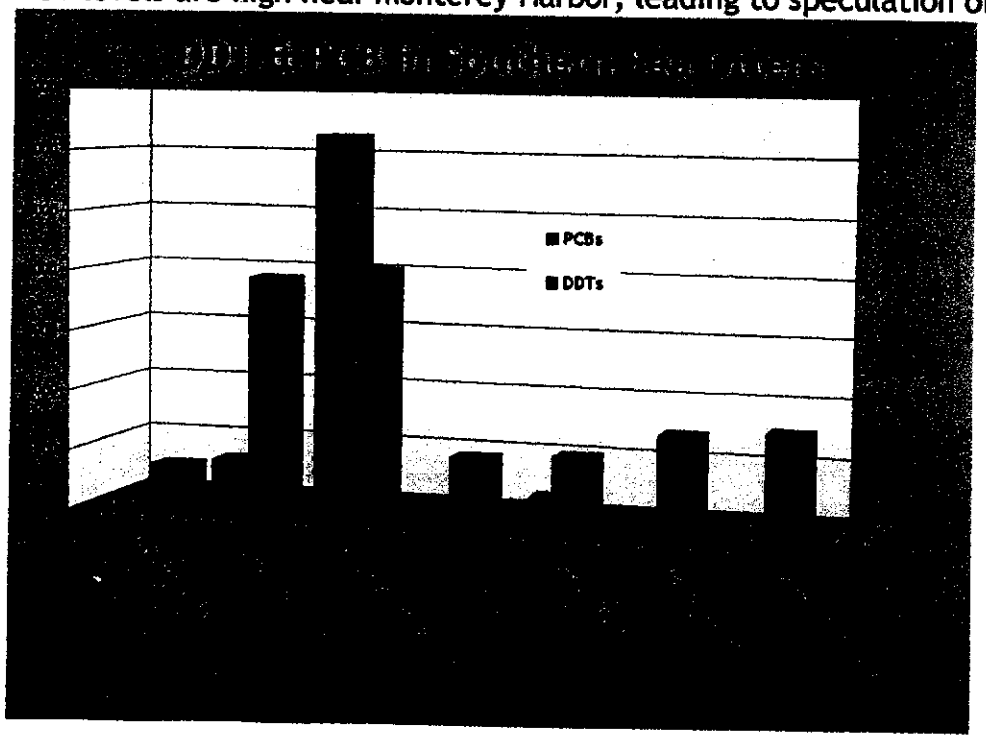
[ii] Nakata, H. et al. 1998. Accumulation pattern of organochlorine pesticides and polychlorinated biphenyls in southern sea otters (Enhydra lutris) found stranded along coastal California, USA. Environmental Pollution 103:45-53.

DDT and PCB in California Sea Otters

DDT levels are very high in California sea otter tissues in comparison to tissues collected from sea otters in pristine SE Alaska. PCB levels are regionally very high in California, but overall, lower than in the Aleutian Islands and higher than SE Alaska.



DDT levels are high in Monterey Bay, most likely from inputs from the Salinas River. PCB levels are high near Monterey Harbor, leading to speculation of a point source.



dpr

Paul Helliker
Director

Department of Pesticide Regulation

Arnold Schwarzenegger
Governor

31

MEMORANDUM

TO: Roger W. Briggs, Executive Officer
Regional Water Quality Control Board
Central Coast Region
895 Aerovista Place, Suite 101
San Luis Obispo, California 93401

FROM: Paul Helliker Paul Helliker
Director
(916) 445-4000

DATE: May 24, 2004

SUBJECT: COMMENTS ON THE PROPOSED CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS FOR DISCHARGES FROM IRRIGATED LANDS

Thank you for the opportunity to comment on the Proposed Conditional Waiver of Waste Discharge Requirements for Discharges From Irrigated Lands. The Department of Pesticide Regulation (DPR) is committed to working cooperatively with the Regional Water Quality Control Board in the implementation of your Management Agency Agreement (MAA) and we offer these comments as a part of that cooperation.

DPR commends the Central Coast Board (Board) for the cooperative and creative approach used in developing the draft waiver. We agree that performing initial toxicity testing or bioassessment to determine if beneficial uses are indeed impaired is a more reasonable approach than requiring monitoring for a long list of specific chemicals. DPR feels that given the geographic distribution and agricultural diversity of the Central Coast Region, the proposed monitoring frequencies and site locations are reasonable for pesticides. 31.1

We do, however, have some concerns about the kinds of monitoring--especially on subsequent actions, should an impairment be noted. Our most serious concern relates to the potential costs to the regulated public for follow-up actions once toxicity testing indicates an impairment. The draft waiver does not provide details on the scope or potential cost of the additional monitoring. If toxicity identification evaluations (TIEs) are required, especially if these are full TIEs, including organic and inorganic constituents, the cost of additional monitoring could greatly exceed the proposed cost of $1.2 million. This could impose a serious financial burden on the regulated community. DPR recommends that the Board consider this possible cost while more explicitly elaborating the procedures to be followed for second stage monitoring. 31.2

DPR maintains a database of surface waters sampled for pesticides. The database has been shared with Board staff. If monitoring for specific pesticides were required, data from the monitoring would be extremely useful in assisting both DPR and the Board to further evaluate water quality in the Central Coast Region. My staff would be happy to discuss with you the best way to be sure that data collected under the waiver can fit into our database.

If you have additional questions about these comments or would like more information on our programs, please contact Kathy Brunetti, DPR MAA Coordinator, at (916) 324-4100 or <kbrunetti@cdpr.ca.gov>.

cc: Walt Shannon, State Water Resources Control Board
Alison Jones, Central Coast Regional Water Quality Control Board
Mark Angelo, Central Coast Regional Water Quality Control Board
Kathy Brunetti

H. Jones (32)

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April 30, 2004

The Ocean Conservancy

Chair Jeff Young and Members of the
Central Coast Regional Water Quality Control Board
895 Aerovista Place
San Luis Obispo, CA 93401

RE: Initial Study and Negative Declaration for Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands

Dear Mr. Young and Members of the Regional Board:

On behalf of The Ocean Conservancy and its more than 25,000 California members, please accept the following comments regarding the Initial Study and Negative Declaration for Conditional Waiver of Waste Discharge requirements for Discharges from Irrigated Lands (hereinafter "Conditional Waiver Program") for the Central Coast Region. Although some of the comments contained herein apply to both the environmental documents and the proposed Conditional Waiver Program and Monitoring and Reporting Plan, we intend to submit additional comments regarding the Program under separate cover. The Ocean Conservancy appreciates this opportunity to comment on the California Environmental Quality Act (CEQA) documents for this program.

Over the past year, The Ocean Conservancy has participated as a member of the Agricultural Advisory Panel to help develop recommendations for Regional Board staff regarding the appropriate and necessary components of program to replace the historical waivers of waste discharge requirement agricultural runoff that legally expired on January 1, 2003. Although we have been concerned with repeated delays in the process of adopting a replacement program, we believe that our time on the Advisory Panel was well spent and appreciated staff's effort to seek collaboration between environmental organizations and agricultural interests on this critical water quality issue.

32.1 The Ocean Conservancy does have several specific concerns regarding the draft CEQA documents prepared for the Conditional Waiver Program and we respectfully request that our concerns be incorporated into the final CEQA documents for the Conditional Waiver Program.

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Specifically, we request:

32.2 • Revision of the Project Description to clarify that agricultural dischargers will be assigned Waste Discharge Requirements unless they comply with Water Code Section 13269, and to include specific enrollment milestones and an enrollment
32.3 contingency plan for the proposed Conditional Waiver Program.
• Revision of the CEQA documents to identify impacts to biological resources,
32.4 water quality and hydrology as potentially significant and identify appropriate mitigation measures.
• Revision of the CEQA documents to include the details of the Conditional Waiver
32.5 Program (including the specifics of the proposed Monitoring and Reporting Program).

Agricultural Dischargers Must Be Issued and Comply with Waste Discharge Requirement Unless They Comply with Water Code Section 13269.

The Ocean Conservancy requests revision of the CEQA documents to clarify that, under Water Code Sections 13260 and 13269, agricultural dischargers must submit reports of waste discharge and comply with issued Waste Discharge Requirements unless they qualify for a conditional waiver. We believe that stating these uncontestable legal requirements at the beginning of the document would help clarify the proposed Conditional Waiver Program for the public and for program participants and better ensure its full and effective implementation.[1] The proposed method of identifying dischargers and a schedule for bringing dischargers into compliance should also be included in the program and referenced in the CEQA documents. The Ocean Conservancy believes that a rigorous and committed public outreach effort by Regional Board staff can result in strong program enrollment in a timely manner. Board staff cannot however expect enrollment to occur automatically.

As noted repeatedly by agricultural representatives on the Advisory Panel, without a significant effort by Board staff to ensure program enrollment, the Regional Board can expect only a minority of eligible farmers to enroll in a timely manner. As the success of the program is entirely contingent upon the level of participation achieved, The Ocean Conservancy believes that specific milestones for levels of participation should be included as part of the Conditional Waiver Program and these enrollment targets should be referenced in the CEQA documents. Furthermore, we urge the Board to have a contingency plan in place to impose Waste Discharge Requirements against dischargers who do not voluntarily comply with enrollment requirements and timelines. Such a

[1]We acknowledge that page 14 of the CEQA documents states: "Waste Discharge requirements and enforcement will be reserved for non-compliant dischargers, or if water quality does not improve." However, we believe that a clear description of the requirements that apply to dischargers who do not qualify for the Conditional Waiver Program, supported by the specific legal mandates in Porter-Cologne, should be included early in the document to avoid continued and potentially escalated agricultural pollution under an ineffective waiver.

contingency plan should be developed now and included as part of the program itself and not deferred to a later date.

The CEQA Documents Should be Revised to Identify Impacts to Biological Resources, Water Quality and Hydrology as Potentially Significant.

The Ocean Conservancy is hopeful that the proposed Conditional Waiver Program will be a success and result in significant improvements to water quality in the region and prevent continued degradation of cleaner waters. However, the CEQA documents must, under California law, realistically assess the likely potential impacts associated with adoption of the program. Given the existing serious and widespread water quality problems associated with agricultural runoff throughout the region, and the documented effects of such pollution on beneficial uses, it is not legally supportable to simply assume that the program will meet its goals and thus not result in impacts to the environment. We urge that the CEQA documents be revised to acknowledge the potentially significant environmental impacts associated with the program and specify how program components will mitigate such impacts, how the effectiveness of such measures will be assessed, and what will be done should they prove unsuccessful.

The Ocean Conservancy cannot agree with the Environmental Determination that the Conditional Waiver Program "could not have a significant effect on the environment." Initial Study and Negative Declaration at Page 6. In making this conclusion, staff assumes that the program will successfully achieve its goal: "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." A finding of no significant impact cannot be based on assumption but must be supported by evidence in the record.

However, the evidence in the record clearly demonstrates that the Central Coast region suffers from significant water quality impairment linked to agricultural runoff. As noted in the Initial Study, within the region: "[m]any surface waterbodies are on the Clean Water Act Section 303 (d) list of impaired waters for pollutants associated with agricultural activities ... [o]f the region's 178 currently listed waterbodies, about 75 designate agriculture as a potential source." Initial Study and Negative Declaration at Page 10. Data from the Central Coast Ambient Monitoring Program (CCAMP), as well as other studies, have documented exceedances of numeric and narrative water quality standards associated with agricultural runoff in several Central Coast region waterbodies. Recent studies performed in the Salinas River watershed have demonstrated water and sediment toxicity associated with agricultural pesticides and suggested ecological impairment in the watershed, which serves as a migration corridor for federally listed steelhead.[2]

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[2] Hunt et al. Ambient Toxicity Due to Chlorpyrifos and Diazinon in a Central California Coastal Watershed. 2003. *Environmental Monitoring and Assessment*, 82: 83-112.

Although the proposed Conditional Waiver Program is designed to help remedy the serious agricultural runoff related water quality problems in the region, there is no guarantee that the program will meet its goals. It is entirely possible that even under the proposed Conditional Waiver Program, water quality impacts associated with agricultural runoff could increase in the Central Coast region, particularly as compared with a more rigorous waiver - or waste discharge requirement-based program. The real possibility of such an outcome is suggested by the fact that statewide, the total pounds of pesticide applications rose 14 percent from 2001 to 2002.[3] During this same period, the total amount of pesticide active ingredients reported in Central Coast region counties increased by more than 750,000 pounds between 2001 and 2002.[4] With increased use of pesticides in the region comes an increased threat of impacts associated with pesticide runoff. Similar variability can be expected with regards to nutrient inputs and even erosion. Finally, as noted in the Initial Study, management practices put in place to hold contaminated irrigation and stormwater on farm can have the unintended consequence of transferring such contaminants from surface water to groundwater via infiltration. Thus, it is reasonable to expect that absent inclusion of specific safeguards, water quality could worsen under the proposed Conditional Waiver Program.

Because the Regional Board's decision to pursue a conditional waiver program rather than requiring Waste Discharge Requirements (with required fees that could guarantee adequate program funding and clearer enforcement mechanisms) would potentially allow for such increased impacts related to agricultural runoff, the CEQA documents must identify impacts to biological resources, water quality and hydrology as "potentially significant" and detail mitigations capable of reducing these impacts to a level of insignificance. The monitoring program adopted as part of the program must also be capable of determining if water quality conditions are improving, staying the same, or getting worse.

The Ocean Conservancy believes that a number of mitigation measures should be incorporated into the program and attendant CEQA documents to address these potentially significant impacts. In many cases, these mitigation measures would simply require clarification of existing program elements. For example, the Conditional Waiver Program should include specific milestones or interim benchmarks for measuring the effectiveness of program implementation. According to the Initial Study, evaluation of the effectiveness of the Conditional Waiver Program will be based on enrollment levels, farm water quality plan completion, levels and types of management practice implementation, and submittal of reports. Initial Study and Negative Declaration at Page 16. The Ocean Conservancy is concerned that the CEQA documents and draft Order do not include clear and specific interim targets for achieving compliance with program requirements. For example, the Regional Board should identify the level of enrollment (by the Order date of December 1, 2004) that will be considered adequate and what action Regional Board staff will take if this target is not met.

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[3] Department of Pesticide Regulation. Pesticide Use Statistics for 2002. www.cdpr.ca.gov/docs/pur/pur02rep/02_pur.htm.
[4] Id.

The Initial Study further states that the results of the monitoring program and management practice implementation will be used to determine progress toward meeting waiver conditions. In turn, the Initial Study identifies administrative compliance measures (establishment of a monitoring entity, enrollment levels for monitoring, funding levels for monitoring) as the milestones for assessing the monitoring program itself. Initial Study and Negative Declaration at Page 16. Of course, administrative compliance cannot, in itself, ensure compliance with the waiver conditions. The monitoring program's water quality data must be assessed to determine whether the substantive conditions (regarding compliance with the Basin Plan, protection of beneficial uses, and compliance with the state Anti-Degradation Policy) are also being achieved. The Ocean Conservancy recognizes that full compliance with water quality objectives will not occur immediately, however, it is critical that the program include a plan for compliance and specific interim benchmarks for determining whether adequate progress is being made.

The CEQA documents should provide a more detailed discussion of how monitoring results will be evaluated to allow Regional Board staff, the Board itself, the public, and program participants to determine whether water quality objectives are being met, water quality is improving and degradation is being avoided. It is particularly important that the program include specific "feedback mechanisms" for assessing program effectiveness in watersheds with documented impairment. Currently, the proposed monitoring program allocates 25% of its budget for "follow-up investigative monitoring in problem areas." The program and CEQA documents should identify the circumstances that would result in such follow up monitoring and what such an investigation would entail. Given the widespread nature of water quality impairment in the Central Coast region, it is important that the Regional Board have an identified method of prioritizing such follow up investigations. The Ocean Conservancy also suggests that the program clearly specify that where water quality problems are eventually linked to specific dischargers, that an appropriate percentage of the cost of such follow up monitoring be borne by those determined to be causing the problem.

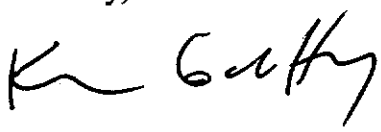
Finally, the proposed monitoring program relies on an ambient monitoring design model that includes 50 sites, all of which are located in known areas of water quality impairment. Such an approach will not allow the Regional Board to identify and react to future degradation of cleaner waters. In the Agricultural Advisory Panel discussions, Regional Board staff noted that additional sites would be monitored periodically (on a five-year rotation) using Central Coast Ambient Monitoring Program (CCAMP) funds, and that these sites would include areas where impairment had not already been
32.6 determined. This program component should be included in the program and discussed in the CEQA documents. Given the historic financial uncertainties facing the CCAMP program, the documents should also identify how the program will insure compliance with the State's "Anti-Degradation Policy" should funding for CCAMP diminish or disappear in the future.

The Details of the Conditional Waiver Program Should be Included in the CEQA Documents.

The Ocean Conservancy is concerned that one of the inadvertent consequences of postponing consideration of the Conditional Waiver Program from the May 2004 Regional Board meeting to the July 2004 Board meeting is a temporal decoupling of public review of the CEQA documents from review of the program itself. Although the CEQA document refers to the draft Order (at page 5), we urge that details of the draft Order and draft Monitoring and Reporting Plan be specifically incorporated by reference into the CEQA documents. We note that any substantive changes to the elements of the program contained in the draft Order or in the draft Monitoring and Reporting Plan may well trigger revision of the CEQA documents and re-circulation for additional public comment.

Thank you for your consideration of these comments.

Sincerely,



Kaitilin Gaffney
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May 28, 2004

Chair Young and Members of the
Central Coast Regional Water Quality Control Board
895 Aerovista Place
San Luis Obispo, CA 93401

The Ocean Conservancy

RE: Draft Order No. R3-2004-0XYZ and Draft Monitoring and Reporting Program for Proposed Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands

Dear Mr. Young and Members of the Regional Board:

On behalf of The Ocean Conservancy and its more than 25,000 California members, please accept the following comments regarding the Draft Order and Draft Monitoring and Reporting Program for Proposed Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands (hereinafter "draft Order," "proposed Conditional Waiver Program," or "draft Monitoring Program") for the Central Coast Region. The Ocean Conservancy submitted comments specific to California Environmental Quality Act (CEQA) documents for this program under separate cover on April 30, 2004.

Over the past 14 months, The Ocean Conservancy has participated as a member of the Agricultural Advisory Panel convened by Central Coast Regional Water Quality Control Board staff to help develop recommendations regarding the appropriate and legally required components of a program to address the serious impacts of agricultural pollution in the Region. The Agricultural Advisory Panel met more than ten times between March 2003 and January 2004 and agreed on the basic components of the proposed Conditional Waiver Program under consideration by the Board. The Ocean Conservancy commends the proactive approach to water quality protection taken by some Central Coast growers. The proposed Conditional Waiver Program builds on the success of existing efforts and was designed to give credit to those farmers who have already taken steps to reduce pollution.

33.1 The Ocean Conservancy urges the Central Coast Regional Water Quality Control Board (hereinafter "Central Coast Regional Board") to take immediate action to adopt the proposed Conditional Waiver Program, as amended by our recommendations below. We also urge the Board to develop Waste Discharge Requirements for those dischargers that do not comply with all of the requirements of the proposed Conditional Waiver Program.

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In accordance with the new Nonpoint Source Pollution Control Implementation and Enforcement Policy approved by the State Water Resources Control Board last week (hereinafter "SWRCB NPS Pollution Control Implementation and Enforcement Policy"), to ensure compliance with the Porter-Cologne Act the Regional Boards must take action "[b]efore approving or endorsing a specific NPS pollution control implementation program" to "determine that there is a high likelihood the implementation program will attain the RWQCBs state water quality objectives."[1] [Emphasis added.] To ensure adoption of an agricultural runoff program that complies with state law and policy, The Ocean Conservancy urges the Central Coast Regional Board to:

- Avoid any further delays in adopting and implementing a replacement for the expired agricultural waivers.
- Identify compliance with water quality objectives as the program's fundamental goal and include specific milestones and a timeline for compliance with such objectives.
- Require implementation of on-farm management practices capable of reducing agricultural pollution with measurable success.
- Include a monitoring program adequate to meet the legal requirements of California Water Code Section 13269.
- Pursue the adoption of a reasonable fee structure that supports adequate staff and resources to implement the program.
- Add clear enforcement guidelines.

Additional details with regard to each of these points are provided below.

A. There is Clear Evidence of Extensive Water Quality Impairment Due to Agricultural Pollution in the Central Coast Region.

As noted in the Draft Initial Study and Negative Declaration for the proposed Conditional Waiver Program, there is ample evidence that irrigation return water and stormwater runoff from irrigated lands have adversely impacted water quality throughout the Central Coast Region. Existing data demonstrates that agricultural discharges are currently causing or contributing to numerous impairments of beneficial uses, exceedances of water quality objectives and violations of the Central Coast Basin Plan. Indeed, the draft Order itself recognizes the significant and widespread impacts of agricultural pollution on water quality throughout the Central Coast Region. See draft Order, Findings #7 & #8.

Within the Central Coast Region: "[m]any surface waterbodies are on the Clean Water Act Section 303 (d) list of impaired waters for pollutants associated with agricultural activities ... [o]f the region's 178 currently listed waterbodies, about 75 designate agriculture as a potential source."[2] Data from the Central Coast Ambient Monitoring

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[1] SWRCB. 2004. Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program. Adopted May 20, 2004. Page 12.

[2] Draft Initial Study and Negative Declaration for Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands at 10.

Program (CCAMP) has documented exceedances of a number of numeric and narrative water quality standards associated with agricultural runoff in numerous Central Coast waterbodies. Detailed research studies performed in several Central Coast watersheds further document the serious pesticide and nutrient pollution impacts that are currently adversely affecting beneficial uses throughout the Region and specifically identify agriculture as the source of this pollution.

The results of recent studies performed by University of California at Davis researchers in the Salinas River watershed demonstrate significant water and sediment toxicity associated with agricultural pesticides and suggest ecological impairment in the watershed, which serves as a migration corridor for federally listed steelhead.[3] Additional studies by California State University Monterey Bay researchers focused on nine sites in the Salinas watershed, monitoring during both the wet and dry seasons. These studies found "[c]oncentrations [of monitored pesticides] are high enough to be toxic to aquatic organisms at all sites, and at most times."[4] [Emphasis added.] In a separate study by California State University Monterey Bay researchers, a full year of monitoring on Chualar Creek, a tributary to the Salinas River, demonstrated "highly degraded" water quality and levels of suspended sediment, nutrients, and coliform that were "above, often far above, the objectives and criteria recommended by the USEPA and the State Water Resources Control Board."[5] [Emphasis in original.] Specifically, the Chualar study found "[n]itrate exceeds standard by ten times, ammonia by about 50 times, and phosphate by seven times."[6]

Research studies looking at multiple years of monitoring data from the Pajaro River and Elkhorn Slough watersheds concluded that nutrients from agricultural sources were at high enough concentrations to cause "possible health hazards for humans and damage aquatic ecosystem."[7] According to a National Estuarine Research Reserve study based on several years of monitoring data from the Elkhorn Slough watershed, "nitrate concentrations in Elkhorn Slough are high compared to many estuarine systems, while concentrations in the lower Salinas River are unmatched for any estuarine system reported in the literature" and can be higher than the measured nitrate concentrations

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[3] Hunt et al. 2003. Ambient Toxicity Due to Chlorpyrifos and Diazinon in a Central California Coastal Watershed. *Environmental Monitoring and Assessment*, 82: 83-112.

[4] Kozlowski, D. et al. 2004. Monitoring Chlorpyrifos and Diazinon in Impaired Surface Waters of the Lower Salinas Region. Publication No. WI-2004-03. The Watershed Institute, Central Coast Watershed Studies, California State University Monterey Bay. Page vi.

[5] Hagar, J. et al. 2003. Chualar Creek Pilot Project Water Quality Monitoring March 2001-December 2002 Final Report. Publication No. WI-2003-08. The Watershed Institute, Central Coast Watershed Studies, California State University Monterey Bay. Page 55.

[6] Anderson, T. et al. 2003. Nutrients in Surface Waters of Southern Monterey Bay Watersheds. Publication No. WI-2003-11. The Watershed Institute, Central Coast Watershed Studies, California State University Monterey Bay. Page 94.

[7] Center for Agroecology and Sustainable Food Systems. 2003. Land Use and Water Quality on California's Central Coast: Nutrient Levels in Coastal Waterways. Research Brief #2. Winter 2003. University of California. Page 4.

from sewage treatment plant effluent.[8] [Emphasis added.] This study measured nitrate values in the lower Salinas River at levels that exceeded drinking water standards more than 70% of the time and found that one monitoring site in the Elkhorn Slough area "becomes hypoxic or anoxic on a daily basis for several weeks in late summer or early fall."[9] Significantly, nitrate can adversely affect ecosystem function even at levels below the drinking water standard.[10]

Although such detailed monitoring and analysis is not available for many watersheds in the Central Coast Region, similar pollution levels are expected to occur in other agriculturally influenced waterbodies. The Final Report for the Chualar Creek monitoring project noted that the high pollutant levels found in Chualar Creek "are comparable to other sites in the Salinas Valley" and that "Chualar Creek is thus a typical agricultural drainage of this region, characterized by degraded water quality, a lack of riparian vegetation, and a loss of any potential for beneficial uses other than agricultural production."[11] [Emphasis added.] Agriculture is not the only source of pollution in the Central Coast Region. However, there is overwhelming evidence that agriculture is a major source of pesticide and nutrient problems in the area. As noted in a study released in 2003: "The dominant source of high nutrient concentrations in southern Monterey Bay watersheds is irrigated agriculture."[12]

B. The Proposed Agricultural Runoff Program Must Comply with the Law.

As stated in the SWRCB NPS Pollution Control Implementation and Enforcement Policy:

> The Porter-Cologne Act is the principal law governing water quality in California. It establishes a comprehensive program to protect water quality and the beneficial uses of the waters of the State. The Porter-Cologne Act . . . applies to both point and nonpoint sources of pollution. . .
>
> The Porter-Cologne Act provides that "All discharges of waste into the waters of the State are privileges, not rights." [citations] Furthermore, all dischargers are subject to regulation under the Porter-Cologne Act including both point and NPS dischargers. [citations] In obligating the SWRCB and RWQCBs to address all discharges of waste that can affect water quality, including nonpoint sources, the legislature provided the

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[8] Caffrey, J. et al. 1997. Water Quality Monitoring in Elkhorn Slough: a summary of results 1988-1996. Elkhorn Slough Technical Report Series: 1997:1.
[9] *Id.*
[10] Center for Agroecology and Sustainable Food Systems. 2003. Land Use and Water Quality on California's Central Coast: Nutrient Levels in Coastal Waterways. Research Brief #2. Winter 2003. University of California. Page 1.
[11] *Id.*
[12] Anderson, T. et al. 2003. Nutrients in Surface Waters of Southern Monterey Bay Watersheds. Publication No. WI-2003-11. The Watershed Institute, Central Coast Watershed Studies, California State University Monterey Bay. Page 99.

> SWRCB and RWQCBs with administrative permitting authority in the form of administrative tools (waste discharge requirements [WDRs], waivers of WDRs, and basin plan prohibitions) to address ongoing and proposed waste discharges. Hence, all current and proposed NPS discharges must be regulated under WDRs, waivers of WDRs, or a basin plan prohibition, or some combination of these administrative tools. [Emphasis in original.] . . . The requirements for . . . a RWQCB to issue WDRs may be waived . . . if the SWRCB or RWQCB determines . . . that the waiver is consistent with any applicable state or regional water quality control plan and is in the public interest. [citations] All waivers are conditional and may be terminated at any time.[13]

These requirements are included in the draft Order (Findings #9, #11, and #15). Any legally adequate waiver or WDR program adopted by the Central Coast Regional Board
33.2 must realistically be able to achieve compliance with the requirements of the California Water Code. According to the SWRCB NPS Pollution Control Implementation and Enforcement Policy, "[p]rior to developing an NPS control implementation program or recognizing an implementation program developed by dischargers or third-parties as sufficient to meet RWQCB obligations to protect water quality, a RWQCB shall ensure that the program meets" five key structural elements.[14] [Emphasis added.] These five key elements are as follows:[15]

- Key Element 1: An NPS control implementation program's ultimate purpose shall be explicitly stated. Implementation programs must, at a minimum, address NPS pollution in a manner that achieves and maintains water quality objectives and beneficial uses, including any applicable antidegradation requirements.
- Key Element 2: An NPS control implementation program shall include a description of the MPs and other program elements that are expected to be implemented to ensure attainment of the implementation program's stated purpose(s), the process to be used to select or develop MPs, and the process to be used to ensure and verify proper MP implementation.
- Key Element 3: Where a RWQCB determines it is necessary to allow time to achieve water quality requirements, the NPS control implementation program shall include a specific time schedule and corresponding quantifiable milestones designed to measure progress toward reaching the specified requirements.
- Key Element 4: An NPS control implementation program shall include sufficient feedback mechanisms so that the RWQCB, dischargers, and the public can determine whether the program is achieving its stated purpose(s), or whether additional or different MPs or other actions are required.

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[13] SWRCB. 2004. Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program. Adopted May 20, 2004 at 2-5.
[14] *Id.* at 12.
[15] *Id.* at 13-16.

4. Pesticide monitoring should be required.

The Ocean Conservancy understands that Regional Board staff did not include pesticide monitoring as a component of the initial phase of the Cooperative Monitoring Program in an effort to reduce costs for waiver holders. According to the draft Monitoring and Reporting Program: "More detailed characterization, involving additional toxicity testing, chemical analysis, analysis of pesticide application data, and/or toxicity identification evaluates, will be required as necessary in areas where toxicity problems are documented." Given the existing data showing impacts to beneficial uses associated with pesticide use, it is our view that the proposed Monitoring Program should, at a minimum require pesticide monitoring in areas with existing evidence of pesticide impairment.

33.9

Absent such a requirement, there is nothing in the proposed Conditional Waiver Program that will ensure that waterbodies already impaired by pesticides do not become even more degraded over time. The real possibility of such an outcome is suggested by the fact that the total amount of pesticide active ingredients reported to be applied in the Central Coast Region increased by more than 750,000 pounds between 2001 and 2002.[26] The Ocean Conservancy believes that Water Code Section 13269 requires that some level of pesticide monitoring occur. Such monitoring could be paid for by a monitoring fee surcharge that applies only to growers that apply pesticides.

5. The monitoring program must be sufficient to demonstrate compliance with the State Anti-Degradation Policy.

33.10 The proposed Conditional Waiver Program must comply with the provisions of State Water Resources Control Board Resolution No. 68-16, "Statement of Policy with Repsect to Maintaining High Quality of Water in California" also known as the State Anti-Degradation Policy. See Finding #45. The Ocean Conservancy recommends revision of the draft Order and proposed Monitoring Program to clearly identify how the program will assess and verify compliance with the State's Anti-Degradation Policy.

The proposed Cooperative Monitoring Program includes a monitoring site network that focuses exclusively on sites "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."[27] During discussions with the Agricultural Advisory Panel, Regional Board staff noted that CCAMP monitoring would provide limited data on sites in areas outside of known impairment. According to the draft Order (Finding #31): "The Central Coast Ambient Monitoring Program will provide additional monitoring as part of its five-year rotation scheme, and monitoring from other agencies will be incorporated wherever possible." If

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[26] Department of Pesticide Regulation. Pesticide Use Statistics for 2002. www.cdpr.ca.gov/docs/pur/pur02rep/02_pur.htm.

[27] Draft Monitoring and Reporting Program for Dischargers Enrolled Under Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands at 1.

the Regional Board intends to rely on CCAMP (or other data) to ensure compliance with the State Anti-Degradation Policy, such intent should be stated explicitly in the program documents. Furthermore, given the historic financial uncertainties facing the CCAMP program, The Ocean Conservancy urges the Central Coast Regional Board to identify how the proposed Conditional Waiver Program will ensure compliance with the State's Anti-Degradation Policy, should funding for CCAMP diminish or disappear in the future.

6. **TOC response to March 19, 2004 letter to Central Coast Regional Board from Discharger organizations.**

The Ocean Conservancy offers the following comments in response to a letter dated March 19, 2004 submitted by 23 Central Coast agricultural organizations (hereinafter "Discharger organizations' letter"). The Discharger organizations' letter raises concerns about the scope and cost of the monitoring program and purports to offer potential solutions to the concerns it raises. Unfortunately, the Discharger organizations' letter misstates the requirements of Water Code Section 13269 and suggests changes to the proposed Monitoring Program that include actions that have either already been taken by Regional Board staff or are not adequate to meet the clear requirements of state law.

The Discharger organizations' letter states: "We understand that monitoring data may be required to ensure compliance with Conditional Waiver conditions" and that "monitoring requirements ... should include only those measures necessary to detect noncompliance with the conditions of the Conditional Waiver Program." These statements represent a fundamental misunderstanding of the requirements of Water Code Section 13269. Clearly, the Central Coast Regional Board has an obligation to ensure that waiver holders comply with the Conditional Waiver Program. However, Section 13269 specifically requires the Regional Board to adopt a monitoring program capable of "verifying the adequacy and effectiveness of the waiver's conditions." Thus, the legal requirements of Section 13269 do not directly address whether an individual discharger is complying with the program's conditions but instead whether the waiver program <u>itself</u> is adequate and effective (i.e., is it resulting in compliance with the Basin Plan, etc). Such a determination can only be made based on assessment of ambient surface water and groundwater quality monitoring data of sufficient quality, quantity, and geographic coverage to reasonably evaluate the overall status of water quality related to agriculture throughout the Central Coast Region and to identify changes over time. At a minimum, such a program should include all waterbodies with evidence of impairment due to agricultural pollutants and include a method of ensuring compliance with the State Anti-Degradation Policy.

The Discharger organizations' letter suggests that the Regional Board staff prepare an inventory and analysis of existing monitoring programs "to determine whether additional monitoring is necessary" and "whether monitoring requirements can be waived in those areas that are found not to pose a significant threat to water quality." Central Coast Regional Board staff has <u>already</u> conducted such an inventory and analysis of existing monitoring efforts and data. This issue is conclusively addressed in draft Order Finding #35:

> The Central Coast Region has few on-going surface water monitoring programs which assess impacts from agricultural constituents with the exception of the Regional Board's Central Coast Ambient Monitoring Program. Data from this program and others can be used to supplement the monitoring program, but will not provide sufficient data on its own to verify the adequacy and effectiveness of the waver, nor to detect improvements in water quality over time due to changes in management practices.

Furthermore, as noted above, all of the sites included in the proposed Cooperative Monitoring Program site network are in areas that have already been identified as impaired by agricultural pollutants. Clearly, water quality monitoring requirements cannot be waived in any such areas.

The Discharger organizations' letter suggests limiting the monitoring program to two pilot programs, one in Monterey County and one in Santa Barbara County. The proposed pilot program locations have presumably been suggested based on the availability of outside funding (PG&E and Guadalupe settlement monies). While understandable from the point of view of those who wish to avoid paying for required monitoring, such an approach does not meet the minimum requirements of Section 13269 and is not legally defensible. The Ocean Conservancy does not object to use of settlement funds (or other funds) to augment Conditional Waiver Program monitoring requirements. Such funds might appropriately be applied to demonstration projects on management practice effectiveness assessment, monitoring of demonstration projects, provision of water quality education courses, or cost sharing for management practice implementation. However, it is not appropriate to rely on outside and temporary funding sources to meet basic discharger or program compliance monitoring requirements. Nor is it legally defensible to geographically limit the monitoring program to areas where outside funding sources are available.

The Discharger organizations' letter also suggests limiting the frequency of monitoring to twice a year and eliminating toxicity monitoring. The Ocean Conservancy has repeatedly noted our concern that the Central Coast Region Board staff's proposed Monitoring and Reporting Program represents the "bare minimum" in terms of a scientifically and legally defensible monitoring protocol. Indeed, as noted above, we believe the staff's proposed monitoring program is not adequate in terms of frequency of toxicity monitoring and its failure to include pesticide monitoring even in areas with evidence of pesticide impairment. Accordingly, we strongly object to the Discharger organizations' suggestion that the monitoring requirements be significantly reduced. We believe that this proposal is not scientifically defensible and fails to meet the basic requirements of the law. For example, absent toxicity analysis and benthic invertebrate sampling, the Central Coast Regional Board would have no way of assessing whether the proposed Conditional Waiver Program was protecting beneficial uses such as protection of aquatic life.

Finally, the Discharger organizations' letter voices concern about confidentiality and trade secrets. The Ocean Conservancy is not certain what type of information is being referred to in the letter but does note that Water Code Section 13269 requires that monitoring results be made available to the public. The SWRCB NPS Pollution Control Implementation and Enforcement Policy also requires that "all monitoring programs should be reproducible, provide a permanent/documented record and be available to the public."[28] Accessibility of monitoring data is a critical component of public accountability.

G. The Central Coast Regional Board Should Recommend that the SWRCB Adopt a Reasonable Fee Structure to Provide Adequate Staff and Resources to Implement the Program.

33.11 The draft Order (Finding #26) notes that: "A fee schedule may be set by the State Board based on a number of factors, including acreage, and monitoring and compliance costs. The Regional Board cannot charge fees until after the State Board adopts a fee schedule for waivers." The Ocean Conservancy urges the Central Coast Regional Board to take a proactive approach to seeking fee authority and provision of additional staff positions necessary to administer the proposed Conditional Waiver Program. Annual fees are necessary to cover the costs of the Central Coast Regional Board's effective implementation of the program, including review, approval and enforcement. Without including a fee proposal now, the proposed Conditional Waiver Program will continue to be understaffed, will not be sustainable and will not result in water quality improvements.

Absent a funding mechanism for the proposed Conditional Waiver Program, The Ocean Conservancy does not believe that the Regional Board can legally justify any waiver program. Significantly, in the absence of a waiver, the Regional Board would be required to impose WDRs on all agricultural dischargers and fees would automatically be assessed. The proposed Conditional Waiver Program requires Central Coast Regional Board staff to develop, administer, implement, monitor reporting, and enforce a vast new program affecting 2,500 dischargers and 600,000 acres of cropland. Currently there is only one staff person assigned to this program. Clearly, the Central Coast Regional Board does not currently have adequate funding or staff to oversee implementation of the proposed Conditional Waiver Program. It is therefore extremely unlikely that the Regional Board will be able to meet its legal obligation to require compliance with the waiver conditions without collecting fees from waiver holders. The Ocean Conservancy appreciates the difficulty of limited resources. As a result, we respectfully suggest that the Central Coast Region Board has a legal responsibility to take a proactive approach to seeking sufficient resources and staff to fully implement the proposed Conditional Waiver Program.

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[28] SWRCB. 2004. Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program. Page 12.

Fortunately, California law provides for adoption of discharger fees to fund the administrative costs of water quality programs. As previously noted, all dischargers operating under WDRs are already required to submit an annual fee to the Regional Board to help cover the administrative costs associated with their permit. It is both fiscally necessary and appropriate from a public policy perspective to require such fees for waivers as well. Taxpayer subsidies of the costs of agricultural pollution do not further the public interest. For this reason, recently enacted legislation requires the dischargers, not the general public, to pay for the costs associated with their pollution. *See* AB X1 10 (Oropeza, 2003) and SB 923 (Sher, 2003). The omission of such fees payable annually frustrates the recognized public interest that pollution sources bear the costs of regulatory activities involving their pollution discharges. *See* Statement of Governor Gray Davis (March 18, 2003) (signing into law ABX1 10) ("It is only fair that those who contribute to California's air and water pollution bear a greater share of the cost of regulatory activities to achieve clean, healthful air and water quality").

There are a number of processes by which the Central Coast Regional Board can seek to add or reassign staff to the proposed Conditional Waiver Program, a program that is mandated under existing law and is required to meet an immediate and urgent threat to public health and safety. Under Executive Order S-3-03, hires with appropriate experience could be assigned to the program with a successful DF-160 application to the Department of Finance pursuant to Budget Letter 03-42. This exemption application form may not even be necessary, however, if the intradepartmental transfer "does not increase General Fund costs or the costs of a fund that is either transferable to the General Fund or is not solvent."[29] That could be the case where, for example, experienced staff in vulnerable positions currently funded with General Fund monies are reassigned to the program. The Regional Board can also budget for new positions as part future budgets.

The Central Coast Regional Board can and must work with the Legislature to ensure that its budget contains a reasonable number of needed staff, funded by fees, and work with the Administration to ensure its approval. SB 923 permits – and Executive Order S-3-03 does not prevent – the Boards from using fees to staff this essential and legislatively mandated program. Processes exist to ensure that the needed staff is there; the Cnetral Coast Regional Board should ensure that these processes are fully and appropriately articulated and committed to in the proposed order.

Furthermore, it is The Ocean Conservancy's understanding that the State Department of Finance recently approved a request from the State Water Resources Control Board for over 22 new staff to work on waiver programs statewide. The Central Coast Regional Board should urge the State Water Resources Control Board to issue the fees necessary to fill these positions as soon as possible and, given that these positions are for waiver programs statewide, act aggressively to seek its fair share of these positions. The Ocean Conservancy would be more than happy to assist in these efforts.

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[29] *See* www.dof.ca.gov/html/budlettr/budlets.htm.

H. The Proposed Program Should Include Clear Enforcement Guidelines.

Water Code Section 13269(e) provides that "the regional boards and the state board shall require compliance with the conditions pursuant to which waivers are granted . . . ." The new SWRCB NPS Pollution Control Implementation and Enforcement Policy adds that "[e]ach RWQCB shall make clear, in advance, the potential consequences for failure to achieve an NPS control implementation program's stated purposes," because "[i]n order to be enforceable, waiver conditions should be clearly specified."[30]

As noted repeatedly by agricultural representatives on the Agricultural Advisory Panel, without a significant outreach effort by Regional Board staff, the Central Coast Regional Board can expect only a minority of eligible dischargers to even enroll in a timely manner. Those growers who have already taken the lead and implemented water quality protection activities on their farms voluntarily are the ones most likely to enroll promptly in the proposed Conditional Waiver Program. The Central Coast Regional Board must ensure that such early enrollees are not inadvertently penalized in any way but instead are provided with incentives and rewarded for early compliance.

It is equally critical that the Central Coast Regional Board include a clear and rigorous
13.12 enforcement element in the program to address dischargers who chose not to enroll or whose activities continue to adversely impact to water quality. A clear and rigorous enforcement policy is important both to protecting water quality and to ensuring fairness to those dischargers who incur the costs and effort of compliance.

It is also important to note that although the proposed Conditional Waiver Program relies heavily upon dischargers implementing management practices to reduce pollution, state law also requires compliance with water quality objectives. Draft Order Finding #20 states that dischargers who comply with certain administrative requirements and meet the Tier 1 requirements in the proposed Conditional Waiver Program will be considered a "low-threat discharge." However, as noted by the State Board in its NPS Pollution Control Implementation and Enforcement Policy, management practice implementation "may not be substituted for actual compliance with water quality requirements."[31] We recommend that appropriate scrutiny be provided to all discharges to ensure that they are managed in accordance with the law.

I. Conclusion

The Ocean Conservancy urges the Central Coast Regional Board to revise the proposed Conditional Waiver Program in accordance with the comments above. We strongly urge

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[30] SWRCB. 2004. Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program. Adopted May 20, 2004. Page 5.
[31] *Id.* at 7.

the Board to take final action on this matter at the July 8, 2004 Board meeting and not to delay adoption of this critical program any longer.

Thank you for your consideration of these comments.

Sincerely,

Kaitilin Gaffney
Central Coast Program Manager

cc: Arthur G. Baggett, Jr., Chair, SWRCB
Gary Carlton, SWRCB
Richard Katz, SWRCB
Pete Silva, SWRCB
Nancy Sutley, SWRCB
Celeste Cantu, Executive Director, SWRCB
Craig Wilson, Esq., SWRCB Chief Counsel

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STATE OF CALIFORNIA
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Region 3
Office
WATER QUALITY CONTROL

June 4, 2004

Ms. Alison Jones, Watershed Coordinator
Central Coast Regional Water Quality Control Board
895 Aerovista Place
San Luis Obispo, CA 93401

Re: Proposed Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands, Draft Order No. R3-2004-0XYZ

Dear Ms. Jones:

This letter provides the comments of Tanimura & Antle, Inc. to the Central Coast Regional Water Quality Control Board's (Regional Board) *Proposed Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands, Draft Order No. R3-2004-0XYZ,* dated March 19, 2004 ("Proposed Waiver"). As an owner and operator of thousands of acres of irrigated land within the Central Coast Region, Tanimura & Antle has a significant interest in the Proposed Waiver and the related *Draft Monitoring and Reporting Program No. R3-2004-XXXX* ("Draft MRP"). Tanimura & Antle has been following the development of the Proposed Waiver and the Draft MRP, and commends Regional Board staff for its hard work and responsiveness to previous comments and concerns raised by those affected by the Proposed Waiver. However, Tanimura & Antle believes that additional improvements are necessary before the Proposed Waiver is adopted. The following comments, together with the comments in the attached document, reflect issues and concerns that require further attention from the Regional Board and staff prior to adoption of the Proposed Waiver and Draft MRP.

1. **California Environmental Quality Act (CEQA) Compliance**

Other irrigators and coalition groups affected by the Proposed Waiver have submitted extensive comments urging the Regional Board to prepare an Environmental Impact Report (EIR) rather than a Negative Declaration for the Proposed Waiver, and we will not rehash those comments here. To be clear, Tanimura & Antle generally agrees with staff's position that the Waiver program should produce an overall benefit and improvement to water quality within the Region, assuming the program is properly implemented. Our concern, however, is that there is a fair argument – if not reasonable probability – that certain components or requirements in the

34.1 Proposed Waiver will result in a significant effect on the environment.[1] Tanimura & Antle understands the time and cost associated with preparation of an EIR, but believes that preparation of an EIR at the outset of this process is the most efficient approach in the long run.

2. **Discharges to Groundwater**

Although groundwater monitoring is not required under the Proposed Waiver, Tanimura & Antle is concerned that other requirements in the Proposed Waiver pertaining to groundwater will make it very difficult to comply with the Proposed Waiver. In particular, Tanimura & Antle is concerned with conditions regarding discharge of nitrates to groundwater. It is well known that nitrates have severely degraded groundwater in numerous basins within the Region, and that measures must be implemented to cure this situation. This problem stems from years of agronomic practices, and perhaps even naturally occurring conditions or factors unrelated to agricultural practices. The problem cannot be rectified overnight and may continue to persist for decades or centuries even if management practices on irrigated lands are changed.

Irrigators that rely on this degraded groundwater for their irrigation supply should not be forced to choose between either (1) halting agricultural operations altogether or (2) remedying a 34.2 problem that, in many cases, the irrigator did not cause. The Proposed Waiver would result in significant exposure to liability for those irrigators that presently rely on degraded groundwater as their primary source of irrigation water. The Proposed Waiver needs to expressly protect irrigators from exposure to liability for degradation that they did not cause.

3. **Subsurface Drainage Water (Tile Drains)**

The Proposed Waiver's requirements and conditions affecting discharges from subsurface drainage or tile drains likewise presents a significant compliance problem. In many 34.3 areas of the Region, irrigation supplies are already affected with high levels of sodium and chloride. To protect their farming operations, these operators have no choice but to install subsurface drainage to remove these constituents from the soil. In many cases, these operations simply cannot meet secondary drinking water standards (or primary drinking water standards for nitrate – i.e., 45mg/L as NO3). Again, the Proposed Waiver needs to protect irrigators in instances where they are not the cause of the degradation.

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[1] The Regional Board must prepare an EIR if any aspect of the Proposed Waiver has the potential to cause a significant impact on the environment, even if there is a net environmental benefit from the Waiver as a whole. 34.4 (CEQA Guideline, § 15063(b)(2). Certain requirements in the Proposed Waiver, including but not limited to, requirements for containment of stormwater and subsurface run-off, compliance with MCLs for discharges to groundwater, and compliance with TMDLs will almost certainly require some irrigators in the Region to substantially modify existing land use and management practices to come into compliance with the Proposed Waiver. An EIR should be prepared to evaluate the extent to which these land use and land management changes will affect the environment.

4. **Program Costs**

The Proposed Waiver states that "the Regional Board cannot charge fees until after the State Board adopts a fee schedule for waivers." (Proposed Waiver, Finding ¶ 26). The Proposed Waiver includes numerous references elsewhere in the document to fees or dues associated with the proposed MRP. (See e.g., Proposed Waiver, Finding ¶¶ 31, 32, and 36). We presume that there is a logical explanation for this apparent discrepancy, and recommend that the Regional Board clarify the Proposed Waiver in this regard.

34.4

Tanimura & Antle is committed to assisting the Regional Board and staff in developing a Waiver rule that is equitable, feasible and legally defensible, and believes that preparation of an EIR is the best way to address remaining issues before adopting the Proposed Waiver. Please do not hesitate to contact the undersigned or Ted Mills (831-455-3673) if you have any questions concerning these comments.

Very truly yours,

Robert Donlan

Robert E. Donlan,
On behalf of Tanimura & Antle, Inc.

Encl.

cc: Bob Antle
Ted Mills

35

March 19, 2004

Mr. Bruce Daniels, Chairman
Regional Water Quality Control Board
Central Coast Region
895 Aerovista Place, Suite 101
San Luis Obispo, California 93401

ATTN: Mr. Roger Briggs, Executive Officer

RE: CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS FOR DISCHARGES RELATED TO IRRIGATED AGRICULTURAL LANDS – **CENTRAL COAST REGION MONITORING PROPOSAL**

Dear Chairman Daniels and Board Members,

On behalf of the members of *Central Coast Ag Task Force, Central Coast Wine Grower's Association, Coalition of Central Coast County Farm Bureaus, Grower-Shipper Association of Central California, Grower-Shipper Vegetable Association of Santa Barbara and San Luis Obispo Counties, Independent Growers' Association, Monterey County Cattleman's Association, Monterey County CattleWomen's Association, Monterey County Farm Bureau, Monterey County Vintners and Growers Association, Salinas River Channel Coalition, Salinas Valley Chapter of California Women for Agriculture, Salinas Valley Water Coalition, San Benito County Cattleman's Association, San Benito County Farm Bureau, San Luis Obispo County Farm Bureau, San Mateo County Farm Bureau, Santa Barbara County Cattleman's Association, Santa Barbara Flower and Nursery Growers' Association, Santa Barbara County Farm Bureau, Santa Clara County Farm Bureau, Santa Cruz County Farm Bureau, and the Southern San Luis Obispo and Santa Barbara County Watershed Coalition*, we encourage the Central Coast Regional Water Quality Control Board (CCRWQCB) to consider our proposal for meeting the monitoring requirements of Section 13269 of the Porter-Cologne Water Quality Control Act and the Conditional Waiver of Waste Discharge Requirements for Discharges Related to Irrigated Agricultural Lands (Conditional Waiver).

We would like to thank the CCRWQCB for its cooperative approach in working with the agricultural industry, as well as acknowledge our appreciation of the CCRWQCB's Agricultural Advisory Panel's tedious work in formulating its recommendations. Working closely with the agricultural representatives on the Agricultural Advisory Panel, industry representatives and 23 Central Coast agricultural organizations reviewed staff's monitoring proposal and the Panel Recommendations.

Our concerns with the various staff reports and monitoring proposals to date are two-fold: (1) the scope and cost of staff's proposed monitoring program, and (2) liability implications of the monitoring requirements on existing voluntary water quality programs. We would like to propose viable solutions to these concerns. Our proposal directly builds upon the work of the Agricultural Advisory Panel, and offers solutions to those items that the Panel was unable to attain consensus on.

35.1 (1) Scope and Cost of Monitoring: We understand that monitoring data may be required to ensure compliance with Conditional Waiver conditions. The monitoring program should be designed narrowly and specifically to provide this data; and, the monitoring program should not be developed for the purpose of establishing detailed scientific watershed analysis. The monitoring requirements placed upon the agricultural industry should include only those measures 35.2 necessary to detect noncompliance with the conditions of the Conditional Waiver program. The RWQCB should take into account background levels of pollution as well as sources of pollution from other land uses to ensure that affected irrigated agricultural operations and landowners are not held responsible for impairments in excess of their contributions. 35.3 Finally, the scope of these monitoring requirements should be no more onerous or costly than those imposed on other industries with non-point source discharges.

(2) Liability Implications: The Central Coast agricultural industry has been a resource protection leader within the State of California for over five years, and its involvement in the implementation of voluntary water quality protection efforts,

such as the Monterey Bay National Marine Sanctuary's *Agricultural and Rural Lands Action Plan IV* among others, has been exemplary. Continuation of these efforts will be critical to the development of ongoing innovative water quality protections in the Region. For these existing water quality programs to continue, however, the Regional Board must ensure that non-irrigators such as industry groups, agencies, nonprofits, etc. are not held responsible for the implementation of the CCRWQCB's water quality regulations, and are not exposed to liability under the CCRWQCB's regulatory requirements.

35.4

To address the above concerns, we propose that the CCRWQCB undertake the following actions in the development of its Conditional Waiver monitoring program. Our proposal would establish a phased and multi-level monitoring program, comprised of (1) Region-wide and watershed-wide monitoring networks that can be augmented and improved over time, and (2) more focused pilot monitoring programs that could be used to immediately address problems in areas of known impairment. Our proposed monitoring program is designed to develop and implement the waiver program in an efficient and coordinated manner that allows the CCRWQCB, affected parties and other stakeholders to evaluate the adequacy and effectiveness of existing monitoring efforts and to augment the monitoring program over time as necessary to achieve the purposes of the waiver program.

I. Prepare an Inventory and Analysis of All Existing Monitoring Programs and Implement Watershed-Based Monitoring Networks: There are many ongoing water quality monitoring and data collection efforts being undertaken by various agencies and organizations throughout the Region. (Attached is a sample chart of existing monitoring programs in the region and a map of existing monitoring programs within Monterey and Santa Cruz Counties). The Central Coast Region should immediately inventory and analyze all existing monitoring and data collection efforts and should establish region-wide and watershed-wide water quality databases that correlate and synthesize the data from existing monitoring programs. These inventories and analyses will allow the CCRWQCB to evaluate the adequacy and effectiveness of existing monitoring networks, to identify monitoring and data gaps, to effectively and efficiently determine whether additional monitoring is necessary, and to determine whether monitoring requirements can be waived in those areas that are found not to pose a significant threat to water quality.

35.5

II. Establish Two Pilot Programs in Areas of Known Water Quality Impairment: The CCRWQCB should work in cooperation with affected irrigated agricultural operations and landowners in two known impaired locations to develop and implement effective pilot monitoring programs that couple data collection with timely education, outreach, grower feedback, and problem remediation. The PG&E funds in North Monterey County and the Guadalupe funds in North Santa Barbara County provide the unique financial opportunities to develop pilot monitoring programs in known impaired locations. These pilot monitoring programs should utilize existing monitoring data to assess the contributing factors of urban, rural residential, and other land use sources of pollution.

35.6

We support the establishment of two pilot monitoring programs – to the extent these monitoring programs are not more onerous than the monitoring requirements imposed on other industries with non-point source discharges. In this regard, the pilot monitoring programs should observe the following parameters and limitations (which are modeled after the existing General Industrial NPS Permit requirements):

(a) **Frequency**: We propose monitoring one storm event per year, and one irrigation event per year. (By comparison, the General Industrial Permit requires monitoring of 2 storm events per year). Monitoring frequency shall be reduced to "first flush" [1] events after the discharger has demonstrated compliance with the Waiver rule for at least two years by completing the following: 1) Submittal of two consecutive years of monitoring data that meet the conditions of the Conditional Waiver; 2) Adoption of a Farm Water Quality Plan; and 3) Implementation of appropriate management practices. The Federal agricultural technical assistance agency, USDA Natural Resources Conservation Service, designs agricultural storm water[2] protection practices to contain 10-year storm events[3]; accordingly, affected irrigated agricultural dischargers and landowners should not be held accountable for compliance with water quality standards for storm water in rain events greater than the local 10-year storm event.

35.7

(b) **Constituents**: We propose basic nutrient constituent monitoring, limited to only those nutrient pollutants that are likely to be applied by the farming operations near the location of the monitoring site. Monitoring for toxicity should not be required. (Although toxicity findings may indicate a problem, toxicity sources and causes are difficult and costly to pinpoint, especially in mixed-use areas where agriculture, rural, suburban and urban

35.8

residential, commercial and industrial discharges flow to the same receiving water. Toxicity tests cost a minimum of $5,000 per sample to adequately pinpoint the cause of the toxicity).

35.9 (c) **Rotations and Cooperatives**: We propose that the pilot programs allow participation on a rotational basis, wherein the monitoring sites rotate over a period of time. Affected irrigated agricultural operations and landowners should be able to submit data and demonstrate compliance with monitoring requirements consistent with sections (a) and (b) above as part of a rotational program.

III. Proportionate Allocation of Monitoring Program Costs: The undersigned support a fair and equitable methodology for assigning financial responsibility for the Monitoring Program, which focuses on the cost of services being provided under the Conditional Waiver rule or monitoring program. Accordingly, we believe 35.10 that the financial responsibility of each irrigated agricultural discharger or landowner for the monitoring program should be proportional to their respective contributions to water quality impairment. To the extent necessary, the financing methodology should include *off-sets or credits* for those dischargers and landowners that contribute to or cause *water quality improvements* as a result of agricultural or drainage practices. Furthermore, the costs associated with the monitoring program should not be assigned to those irrigated agricultural dischargers or landowners in areas where testing indicates compliance with the Conditional Waiver rule. We believe that a per-acre fee assessed to include all irrigated agricultural dischargers and landowners in the Region, is not fair or equitable, and may be legally suspect.

IV. Support for Non-regulatory Technical Assistance: While we believe that monitoring is an important tool for protecting and improving water quality in the Region, it must be coupled with educational and outreach 35.11 programs to be effective in the long-term. Technical expertise and financial resources must be made available to the industry and resource agencies within the Region for *non-regulatory* technical assistance to help growers and landowners analyze monitoring results and implement on-farm management decisions.

V. Establish a Clear and Effective Enforcement Plan: The CCRWQCB shall develop, administer, and implement an effective enforcement plan to address noncompliant affected irrigated agricultural operations and 35.12 landowners. This plan should be clear and precise, to ensure that affected irrigated agricultural operations and landowners have a clear understanding of the Conditional Waiver requirements and the consequences of noncompliance.

VI. Liability Protections for Non-irrigators Assisting in Program Implementation: The CCRWQCB should provide adequate protections within the Conditional Waiver program to assure that organizations and associations which assist in Conditional Waiver implementation will not be held responsible for Conditional Waiver implementation, or subject to liability under the Conditional Waiver rule. Existing water quality programs in the Region, including for example those developed by the Coalition of Central Coast County Farm Bureaus and the Southern San Luis Obispo and Santa Barbara Watershed Coalition, are assets to water quality protection in the Region. The Conditional Waiver rule must include assurances that existing programs – including persons or entities sponsoring these programs and technical service providers (i.e., governmental agencies, resource conservation districts, water districts, private consultants, nonprofit organizations, etc.) – are not responsible for compliance with the Conditional Waiver or exposed to liability for non-compliance with the Conditional Waiver.

VI. Adopt the Following Confidentiality Clause:
To the extent farm water quality plans, lists of practices, annual reports, technical reports, monitoring reports or any other information requested or required by the Regional Board pursuant to this Conditional Waiver or any subsequent Waste Discharge Requirement contains trade secrets, information concerning secret processes, or 35.13 confidential information, such trade secrets, secret processes information and confidential information may be withheld from submission to the Regional Board upon the election of the Discharger. If and to the extent the Discharger elects to withhold trade secrets, secret process information or confidential information, the Discharger shall make the information available for review by the Regional Board in connection with any investigation or report concerning water quality, and such information shall be available for use by the Regional Board or any state agency in judicial review or enforcement proceedings involving the person furnishing the information. The Regional Board shall not make such information available for inspection by the public unless specifically authorized, in writing, by the discharger.

Central Coast Ag Task Force

Coalition of Central Coast County Farm Bureaus

Sig Christiernson

Grower-Shipper Association of Central California

Independent Growers' Association

Monterey County Cattleman's Association

Monterey County CattleWomen's Association

Monterey County Farm Bureau

Monterey County Vintners and Growers Association

Salinas River Channel Coalition

Salinas Valley Chapter of California Women for Agriculture

Salinas Valley Water Coalition

San Benito County Cattleman's Association

San Benito County Farm Bureau

San Luis Obispo County Farm Bureau

San Mateo County Farm Bureau

Santa Clara County Farm Bureau

Santa Cruz County Farm Bureau

PRESIDENT

Grower-Shipper Vegetable Association
of Santa Barbara and San Luis Obispo Counties

Santa Barbara Flower and Nursery Grower's Association

President

Santa Barbara County Cattleman's Association

1ST VICE-PRESIDENT

Santa Barbara County Farm Bureau

President

Southern San Luis Obispo and Santa Barbara County Watershed Coalition

Executive Director

Central Coast Wine Growers Association

(36)

From: Amanda Bern
To: marwin@cruzio.com
Date: 3/16/04 8:47AM
Subject: Re: who pays

Sandra,

I am sending a copy of your e-mail to Alison Jones in our office. She is directing the efforts on the Agricultural Waiver and will incorporate your comments into the public record.

I am

Amanda L. Bern
Environmental Scientist
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Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906
voice 805-594-6197
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Phone 805-594-6197
Fax 805-788-3508

>>> "marwin" <marwin@cruzio.com> 03/15/04 22:45 PM >>>
Amanda

36.1 This is a follow-up to my conversation with you after the meeting today. I think the committee should seriously consider assessing a fee to all property owners in the watershed to pay for monitoring water quality. The lack of N pollution in Corralitos and Salsipuedes Creeks demonstrates that none of the farming operations in their watersheds are experiencing fert runoff, and are therefore not contributing to the problems in the Pajaro River. Has the E. coli in Corralitos Creek been identified as human, animal or avian? Any one with a septic system could be contributing to bacterial pollution, if it is indeed of human origin.

The issue of water quality is important to everyone who lives here, and it is a great injustice to single out farming operations, which, by your own data, are not contributing to the problem, to pay for the solution. Nonpoint source pollution is just that, nonpoint, yet you folks are making farms the point source without any evidence. Let everyone who MIGHT be contributing to the problem pay something, and, when a farm is proved to be polluting, make them pay to clean it up.

Thank you for all the hard work you are doing. It is a difficult task.

Sandra Martin
Marwin@cruzio.com

CC: ajones@rb3.swrcb.ca.gov