



# California Regional Water Quality Control Board Central Coast Region



**Matthew Rodriquez**  
Secretary for  
Environmental Protection

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**Edmund G. Brown Jr.**  
Governor

Date: August 12, 2011

Draft Agricultural Order  
Public Comments for the September 1, 2011 Board Meeting

*(Use PDF bookmarks to skip directly to a letter)*

No.	Commenter(s)	No.	Commenter(s)
1	Best, Best & Krieger LLP	19	French Camp Vineyards*
2	California Dept. of Food and Agriculture	20	General Farm Investment*
3	California Farm Bureau Federation	21	Joel Stinchfield*
4	Clean Water Action, California Strawberry Commission, Environmental Defense Center, Grower-Shipper Association of the Central Coast, Monterey Coastkeeper, Monterey County Farm Bureau, Santa Barbara Channelkeeper, Western Growers	22	Kawaguchi Farms*
5	Costa Farms	23	KB Farms LLC*
6	Dragon Spring Farm	24	L.A. Hearne Co.*
7	Environmental Defense Center, Monterey Coastkeeper, Santa Barbara Channelkeeper, San Luis Obispo Coastkeeper	25	Las Vargas and Edwards Ranches*
8	Salinas River Channel Coalition	26	Maria Azevedo*
9	Salinas Valley Chamber of Commerce	27	Neil Bassetti Farms LLC*
10	Santa Barbara County Farm Bureau	28	Yamanish Farms*
11	Somach Simmons & Dunn	29	Clean Water Action California, Food & Water Watch, Central Coast Alliance United for a Sustainable Economy (CAUSE), San Jerardo Cooperative, Inc., Community Water Center, Environmental Justice Coalition for Water, Santa Lucia Chapter of the Sierra Club, Pacific Institute, Unitarian Universalist Legislative Ministry, CA, Marjorie Kay
12	Dr. John Letey	30	Senator Sam Blakeslee
13	Belli Architectural Group*	31	Best, Best & Krieger LLP
14	Bullet Ranches*	32	San Luis Obispo County Farm Bureau
15	Bullet Ranches*	33	Congressman Sam Farr
16	Coles Cattle Company*	34	Grower-Shipper Association of California
17	Doug Turner*	35	Assemblyman Katcho Achadjian
18	Frank Costa*		

\* Individual submittal of standard form letter coordinated by the California Farm Bureau



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July 18, 2011

**SENT VIA EMAIL & U.S. MAIL**

Roger Briggs, Executive Officer  
California Regional Water Quality Control Board  
Central Coast Region  
895 Aerovista Place, Suite 101  
San Luis Obispo, CA. 93401-7906

Re: Central Coast Ag Waiver

Dear Roger:

I write on behalf of Ocean Mist and RC Farms, two of the major vegetable grower operations in the region. Ocean Mist and RC Farms have been fully engaged in the waiver issue and actively focused on water quality improvement.

1. We are significant participants and contributors to the Central Coast Water Quality Preservation Cooperative (CCWQP) monitoring effort. Our operations alone have contributed nearly \$25,000 to that effort this year alone.

We are very aware of the pattern of problems associated with the defective maintenance of the waiver database, lack of staff follow up to issues, lack of compliance enforcement, etc., all of which results in misrepresenting participation, providing cover for some operations to duck participation and giving rise to some operations dropping out or failing to participate due to lack of compliance efforts.

The present Regional Board database has one of our farms underrepresented by some 96%, even though we have always been fully paid and active participants. This is merely a single example of the problems created by the Regional staff, which is totally disengaged with the grower community, solely managing an electronic database, requiring unassisted input directly from the fields. This can work if your staff is jointly coordinating with CCWQP, but will remain a disaster if that cooperation is not re-joined.

Because we have remained stalwart supporters of the waiver and CCWQP, our present costs are projected to more than double under this present program. In the future, even if the ag alternative is adopted, our costs will further increase dramatically. The present increase is due to the fact that we are having to cover for non-participants and we can get no attention to this by staff. CCWQP is at risk of totally failing as a result of these problems.

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Roger Briggs, Executive Officer  
July 18, 2011  
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2. Thanks for the memo which you recently circulated to many of us who are involved in the agricultural waiver reauthorization process. My vegetable production and packing clients (Ocean Mist and RC Farms) have been very engaged in the waiver renewal and the agriculture alternative development process, and we appreciate your recent offer to coordinate with agriculture prior to the anticipated September hearing.

I do not believe you have received a collective response from the entire ag group yet, so I wanted to respond from our clients' standpoint. As you know, we had on many occasions (in letters, calls, and testimony) suggested that your staff meet with some from agriculture in a serious attempt to identify middle ground between the extreme staff alternative and the agriculture alternative, which has many provisions offering accountability (survey, audits, etc.) beyond even the staff alternative.

My requests for such a coordinating effort and similar requests by the entire ag coalition were summarily rejected in the past. We, however, would remain more than interested in coordinating with you and your staff. We are presently reviewing the most recent circulation of proposed amendments to the staff proposal, and would be prepared to discuss those issues.

Please let us know how you would propose following up on 1) the membership databases and 2) your suggestions for a meeting, which we appreciate.

Sincerely,



William J. Thomas  
for BEST BEST & KRIEGER LLP

WJT:lmg

cc: Jeffrey S. Young, Board Chair  
John H. Hayashi, Board Member  
David T. Hodgin, Board Member  
Dr. Monica S. Hunter, Board Member  
Dr. Jean-Pierre Wolff, Board Member  
Russell M. Jeffries, Board Member  
Ocean Mist Farms  
RC Farms

## Steve Saiz - CDFA Comments RE Addendum to Staff Report and Agricultural Proposal

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**From:** Edward Hard <edward.hard@cdfa.ca.gov>  
**To:** <ASchroeter@waterboards.ca.gov>  
**Date:** 8/1/2011 5:00 PM  
**Subject:** CDFA Comments RE Addendum to Staff Report and Agricultural Proposal  
**CC:** Edward Hard <edward.hard@cdfa.ca.gov>, Michele Dias <michele.dias@cdfa.c...>

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August 1, 2011

Jeffrey S. Young, Chairman of the Board  
Roger Briggs, Executive Officer  
California Regional Water Quality Control Board  
Central Coast Region  
895 Aerovista Place, Suite 101  
San Luis Obispo, CA 93401

Dear Chairman Young and Executive Officer Briggs:

The Department of Food and Agriculture (CDFA) takes this opportunity to review and comment on the Addendum to the Staff Report and the Agricultural Alternative Proposal comments pertaining to the Draft Agricultural Order (Order) to regulate discharges of waste from irrigated agriculture. The CDFA understands the importance of the Order process and appreciates the opportunity to strike a balance between environmental stewardship and economic viability.

### **Addendum to Staff Report**

The CDFA submits that the Water Board staff has broad discretion for phasing and timing for implementation for the Order elements. As such, staffs' discussion on page 5 of the staff report suggests that growers joining a third party will not be accountable for ensuring compliance with water quality standards and that "working toward compliance" is somehow not satisfactory.

The CDFA supports growers who are "working towards compliance" and contends that the Water Board should be accepting and supporting of those growers. The water quality conditions the Water Board is addressing through this Order developed over many years, accordingly a strategic phasing of requirements within economic reason and practicality are paramount towards improving water quality and environmental conditions.

Additionally, on page 6 of the staff report, the Water Board to date has not provided the opportunity for an alternative set of conditions for those growers electing to participate in a third party group. The third party groups need effective guidance from the Water Board on alternative set of conditions for those in third party groups.

### **Attachment B, Terms and Conditions, Technical Reports**

#### *Work plan*

In review of the General Report/Workplan amendment submitted by the Agricultural Alternative Proposal track edit comments, the CDFA supports the Workplan concept. The concept affords for a necessary Technical

Advisory Committee to assist third party groups in the proposed auditing process of agricultural operations and thus can help reduce the direct burden to individual growers.

Furthermore, the Technical Advisory Committee brings necessary scientific expertise to ensure operational awareness of the farming operations relative to the agronomic, soil and hydrologic conditions on individual farms and within a watershed.

#### *Audit Criteria*

Within sections (b) and (d) on page 5 of Attachment B, the addition of including known, documented and or commonly accepted management practices are very appropriate considering the need for the best available science that will facilitate improvements to water quality conditions.

The CDFA recommends that the existing draft language be inclusive, but not limited to management practices identified through the CDFA Fertilizer Research and Education Program, the University of California Cooperative Extension and the Natural Resources Conservation Service.

#### **Groundwater Assessment, Monitoring and Reporting Requirements**

Per the Agricultural Alternative Proposal, growers should be allowed to perform a work plan for groundwater assessment within one year of the Order adoption and within five years submit a final report of laboratory data collected from well samples.

The milestone/dates proposed by the Agricultural Alternative Proposal are consistent with the goals and objectives of the Water Board. The goal of decreasing the in-stream sediment by 20% and nitrate loads by 10% from current cooperative monitoring program sites is within acceptable limits of the agricultural industry.

Yours truly,

Edward J. Hard

cc: Karen Ross, Secretary  
Sandy Schubert, Undersecretary  
Michele Dias, General Counsel  
Rick Jensen, Director, Inspection Services  
Asif Maan, Environmental Program Manager II  
Edward Hard, FREP Program Lead

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# CALIFORNIA FARM BUREAU FEDERATION

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August 1, 2011

Jeffrey S. Young, Chairman of the Board  
Roger Briggs, Executive Officer  
Central Coast Regional Water Quality Control Board  
Attn: Agricultural Order Renewal  
895 Aerovista Place, Suite 101  
San Luis Obispo, CA 93401-7906

**Re: *Comments on the Addendum to the Staff Report for an Updated Conditional Waiver of Waste Discharge Requirements for Irrigated Agricultural Waste Discharges, Draft Agricultural Order No. R3-2011-0006; Evaluation of New Information Provided by Agricultural Industry Representatives on March 17, 2011 and May 4, 2011***

Dear Chairman Young and Members of the Board:

The California Farm Bureau Federation is a non-governmental, non-profit, voluntary membership California corporation whose purpose is to protect and promote agricultural interests throughout the state of California and to find solutions to the problems of the farm, the farm home, and the rural community. Farm Bureau is California's largest farm organization, comprised of 53 county Farm Bureaus currently representing approximately 76,500 agricultural and associate members in 56 counties. Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California's resources.

On behalf of the Santa Barbara County Farm Bureau, the San Luis Obispo County Farm Bureau, the Monterey County Farm Bureau, the San Benito County Farm Bureau, the Santa Cruz County Farm Bureau, the Santa Clara County Farm Bureau, and the San Mateo County Farm Bureau, the California Farm Bureau Federation ("Farm Bureau") appreciates the opportunity provided by the Central Coast Regional Water Quality Control Board ("Regional Board") to submit comments on the *Addendum to the Staff Report for an Updated Conditional Waiver of Waste Discharge Requirements for Irrigated Agricultural Waste Discharges, Draft Agricultural Order No. R3-2011-0006 and the Evaluation of New Information Provided by Agricultural Industry*

NANCY N. McDONOUGH, GENERAL COUNSEL

ASSOCIATE COUNSEL:

CARL G. BORDEN • KAREN NORENE MILLS • CHRISTIAN C. SCHEURING • KARI E. FISHER • JACK L. RICE

*Comments on Ag Order Addendum to Staff Report*

*Representatives* (“Addendum to Staff Report”). Farm Bureau has numerous reservations and concerns regarding the Addendum to the Staff Report, including the evaluation of the new information provided by the Agricultural Industry and the revisions to the Draft Order, and offers the following specific comments contained herein.

**I. Comments on the Evaluation of Information Provided by the Agricultural Industry**

**A. The Evaluation of the New Information Provided by Agricultural Industry Representatives is Not an Objective Review**

During the Regional Board hearing on May 4, 2011, discussion centered on the Regional Board staff’s Draft Order and the Agricultural Industry Representatives’ Proposal<sup>1</sup> (“Ag Alternative Proposal”). Given the two viable proposals, the Regional Board directed staff to provide an addendum to the Staff Report evaluating and comparing the new information within the Ag Alternative Proposal to staff’s Draft Order. (See July 8, 2011 Public Notice; Addendum to Staff Report, p. 1.) Although the Addendum to the Staff Report contains commentary on the Ag Alternative Proposal, such commentary is neither objective, appropriate, nor proper.

Further, the evaluation of the Ag Alternative Proposal was intended to be one in which staff objectively compared and contrasted the Ag Alternative Proposal to staff’s Draft Order, elaborating on components that are feasible, as well as those components that are infeasible. (See May 4, 2011 Board Transcript, pp. 649:21-650:3.) As evidenced by the text of the Addendum, no objective comparison is evident. Rather, the text is replete with inaccurate assumptions and conclusions, and is biased and flawed. The analysis of the Ag Alternative Proposal contains numerous substantive flaws, misstatements, and incorrect assumptions leading to inaccurate and deleterious conclusions. Although far from exhaustive, a few of the major inaccuracies include: 1) concluding that the use of third party groups is invalid and conflicts with the Porter-Cologne Water Quality Control Act (“Porter-Cologne”) and the Nonpoint Source Policy (“NPS Policy”); 2) attributing statements to members of the agricultural community when no such statements were made; 3) unsupportable conclusion regarding the cost of the third-party group proposal; 4) disregarding the conditions and compliance measures within the Proposal and Attachment B; 5) improper determination of the Ag Alternative Proposal’s purpose; and 6) improper requirements regarding proprietary and confidential information. By utilizing incorrect assumptions and false conclusions, the evaluation of the Ag Alternative Proposal is incomplete and inappropriate. Further, no comparison of

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<sup>1</sup> In order to correctly evaluate the Ag Alternative Proposal, all documents submitted by agriculture must be read together. (See May 4, 2011 Board Transcript, pp. 649:21-650:3.) This includes the December 3, 2010 proposal, the March 17, 2011 additions, and the May 4, 2011 revisions and additions. By reviewing only a portion of these documents in a vacuum, as evidenced by the analysis contained within the Addendum to the Staff Report, the evaluation of the Ag Alternative Proposal is unequivocally flawed and any such conclusions drawn from the “evaluation” are improper and deficient.

*Comments on Ag Order Addendum to Staff Report*

staff's Draft Order was included. Rather, "defects" or "blemishes" within the Ag Alternative Proposal are improperly highlighted while staff's Draft Order's "fine points" are improperly emphasized.

Contrary to staff's conclusions, the Ag Alternative Proposal is enforceable; contains a legally consistent approach for the use of third-party groups; provides accountability; will control waste discharges from irrigated agricultural lands; provides flexibility; and includes adequate surface water and groundwater monitoring components.

B. The Ag Alternative Proposal's General Compliance with Porter-Cologne and Nonpoint Source Policy

The Addendum to the Staff Report concludes, and reiterates throughout, "the Agricultural Alternative Proposal does not comply with Water Code Section 13269 and the NPS Policy." (Staff Report, p. 2.) These conclusions are based on misguided interpretations of Porter-Cologne and the NPS Policy. For example, page 5 states, "Water Code section 13269 authorizes the Water Board to waive waste discharge requirements for individual dischargers who comply with the conditions." (Staff Report, p. 5.) Water Code 13269 states:

[T]he provisions of subdivisions (a) and (c) of Section 13260, subdivision (a) of Section 13263, or subdivision (a) of Section 13264 *may be waived by the state board or a regional board as to a specific discharge or type of discharge* if the state board or a regional board determines, after any necessary state board or regional board meeting, that the waiver is consistent with any applicable state or regional water quality control plan and is in the public interest. (Wat. Code, § 13269(a)(1), emphasis added.)

Accordingly, section 13269 does not limit the waiving of waste discharge requirements *only to individual dischargers*. Rather, section 13269 is much broader and applies to "discharges or types of discharge," including the very conditions proposed in the Ag Alternative Proposal. (*Ibid.*)

A proper interpretation of Porter-Cologne and the NPS Policy would substantially amend a majority, if not all, of the conclusions drawn in the "Legal Evaluation of the Agricultural Proposal" section of the Staff Report. The Addendum to the Staff Report should be revised to appropriately reflect the law, and the Ag Alternative Proposal should then be re-evaluated and compared to the staff Draft Order.

C. Third-Party Groups/Coalitions Are Proper Parties to Manage Components of the Irrigated Lands Regulatory Program

The Staff Report's evaluation misconstrues the use of third-party groups/coalitions as proposed by the Ag Alternative Proposal. Staff's Revised Draft

Comments on Ag Order Addendum to Staff Report

Order, as amended in May, now allows for third-party groups. As stated in the Addendum to the Staff Report:

It is important to recognize that the Draft Agricultural Order proposed by staff also explicitly allows for third-party groups (Condition #10) and provides incentives for third-party certifications that require implementation of similar management practices as the Draft Agricultural Order (e.g. Sustainable in Practice, Condition #14.1d). In addition, the Draft Agricultural Order encourages participation in cooperative water quality improvement efforts, such as the implementation of local or regional scale water quality protection and treatment strategies (Finding #12). And, for these cooperative efforts, the Draft Agricultural Order provides for the opportunity to propose alternative monitoring and alternative time schedules to allow flexibility for such cooperative efforts (Condition #12). Furthermore, the Draft Agriculture Order also allows dischargers to implement cooperative or individual surface receiving water monitoring (Condition #52), and staff has proposed revisions to allow dischargers to participate in individual or cooperative groundwater monitoring. (Staff Report, p. 7.)

The Ag Alternative Proposal contains the very point listed above that is “explicitly allowed” by staff’s Draft Order. Specifically, the Ag Alternative Proposal’s third-party group concept requires “implementation of management practices,” would incorporate “cooperative water quality improvement efforts,” would further the “implementation of local or regional scale water quality protection and treatment strategies,” consists of “alternative monitoring” on an “alternative time schedule,” and incorporates “cooperative surface receiving water monitoring and cooperative groundwater monitoring.” (*Ibid.*) Notwithstanding the inclusion of the above factors listed in staff’s Draft Order, the Staff Report concludes that “some of the agricultural industry representatives’ proposed recommendations, particularly with respect to third-party groups, are not consistent with Water Code section 13269.” (Staff Report, p. 2.)

Unfortunately, within the Addendum to the Staff Report, it appears components of the Ag Alternative Proposal’s third-party group concept have been misconstrued and misinterpreted. The Staff Report’s recurring “findings” include: (a) Inconsistency with Porter-Cologne; (b) Inconsistency with NPS Policy; (c) “Work toward compliance” rather than attaining water quality standards (p. 6); and (d) Ag Alternative Proposal’s primary purpose is the formation of a stand-alone order for a third-party group. The inappropriateness of these conclusions will be discussed *infra*.

The State Water Resources Control Board (“State Board”) recognizes the validity of third party groups within the irrigated lands regulatory program structure. (See Attachment 1, SWRCB 2010-2011 Fee Schedule available at <[http://www.swrcb.ca.gov/resources/fees/docs/irrigated\\_agricultural\\_discharge\\_waiver\\_fees.pdf](http://www.swrcb.ca.gov/resources/fees/docs/irrigated_agricultural_discharge_waiver_fees.pdf)>.) Moreover, the State Board, recognizing the benefits of a third party group or

coalition, encourages the use of third-party groups by reducing the fees associated with waivers for discharges from agricultural land if a discharger is a member of an approved third-party group. (*Ibid*; see also State Board Water Quality Orders.) The payment of the annual fee, either through discharger participation in a third-party group or as an individual, is further reiterated by the NPS Policy:

Dischargers operating under a WDR must submit an annual fee to the appropriate RWQCB to cover administrative costs. The fee schedule is determined by the SWRCB, based upon factors such as total flow, volume, number of animals or area involved, etc. (SWRCB, Policy For Implementation and Enforcement of The Nonpoint Source Pollution Control Program (May 20, 2004) p. 4 (“NPS Policy”).)

The Ag Alternative Proposal’s third-party group is based on the Central Valley Regional Water Quality Control Board’s “Coalition Group Conditional Waiver of Waste Discharge Requirements for Discharges From Irrigated Lands.” (Central Valley Regional Water Quality Control Board, Order No. R5-2006-0053, Coalition Group Conditional Waiver of Waste Discharge Requirements for Discharges From Irrigated Lands.) The Central Valley Regional Board has long approved of and encouraged the use of third-party groups to aid in the implementation of the irrigated lands regulatory program. The Central Valley Regional Board has found, and the State Board has agreed, that the use of coalitions or third-party groups is consistent with the Water Code and the NPS Policy. In particular, the Central Valley Regional Board’s findings conclude:

As authorized by Water Code Section 13269, this Order conditionally waives the requirement to file RWDs and obtain WDRs for Dischargers, as defined in Attachment A, who are participants in a Coalition Group that complies with the *Coalition Group Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands*. (Central Valley Regional Board, Coalition Group Waiver, p. 2, ¶ 10.)

The Central Valley Water Board acknowledges that the Coalition Groups are not responsible for enforcing the Water Code. (Central Valley Regional Board, Coalition Group Waiver, p. 3 ¶ 14.)

Neither the Water Code nor Resolution No. 68-16 requires instantaneous compliance with applicable water quality standards. (Central Valley Regional Board, Coalition Group Waiver, p. 6 ¶ 24.)

As stated *infra*, the Ag Alternative Proposal’s third-party group concept borrows conditions and language *directly* from the Central Valley Coalition Group Waiver, a waiver found to be in compliance with the NPS Policy and Porter-Cologne. Accordingly, if the inclusion of third-party groups is tantamount to a legal means of compliance within staff’s Draft Order (see Staff Report, p. 7), the inclusion of a third-party group based on a

legally valid existing coalition conditional waiver should also be a legal means to compliance.

D. The Use of Third-Party Groups/Coalitions Complies with Porter-Cologne and the Nonpoint Source Policy

Staff's conclusions throughout the evaluation of the Ag Alternative Proposal are flawed and do not reflect a proper reading of Ag's Proposal. For example, a conclusion is drawn that the Ag Alternative Proposal is not consistent with the Water Code, the Basin Plan, and the NPS Policy because it "would allow the 'third-party group' to be responsible for compliance, rather than the individual discharger." (Staff Report, p. 5.) This conclusion is not supported by any evidence or citation.

Within the Ag Alternative Proposal, substantial conditions are included detailing the requirements for the third-party group as well as individual dischargers. Foremost, all dischargers, even those who participate within a third-party group, must comply with water quality standards. Explicit language in the May 2011 Attachment B clearly indicates that *both* the third-party groups *and* its participants are responsible for meeting all of the conditions contained therein. Specifically, the language of the May 2011 Attachment B states, "[a] third party group and/or its participants shall comply with the following conditions." (Ag Alternative Proposal, Attachment B (May 2011) p. 1.) The use of "and/or" is modeled directly after the Central Valley Regional Water Quality Control Board, Order No. R5-2006-0053, Coalition Group Conditional Waiver of Waste Discharge Requirements for Discharges From Irrigated Lands, which utilizes the conjunctive "and" as well as the disjunctive "or" throughout the Order and Attachments. The use of "and/or" is not unclear (see Staff Report, p. 10), but rather overly inclusive and ensures that the individual discharger is ultimately responsible for the conditions of the Order, as specified in Attachment B. Thus, if a third-party group fails to perform the required conditions, the Regional Board may bring an enforcement action for noncompliance against the individual discharger. (See Wat. Code, § 13267; Staff Report, p. 23, [Consequences for noncompliance with the Ag Alternative Proposal is the same as that found in staff's Draft Order. Thus, the following sentence is applicable to both the Ag Alternative Proposal and staff's Draft Order: "If the discharger fails to address impacts to water quality by taking the actions required by the Order, including evaluating the effectiveness of their management practices and improving as needed, the discharger would then be subject to progressive enforcement and possible monetary liability."].)<sup>2</sup>

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<sup>2</sup> As evidenced by the NPS Policy, the Regional Board retains its discretionary authority to ensure compliance with the conditions of the waiver:

"[T]he RWQCBs retain their prosecutorial discretion to decide how to ensure compliance with their conditional waivers."

...

"There are many different ways for the RWQCBs to ensure compliance."  
(NPS Policy, p. 5.)

The Ag Alternative Proposal does not infringe upon the Regional Board's discretion. Thus,

Further, the Ag Alternative Proposal's third-party group conditions, as detailed in Attachment B, comply with the NPS Policy because individual dischargers, and not the third-party group, implement and improve management practices. As stated in the Staff Report to bolster staff's Draft Order, "consistent with the NPS Policy, dischargers comply by implementing and improving management practices." (Staff Report, pp. 22-23.) In other words, compliance with conditional waiver and the NPS Policy is tantamount to the implementation of management practices. The Ag Alternative Proposal contains numerous provisions explicitly requiring the implementation of management practices:

(4) Implement the Farm Plan and management practices to improve water quality; and

(5) Assess the effectiveness of implemented agricultural management practices in attaining water quality benchmarks and, when necessary to attain water quality benchmarks, and identify, implement, or upgrade management practices. (Ag Alternative Proposal (Dec. 3, 2010), p. 1 ¶¶4-5.)

...

Dischargers who are participating in a third party group shall implement management practices, as necessary, to achieve best practicable treatment or control of the discharge to reduce wastes in the discharges. (Ag Alternative Proposal, Attachment B (May 2011) p. 2 ¶ 6.)

Therefore, as evidenced by conditions, the Ag Alternative Proposal requires individual dischargers to implement and improve management practices, and complies with the NPS Policy. Thus, all portions of the Addendum to the Staff Report that incorrectly state this misinterpretation should be corrected to properly reflect the Ag Alternative Proposal and its adherence to the Porter-Cologne and the NPS Policy.

E. Comparison of the Ag Alternative Proposal to the 2004 Ag Order is Improper

The Addendum to the Staff Report contains bold attempts to discredit the Ag Alternative Proposal by characterizing the Proposal's requirements as less stringent than the 2004 Ag Order. Specifically, the Staff Report states: "the Agricultural Alternative Proposal would be less stringent than the current 2004 Ag Order and would not sufficiently address the severe water quality conditions in agricultural areas and the significant impacts to water quality resulting from agricultural discharges." (Staff Report, p. 2.) This "comparison" with the 2004 Ag Order is faulty.

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statements within the Addendum indicating that "it would limit the Board's Authority and discretion to enforce" or it "is clearly not enforceable" are irrelevant. (Staff Report, p. 2.)

The Ag Alternative Proposal fully complies with the NPS Policy and Porter-Cologne; is enforceable; contains a legally consistent approach for the use of third-party groups; provides accountability; will control waste discharges from irrigated agricultural lands; provides flexibility; and includes adequate surface water and groundwater monitoring components. Further, the Proposal contains restrictive conditions, requirements, and mandates that far exceed other irrigated lands regulatory programs throughout the state, not to mention the 2004 Ag Order.

#### F. Improper Purpose

The Staff Report concludes “the primary focus of the Agricultural Proposal was to create waiver conditions specific to the formation of third-party groups in the form of a stand-alone order” and the “primary purpose of the Agricultural Proposal is to establish a detailed framework for third-party groups.” (Staff Report, pp. 4, 7, 29.) The primary focus and purpose of the Ag Alternative Proposal has never been the formation of a third-party group in the form of a stand-alone order. Such statements are not included in any of the Ag proposals submitted to the Regional Board, nor has the agricultural community stated that the third-party group is the sole purpose of an alternative proposal. Rather, the Ag Alternative Proposal is that, an *alternative approach* to the overly prescriptive and burdensome approach put forth by staff. The Ag Alternative Proposal has, from its first iteration, been an approach developed by agriculture, the very community regulated by the Order, to regulate discharges from irrigated agricultural lands in a feasible manner. (See Ag Alternative Proposal (Dec. 3, 2010) p. 1 section entitled “Purpose of the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Agriculture Lands”.)

## II. **Comments on Additions and Revisions to the Staff Draft Order Contained within the Addendum to the Staff Report**

### A. Farm/Ranch Definition

The Addendum to the Staff Report fundamentally changes the regulation of discharges from irrigated lands by substituting an individual farm/ranch for operation. In the November 19, 2010 Draft Ag Order, the tiering criteria was based on operations. In the July 8, 2011 Revised Draft Order, “operation” has been deleted and instead replaced with “farm/ranch.” Regulation at the individual farm/ranch level instead of operation level represents a dramatic shift in the number of properties subject to the conditions of the waiver.

Additionally, the definition of “farm/ranch” has been substantially revised to include “a tract of land where commercial crops are produced or normally would have been produced.” (Addendum to the Staff Report, Attachment A, p. 48, ¶ 19.) The addition of the phrase “normally would have been produced” is vague, arbitrary, capricious, and unsupported. As currently defined, “farm/ranch” is overly expansive and inappropriately broad in breadth.

B. Change in Total Acres for Tier Designation is Improper, Arbitrary, and Capricious

The July 8, 2011 Revised Draft Order fundamentally changes the tiering criteria related to acreage and crop types with high potential to discharge nitrogen to groundwater for all tiers. The new acreage trigger of 50 acres and 500 acres, depending on the tier classification, is not supported by any rationale or evidence, is arbitrary, and does not provide enough flexibility for situations unique to agricultural tenant practices.

The change in total acres for tier designation amounts to novel components that were not part of any alternative that received environmental review pursuant to the California Environmental Quality Act (“CEQA”). (See CEQA comments *infra*.) Therefore, this new tiering criteria constitutes a new alternative pursuant to CEQA and must be properly evaluated prior to project adoption and certification of the Final SEIR.

C. Inclusion of Regulation of Tile Drains is Improper

The Draft Order specifically states, “the focus of this Order is non-tile drain discharges. However, new language has been added to specifically require individual monitoring, reporting of management practices, and attainment of water quality standards for tile drain discharges.” These new requirements for tile drains are inconsistent with and contradictory to the very focus of the Order. Further, the inclusion of tile drain discharges is a new component that was not part of any alternative that received environmental review pursuant to CEQA. (See CEQA comments *infra*.) Therefore, the regulation of tile drains must be properly evaluated pursuant to CEQA prior to project adoption and certification of the Final SEIR.

D. Shift in Burden of Proof

The addition requiring a discharger to “provide adequate legal justification pursuant to Water Code section 13267” when asserting that portions of a report contain trade secrets, proprietary information, or secret processes is inappropriate. (Staff Report, p. 27; Red-line Strikeout Version of Draft Order (“July 8, 2011 Revised Draft Order”), p. 25 ¶ 65.) The Water Code does not place this burden on dischargers. Water Code section 13267(b)(2) states:

When requested by the person furnishing a report, the portions of a report that might disclose trade secrets or secret processes may not be made available for inspection by the public but shall be made available to governmental agencies for use in making studies. However, these portions of a report shall be available for use by the state or any state agency in judicial review or enforcement proceedings involving the person furnishing the report.

Water Code section 13267 does not require the discharger to prove with “legal certainty” or provide a “legal justification” that information contained within reports are confidential, trade secrets, proprietary, or secret processes. Rather, the individual “furnishing the report” is only required to request that those portions be kept confidential from public disclosure. Therefore, the new “legal justification” requirement is improper and should be deleted.

### **III. Comments on CEQA Compliance Regarding Additions and Revisions to the Staff Draft Order Contained within the Addendum to the Staff Report**

#### **A. Failure to Properly Analyze the New Draft Order Under CEQA**

Within the Addendum to the Staff Report released on July 8, 2011, staff released “Specific Revisions to the Draft Agricultural Order<sup>3</sup>.” These revisions, which make up the project proposed for Board adoption, were not properly analyzed under CEQA as they were not in existence during *any* of the stages of environmental review.<sup>4</sup>

The Draft SEIR and Final SEIR analyzed the alternatives *in existence at that time*. However, the Revised Draft Order within the Addendum to the Staff Report (“Revised Draft Order”) was not in existence since it was not released for public review until July 8, 2011.

The Revised Draft Order within the Addendum to the Staff Report constitutes a new alternative for the regulation of irrigated agricultural waste discharges. Although the July 8, 2011 Revised Draft Order is a “conditional waiver of waste discharge requirements” and, thus, similar in regulatory format as previous alternatives analyzed within the Draft SEIR and Final SEIR, the July 8, 2011 alternative contains new requirements and regulatory conditions and is fundamentally different from the November 19, 2010 Draft Ag Order alternative. New additions or revisions to the July 8, 2011 alternative include:<sup>5</sup>

- A new tiering criteria;
- Change in the definition of “farm or ranch”;
- Change in the definition of “operation”;
- Regulation at the individual farm/ranch level instead of operation level;

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<sup>3</sup> “Specific Revisions to the Draft Agricultural Order” are discussed within the Addendum to the Staff Report. Thus, any comments made regarding these revisions fall within the scope of comments accepted by the Regional Board as noticed in the July 8, 2011 Public Notice.

<sup>4</sup> Farm Bureau maintains the arguments made in its January 3, 2011 comment letter regarding the improper CEQA analysis of the November 19, 2010 Staff Draft Ag Order, the Draft SEIR, and the Final EIR, and incorporates all such arguments into this comment letter.

<sup>5</sup> The list of revisions and additions is not inclusive.

Comments on Ag Order Addendum to Staff Report

- Restriction of total irrigated acreage for Tier 1 from 1,000 acres to less than or equal to 50 acres;
- Restriction of total irrigated acreage for Tier 2 from 1,000 acres to 50-500 acres;
- Change in total irrigated acreage for Tier 3 from greater than 1,000 acres to greater than 500 acres;
- Inclusion of tile drains requirements including monitoring;
- Revision to give Executive Officer discretionary authority over tile drain compliance;
- New requirements for prevention of aquifer cross-contamination for groundwater wells;
- Deletion of the requirement to allow Farm Plans to remain on farm;
- Addition of monitoring requirements in place of previous sampling requirements, thus changing the associated legal requirements;
- Improper shift of burden of proof for exemptions from public disclosure;
- Inclusion of new information such as pesticide, herbicide, and fungicide data;
- Changes to the Monitoring and Reporting Requirements for Tier 1;
- Changes to the Monitoring and Reporting Requirements for Tier 2; and
- Changes to the Monitoring and Reporting Requirements for Tier 3.

Rather than recirculating the SEIR with a new section containing the environmental analysis of the July 8, 2011 alternative, the Addendum to the Staff Report is silent regarding environmental compliance. No mention is made regarding the lack of CEQA review or any such forthcoming review. Therefore, the Revised Draft Order, which is now the *very project* recommended by staff for approval, constitutes a brand new alternative that has not undergone any environmental review, and thus, violates CEQA.

Likewise, in its current state, the Final SEIR has not analyzed the brand new alternative set to be considered by the Regional Board. Thus, the Final SEIR cannot be certified, as it contains no environmental review of the very project to be approved and carried about by the lead agency. CEQA is very clear in its purpose and requirements:

“CEQA generally provides that, before a public agency carries out or approves any discretionary project - i.e., any activity that requires the exercise of agency judgment or deliberation and foreseeably may cause physical damage to the environment - the agency must first assess the project’s potential environmental effects.” (*Stockton Citizens for Sensible Planning v. City of Stockton* (2010) 48 Cal.4th 481, 498 (citations omitted); Pub. Resources Code, § 21061.)

“‘The EIR is the heart of CEQA,’ and the integrity of the process is dependent on the adequacy of the EIR.” (*Cherry Valley Pass Acres &*

Comments on Ag Order Addendum to Staff Report

*Neighbors v. City of Beaumont* (2010) 190 Cal. App.4th 316,327 (citation omitted).) “The EIR is the primary means of achieving the Legislature’s considered declaration that it is the policy of this state to ‘take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state.’” “The EIR ... is the mechanism prescribed by CEQA to force informed decision making and to expose the decision making process to public scrutiny.” (*Planning & Cons. League v. Dept. of Water Res.* (2000) 83 Cal. App.4th 892, 910.)

“The fundamental purpose of an EIR is ‘to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment.’” (*Center for Bio. Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866, 882 (citation omitted).) “For the EIR to serve these goals it must present information in such a manner that the foreseeable impacts of pursuing the project can actually be understood and weighed, and the public must be given an adequate opportunity to comment on that presentation before the decision to go forward is made.” (*Comm. for a Better Env. v. City of Richmond* (2010) 184 Cal.App.4th 70, 82 (citation omitted).)

Although an EIR need not consider all potential alternatives to the project and instead need only to consider a reasonable range of alternatives, the alternative preferred and recommended by the agency must be considered and examined within the EIR. (See Cal. Code Regs., tit. 14, § 15226.6(a).) Further, the EIR must contain sufficient information about *each alternative* to permit an evaluation of the relative merits of the alternatives and the project. (*Ibid.*) Here, the Draft SEIR analyzed the November 17, 2010 staff preferred Ag Order and briefly identified a handful of other alternatives. The Final SEIR was released just prior to the March 17, 2011 Board meeting. The Final SEIR and accompanying staff report contained only those alternatives identified in the Draft SEIR. Only after the completion of both the Draft SEIR and Final SEIR and the close of public comments was a new alternative, the July 8, 2011 Revised Draft Order, released. As stated previously, a new alternative must receive full CEQA review. Reliance on existing environmental review which was completed *prior to* the development of the July 8, 2011 Revised Draft Order directly contradicts existing case law.<sup>6</sup> (Pub. Resources

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<sup>6</sup> CEQA’s statutory framework sets forth a series of analytical steps intended to promote the fundamental goals and purposes of environmental review—information, public participation, mitigation, and governmental agency accountability. (Cal. Code Regs., tit. 14, § 15002.) Specifically, the basic purposes of CEQA review include: informing governmental decision makers and the public about the potential significant environmental effects of proposed activities; identifying ways that environmental damage can be avoided or significantly reduced; requiring changes in projects through the use of alternatives or mitigation measures when feasible; and disclosing to the public the reasons why a project was approved if significant environmental effects are involved. (See Pub. Resources Code, §§ 21001, 21001.1, 21002, 21003, 21006, 21064.) Adopting a project without complying with the above requirements violates CEQA.

Code, §§ 21000, *et seq.*; Cal. Code Regs., tit. 14, § 15000, *et seq.*) Without proper evaluation of what would result when those elements are combined with each other, the Final SEIR is substantively and procedurally flawed and the fundamental goals of CEQA are not met.

The Revised Draft Order substantially differs from the November 17, 2010 staff preferred Ag Order. Specifically, the Revised Draft Order imposes new burdens on irrigated agricultural operations throughout the Central Coast, which will have significant and cumulatively considerable impacts on the environment. Such impacts must be analyzed. (See Cal. Code Regs., tit. 14, § 15130.) Further, the Revised Draft Order introduces a new tiering structure and associated requirements. (See Staff Report, pp. 23-28, Red-line Strikeout Version of Revised Draft Order.) These new requirements are not merely a “variation” on the alternatives in the Draft and Final SEIRs but rather include elements that were not thoroughly considered previously. Given the likely significant and identifiable environmental impacts that will occur if the Revised Draft Order is adopted, including, but not limited to, impacts on agricultural resources, potential conversion and loss of agricultural land, and increased economic costs, any reliance on previous environmental review and economic analysis is inappropriate. Additional environmental review must be conducted and recirculated. (Pub. Resources Code, § 21092.1; Cal. Code Regs., tit. 14, § 15088.5.)

Changes to the Revised Draft Order, in the form of additions, have deprived the public of meaningful opportunity to comment on the impacts and to suggest feasible alternatives. The July 8, 2011 Revised Draft Order must be subjected to the same “critical evaluation” that occurs in the draft environmental review stages. (*See Sutter Sensible Planning, Inc. v. Board of Supervisors* (1981) 122 Cal.App.3d 813, 822.) Further, by failing to prepare additional environmental review and recirculate the document, the public is denied an opportunity to “test, assess, and evaluate data and make an informed judgment as to the validity of the conclusions to be drawn therefrom.” (*Ibid.*) Thus, given the significant new information, and the significant changes and additions to overall program, definitions, timeline, compliance, tiers, and monitoring, the environmental impact report must be revised to include a full analysis of the July 8, 2011 Revised Draft Order, and a new notice of availability must be issued allowing the public an opportunity to provide meaningful review and comment. (See Cal. Code Regs., tit. 14, §§ 15087, 15088.5.)

B. The Revised Draft Order Contains Arbitrary Designations and Was Not Properly Reviewed Within the Draft SEIR or Final SEIR

The tiering structure within the July 8, 2011 Revised Draft Order includes considerable changes, including regulation at the individual farm/ranch level instead of operation level and substantial total irrigated acreage constraints, none of which were included in previous alternatives, or reviewed within the Draft SEIR or Final SEIR.

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These new inclusions, the effects of which have not been thoroughly analyzed in any environmental review, greatly expand the breadth and scope of the program. Given that numerous operations *may now* fall under Tier 2 and Tier 3 requirements, and thus, must comply with additional reporting and monitoring requirements, this newly revised tiering structure must undergo CEQA review and proper economic analysis.

C. Failure to Adequately Analyze the Economic Impacts of the New Project Alternative Under Porter-Cologne

The requirement to consider economics under Porter-Cologne is absolute. Water Code, section 13141 explicitly mandates:

State policy for water quality control adopted or revised in accordance with the provisions of this article, and regional water quality control plans approved or revised in accordance with Section 13245, shall become a part of the California Water Plan effective when such state policy for water quality control, and such regional water quality control plans have been reported to the Legislature at any session thereof. However, prior to implementation of any agricultural water quality control program, an estimate of the total cost of such a program, together with an identification of potential sources of financing, shall be indicated in any regional water quality control plan.

(Wat. Code, § 13141.) Before a Regional Board can impose waste discharge requirements or conditioned water quality certification for discharges from irrigated lands, Porter-Cologne requires that the Regional Board “shall take into consideration” the following factors: “the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and the provisions of Section 13241.” (Wat. Code, § 13263.) Section 13241 in turn lists six “factors to be considered,” including “economic considerations” and “water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area.” (Wat. Code, § 13241.)

While a cost considerations analysis was conducted within the Draft SEIR, no economic analysis has been conducted for the recently Revised Draft Order. Given that the Revised Draft Order contains brand new components, reliance on the previous cost considerations analysis does not comply with Porter-Cologne. A full analysis properly acknowledging the total cost of an agricultural water quality control program and the potential sources of financing must be completed. Anticipated program implementation costs to the agricultural community include increases in potential fees, management practice implementation, monitoring costs, report preparation, and cost for education, as well as other costs. Given that the impacts of water quality regulations frequently take years to materialize, the Regional Board should analyze the economic costs and impacts within a dynamic structure taking into account the projected changes in the economic situation *over time*.

In addition to direct costs imposed on the agricultural community, the Regional Board should evaluate indirect costs, including the economic consequences that are transmitted via market interactions to other groups, such as consumers. Water quality regulation, such as the Revised Draft Order, increases the average cost of production and has a direct negative effect on producer and the consumer through the resulting increase in variable costs and the output price. The propagation of the impacts of a regulation, such as this, through the economy is well documented and can be quantified by economic analysis. Further, such analysis shall be conducted prior to adoption or implementation of any program. (Wat. Code, § 13141.) Thus, a proper economic analysis of the July 8, 2011 Draft Order must be conducted immediately.

#### D. Reliance on New Information Triggers Recirculation

The Addendum to the Staff Report relies upon substantial new information not originally included in the Draft SEIR or Final SEIR. (See, for example, Attachment A, p. 17, inclusion of additional toxic and/or bioaccumulating substances required to be monitored under the project.) The inclusion of and reliance upon new information prevents approval of the Final SEIR and triggers recirculation in order to allow the public the opportunity to review this significant new information. (Pub. Resources Code, § 21092.1; Cal. Code Regs., tit. 14, § 15088.5.) The information relied upon in the Addendum to the Staff Report and the July 8, 2011 Revised Draft Order was released subsequent to the commencement of public review but prior to final EIR certification. This addition of “significant new information” triggers the issuance of a new notice and recirculation of the revised EIR to allow additional public commentary and consultation. (*Ibid.*) The EIR must be appropriately revised to reflect the new information and then subjected to the same “critical evaluation that occurs in the draft stage” so that the public and the regulated community is not denied “an opportunity to test, assess, and evaluate the data and make an informed judgment as to the validity of the conclusions drawn therefrom. (*Sutter Sensible Planning, Inc. v. Board of Supervisors* (1981) 122 Cal. App. 3d 813, 822.)

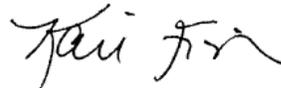
### CONCLUSION

Farm Bureau appreciates the opportunity to submit comments on the *Addendum to the Staff Report for an Updated Conditional Waiver of Waste Discharge Requirements for Irrigated Agricultural Waste Discharges, Draft Agricultural Order No. R3-2011-0006 and the Evaluation of New Information Provided by Agricultural Industry Representatives*. Farm Bureau remains concerned that the Addendum to the Staff Report and the Revised Draft Order imposes a number of requirements that are burdensome, unnecessary, and unsupported under Porter-Cologne. Further, the Revised Draft Order contains a number of provisions that were not analyzed in the Draft SEIR or Final SEIR and the resulting impacts of which has not been properly and fully considered under CEQA. Farm Bureau urges the Regional Board to resolve those issues raised herein.

*Comments on Ag Order Addendum to Staff Report*

Furthermore, in order to actually improve water quality, any future Ag Order must be designed with achievable objectives, and must be a transparent and collaborative process that utilizes agricultural stakeholders. To accomplish this, the Regional Board should adopt the Ag Alternative Proposal, or, alternatively, base the new Ag Order upon the Ag Alternative Proposal and not staff's Revised Draft Order. We look forward to further involvement and discussion with the Regional Board on the development of the new Ag Order.

Sincerely,

A handwritten signature in black ink, appearing to read "Kari Fisher". The signature is fluid and cursive, with a prominent initial "K" and a long, sweeping underline.

KARI E. FISHER  
Associate Counsel

KEF:pkh



## 2010-11 Fee Schedules

### Section 2200.6. Annual Waiver Fee Schedules

(a) Any person for whom waste discharge requirements have been waived pursuant to Section 13269 of the Water Code shall submit an annual fee to the State Board if a fee is specified for the waiver in this section.

No ambient water monitoring surcharge shall apply to annual fees for waivers as specified in this section.

(b) Annual fees for waivers for discharges from agricultural land<sup>1</sup> adopted by the Regional Water Quality Control Boards for the Central Coast, Central Valley, or Los Angeles Regions shall be as follows:

(1) Tier I: If a discharger is a member of a group that has been approved by the State Board to manage fee collection and payment, then the fee shall be \$100 per group plus \$0.12 per acre of land.

(2) Tier II: If a discharger is a member of a group that has been approved by the State Board but that does not manage fee collection and payment, then the fee shall be \$100 per farm plus \$0.20 per acre of land.

(3)(A) Tier III: Except as provided in (b)(3)(B), if a discharger is not a member of a group that has been approved by the State Board, the following fee schedule applies:

Acres	Fee Rate	Min Fee	Max Fee
0-10	\$300 + \$10/Acre	\$300	\$400
11-100	\$750 + \$5/Acre	\$805	\$1,250
101-500	\$2,000 + \$2.5/Acre	\$2,253	\$3,250
501 or More	\$4,000 + \$2/Acre	\$5,002	\$6,500

(B) Annual fees for waivers for discharges of wastes from water districts subject to Order No. R5-2006-0054 issued by the Central Valley Regional Water Quality Control Board shall be \$4,500.

(c) Upon approval by the Regional Board to join a group subject to waivers of discharges from agricultural land, the discharger shall submit to the State Water Board an application fee, unless such fee is not required by the Regional Board. The application fee is a one-time fee of \$200 for dischargers responding to a California Water Code §13267 Order and \$50 for all other dischargers. This application fee shall not apply to dischargers who were members of a group on or before June 30, 2008.

(d) For purposes of this section, the word "farm" and the word "discharger" refer to any person who is subject to Order No. R3-2004-0117 issued by the Central Coast Regional Water Quality Control Board, Order No. R4-2005-0080 issued by the Los Angeles Regional Water Quality Control Board, or Amended Order No. R5-2006-0053 and Order No. R5-2006-0054 issued by the Central Valley Regional Water Quality Control Board.

Note: Authority cited: Sections 185 and 1058, Water Code. Reference: Section 13269, Water Code.

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<sup>1</sup> As used in this section, the acreage on which the fee is based refers to the area that has been irrigated by the farmer or discharger at any time in the previous five years.

August 1, 2011

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

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

Dear Board Members:

We, the undersigned organizations, represent stakeholders with multiple interests related to the Central Coast Region's Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands (Conditional Waiver).

We have participated in a facilitated process, which was designed to identify areas where our representative perspectives may overlap. Our conversations have been productive and largely positive; stakeholders with multiple perspectives have stated that the process was a valuable learning experience.

In general, we are interested in improving water quality on the Central Coast. We are similarly interested in ensuring the continued viability of commercial agriculture on the Central Coast.

We agree that the quality of agricultural discharges can and will improve through implementation of on-farm practices.

We agree that an effective and efficient Conditional Waiver can aid stakeholders in implementing this and other objectives.

We have not been able to find agreement, however, on a regulatory structure for a Conditional Waiver which meets every party's objectives and addresses every party's concerns.

At this time we have respectfully "agreed to disagree" on many substantive points, as they relate to your staff's July 7, 2011, Draft Order and to the Agricultural Alternative.

We appreciate your Board's consideration of our various comments throughout this process, and we look forward to your Board considering each of our various perspectives as you move forward with a September 1, 2011, hearing.

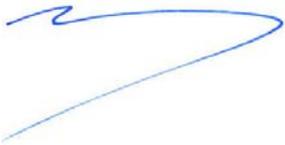
Thank You & Sincerely,



Jennifer Clary  
*Clean Water Action*



Rick Tomlinson  
*California Strawberry Commission*



Nathan G. Alley  
*Environmental Defense Center*



Abby Taylor-Silva  
*Grower-Shipper Association of the Central Coast*



Steve Shimek  
*Monterey Coastkeeper*



Norm Groot  
*Monterey County Farm Bureau*



Ben Pitterle  
*Santa Barbara Channelkeeper*



Hank Giclas  
*Western Growers*

**From:** Nathan Alley <nathanalley@edcnet.org>  
**To:** Roger Briggs <Rbriggs@waterboards.ca.gov>, Michael Thomas <mthomas@water...>  
**CC:** richard silver <rsilver@sonic.net>, Rick Tomlinson <rtomlinson@calstrawb...>  
**Date:** 8/1/2011 2:10 PM  
**Subject:** Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands  
**Attachments:** orgs\_re\_conditional\_waiver\_8.1.11.pdf

Please consider the attached letter, regarding the Central Coast Region Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands, addressed from the following organizations:

Clean Water Action  
California Strawberry Commission  
Environmental Defense Center  
Grower-Shipper Association of the Central Coast  
Monterey Coastkeeper  
Monterey County Farm Bureau  
Santa Barbara Channelkeeper  
Western Growers

Thank you.

--

Nathan G. Alley  
Staff Attorney  
Environmental Defense Center  
906 Garden Street  
Santa Barbara, California 93101  
805.963.1622 x 107

**Subject:** Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands  
**Created By:** nathanalley@edcnet.org  
**Scheduled Date:**  
**Creation Date:** 8/1/2011 2:10 PM  
**From:** Nathan Alley <nathanalley@edcnet.org>

Recipient	Action	Date & Time	Comment
CC: (jclary@cleanwater.org)			
CC: (hgiclas@wga.com)			
CC: Abby Taylor-Silva (abby@growershipper.com)			
To: Angela Schroeter (ASchroeter@waterboards.ca.gov)			
CC: Ben Pitterle (ben@sbck.org)			
CC: Jason Burnett (jason.burnett@gmail.com)			
To: Lisa McCann (Lmccann@waterboards.ca.gov)			
To: Michael Thomas (Mthomas@waterboards.ca.gov)			
CC: Norm Groot (norm@montereycfb.com)			
CC: richard silver (rsilver@sonic.net)			
CC: Rick Tomlinson (rtomlinson@calstrawberry.org)			
To: Roger Briggs (Rbriggs@waterboards.ca.gov)			
CC: Steve Shimek (exec@otterproject.org)			

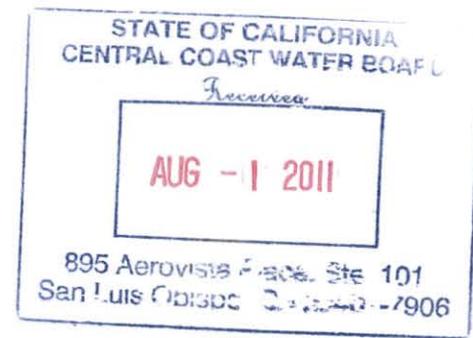
7/27/2011

Chairman Jeffrey Young

Central Coast Regional Water Quality Control Board

895 Aerovista Place, Suite 101

San Luis Obispo, CA 93401-7906



Dear Chairman Young,

Thank you for the continuing opportunity to provide comments on the staff's Draft Agricultural Order.

I fully support the Agricultural Alternative proposal (the 'Ag. Alternative') because this offers the clearest chance that any water quality improvements will be achieved in the coming five years.

As I stated in a prior board meeting in San Luis Obispo, the Agricultural Order currently proposed by your staff, in my opinion, sets Tier 3 growers up for failure. The timelines for compliance by specified dates are unrealistic and unachievable.

The requirements for Tier 3 growers as compared to the other tiers continue to be exponentially greater, even though the practices of the growers in each of those different tiers may be the same.

The staff draft order provides little or no incentive to improve water quality, but instead burdens farms with a long list of monitoring and reporting requirements. The expenditures that will be made to accomplish this reporting would be better spent on actual efforts to improve water quality, as submitted in the Ag. Alternative.

The addition of a 50 acre threshold and a reduction from 1000 acres to 500 acres in tier determinations continues the practice of using random and arbitrary criteria preferred by staff. This is not supported by any scientific data that suggests that these acreage levels have significant impacts on water quality simply due to size. As I have said in many prior comments to the board, "Isn't it about practices?" The larger size farm remains penalized under the

staff draft order when they have been the most proactive element of the agricultural community in the past six years working on innovative water management practices that have required substantial capital investment. I have shared the details of my family's investment with you previously. There is no scientific basis in a tier ranking that categorizes farms simply by size.

Farm Plans have always been a part of the individual farm or ranch operation, available to Regional Water Board staff inspection at any time. There is no justification for making these farm plans required submissions to the Regional Water Board; Farm Plans should remain as part of the farm's individual operational functions, available to Regional Water Board staff for inspection, and not subject to public scrutiny.

At the May board meeting a fellow grower commented about the Draft Order's requirement to line containment structures to avoid percolation of waste to groundwater; that is exactly my interpretation of that section also. But in the staff comments that followed it was stated that he was "reading the order wrong" and that growers were only required to monitor those containment structures. Worse yet for the public, there was no opportunity for rebuttal regarding the staff's comments that followed, for staff simply brushed aside that speaker's observations as being incorrect. But yet, here on page 19 of Attachment One of the staff report for the September 1st meeting in paragraph 32 it states, "Discharger's who utilize containment structures (such as retention ponds or reservoirs) to achieve treatment or control of the discharge of waste must construct and maintain such containment structures to avoid percolation of waste to groundwater that causes or contributes to exceedances of water quality standards, and to avoid surface water overflows that have the potential to impair water quality." For the benefit of those who don't understand, avoiding percolation from water retention and containment structures means lining or sealing those structures. That is a practice which is entirely unworkable and lacking in feasibility in that setting. It is very frustrating that staff is allowed to make such blatant misstatements in the staff comment period; with no opportunity for the public's rebuttal, they never have to answer to them and we are dependant on the Board to recognize those misstatements by staff.

It is my expectation that my costs for compliance under the Staff's Draft Agricultural Order will exceed \$550 per acre over the 5 years of the waiver for my Tier 3 ranches. To be more specific, my expected range of costs is a minimum of \$554.10 per acre and a maximum of \$739.05 per acre. On an average annual basis these numbers are a minimum of \$110.82 per acre and a maximum of \$147.81 per acre. Many of these costs will be front loaded; a greater percentage of the costs will be incurred in the 1<sup>st</sup> and 2<sup>nd</sup> year. These expected costs also have made no provision for the yield and quality losses that I expect to incur. The sum total is substantially more than the costs for compliance that I expect under the Agricultural Alternative Proposal. I would prefer to take the investment that would be required for monitoring and reporting requirements under the staff draft order and instead invest that money on actual efforts to improve water quality; in practices, and in "actions on the ground" as would be the case under the Ag. Alternative. This is the road to improved water quality.

Sincerely,



David Costa

Costa Family Farms

David Costa  
Costa Family Farms  
36817 Foothill Rd.  
Seledad, CA 93960

SAVED FROM THE POST OFFICE  
NO POSTAGE  
NECESSARY  
IF MAILED  
IN THE  
UNITED STATES



Chairman Jeffrey Young  
Central Coast Regional Water Quality Control Board  
895 Aerovista Place, Suite 101  
San Luis Obispo, CA 93401-7906

93401+8725



## Dragon Spring Farm

Mike & Carol Broadhurst, Owners  
6115 Santa Rosa Creek Road  
Cambria, CA 93428  
(805) 924-1260  
email: mdbroadhurst@att.net  
www.dragonspringfarm.com



July 19, 2011

Central Coast Water Board  
Attn: Agricultural Order Renewal  
895 Aerovista Place, Suite 101  
San Luis Obispo, CA 93401-7906

Dear Sirs,

We own and operate Dragon Spring Farm, a small farm approximately 5 miles east of Cambria. We make our living farming about twenty acres and selling direct to the public and restaurants.

I have therefore followed the proposed Ag Order R3-2011-0006 and the recent Staff Addendum (July 8, 2011) with interest and would like to file the following comments.

- As far as I can tell in this mountain of paperwork, none of the issues I raised in my letter on the November 2010 draft (Dec. 29, 2010) have been addressed. There has certainly been no correspondence with me. Many of the questions raised were ones of clarification. All those points remain unclear.
- Of particular concern to many small farmers such as us is added cost resulting from groundwater monitoring. I have included a Viewpoint I wrote that was published in the May 26, 2011 Cambrian with further detail on my personal concerns and would like this incorporated into the record. This raises a number of clear issues – for example, why require sampling in and around non-polluted watersheds, why not use existing water quality data, and why the requirement for chain of custody – that deserve clear answers not obfuscated by reams of additional words.
- On the issue of existing data I have learned from the San Luis Obispo Department of Environmental Health that considerable recent data exists for wells drilled in the same watershed as my wells. Why does the board's staff appear unwilling to use such data? What is the justification for requiring farmers to incur considerable expense for data that may exist?
- The recently issued addendum suggests, "... dischargers may participate in an acceptable cooperative groundwater monitoring effort ..." (p.26, point 10). But no further detail on what might constitute an "acceptable" cooperative effort seems to be available. Would a group of six farmers constitute an "acceptable" group? If not, how do we find such a cooperative group?
- But such tactics seem to characterize staff's approach, and leaving an impression the lack of clarity could be purposeful?
- And the baffling requirement for independent 3<sup>rd</sup> party sampling always appeared way over the top, more than doubling the direct cost of the program to farmers. I might understand such a requirement if the reputation of our country were at stake, but surely clear instructions for wellhead sampling and a farmer's signature ought to be sufficient.

Sincerely yours,

Michael and Carol Broadhurst  
Owner, Dragon Spring Farm

cc: Bruce Gibson, District 2 Supervisor

## **Viewpoint One Farmer's View**

Good for the Tribune to give front-page coverage to the current debate over clean water, a debate that falls under most people's radar (Farming runoff a slippery issue, 5-5-11). David Sneed's coverage was balanced though predictably shallow. The purpose of this Viewpoint is to fill in a few of the blanks.

Healthy drinking water for all is a realistic goal. But the underlying issues run deep into subject matter only now being explored – diagnosing and reversing damage in the few truly polluted waterbodies, understanding pollutant source and how contamination makes its way into water, and fairly implementing remedial measures while respecting the riparian water rights of farmers who don't pollute – to name but a few. I limit my comments to a small bite of an enormous pie, because as smart as we've become, fully unraveling this multivariate matrix remains beyond us.

My small farm includes a half-mile section of Santa Rosa Creek. In most years surface water disappears in sections of the creek during the summer. Yet, the creek remains home to a variety of fauna and flora, including steelhead salmon, and there has never been a problem with extracting sufficient water from the underlying aquifer to keep crops healthy.

My farm also employs what we consider best practice for drip irrigation, and we apply little in the way of herbicides and pesticides, none to most crops. We must, however, employ fertilizer to grow our crops. Most of this is introduced in liquid form via the drip irrigation system. We have also made a number of improvements under the existing Ag waiver (the rules that would be updated as a result of the current debate) to limit stormwater erosion and runoff from the farm.

Nonetheless, our farm would likely fall in the middle tier of three the Central Coast Regional Water Quality Board (CCRWQB) staff is proposing for a waiver to replace the present one, because Santa Rosa Creek is listed on the Clean Water Act Section 303(d) List of Impaired Waterbodies because summertime water temperatures sometimes exceed those in the optimal range for salmon habitat. The creek is not impaired in the more conventional sense by some dissolved pollutant. In fact the creek's water serves as a source of drinking water downstream for the town of Cambria with no treatment other than precautionary chlorination.

So, even though our farm has no tailwater (100% of our irrigation water and dissolved nutrients stay on the farm), we don't use any pesticides of concern to the CCRWQB, we have taken several actions and considerable expense to limit the amount of sediment entering the creek from the farm during strong rain events, and Santa Rosa Creek is known for good water quality, we will have to comply with a lengthy list of costly and time consuming rules should this new waiver go forward in its present form.

Arguably the most costly of these is groundwater sampling. Our farm would be required to hire a technician to sample and analyze the water from two wells once in the spring and again in the fall. The total cost of the program would be \$1800 using the estimates from the CCRWQB.

This one-size-fits-all aspect of the overall program is bursting with problems. For instance, I have seven neighbors with wells in the same aquifer, all within a mile, two at most, of my wells. Sampling of all these wells will minimally cost \$10,000 to produce duplicate data. Furthermore, at least two of these wells were

drilled in recent years and have a complete water analysis on file with the county Department of Environmental Health.

And this exemplifies possibly the worst aspect of the proposed program. It punishes the innocent – the majority of farmers who use best practice in areas without problems – without probable cause. It has left many of us scratching our heads wondering why. Numerous questions to the CCRWQB have gone unanswered.

In public the CCRWQB suggests they are bound to enforce the clean water laws without considering financial ramifications. My calculations suggest that implementing the proposed plan will minimally take \$10,000,000 out of the pockets of local farmers with no recourse. Some in the public have suggested we will just pass this expense onto consumers, but food companies buy from the lowest cost producer without regard for state or country of origin. So, high fuel costs may drive up your food cost, but not the increasingly complex regulatory environment at home.

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



August 1, 2011

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

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

Dear Board Members:

The Environmental Defense Center (EDC), Monterey Coastkeeper (MCK), Santa Barbara Channelkeeper (SBCK) and San Luis Obispo Coastkeeper (SLOCK) offer these comments for your September 1, 2011, hearing regarding the Central Coast Region Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands, Order R3-2011-0006 ("Conditional Waiver" or "Draft Order"). In general, we support a conditional waiver program that contains robust regulatory provisions to ensure that our waters are protected from agricultural discharges and which ensures that agriculture remains sustainable and productive.

Our organizations continue to support adoption of staff's February 2010 Draft Order, as it is most protective of water quality and is adequate to fulfill your statutory duties. Draft Order R3-2011-0006 is not adequate to protect the public interest, and we therefore respectfully oppose its adoption.

EDC is a non-profit public interest law firm that represents community organizations in environmental matters affecting California's south central coast. MCK serves Monterey and Santa Cruz Counties as a program of the Otter Project, and protects the water, watersheds and coastal ocean for the benefit of wildlife and human populations alike. SBCK is a non-profit environmental organization dedicated to protecting and restoring the Santa Barbara Channel and its watersheds through citizen action, education, field work and enforcement. SLOCK, a program of Environment in the Public Interest, is dedicated to the protection of water quality, watershed and coastal regulations in San Luis Obispo and northern Santa Barbara Counties.

EDC  
906 Garden St.  
Santa Barbara, CA 93101

MCK  
475 Washington St., Ste A  
Monterey, CA 93940

SBCK  
714 Bond Ave.  
Santa Barbara, CA 93103

SLOCK  
1013 Monterey St., Ste 202  
San Luis Obispo, CA 93401

Please note that our prior comments on the February and November 2010 Draft Orders are incorporated herein by reference. Comments submitted in March 2011 are attached as Exhibit A and incorporated herein by reference; these comments illustrate how far removed the Draft Order is now from where it was in February 2010, and why our organizations can no longer support staff's recommended action(s). Other specific comments follow:

### **Executive Officer Authority**

As the staff report notes on page 23, the new Draft Order removes the Executive Officer's authority to change tiering criteria. The tiering criteria have already been relaxed to the point of near-inefficacy. To further constrain the ability of this Conditional Waiver to address additional acreage or additional high priority dischargers, will only constrain its ability to protect water quality on the Central Coast.

In addition, the continued focus of this Draft Order on Diazinon and chlorpyrifos, to the exclusion of other toxic pesticides, limits the ability of the Conditional Waiver to protect water quality.

Staff needs the flexibility and authority to adapt to new information in order to meet the goals of the Order. As we have seen over the past three years, a politicized process is slow and burdensome. We oppose this revision to the Executive Officer's authority.

### **Costs**

Page 28 of the staff report notes that the Ag Alternative will likely have significantly higher costs than the staff's Draft Order. These costs will stem from a new institutional framework of third-party groups, audits, governance, filtering of data, and compiling of data into composite reports. At a higher cost, the results will likely be no improvement in water quality and an impediment to enforcement against dischargers. This threatens to burden the small family farm with high cost bureaucracy, creating the likely opportunity for big farms to get bigger by buying out their family farm competitors.

### **Comparison of Drafts**

We agree with staff's comparison of the Draft Order and Ag Alternative. As noted, your Board is faced with clear choices:

<b>Draft Order</b>	<b>Ag Alternative</b>
Responsibility placed on growers and land owners	Responsibility shielded by a third-party
Monitoring and compliance focused on water quality improvements	Monitoring and compliance based on optional implementation of farm practices
Clear enforceable dates of compliance	No dates of compliance
Clear enforceable milestones	Unenforceable milestones

Individual groundwater monitoring in highest risk areas	Optional groundwater monitoring
Individual surface water monitoring in highest risk areas	Optional individual surface water monitoring and continuation of CMP monitoring
Measures to stop the loss of riparian vegetation and wetland habitat that both protects and improves water quality and beneficial uses.	All measures to protect wetlands and riparian habitat stripped from Order.

### Legal Analysis of the Ag Alternative

We agree generally with staff's legal analysis of the Ag Alternative. The Ag Alternative proposal lacks accountability and specificity, and it otherwise cuts against the public interest.

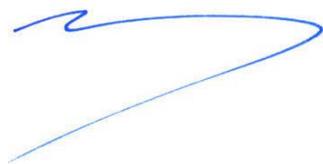
### Conclusion

It is clear that some, largely "industrial," agricultural operations cause "widespread and serious impacts on people and aquatic life" on a regular and ongoing basis. Domestic and public water supplies have been significantly contaminated with nitrates and other agricultural pollutants, in many cases at levels that far exceed applicable drinking water standards. Similarly, toxic surface water discharges from irrigation ditches continue to regularly violate water quality standards, despite claims of significant enrollment under the existing Conditional Waiver. And trends in the use of riparian vegetation buffers to protect against sedimentation, nutrient loading, and temperature increases are going in exactly the wrong direction. (Regional Board Staff Preliminary Draft Report, Feb. 1, 2010, p. 16.)

The severity of the problem is demonstrated by the existing Section 303(d) impaired waterbodies list for the Central Coast region. Order R3-2011-0006 represents an opportunity for your Board to take an active leadership role in fixing the problems on our Central Coast and making sure that we all have water for drinking, for agriculture and for habitat, for the long and foreseeable future. As it is presently drafted, however, Order R3-2011-0006 is not sufficient.

We appreciate this opportunity to comment. If you have any questions about our recommendations, please do not hesitate to contact any of our organizations.

Sincerely,



Nathan G. Alley

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

August 1, 2011

Page 4 of 4

Staff Attorney  
Environmental Defense Center



Steve Shimek  
Executive Director  
Monterey Coastkeeper



Ben Pitterle  
Director of Watershed Programs  
Santa Barbara Channelkeeper



Gordon Hensley  
Executive Director  
San Luis Obispo Coastkeeper

# **EXHIBIT A**



San Luis Obispo COASTKEEPER®

March 11, 2011

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

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

Dear Board Members:

The Environmental Defense Center (EDC), Environmental Justice Coalition for Water (EJCW), Monterey Coastkeeper (MCK), Santa Barbara Channelkeeper (SBCK) and San Luis Obispo Coastkeeper (SLOCK) offer these comments for your March 17, 2011, hearing in Watsonville regarding the Central Coast Region Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands, Order R3-2011-0006 ("Conditional Waiver" or "Draft Order"). In general, we support a conditional waiver program that contains robust regulatory provisions to ensure that our waters are protected from agricultural discharges and which ensures that agriculture remains sustainable and productive.

Our organizations continue to support adoption of the February 2010 Draft Order, as it is most protective of water quality and adequate to fulfill your statutory duties. Certain aspects of the November 2010 Draft Order are useful; for example, the provisions about discharge from bait traps; the presence of bare soil; reporting of total nitrogen applied, reporting of nitrate balancing; and the achievement nitrogen balance ratios. Draft Order R3-2011-0006 does not compare favorably to the February and November 2010 Drafts; however, our organizations conditionally support adoption of Order R3-2011-0006, contingent on several additions and revisions as described below.

EDC is a non-profit public interest law firm that represents community organizations in environmental matters affecting California's south central coast. EJCW works to empower community members to become strong voices for water justice in their communities, and to build a collective, community-based movement for democratic water management and allocation in California. MCK serves Monterey and Santa Cruz Counties as a program of the Otter Project, and protects the water, watersheds and coastal ocean for the benefit of wildlife and human populations alike. SBCK is a non-profit environmental

organization dedicated to protecting and restoring the Santa Barbara Channel and its watersheds through science-based advocacy, education, field work and enforcement. SLOCK, a program of Environment in the Public Interest, is dedicated to the protection of water quality, watershed and coastal regulations in San Luis Obispo and northern Santa Barbara Counties.

Please note that our prior comments on the February and November 2010 Draft Orders are incorporated herein by reference.

## **Tiering**

The November 2010 Draft Order and Order R3-2011-0006 rely on a tiering structure based upon proximity to polluted waters and loading risk, including crop type and size of operation. “Tier 3” operations represent the highest risk to water quality. We are generally supportive of the tiered structure (with revisions outlined below), but we continue to be concerned by the inadequate scale of Tier 3; it is essential that the acreage regulated in Tier 3 be expansive enough to address the serious surface and groundwater pollution issues on the Central Coast. For example, operators might split acreage between family members to avoid the 1,000-acre trigger for Tier 3 classification.<sup>1</sup>

According to Table 5, on page 23 of the staff report, Tier 3 is expected to include 54 percent of the acreage and 13 percent of the operations enrolled in the Conditional Waiver. This is an appropriate target and is critical to maintain effective regulation. It is essential that a large proportion of the highly impaired waters be included in Tier 3. To ensure that the Conditional Waiver operates effectively, the following language should be added to Order R3-2011-0006:

*This order shall be scaled to adequately regulate discharges to impaired surface water and to groundwater. After this order has been effective for one year, the tiering structure shall be modified as appropriate to capture at least 10 percent of the total operations or 40 percent of the total acreage enrolled in Tier 3. The tiering structure shall be re-evaluated at least every two years to ensure that at least 10 percent of the total operations or 40 percent of the total acreage enrolled in the conditional waiver are in Tier 3.*

Order R3-2011-0006 adds proximity to public water supply wells contaminated with nitrates (or other nitrogen) into the tiering structure. Operations greater than 1,000 acres and within 1,000 feet of a public water supply well are included in Tier 2. The staff report describes Tier 2 as approximately the same level of regulation as Order R3-2004-0117: “Tier 2 requirements are comparable to the 2004 Conditional Waiver, with a few additional reporting requirements to better indicate effectiveness of management practices and reduction in pollutant loading.”

---

<sup>1</sup> Please note that we do *not* assume that 1,000 acres is an adequate threshold for determining which operations fall into Tier 3.

In addition, as noted by the quotation and by careful reading of Order R3-2011-0006, Tiers 1 and 2 require dischargers to report information but to actually *do* very little. Tier 2 asks that operators sample groundwater, report groundwater sampling results, self calculate and report Nitrate Loading Risk Level, and report total nitrogen applied. It is not until Tier 3 that operators are required to actually achieve Nitrogen Balance Ratios and “achieve annual reduction(s) in nitrogen loading to groundwater.” Nitrate pollution of our groundwater is the most serious public health issue controlled by your Board. To delay *doing* anything about it is inappropriate and unacceptable, and it is not protective of public health. Order R3-2011-0006 should be revised to include all operations with high nitrate loading potential and within 1,000 feet of a public water system above nitrate MCL in Tier 3.

### **Toxicity**

First, we are concerned by the requirement that dischargers must “effectively control” waste discharges, as provided throughout Order R3-2011-0006 and especially in Part H, Time Schedule, Sections 84 to 87. “Effectively control” must be defined specifically. In addition, Order R3-2011-0006 should be revised to state:

*By October 1, 2013, Tier 3 dischargers must effectively eliminate individual waste discharges of pesticides and toxic substances to waters of the State and of the United States.*

Second, we share the concerns expressed by your Board at the February 2011 meeting, that if a discharger switches from using Diazinon or chlorpyrifos to some other pesticide(s) – which may be as or even more toxic than Diazinon or chlorpyrifos – the discharger would no longer be in Tier 3, even though the discharger’s operations could pose a comparable risk to water quality. The focus on two specific pesticides is perplexing, considering that staff has already concluded based on studies that additional contaminants such as pyrethroid pesticides, metals, and phenolic compounds are a significant source of toxicity throughout agricultural areas of the Central Coast Region (Attachment A; Sections 78, 79, 80, and 81).

Even though the Department of Pesticide Regulation controls the use of specific pesticides, it is within your Board’s regulatory scope to eliminate “toxicity.” The February 2010 Draft Order appropriately included a long list of substances known to cause toxicity in sediment or water and did not focus tiering around just two chemicals. Order R3-2011-0006 should be revised to match this section of the February 2010 Draft Order.

### **Vegetated Buffers**

Order R3-2011-0006 does not include prescriptive 30-foot buffers, but rather a reference to the Basin Plan which refers to a 30-foot buffer for construction. Your Board must consider how far we have stepped back from the February 2010 Draft Order, which included 100, 75 and 50-foot buffers (50-foot buffers required for streams that are not

impaired). The November 2010 Draft Order specified a 30-foot buffer for impaired waters and no buffer along unimpaired waters. Now, Order R3-2011-0006 contains nothing more than a vague reference to buffers for impaired waterways. This language is unacceptable, and we suggest the following revision:

*A vegetated buffer strip of at least 30 feet shall be maintained along all Tier 2 and 3 streams based on the National Hydrography Dataset Plus (NHDPlus,) and a vegetated buffer strip of at least 50 feet shall be maintained along lakes, wetlands, estuaries, and other natural bodies of standing water.*

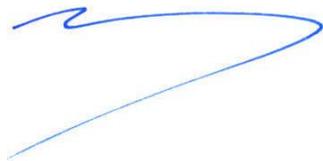
## **Conclusion**

It is clear that some, largely “industrial,” agricultural operations cause “widespread and serious impacts on people and aquatic life” on a regular and ongoing basis. Domestic and public water supplies have been significantly contaminated with nitrates and other agricultural pollutants, in many cases at levels that far exceed applicable drinking water standards. Similarly, toxic surface water discharges from irrigation ditches continue to regularly violate water quality standards, despite claims of significant enrollment under the existing Conditional Waiver. And trends in the use of riparian vegetation buffers to protect against sedimentation, nutrient loading, and temperature increases are going in exactly the wrong direction. (Regional Board Staff Preliminary Draft Report, Feb. 1, 2010, p. 16.)

The severity of the problem is demonstrated by the existing Section 303(d) impaired waterbodies list for the Central Coast region. Order R3-2011-0006 represents an opportunity for your Board to take an active leadership role in fixing the problems on our Central Coast and making sure that we all have water for drinking, for agriculture and for habitat, for the long and foreseeable future.

We appreciate this opportunity to comment. If you have any questions about our recommendations, please do not hesitate to contact any of our organizations.

Sincerely,



Nathan G. Alley  
Staff Attorney  
Environmental Defense Center

March 11, 2011

Page 5 of 5



Dipti Bhatnagar  
Northern California Program Director  
Environmental Justice Coalition for Water



Steve Shimek  
Executive Director  
Monterey Coastkeeper



Kira Redmond  
Executive Director  
Santa Barbara Channelkeeper



Gordon Hensley  
Executive Director  
San Luis Obispo Coastkeeper

**From:** Nathan Alley <nathanalley@edcnet.org>  
**To:** Roger Briggs <Rbriggs@waterboards.ca.gov>, Michael Thomas <mthomas@water...>  
**CC:** Steve Shimek <exec@otterproject.org>, Ben Pitterle <ben@sbck.org>, "G.R...."  
**Date:** 8/1/2011 4:18 PM  
**Subject:** Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands (EDC, MCK, SBCK, SLOCK)  
**Attachments:** edc\_mck\_sbck\_slock\_re\_ag\_waiver\_8.1.pdf

Please consider the attached letter, regarding the Central Coast Region Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands, addressed from the Environmental Defense Center, Monterey Coastkeeper, Santa Barbara Channelkeeper and San Luis Obispo Coastkeeper.

Thank you.

--

Nathan G. Alley  
Staff Attorney  
Environmental Defense Center  
906 Garden Street  
Santa Barbara, California 93101  
805.963.1622 x 107

STATE OF CALIFORNIA  
CENTRAL COAST WATER BOARD  
*Jefferson*  
JUL 29 2011  
895 Aerovista Road Ste 101  
San Luis Obispo CA 93426-7906

MARTIN JEFFERSON & SONS  
FARMING SINCE 1863

299 Napoleon Rd.  
Salinas, CA 93908  
P.O. Box 56  
Castroville, CA 95012  
(831) 422-8031 phone  
(831) 422-0755 fax

SCANNED  
JUL 29 2011  
BY: *BES*

**FAX**

To: *Chairman Young*  
Fax: *805 543-0397*  
Phone:  
Re:

From: *SRCC Benny Jefferson*  
Pages: *3*  
Date: *July 29, 2011*  
cc:

Comments:

# Salinas River Channel Coalition

*Established 1995*

P. O. Box 7602  
Spreckels, CA 93962  
(831) 682-0734



**August 1, 2011**

Chairman Jeffrey Young  
Vice Chairman Russell Jeffries  
Board Members  
Central Coast Regional Water Quality Control Board  
895 Aerovista Place, Suite 101, San Luis Obispo, CA. 93401-7906  
Fax: 805 543 0397

**RE: Region 3: Central Coast Regional Water Quality Control Board  
Staff Recommendations for an Updated Agricultural Order**

Dear Chairman Young and Members of the Board;

The Salinas River Channel Coalition (SRCC) represents landowners, growers, municipalities and other interested parties in issues surrounding the Salinas River and its tributaries; focus of the SRCC is the Channel Maintenance Program. We are concerned about the channel maintenance program for flood capacity, recharge, reservoir releases, and protection of infrastructure (i.e. roads & bridges) and controlling invasive, noxious weeds that are intense in water consumption, pose a flood and erosion threat to our land and reduces fish and wildlife habitat quality.

The Board of Directors and Members of the Salinas River Channel Coalition have been proactive and involved for many years with water quality solutions on the Central Coast. The Salinas River Channel Coalition has been very involved with public/private partnerships in order to find solutions in balancing the many interests within its basin.

We are concerned with the contents of the Addendum to the Staff Report released on July 8, 2011. The Addendum to the Staff Report does not provide an objective review, contrast, or comparison of the Agricultural Alternative Proposal to Staff's Draft Agricultural Order as directed by the Central Coast Regional Water Quality Control Board. The analysis of the Agricultural Alternative Proposal contains numerous substantive flaws, misstatements, and incorrect assumptions leading to inaccurate and deleterious conclusions. Contrary to Staff's conclusions, the Agricultural Alternative Proposal is enforceable; contains a legally consistent approach for the use of third-party groups; provides accountability; will control waste discharges from irrigated agriculture; provides flexibility; and includes adequate surface water and groundwater monitoring components.

The Agricultural Alternative Proposal will allow the evaluation of data by professionals that are able to adapt to the best available science with an understanding of the best management practices of agriculture on the ground to have successful improvement of water quality.

The new acreage trigger of 50 acres and 500 acres, depending on the tier classification, is not supported by any evidence, is arbitrary, and does not provide enough flexibility for situations unique to agricultural tenant practices. Is your farm or ranch located more than 1,000 feet from a surface water body listed for toxicity, pesticides, nutrients, turbidity or sediment on the 2010 List of Impaired Water bodies? Again as we stated before, size and location is arbitrary.

The Salinas River is a highly managed river system that is influenced by flow regulation from upstream dams, levees, and land use on the adjacent floodplains. Construction of Nacimiento and San Antonio dams in 1957 and 1967, respectively, altered the natural hydrology of the Salinas River. In 1956, The Nacimiento Dam was constructed to provide flood protection and aquifer recharge. The San Antonio Dam was constructed in 1965 to provide flood protection, aquifer recharge and recreation. In addition, the Santa Margarita Dam was built on the headwaters of the Salinas River. Prior to the construction of the dams, in particular the Nacimiento and San Antonio Dams, seasonal high flows scoured the channel preventing the accumulation of sediments and excessive riparian growth within the active channel (encroachment). Since then, the duration and magnitude of peak winter storms have been considerably reduced.

The Salinas River is privately owned by multiple parties. Monterey County collects assessments for flood control and the Monterey County Water Resource Agency then applies for 404 permits from the U S Army Corp requiring approvals from the resource agencies NOAA, National Marine Fisheries Service, Fish and Wildlife, the Regional Water Quality Control Board 401 Permit, regarding California Fish and Game land owners operators apply directly for 1601 Fish and Game permits and pay for the permits, and as a part of the process it could include a Monterey County Planning and Building Department grading permit, as well as conditions imposed by Monterey County Water Resources Agency for the maintenance of their property.

The Salinas River Channel Coalition focus is again channel maintenance program we are highly regulated and the additional conditions of aqua habitat under this ag order are duplicative regulations.

In closing, we support Agricultural Alternative Proposal for improvement of water quality on the Central Coast.

Sincerely,

  
Benny Jefferson, Chairman  
Salinas River Channel Coalition (SRCC)

CC:

*Roger Briggs, Executive Officer*

*Angela Schroeter, Senior EG*

Salinas Valley Chamber of Commerce  
119 E. Alisal St.  
Salinas, CA 93901  
(831) 751-7725  
Fax (831) 424-8639  
[info@salinaschamber.com](mailto:info@salinaschamber.com)



# Fax

**To:** Regional Water Quality Control Bd.      **From:** Salinas Valley Chamber of Commerce

---

**Fax:** (805) 543-0397      **Pages:** 3, including this cover

---

**Phone:**      **Date:** 8/1/2011

---

**Re:** Ag waiver (Alternate proposal)      **CC:**

**Urgent**     **For Review**     **Please Comment**     **Please Reply**     **Please Recycle**

● **Comments:** Please see the attached for the comments of the Salinas Valley Chamber of Commerce on the proposed ag waiver policies.

--Tom Carvey, President/CEO



# Salinas Valley

CHAMBER OF COMMERCE

**We are committed to . . .**

*Creating a strong local economy  
Promoting the community  
Providing networking opportunities  
Representing the interests of business with government  
Political action*

August 1, 2011

Central Coast Water Board  
Attn: Agricultural Order Renewal  
895 Aerovista Place, Suite 101  
San Luis Obispo, CA 93401-7906



Dear Sir or Madam,

The Salinas Valley Chamber of Commerce speaks for 700 businesses throughout the Salinas Valley, and therefore also represents approximately 3,000 jobs. We are greatly concerned with the state of our local economy; it is our number one priority. The City of Salinas is experiencing 18% unemployment at the moment, and job creation is therefore paramount. Our economy is not in good shape, and this is not a time to shake its very foundation—agriculture.

With the preceding in mind, the level of regulation proposed by the Regional Water Quality Control Board (RWQCB) is beyond comprehension. Our local farmers, growers and shippers are currently competing globally and produce the safest, healthiest food on earth. This high quality produce supplies 80% of the fresh salad products consumed in the U.S. It is in demand because of its quality. As a consequence, jobs are created for those who live in the Salinas Valley. Innovation and free market competition have been the keys to success.

From talking to local farmers about water quality regulation, I have learned that they are willing to self-regulate themselves through the Agricultural Alternative Proposal, and that this self-regulation will cost somewhere in the neighborhood of from \$17 to \$100 per acre per year. That's a stiff price to pay, and will no doubt result in higher costs for growers. A greater economic burden, however, will be placed on farmers if the state imposes the RWQCB proposal.

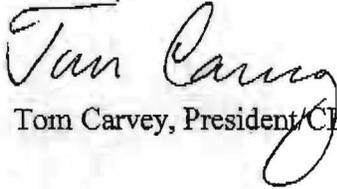
In the Salinas Valley, the free market dictates prices—not the State of California. There are no governmental subsidies supporting prices for the specialty crops of the Salinas Valley. When it costs more to produce a product, and when the market determines pricing, growers are caught in a squeeze. Something will have to go, and what's likely to go is profitability and farm jobs.

If improvements are to be made to water quality, growers themselves are the best ones to determine the methods. If state agencies such as the RWQCB impose stringent controls from the outside, without the benefit of the best practices developed within the industry, valuable insights and knowledge are lost. An engineer's approach can be a blind one.

Innovation in the field—not a top-down mandate—is the best approach. We urge you to adopt the Agricultural Alternative Proposal, created by the same agriculturists who have put their expertise to work to bring us the freshest produce on earth. It is to them we should look for fresh solutions.

Thank you for your consideration of our concerns and suggestions.

Sincerely,

A handwritten signature in cursive script that reads "Tom Carvey". The signature is written in dark ink and is positioned above the printed name.

Tom Carvey, President/CEO



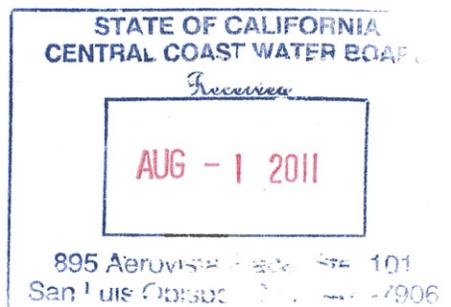
**Salinas Valley**  
CHAMBER OF COMMERCE

**We are committed to . . .**

*Creating a strong local economy  
Promoting the community  
Providing networking opportunities  
Representing the interests of business with government  
Political action*

August 1, 2011

Central Coast Water Board  
Attn: Agricultural Order Renewal  
895 Aerovista Place, Suite 101  
San Luis Obispo, CA 93401-7906



Dear Sir or Madam,

This is an addendum to the letter we submitted previously today. In that letter, page 1, paragraph 3, I said that if regulations are imposed by the RWQCB rather than the Agricultural Alternative, a greater economic burden will be placed on farmers. This addendum provides research backing up that claim.

Recent economic analysis completed by Dr. Brad Barbeau, Kay Mercer and Dr. Marc Los Huertos shows that participation in the Ag Alternative plan (also known as the "Third-Party Group/Coalition plan" or TPG) would cost from \$6.94/acre to \$11.79/acre, depending on the level of participation and an enrollment of 50-85% in the alternative plan. Furthermore, the cost of an audit would be from \$5.00 per acre in the on the farm(s) audited in the year of that audit.

In contrast, if a grower were to be forced to use the RWQCB staff draft, the annual costs would be as follows:

- Tier 1: \$4.66/acre - \$98.97/acre
- Tier 2: \$23.74/acre to \$231.19/acre
- Tier 3: \$73.11/acre to \$620.55/acre

It should be obvious even to the most casual observer that the staff plan is vastly more expensive than the TPG plan.

Costs associated with the Third-Party Group/Coalition concept include organization costs of the TPG itself, initial startup and planning costs, auditing costs, and program review costs. Participation by growers in the TPG, which is required to be voluntary by the proposed Waiver, will depend in large part on the tier into which a grower falls under the staff order. It is likely that only operations growing high-nitrate crops will participate, although many of these operations also grow other crops. Based on assumptions about where acreage will fall in the tiers, it is assumed that 184,000 acres will consider the coalition as a viable option for compliance and actually enroll. If 50% of the acres enroll, then the cost per year for the 3PG would be approximately \$11.79 per acre, plus audit costs. Seventy-five percent participation

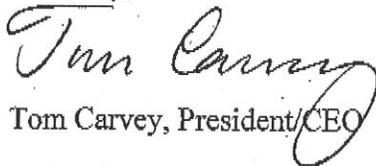
would lower the costs to \$7.86 per acre plus auditing cost, and 85% participation would lower the cost to \$6.94 per acre plus audit costs.

A survey undertaken recently to assess the costs to growers and handlers of the national Leafy Green Marketing Agreement (NLGMA) was used to estimate audit costs for this program. One would expect the water quality audits to be substantially similar to the food safety audits, and the audited operations to range from 50 to greater than 10,000 acres. Costs of audits are expected to range from \$2.5 -\$10.00 per acre depending on efficiencies of scale so we use an estimated mid-range cost of \$5.00 per acre for the audit costs. If a grower is selected for a follow-up audit, they can expect the cost to be higher than the mid-range. The cost to individual growers would depend on the level of participation and the fee structure. As the costs for compliance with the staff proposal occur on a per-acre basis, the study considered the TPG costs on the same basis.

Salinas Valley agriculture simply cannot afford the RWQCB staff report's recommendations. The effects on our local economy could be devastating, at a time when the viability of many businesses hangs in the balance. As previously stated, unemployment in the Salinas Valley is 18%; this is not a time to gamble on imposed, arbitrary regulation with unknown and unintended consequences.

Thank you for your consideration of our concerns and suggestions.

Sincerely,

A handwritten signature in cursive script that reads "Tom Carvey". The signature is written in black ink and is positioned above the printed name.

Tom Carvey, President/CEO



# Santa Barbara County Farm Bureau

Affiliated with the California Farm Bureau Federation and the American Farm Bureau Federation

July 29, 2011

*Via First-Class Mail & Email*

[rbriggs@waterboards.ca.gov](mailto:rbriggs@waterboards.ca.gov)  
[aschroeter@waterboards.ca.gov](mailto:aschroeter@waterboards.ca.gov)  
[AgOrder@waterboards.ca.gov](mailto:AgOrder@waterboards.ca.gov)

Jeffery S. Young, Chairman of the Board  
Angela Schroeter, Agricultural Regulatory Program Manager  
Central Coast Regional Water Quality Control Board  
895 Aerovista Place, Suite 101  
San Luis Obispo, Ca. 93401

**Re: Request for Public Comment on Addendum to Draft agricultural Order dated July 8, 2011**

The Santa Barbara County Farm Bureau represents over 750 diversified agriculturalists in Santa Barbara County. Agriculture provides a strong economic base for the County, with a local impact of over \$2.2 billion dollars.

I have worked with the staff of the Regional Water Quality Control Board here in Region 3 since 2003, developing a successful watershed coalition in anticipation of the first conditional agricultural waiver. I also served as a member of the first Ag working group that helped write the initial Ag Waiver.

As stated in my letter to your Board dated December 28, 2010, I am disappointed in the breadth and scope of staff's current proposal. It is overreaching, filled with incorrect assumptions that are based on flawed science or no science at all. It will be extremely burdensome and costly to the agricultural community, while not providing any meaningful improvement to water quality.

An example is staff's tiering criteria related to acreage and crop types. The triggers of 50 or 500 acres have no nexus to water quality; it is not supported by any scientific data and appears to be an arbitrary number picked by staff.

Staff's definition of a farm or ranch is overreaching and speculative. It now includes "any land where commercial crops are produced or normally would have been produced".

Farm plans have historically remained on the farm to be inspected by Regional Board Staff onsite. Staff now wants those plans to be turned into the Regional Board office and become public information. This is unnecessary and could have significant negative consequences for private farming operations.

These are just a few of the flawed examples staff has included in their latest addendum to their proposal for the renewal of the conditional Ag waiver. I urge you and the board to carefully consider the positive aspects of the proposal written by the Ag community here in Region 3. I do not believe the addendum to the staff report dated July 8, 2011 provides a fair comparison, or an objective review of the Agricultural Alternative Proposal.

I urge you and the Board to renew the existing conditional Ag waiver at your meeting in September. The focus of a new Ag order should be sites that are being monitored by the cooperative program and consistently show water quality impairment. Design a program that is feasible, has achievable objectives, and is transparent and collaborative. Utilize the local farming community, U.C, Cooperative Extension, local Agricultural Commissioners and the private sector to accomplish the goal of actually improving water quality.

The Santa Barbara County Farm Bureau Board of directors endorses many of the concepts brought forward in the Agricultural Alternative Proposal. They believe that a more focused approach as described above is a more workable plan to address agricultural water quality issues here in Region 3. Rely and enforce regulations already in place to address water quality issues.

Further the Santa Barbara County Farm Bureau Board of Directors is concerned that with the current staffing level at Region 3, administration of staff's proposed Ag order is not feasible. They are also extremely concerned with the costs of each proposal.

I urge you to consider renewing the existing Conditional "Ag Order" so as to provide time to develop a workable new waiver that would focus on areas that are the most impaired within Region 3. Utilize pertinent components of the Agricultural Alternative Proposal to accomplish this goal.

Sincerely,



Kevin Merrill, President  
Santa Barbara County Farm Bureau

Cc: Russell M. Jefferies, Vice Chair  
Monica S. Hunter, Board Member  
David T. Hodgins, Board Member  
John T. Hayashi, Board Member  
Dr. Jean Pierre Wolff, Board Member  
Mr. Roger Briggs, Executive Officer



**SOMACH SIMMONS & DUNN**

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August 1, 2011

***VIA ELECTRONICALLY ONLY***

Mr. Jeffrey S. Young, Chair  
Regional Water Quality Control Board, Central Coast Region  
895 Aerovista Place, Suite 101  
San Luis Obispo, CA 93401-7906  
[agorder@waterboards.ca.gov](mailto:agorder@waterboards.ca.gov)

Re: Comments on Addendum to Staff Report for an Updated Conditional Waiver of Waste Discharge Requirements for Irrigated Agricultural Waste Discharges, Draft Agricultural Order No. R3-2011-0006; Evaluation of New Information Provided by Agricultural Industry Representatives on March 17, 2011 and May 4, 2011 (Staff Addendum)

Dear Mr. Young:

Our firm, Somach Simmons & Dunn, submits these comments on behalf of the Farmers for Water Quality coalition, which includes the following organizations, California Strawberry Commission, Grower-Shipper Association of Central California, Monterey County Farm Bureau, Santa Cruz County Farm Bureau, Grower-Shipper Association of Santa Barbara & San Luis Obispo Counties, San Benito County Farm Bureau, San Luis Obispo County Farm Bureau, and Western Growers (herein collectively "Farmers"). The comments here respond to the Central Coast Regional Water Quality Control Board's (Central Coast Water Board) Staff Addendum, which was prepared at the direction of the Central Coast Water Board members at the May 4, 2011 hearing. Based on our review, we believe it necessary to provide significant additional information to correct some of the misinformation contained in the Staff Addendum. We have also included comments on the Central Coast Water Board staff's proposed revisions as presented in the Staff Addendum. Our comments on the proposed revisions are contained in Attachment 1 to this letter. Many of our concerns with respect to various provisions in Draft Order No. R5-2011-0006, Conditional Waiver of Waste Discharge Requirements for Discharges From Irrigated Lands (Draft Order), as detailed in our individual association letters submitted throughout this process, remain applicable and have not changed even though the Draft Order has been modified to some extent.

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As a preliminary matter, Farmers would like to remind the Central Coast Water Board members of the specific direction provided to staff.

- Mr. Young: “So what I would propose is that we direct staff to take that material and analyze it and compare it to what staff is proposing in their order so we can see, you know, what the differences are. Where there’s common ground, what can be used, how similar they are.” (Transcript, Central Coast Regional Water Quality Control Board Panel Hearing, May 4, 2011, Volume II, Continuation of the Hearing on the Waiver of Waste Discharge Requirements Discharged From Irrigated Lands (May 2011 Transcript), p. 630:20-25.)
- Mr. Young: “What we are directing staff to do is to take the California Farm Bureau written submission that was from March 17<sup>th</sup> and their submission today directing staff to compare and contrast and comment on what parts of that submission are doable, for what reasons, which parts are not doable for what other reasons. So that we can get some further analysis of that.” (May 2011 Transcript, pp. 649:21-650:3.)
- Mr. Young: “I would like to give the Farm Bureau proposal, you know, as much consideration as possible.” (May 2011 Transcript, p. 631:20-21.)
- Mr. Jeffries: “I was really impressed with the Ag proposal. I really thought that they did an outstanding job and they came a long way.” (May 2011 Transcript, p. 626:18-20.)
- Mr. Jeffries: “I would support the Ag Waiver that was proposed by the Ag Coalition.” (May 2011 Transcript, p. 628:19-20.)
- Mr. Hodgin: “Okay. I can also support Mr. Jeffries . . . .” (May 2011 Transcript, p. 636:7-8.)
- Dr. Hunter: “Yeah, I can go along with respect to your views, Mr. Jeffries.” (May 2011 Transcript, p. 637:8-9.)

Based on these comments and others, the Central Coast Water Board members directed the Central Coast Water Board staff to objectively evaluate the alternative proposal proposed by agriculture and to use the provisions in the agricultural proposal as appropriate. Central Coast Water Board staff were directed to make changes in a manner consistent with that provided by Central Coast Water Board members taking into consideration Board member comments given at the March 17 and May 4, 2011 hearings. (See, e.g., Dr. Hunter: “Well, I really do appreciate the idea of doing things collectively and trying to maximize resources and then the collaboration that may come in sharing knowledge and experience.” (Transcript, Central Coast Regional Water Quality Control Board Panel Hearing, March 17,

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2011, Conditional Waiver of Waste Discharge Requirements for Discharge From Irrigated Lands (March 2011 Transcript), p. 221:10-13; Dr. Hunter: “Innovative meaning we need solutions to individual farm operations.” (May 2011 Transcript, p. 623:23-24.) Instead, the Staff Addendum seeks to find flaws in the Agricultural Alternative<sup>1</sup> in order to bolster staff’s preferred alternative.

In particular, the analysis provided in the Staff Addendum conflicts with statewide policy and precedent with respect to the validity of third party groups, and it incorrectly attributes statements and comments to the agricultural community that are false. Farmers corrects this information in its comments provided below. The Staff Addendum also attempts to characterize the Agricultural Alternative as the more expensive alternative. In response, Farmers provides economic information to counteract this allegation. Finally, Farmers sets forth its recommendation to the Central Coast Water Board, which is to adopt the more appropriate alternative, which is the Agricultural Alternative. In the alternative, Farmers recommends that the Central Coast Water Board seek an independent evaluation of the Agricultural Alternative prior to taking any action.

#### **I. The Agricultural Alternative Complies With the Porter-Cologne Water Quality Control Act**

In general, the Staff Addendum concludes that the “Agricultural Alternative Proposal does not comply with Water Code section 13269 and the NPS Policy.” (Staff Addendum, p. 2.) The Staff Addendum also attempts to characterize the Agricultural Alternative as being less restrictive than the existing 2004 Conditional Waiver. We disagree with both statements. First, the alternative requirements contained in the Agricultural Alternative fully comply with the Porter-Cologne Water Quality Control Act (Porter-Cologne), and the state’s Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program

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<sup>1</sup> The Agricultural Alternative for the purpose of this comment letter is defined to include and mean the following documents:

- (1) The Draft Central Coast Agriculture’s Alternative Proposal for the Regulation of Discharges From Irrigated Agricultural Lands, submitted to the Central Coast Water Board on December 3, 2010 (individually referred to as “Ag’s December Proposal”);
- (2) The strike-out and underline version of the Central Coast Water Board’s Draft Order No. R3-2011-0006, submitted to the Central Coast Water Board on March 17, 2011 (individually referred to as “Ag’s Revised Version of the Draft Order”);
- (3) Attachment B to Draft Order No. R3-2011-0006, submitted to the Central Coast Water Board on March 17, 2011, and as further revised and submitted to the Central Coast Water Board on May 4, 2011 (individually referred to as “May 2011 Attachment B”);
- (4) Monitoring and Reporting Program to Order No. R3-2011-0006 for Third Party Group Participants (individually referred to as “Third Party Group Participant MRP”); and,
- (5) Part 2, Groundwater Assessment, Monitoring and Reporting Requirements (individually referred to as “Ag’s Groundwater MRP Requirements”).

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(May 2004) (NPS Policy). Second, the Agricultural Alternative includes requirements that go well beyond any others imposed on irrigated agriculture in California, and likely the United States.

Before discussing the legality of third party groups, Farmers must first provide a general summary and characterization of the Agricultural Alternative. As indicated previously, the purpose of the Agricultural Alternative is to provide an alternative to the Draft Order's prescriptive provisions, and its monitoring and reporting requirements. Instead, the Agricultural Alternative focuses on the need to implement appropriate management practices. To ensure accountability, the Agricultural Alternative includes a verification/audit process for those growers that voluntarily elect this path. The need for growers to implement management practices and be subject to audits as part of this alternative are required actions—not voluntary ones. Third party groups are formed for the purpose of conducting audits and working with growers to implement management practices. The creation of third party groups is not the purpose of the Agricultural Alternative but the means for conducting audits and ensuring implementation of appropriate management practices. Through audits, third party groups can better evaluate if growers are implementing appropriate management practices that are designed to protect water quality. Third party groups are also better situated to conduct site-specific studies to evaluate the effectiveness of management practices. If growers do not implement appropriate management practices as indicated in their audit, they are no longer eligible for the alternative program and instead become subject to the Draft Order's more traditional, prescriptive approach of discharge monitoring, reporting, and enforcement. The third party groups' mechanism for implementation also allows for more efficient communication between Central Coast Water Board staff and the grower community on the effectiveness of management practices, and the need to implement such practices to protect water quality.

The Staff Addendum takes issue with the Agricultural Alternative because, as compared to the staff's Draft Order, it provides an alternative to the Draft Order's more stringent, prescriptive requirements, and utilizes third party groups. Exactly! The Agricultural Alternative was put forward because the Draft Order is unreasonable, too restrictive, and does not concentrate on the implementation of appropriate management practices, which are the key to improving water quality. The purpose of the Agricultural Alternative is to provide growers with an *alternative* to the requirements proposed in the Draft Order—not mirror the requirements contained in the Draft Order. Further, the purpose of the Agricultural Alternative is to put forward an alternative that focuses on the need to implement management practices to improve and protect water quality. Conversely, the Draft Order focuses on the submittal of annual reports and edge of field monitoring to determine if water quality standards are being met while ignoring the need to work with growers to ensure that effective management practices are being implemented. The Draft Order would likely result in significant enforcement actions for failure to comply with water quality standards. But it provides no meaningful mechanism to assist growers in implementing management practices

to actually improve water quality. Accordingly, the Agricultural Alternative is a superior alternative to the Draft Order.

**A. The Third Party Groups Are Legal, and Provide Regulatory Benefits**

The Staff Addendum alleges that the Agricultural Alternative inappropriately allows “third-party groups” to be responsible for compliance, and that the primary purpose of the Agricultural Alternative is to “establish a framework for third-party groups.” (Staff Addendum, p. 7.) The Staff Addendum also mistakenly characterizes the Central Coast Water Board’s authority under Water Code section 13269 as being authorized to only “waive waste discharge requirements for individual dischargers who comply with the conditions.” (*Id.*, p. 5.) The language of Water Code section 13269 is much broader than that, and states that waste discharge requirements may be waived for “a specific discharge or *type of discharge* if the state board or a regional board determines, after any necessary state or regional board meeting, that the waiver is consistent with any applicable state or regional water quality control plan and is in the public interest.” (Wat. Code, § 13269.)

Further, a State Water Resources Control Board (State Water Board) precedential order states that it does not believe there to be a legal requirement that “all dischargers subject to a waiver must be individually listed.” (*In the Matter of the Petitions of Agricultural Water Quality Coalition, et al.*, Order WQO 2004-0003 (Ag Coalition Order).) The State Water Board also states that “. . . a Coalition Group must have information concerning its membership in order to fully implement the requirements of the waiver.” (*Id.*, p. 10.) The NPS Policy also recognizes the legality of third party groups. “Implementation programs for NPS pollution control may be developed by a RWQCB, the SWRCB, an individual discharger or by or for a coalition of dischargers in cooperation with a third party representative organization, or government agency.” (NPS Policy, p. 8.) These State Water Board findings and its NPS Policy clearly support the notion that third party groups are legal, and may be used to implement requirements of a waiver.

The Staff Addendum appears to take issue with the Agricultural Alternative because it creates, in its words, “an unfair distinction” between the growers who choose to participate in a third party group versus those who do not. (Staff Addendum, p. 6.) But nowhere does the Staff Addendum provide specific reasons as to why this makes the Agricultural Alternative illegal. In both the Central Valley region and the Los Angeles region, growers may elect to be regulated as an individual, or participate in a third party group. In both cases, the requirements for growers choosing to comply as an individual are different than those compared to requirements imposed on growers choosing to comply through participation in a third party group. The same applies here. While the requirements are different between those growers that choose the third party group option as compared to those that do not, they do not create an “unfair distinction.” For example, under the Draft Order, tier 3 growers must prepare certain plans, conduct on-farm monitoring, and submit annual compliance reports. Under the Agricultural Alternative, tier 3 growers must participate in a third party group in

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good faith, evaluate the risk to water quality of their farm or operation, and subject their farms or operations to independent audits to determine if they are implementing appropriate management practices. Accordingly, the inclusion of third party groups in the Agricultural Alternative is a legal means to compliance.

Next, the State Water Board further recognizes the usefulness of third party groups, or coalitions, in its need to regulate discharges from irrigated agriculture.

Of utmost concern to this Board is the need for an effective and efficient regulatory program for discharges from irrigated agriculture. We note that in the Central Valley there are an estimated 25,000 farming operations and that, until now, this entire industry has been largely unregulated by the Regional Board. We strongly believe that in light of this number of operations, it is to the benefit of both the regulators and the regulated community to encourage the formation of Coalition Groups. Not only will communication and regulation be simpler with a smaller number of regulated entities, but the monitoring requirements for Groups are much greater and will provide much more useful information. We much prefer to see the Groups' resources used for developing adequate plans and reports than to be used to ensure that each Participant is fully named and described at this time. (Ag Coalition Order, p. 9.)

While the Central Coast irrigated agricultural community is much smaller than that of the Central Valley, and while the growers in the Central Coast already file individual notices of intent, the State Water Board's rationale articulated above is still applicable to the Central Coast agricultural community. The third party groups in the Agricultural Alternative provide significant regulatory benefit by providing for a more effective means of communication, and by ensuring that appropriate management practices are being implemented. These two benefits combined will lead to improved water quality, and compliance with water quality standards.

First, as indicated previously, the third party groups would serve a key role by ensuring that grower participants are implementing appropriate management practices. The third party groups would accomplish this task by developing an audit process. Further, if a grower is not implementing appropriate management practices, the grower will be dispelled from the group and the Central Coast Water Board will be notified. This allows the Central Coast Water Board to more efficiently utilize its resources to investigate those individuals instead of trying to review the annual reports submitted by all tier 2 and tier 3 growers as proposed in the Draft Order. Also, review of paper annual reports does not provide the Central Coast Water Board with sufficient information to determine if a grower is implementing appropriate management practices. By working with and communicating with third party groups, Central Coast Water Board staff would be better positioned to know what

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management practices are effective for the various commodities in the various parts of the region.

The Agricultural Alternative also includes formation of a Technical Advisory Committee (TAC) to ensure that the audit process is effective and verifiable. The formation of the TAC allows the third party groups, and by extension the Central Coast Water Board, to obtain the most sophisticated information available from experts that work with irrigated agriculture to better understand how to protect water quality while maintaining a viable agricultural industry. Instead of discounting the Agricultural Alternative, and the establishment of third party groups to implement the Agricultural Alternative, the Central Coast Water Board staff should embrace the fact that the Agricultural Alternative would establish third party groups that will audit all grower participants, and bring forward professionals to objectively establish an audit process and review the effectiveness of management practices.

Second, the third party groups also provide the Central Coast Water Board with a better opportunity to communicate with the agricultural community. The third party groups are likely to be organized with the support of major agricultural organizations in the Central Coast, including the Farmers for Water Quality organizations. The major agricultural organizations are better able to communicate with the growers as compared to the Central Coast Water Board because the organizations are grower-oriented and their boards of directors include influential growers in their respective areas. Also, the growers in the third party groups would join voluntarily, and would receive a benefit by agreeing to an alternative form of compliance as compared to some of the requirements contained in the Draft Order. Just to clarify, while enrollment in the Agricultural Alternative is voluntary, the requirements for those choosing this option are mandatory. In other words, growers must comply with the tier 2 or tier 3 provisions in the Draft Order, *or* growers must implement management practices, subject their farms or ranches to audits, and participate in the third party group in good faith. Accordingly, participant growers are mandated to comply with the directives issued by the third party groups.

As proposed in the May 2011 Attachment B, the third party groups would also have the option of conducting site-specific studies to determine the effectiveness of management practices. By conducting site-specific studies, the third party groups can provide the Central Coast Water Board with valuable information that will assist the Central Coast Water Board in evaluating its ability to ensure the protection of water quality. For example, Farmers contracted with Dr. Marc Los Huertos from California State University, Monterey to develop a model management practice evaluation plan. The model management practice evaluation plan is still being developed. However, in discussions with Dr. Los Huertos, he recommends that grower practices be evaluated over two years on each ranch identified as high risk through the audit process. He further recommends that evaluations be conducted by members of the TAC, and independent researchers and consultants. As part of the evaluations, on-farm measurements would be used to estimate risks to meeting water quality, and to measure load

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reductions associated with different types of management practices. The results from these evaluations would then be included in a summary study report that could be provided to the Central Coast Water Board, and others. This would provide the Central Coast Water Board with significant new information with respect to the effectiveness of certain types of management practices. Farmers supports the concept as articulated by Dr. Los Huertos.<sup>2</sup>

Through the third party groups' audits and communication processes, and management practice evaluations as described by Dr. Los Huertos, the Central Coast Water Board would be able to more effectively communicate its water quality concerns to the grower community, and identify what areas of the region are more vulnerable due to a lack of implementation of appropriate management practices. The Central Coast Water Board could also prioritize its enforcement efforts by being better able to investigate those growers that are likely not implementing appropriate management practices because they have been dispelled from the third party groups. Thus, the third party groups and its functions as contained in the Agricultural Alternative provide the Central Coast Water Board with significant regulatory benefit.

**B. Individual Participants Are Responsible for Complying With the Provisions in the Agricultural Alternative**

Regardless of the legality of third party groups, the May 2011 Attachment B is drafted in a way that makes the requirements in it applicable to individual dischargers choosing that option as well as the third party groups. The Staff Addendum criticizes the Agricultural Alternative claiming that the language in May 2011 Attachment B is unclear as to who is required to implement the various conditions. (Staff Addendum, p. 21.) We disagree. The language in May 2011 Attachment B clearly indicates that both the third party groups and its participants are responsible for meeting all of the conditions contained therein. Specifically, the language of May 2011 Attachment B states up front that, "[a] third party group and/or its participants shall comply with the following conditions." (May 2011 Attachment B, p. 1.) This language, and May 2011 Attachment B as a whole, is modeled after the Central Valley Regional Water Quality Control Board's Order No. R5-2006-0053, Amended Attachment B Terms and Conditions, Coalition Group Conditional Waiver of Waste Discharge Requirements for Discharges From Irrigated Lands (Central Valley Coalition Order). (See Attachment 2, Central Valley Coalition Order.) This language is intended to ensure that the individuals choosing this alternative means of compliance are ultimately responsible for making sure that the third party groups perform its functions as outlined in May 2011 Attachment B. Should a third party group fail to comply with the terms of May 2011 Attachment B, the individuals in the third party group are liable for non-compliance, and the Central Coast Water Board can seek enforcement actions against those individuals.

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<sup>2</sup> Personal communication with Dr. Marc Los Huertos, July 31, 2011.

**C. The Agricultural Alternative Maintains the Central Coast Water Board's Enforcement Authority, and Includes Appropriate Mechanisms of Accountability**

The Staff Addendum claims that the Agricultural Alternative is not enforceable, and that the Central Coast Water Board staff would not be able to determine compliance or effectiveness of the waiver under its conditions. We disagree. First, the Agricultural Alternative does not take away or diminish the Central Coast Water Board's enforcement authority. Under the Agricultural Alternative, Central Coast Water Board staff can inspect and investigate any individual grower at any time with good cause. In reality, the Agricultural Alternative would help the Central Coast Water Board to prioritize enforcement action. Specifically, the Agricultural Alternative includes a Participant Termination Process that would require the third party groups to notify the Central Coast Water Board if a grower in the third party group is not implementing appropriate management practices. (May 2011 Attachment B, p. 7.) At that point in time, the grower is no longer eligible to participate in the alternative compliance program offered in the Agricultural Alternative. After the third party group notifies the Central Coast Water Board of a participant's termination, the Central Coast Water Board could (and should) use that information to prioritize its inspection activities. By prioritizing inspection activities, the Central Coast Water Board can better prioritize its enforcement activities.

Second, as described above, the May 2011 Attachment B makes the requirements in it applicable to individual dischargers choosing that option as well as the third party groups. Should a third party group fail to comply with the terms of May 2011 Attachment B, the individuals in the third party group are liable for non-compliance, and the Central Coast Water Board can seek enforcement actions against those individuals.

Third, the primary purpose of the audit process is to ensure accountability. As indicated, the audit process would be conducted under the direction of a Technical Advisory Group, and a Public Advisory Group would review reports prior to submittal to the Central Coast Water Board. (May 2011 Attachment B, pp. 4-5, 7.) The May 2011 Attachment B includes specific requirements for components of the audit process, and the Central Coast Water Board's Executive Officer must approve the work plan for the creation of the audit process. (*Id.*, pp. 5-7.) The Central Coast Water Board's Executive Officer also maintains significant discretion and authority to oversee third party groups, and their performance of the requirements in the May 2011 Attachment B. (*Id.*, pp. 7-8.)

Most importantly, the May 2011 Attachment B requires that every participant be audited within the term of the Conditional Waiver. An actual audit of each participant is more than the Central Coast Water Board staff can do with their limited time and resources. If the Draft Order is adopted as is, the Central Coast Water Board will be flooded with individual plans and annual reports. However, submittal of paper reports to the Central Coast Water

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Board is a weak substitute as compared to actual on-farm review of every participant's farm plan and actual implementation of management practices.

Further, the Agricultural Alternative includes specific requirements for annual reports that must be submitted to the Central Coast Water Board. As detailed in the Third Party Group Participant MRP, the third party group's annual reports must include all of the following: the names of the Participants in the third party group that are in good standing (e.g., have paid applicable fees); the number of Participants' operations for which audit evaluations were conducted over that 12 month period; the identification of the sub-watersheds where the audit evaluations were conducted; the names of the Participants whose operations were audited; an aggregated summary of the audit results (summary of audit results shall not be operator-specific), including, for example, the number or percentage of operations that are implementing Farm Water Quality Management Plans and appropriate management practices to control the discharge of pollutants to ground and/or surface water to the maximum extent practicable; a general summary of assistance that the third party groups provided to Participants to assist them in updating Farm Water Quality Management Plans and in implementing management practices; an aggregated summary of any educational workshops conducted by the third party groups, and a list of the those that attended the educational workshop; and, an aggregated summary of any other activities conducted by the third party groups towards the improvement of water quality, which would include the results of management practice evaluations conducted in a manner similar to that as articulated by Dr. Los Huertos. Through the annual reports, the Central Coast Water Board can monitor a third party group's activities as well as review summarized audit results on a sub-watershed basis. By reviewing the audit results annually, the Central Coast Water Board staff will be able to identify on a sub-watershed basis where it should consider concentrating its inspection and enforcement activities.

Finally, the Agricultural Alternative includes a system of checks and balances that are designed to ensure accountability. As discussed previously, the third party groups (and by extension its participants) have a direct reporting obligation to the Central Coast Water Board and its Executive Officer. Third party groups must be approved by the Executive Officer; third party groups must prepare workplans for approval by the Executive Officer; third party groups must submit annual reports to the Central Coast Water Board; third party groups must establish Technical Advisory Groups and Public Advisory Groups; the Executive Officer may terminate a third party group for failing to comply with the requirements in May 2011 Attachment B; and, the Central Coast Water Board can hold individual participants responsible for actions that are conducted by third party groups.

**D. The Central Coast Water Board Has Considerable Discretion in Determining Compliance With Water Quality Standards**

The Staff Addendum criticizes the Agricultural Alternative because it would allegedly limit the Central Coast Water Board's authority and discretion to enforce water quality

standards, and the Staff Addendum would lead the Central Coast Water Board to believe that the Conditional Waiver must require immediate, near-term compliance with water quality standards. (Staff Addendum, p. 6.) First, there is nothing in Water Code section 13269 that requires immediate, near-term compliance with water quality standards. The primary requirement for adopting a waiver under section 13269 is that it must be “consistent with any applicable state or regional water quality control plan,” and be in the public interest. (Wat. Code, § 13269.) The Water Quality Control Plan for the Central Coast Region (Basin Plan) includes adopted water quality standards (i.e., identification of beneficial uses and water quality objectives) for Central Coast surface and ground waters. To achieve the water quality objectives and ensure reasonable protection of beneficial uses, the Central Coast Water Board is also required to adopt a program of implementation. (*Id.*, § 13242.) The program of implementation is required to include: (1) a description of the nature of actions which are necessary to achieve the objectives; (2) a time schedule for the actions to be taken; and, (3) a description of surveillance to be undertaken to determine compliance with the objectives. (*Ibid.*) The program of implementation in the Basin Plan does not directly describe the actions that the Central Coast Water Board intends to take to ensure compliance with the water quality objectives that are also part of the Basin Plan. It also fails to identify a time schedule for actions to be taken. But it recognizes that the Central Coast Water Board may use one of three approaches for controlling nonpoint source pollution, which includes runoff from irrigated agriculture. (Basin Plan, p. IV-7.) The three approaches are the voluntary implementation of best management practices, enforcement of best management practices, and adoption of effluent limitations. (*Ibid.*)

The Agricultural Alternative is best described as falling within the second approach, enforcement of best management practices. The Draft Order likely falls somewhere between the second and third approach, adoption of effluent limitations. As clearly indicated in the Basin Plan, the enforcement-of-best-management-practices approach is about implementing and complying with best management practices—not immediate or near-term compliance with water quality standards. The NPS Policy describes management practice implementation as typically requiring: “(1) adaptation to site-specific or regional-specific conditions; (2) monitoring to assure that practices are properly applied and are effective in attaining and maintaining water quality standards; (3) immediate mitigation of a problem where the practices are not effective; and (4) improvement of MP implementation or implementation of additional MPs when needed to resolve a deficiency.” (NPS Policy, p. 7.) While the NPS Policy includes policy statements with respect to the need to comply with water quality standards, it also clearly understands that immediate and near-term compliance may not be feasible. (See *id.*, p. 12 [“We recognize that in the earlier stages of some pollution control programs, water quality changes may not be immediately apparent, even with the implementation of pollution control actions. Although MP implementation never may be a substitute for meeting water quality requirements, MP implementation assessment may, in some cases, be used to measure nonpoint source control progress.”].) In other words, implementation of management practices is a process for achieving water quality standards. The implementation of management practices as a means towards achieving compliance with

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water quality standards has long been recognized and supported by the State Water Board. Specifically, the State Water Board upheld permit language that required stormwater management plans to be designed to achieve water quality standards, and that compliance was to be achieved over time, through an iterative approach requiring improved best management practices. (*In the Matter of the Petitions of Building Industry Association of San Diego County and Western States Petroleum Association*, Order WQ 2001-15 (BIA Order), p. 7.) Although this decision was based in part due to language in the Clean Water Act that is applicable to municipal stormwater dischargers, the language of Porter-Cologne is flexible in this respect as well.

Under Porter-Cologne, regional boards are afforded considerable discretion with respect to how and when dischargers should comply with water quality standards. For example,

[W]ater quality objectives, we realize, may not always be readily enforceable. The statutory factors enumerated in section 13242, particularly the provisions for recommended action and time schedule, reflect the Legislature's recognition that an implementing program may be a lengthy and complex process requiring action by entities over which the Board has little or no control also requiring significant time intervals. (*United States of America v. State Water Resources Control Bd.* (1986) 182 Cal.App.3d 82, 122.)

Thus, as part of the Basin Plan, the Central Coast Water Board can provide for and recognize a flexible program of implementation. And, in fact, the Basin Plan does provide for such a flexible program by recognizing that it may enforce implementation of best management practices to control nonpoint source pollution.

Besides requiring time schedules as part of programs of implementation for meeting specific water quality objectives, the language of Water Code section 13263 also provides the Central Coast Water Board with discretion in establishing time schedules as part of waste discharge requirements (WDRs). (Wat. Code, § 13263(c).) Although the Draft Order is being proposed pursuant to Water Code section 13269 instead of Water Code section 13263, nothing in Water Code section 13269 precludes the inclusion of time schedules for complying with its requirements. Further, it would be illogical to allow such schedules in WDRs, while disallowing such schedules in waivers from WDRs.

More importantly, the Legislature's intent with respect to regulating water quality under Porter-Cologne is supposed to be a measure of reasonableness considering all of the demands being made on the water. (Wat. Code, § 13000 ["The Legislature further finds and declares that activities and factors which may affect the quality of the waters of the state shall be regulated to attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, and tangible and intangible."].) Requiring immediate or near-term compliance (i.e., the timeframes included in the Draft Order) with water quality

standards in the manner as dictated in the Draft Order would have devastating economic impacts on Central Coast agriculture and the Central Coast region in general. As detailed in a report prepared by Dr. J. Bradley Barbeau, and discussed further below in section II, costs of implementing the Draft Order are likely to range as follows for compliance, depending on the tier classification of the grower's farm: tier 1 estimates range from \$4.66 per acre to \$98.97 per acre; tier 2 estimates range from \$23.74 per acre to \$231.19 per acre; and, tier 3 estimates range from \$73.11 per acre to \$620.55 per acre. (Barbeau, J. Bradley, Ph.D., California State University, Monterey Bay School of Business, and Kay L. Mercer, M.S., PCA, KMI, *Economic and Cost Analysis of the Proposed Ag Waiver and Ag Alternative* (July 2011) (Barbeau Report), p. 9, attached hereto as Attachment 3.) This cost represents only what it would cost growers to comply; it does not include other costs or economic impacts on the region. In comparison, the Agricultural Alternative would cost participants \$6.94 per acre to \$11.79 per acre, depending on participation level and based on a per-acre average cost, at 50-85% enrollment. Mid-Range Audit Costs would cost \$5.00 per acre on the farm(s) audited in the year of that audit. Costs of audits are expected to range from \$2.5 per acre to \$10.00 per acre depending on efficiencies of scale. (Barbeau Report, p. 18.) Under the current structure, all growers in the third party group would have an audit of at least one farm. Dr. Los Huertos recommends that each farm be audited once in the course of the waiver, with follow-up audits on 10% of high risk farms.<sup>3</sup>

Much has been said about the need to achieve water quality standards quickly. Farmers does not disagree. However, the process of getting there must be reasonable and feasible. The Central Coast Water Board must remember that the regulation of irrigated agriculture for the protection of water quality only just began in 2004. Thus, the program is only seven (7) years old. Comparatively, wastewater and stormwater have been regulated 30 and 20 years respectively, and they too are still struggling to meet water quality standards. In light of the considerable difference between the costs of the programs, and therefore the economic impact, it is reasonable and legal for the Central Coast Water Board to adopt a management practice implementation program to achieve water quality standards such as the Agricultural Alternative versus the Draft Order, which would mandate compliance with water quality standards immediately.

**E. The Agricultural Alternative Complies With and Is Consistent With the State Water Board's Nonpoint Source Policy**

The state's NPS Policy clearly recognizes the important and valuable role that third party groups can play in implementation programs for the control of nonpoint source pollution, such as that from irrigated agricultural. (NPS Policy, pp. 8-9.) The NPS Policy also encourages regional boards "to be as creative and efficient as possible in devising approaches to prevent or control NPS pollution." (*Id.*, p. 9; see also *id.*, p. 10 ["the RWQCBs

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<sup>3</sup> Personal communication with Dr. Los Huertos, July 31, 2011.

have broad flexibility and discretion in using their administrative tools to fashion NPS management programs, and are encouraged to be as innovative and creative as possible, and, as appropriate, to build upon third-party programs.”.) The standard set forth in the NPS Policy is that “[e]ach program brought before a RWQCB or SWRCB must be individually judged on its merits. The scale against which it will be measured will assess its potential to result in the implementation of actions to successfully prevent or control discharges of nonpoint sources of pollution.” (*Id.*, p. 9.)

Before adopting a NPS implementation program, regional boards are advised to determine if “. . . there is a high likelihood the implementation program will attain the RWQCB’s stated water quality objectives . . . [including] consideration of the MPs [management practices] to be used and the process for ensuring their proper implementation, as well as assessment of MP effectiveness.” (NPS Policy, p. 11.) It is important to note that a high likelihood of attaining water quality objectives does not necessarily equate to immediate or near-term compliance, but indicates that meeting water quality objectives needs to be the goal of the program. The NPS Policy sets forth five key elements for NPS control implementation programs. The five key elements, and a summary of the Agricultural Alternative’s compliance with the key elements, are provided here.

- “*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.*” (NPS Policy, pp. 11-12.)

In the narrative to key element 1, the NPS Policy further states that if the program relies on the use of management practices (MPs), that there should be a strong correlation between the MPs implemented and the relevant water quality requirements. (NPS Policy, p. 12.) Farmers agrees with the premise stated in key element 1. The need to attain water quality objectives and protect beneficial uses needs to be the ultimate goal in any water quality regulatory process. The bigger question is how to get there in a reasonable manner. Farmers contends that the Agricultural Alternative does have a high likelihood of attaining water quality objectives over time. First, the Agricultural Alternative would require all dischargers to implement MPs “. . . that will achieve compliance with applicable water quality standards.” (Ag’s Revised Version of the Draft Order, p. 17.) Similar language is contained in the May 2011 Attachment B. The Staff Addendum criticizes the Agricultural Alternative because the May 2011 Attachment B uses terminology such as “work towards” meeting applicable water quality standards. As explained to Central Coast Water Board staff at a meeting held on May 25, 2011, the language in May 2011 Attachment B was derived to reflect the need to have an iterative process that would allow growers to implement MPs for the benefit of water quality based on new information received. Further, the language in May 2011 Attachment B does not alleviate the need to comply with the language in Ag’s Revised Version of the Draft Order. To the extent that the language in the two

documents conflict, Farmers indicated to Central Coast Water Board staff a willingness to revise the language to address staff's concerns. Unfortunately, the Staff Addendum fails to recognize Farmers' willingness to seek compromise with respect to this language.

Second, regardless of the language identified by Central Coast Water Board staff, the Agricultural Alternative complies with key element 1. The Farm Plan, the risk characterizations and categories in the May 2011 Attachment B, the audit process, and the surface and groundwater monitoring requirements in the Agricultural Alternative collectively work towards achieving compliance with water quality standards. The most important element in the Agricultural Alternative is the implementation of MPs that will ultimately achieve water quality standards. But it will take time and considerable effort from all parties to reach the ultimate goal.

- *“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.”* (NPS Policy, p. 12.)

In the narrative to key element 2, the NPS Policy further provides, “[w]e recognize that in earlier stages of some pollution control programs, water quality changes may not be immediately apparent, even with the implementation of pollution control actions. Although MP implementation may never be a substitute for meeting water quality requirements, MP implementation assessment may, in some cases, be used to measure nonpoint source control progress.” (NPS Policy, p. 12.) The Agricultural Alternative squarely fits within key element 2. The audit process in the Agricultural Alternative is clearly designed to review the implementation of MPs on an individual grower basis as well as on a sub-watershed basis. By comparing audit results to surface water monitoring results in the Coordinated Monitoring Program (CMP), the third party groups can evaluate the effectiveness of certain MPs. Further, the third party groups can conduct site-specific studies in a manner as identified by Dr. Los Huertos to further evaluate the effectiveness of MPs when necessary. The Agricultural Alternative also includes the various reporting requirements, discussed above, that are designed to ensure attainment of the implementation program’s stated purpose, which includes auditing all participating grower operations to evaluate implementation of MPs.

- *“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.”* (NPS Policy, p. 13.)

Both the Draft Order and the Agricultural Alternative include milestones that comply with key element 3. (Staff Addendum, pp. 19-21.) The primary difference being that the Draft Order sets forth milestones that are unlikely to be achieved, and are therefore

unreasonable. The milestones proposed in the Agricultural Alternative are more realistic considering the diffuse nature of nonpoint source pollution. Also, although not identified as milestones, the Agricultural Alternative includes performance-based milestones such as requiring at least 20% of third party group participants to be audited annually. These types of performance-based milestones go directly to ensuring that the program is making progress towards its goal of requiring growers to implement appropriate MPs for the protection of water quality and for achieving water quality standards.

- *“KEY ELEMENT 4: An NPS control implementation program shall include sufficient feedback mechanisms so that the RWQCB, dischargers and other public can determine whether the program is achieving its stated purpose(s), or whether additional or different MPs or other actions are required.”* (NPS Policy, p. 13.)

The Agricultural Alternative includes many provisions that comply with key element 4. For example, third party groups would be required to establish a Technical Advisory Group and a Public Advisory Group to provide feedback with respect to the audit program. Other examples include requirements for third party groups to submit workplans to the Central Coast Water Board’s Executive Officer for approval, requirements for the submittal of annual reports, provisions that provide the Executive Officer with the ability to terminate a third party group if it is not performing as required, and the ability to conduct site-specific MP evaluations. Most importantly, if an individual participant is not implementing MPs as deemed appropriate through the audit process, the individual participant must be dispelled from a third party group and their termination must be reported to the Central Coast Water Board. All of these requirements combined ensure that the Central Coast Water Board has sufficient information to determine if the program is proceeding appropriately towards achieving compliance with water quality standards. Should the feedback information provided to the Central Coast Water Board indicate otherwise, the Central Coast Water Board maintains the authority to terminate the Agricultural Alternative at any time. At the very least, the Central Coast Water Board will have significant information to evaluate the success of the program when the Agricultural Alternative expires at the end of five years.

- *“KEY ELEMENT 5: Each RWQCB shall make clear, in advance, the potential consequences for failure to achieve an NPS control implementation program’s stated purposes.”* (NPS Policy, p. 14.)

As discussed in section I above, the Central Coast Water Board maintains its enforcement authority under the Agricultural Alternative. Further, Farmers understands the Central Coast Water Board’s need to identify its expectations with respect to success and failure of the program proposed in the Agricultural Alternative. Farmers is not opposed to having the Central Coast Water Board articulate its expectations with respect to its proposed action or actions should the Agricultural Alternative in its reports not demonstrate progress towards meeting water quality standards. In fact, key element 5 clearly indicates that the

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Central Coast Water Board maintains the obligation to clearly articulate its expectations and potential consequences should the Agricultural Alternative not be successful.

Accordingly, the Agricultural Alternative is consistent with and complies with the state's NPS Policy as well as Porter-Cologne.

## **II. The Agricultural Alternative Is an Environmentally and Economically Superior Alternative**

As indicated in the previous comments, the Agricultural Alternative is designed primarily to ensure implementation of appropriate management practices. Through the implementation and evaluation of management practices, the Central Coast agricultural industry and the Central Coast Water Board can work collaboratively towards improving water quality with the ultimate goal of achieving applicable water quality standards in a reasonable timeframe. Conversely, the Draft Order claims to ensure requirements with water quality standards by requiring annual compliance reports, edge-of-field monitoring, and mandatory buffers for tier 3 growers. There is little offered in the Draft Order that would allow the Central Coast Water Board staff to work iteratively with the agricultural community to actually improve water quality. Instead, the Draft Order offers a process whereby Central Coast Water Board staff can review annual compliance reports as compared to reported edge-of-field monitoring data to determine if water quality standards are met. If not met, Central Coast Water Board staff can then begin down the progressive-enforcement path. While this may lead to increased enforcement activities and the collection of administrative civil liability fines, it does not necessarily result in improved water quality. Further, the economic impacts of the Draft Order may well drive some agricultural land out of production to other more intensive land uses such as development. The loss of agricultural land to more intensive land uses is likely to negatively impact the environment. Accordingly, the Agricultural Alternative is the environmentally superior alternative.

With respect to economics, the Staff Addendum incorrectly characterizes statements made by Farmers representatives at a meeting held on May 25, 2011. Specifically, the Staff Addendum claims that agricultural representatives stated that the "Agricultural Proposal will likely cost more than the Draft Agricultural Order." (Staff Addendum, p. 28.) This is not true. In fact, the agricultural representatives clearly stated that they did not yet know what the Agricultural Alternative would cost to implement. The agricultural representatives did make a statement to the affect that many growers would likely prefer to join a third party group as proposed in the Agricultural Alternative even if it did cost more versus being subject to the prescriptive requirements contained in the Draft Order. But in no way did the agricultural representatives make an affirmative statement saying that the Agricultural Alternative would likely cost more.

In response to Central Coast Board Member queries with respect to costs of the two programs, Farmers contracted with Dr. Barbeau and others to conduct an economic and cost analysis of the Draft Order as well as the Agricultural Alternative. The results of

Dr. Barbeau's analysis are presented in the Barbeau Report (Attachment 3). To conduct the analysis, Dr. Barbeau and Ms. Mercer interviewed 12 vegetable growers with operations ranging from 378 acres to 5,510 acres. The total acreage for all 12 operations was 26,448 acres. The growers interviewed were chosen because they were representative of the growers in the region. The average annual cost per acre varied between growers classified as being in tier 1 as compared to those classified as being in tier 2 or tier 3. The annual average estimates ranged from \$27.78 to \$51.82 per acre for tier 1 growers; \$67.54 to \$96.21 per acre for tier 2 growers; and, \$128.79 to \$187.48 per acre for tier 3 growers. (Barbeau Report, p. 9.) The actual range of costs across the growers was as follows: \$4.66 per acre to \$98.97 per acre for tier 1 growers; \$23.74 per acre to \$231.19 per acre for tier 2 growers; and, \$73.11 to \$620.55 per acre for tier 3 growers. (Barbeau Report, p. 9.) The reported costs include major cost items such as lining water containment ponds, erosion control, annual compliance reporting, and the need to hire new staff to manage the multiple reporting requirements contained in the Draft Order. The costs represented do not include costs associated with yield losses and land taken out of production.

In comparison, the Agricultural Alternative is estimated to cost \$1.085 million per year, plus audit costs, if recommendations by Dr. Los Huertos are part of the third party groups' workplan. (Barbeau Report, p. 18.) Depending on the percentage of estimated tier 2 and tier 3 acres that are likely to enroll in the Agricultural Alternative's third party group program, the annual costs would be approximately \$11.79 per acre, plus audit costs, if 50% of the acres enroll. Seventy-five percent participation would lower the costs to \$7.86 per acre, plus audit costs, and 85% participation would lower the costs to \$6.94 per acre, plus audit costs. (*Id.*, p. 19.) Based on these estimates, the costs between the two programs are significantly different and the Agricultural Alternative represents a significantly lower cost to growers. Thus, the allegations in the Staff Addendum that the Agricultural Alternative would be more costly are clearly false.

The Central Coast Water Board has a duty to regulate activities that may impact water quality to the highest degree that is *reasonable*, considering all the demands being made on the water. (Wat. Code, § 13000.) As provided in detail herein, the Agricultural Alternative represents a legal alternative that is both environmentally and economically superior. By extension, it is also clearly the most reasonable option available to the Central Coast Water Board at this time.

### **III. The Central Coast Water Board Should Adopt the Draft Order as Revised and Amended by the Agricultural Alternative Provisions Submitted on December 3, 2010, March 17, 2011, and as Further Revised and Amended by the Agricultural Alternative Provisions Submitted on May 4, 2011**

Based on the information and clarifications provided above, as well as the information provided in the Attachments, the Agricultural Alternative is the superior alternative before the Central Coast Water Board. It complies with Porter-Cologne, and the NPS Policy; is more

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economical; and, is more likely to lead to actual improvements in water quality. Accordingly, the Central Coast Water Board should adopt the Agricultural Alternative in its entirety.

However, should the Central Coast Water Board members determine that the information contained here, as compared to the analysis in the Staff Addendum, raises considerable questions in the Central Coast Water Board members minds, Farmers recommends that the Central Coast Water Board, at the very least, seek an independent review of the two alternatives.

We appreciate all of the Central Coast Water Board members' time and effort that has gone into this very contentious and laborious process. We also understand that the Central Coast Water Board must ultimately make a decision and move this program forward. Farmers, of course, hopes that such a decision will include the Agricultural Alternative. In any case, we thank you for your considerable attention to this matter. Please let Farmers know if you have any questions with respect to the information contained herein.

Sincerely,

A handwritten signature in black ink, appearing to read "Theresa A. Dunham". The signature is fluid and cursive, with the first name being the most prominent.

Theresa A. Dunham

Attachments

cc: Lisa McCann ([lmccann@waterboards.ca.gov](mailto:lmccann@waterboards.ca.gov))  
Angela Schroeter ([aschroeter@waterboards.ca.gov](mailto:aschroeter@waterboards.ca.gov))  
Roger Briggs ([rbriggs@waterboards.ca.gov](mailto:rbriggs@waterboards.ca.gov))  
Abby Taylor-Silva, President, Farmers for Water Quality ([abby@growershipper.com](mailto:abby@growershipper.com))

TAD:cr

# **ATTACHMENT 1**

## ATTACHMENT 1

### Specific Comments on Additional Revisions to the Draft Agricultural Order and Monitoring and Reporting Program As Contained in the Staff Addendum

August 1, 2011

The comments provided below are numbered to match the revisions as outlined in the Staff Addendum. (Staff Addendum, pp. 23-28.) Our comments here are only on those identified revisions for which Farmers has substantive comments, or comments of concern. For the remaining proposed revisions, Farmers has no comment.

- (1) Remove Executive Officer's authority to change tiering criteria. Farmers supports this change.
- (2) Use individual farms instead of operations as the appropriate level to consider tiering criteria. Farmers supports the concept behind this revision, but some ambiguity may still exist. We request that the following written clarification offered by Lisa McCann be included in the definition of Farms/Ranch, "For tiering determinations, total acreage applies only to a farm/ranch, irrespective of how many parcels, whether they are contiguous, and whom or how many owners or operators are associated with the parcels. Therefore, the total acreage of a farm/ranch is the total acreage of all the parcels that make up the farm/ranch. Landowners or operators have and retain the discretion to determine the boundaries of farms/ranches for their business purposes, whether or not they include contiguous parcels with different landowners or operators. However, for each farm/ranch enrolled in the Order, the landowners and operators associated with each farm/ranch are the 'dischargers' and the 'responsible parties' for complying with the terms and conditions of the Order." A farm is typically considered to be a single commodity on a single area of land (that may be one or more parcels), under the same grower. A ranch may be slightly broader and may include one or more commodities on a single area of land (that may be one or more parcels), under the same grower. Growers/landowners need to be allowed some flexibility in characterizing their farm or ranch for management purposes to reflect the different production practices and schedules of different commodities and operations.
- (3) Change the tiering criteria related to top acreage and crop types with high potential to discharge nitrogen to groundwater. Farmers continues to maintain concerns with the proposed acreage criteria used in the Draft Order. Farmers does not believe that the size of a farm or ranch is relevant to determining risk to water quality. Further, the requirements in tier 2 and tier 3 should be applicable based on the reasons for why a farm or ranch has been classified as tier 2 or tier 3. For example, if the reason for being classified is because the farm or ranch uses chloryprifos or diazinon, then only requirements with respect to pesticides should apply. Otherwise, the requirements bear no rational relationship to the farm or ranch's risk to water quality.

- (4) Provide dischargers with the option to use the Nitrate Hazard Index to evaluate nitrate loading risk. The Staff Addendum states that revisions are proposed that would allow dischargers the option of using the Nitrate Hazard Index (NHI) as developed by the University of California - Division of Agriculture and Natural Resources (UCANR) to evaluate nitrate loading risk. (Staff Addendum, p. 25.) However, our review of the Draft Order fails to identify this as being completely true. Based on our review, the NHI has been added to the tiering criteria but not the substantive permit requirements applicable to those in tier 3. (Draft Order, pp. 14-15 29.) For tier 3 dischargers, waiver requirements are triggered by the High Nitrate Loading Risk, which is defined differently than the NHI. (*Id.*, p. 29.) Thus, for these requirements, tier 3 dischargers do not have the option of using the NHI.

Further, Farmers supports the comments submitted by Dr. John Letey, who is one of the world's premier experts on this issue. Dr. Letey clearly articulates the differences between the two methods, and the deficiencies with the Central Coast Water Board's proposed Nitrate Loading Risk Factor. Based on Dr. Letey's comments, the Central Coast Water Board should remove all references to the Draft Order's Nitrate Loading Risk Factor.

- (11) Clarify that requirements related to compliance with Department of Pesticide Regulation (DPR), Department of Fish and Game (DFG), and California Department of Forestry and Fire Protection (CalFIRE) are to show proof of compliance with relevant requirements upon request of the Executive Officer. Farmers appreciates that the proposed revisions are an attempt to address one of our comments raised in the Ag Revised Order. However, the proposed revisions create new obligations that may not currently exist. For example, the revisions would require dischargers to submit proof of compliance with DPR regulations upon request. If compliance can be determined solely by providing copies of properly filed pesticide use reports, then it is easy for dischargers to comply. However, if proof of compliance means that dischargers must somehow show the Central Coast Water Board exactly how they have complied with label requirements, then proof of compliance is much more nebulous. For many of the regulatory programs required by DPR, compliance is based on the fact that there are no enforcement actions.
- (14) Clarify specific requirements related to Farm Plans (e.g., farm/ranch maps, characteristics of discharge). The proposed revisions here capture only a small number of the provisions proposed by Farmers. It is important to note that the most important revision proposed by Farmers has not been included. That would be to clarify that Farm Plans are to remain on the farm, and be available to Central Coast Water Board staff upon request at the farm. As currently drafted, Farm Plans would need to be submitted to the Water Board's offices, and become public documents, upon request by Central Coast Water Board staff.
- (17) Clarify the definition of operation, farm, and public water system. See comments on number (2) above.

- (18) Clarify reporting requirements relative to proprietary information such as trade secrets and secret processes. While the proposed revision will clarify the process for submitting information, it does not provide the growers with any protection for confidential information. Further, the proposed revision would now require every grower to provide “adequate legal justification” for protecting information from public disclosure. This means that many growers may need to seek legal counsel in order to make the appropriate justification to the Central Coast Water Board. Thus, costs associated with the Draft Order have increased.
- (20) Remove requirement for including the “total nitrogen removed at harvest” in the nitrogen balance ratio. The proposed revision here does little to address our overall concerns with the approach contained in the Draft Order. As indicated in Dr. Letey’s comments, obtaining a mandated nitrogen balance is difficult and complex. Accordingly, the requirements proposed, even with the proposed revision, are inappropriate and should be removed.

## **ATTACHMENT 2**

## ATTACHMENT 2

### CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD CENTRAL VALLEY REGION

ORDER NO. R5-2006-0053

#### COALITION GROUP CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS FOR DISCHARGES FROM IRRIGATED LANDS

The California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) finds that:

1. The Central Valley Region has more than seven million acres of cropland under irrigation and thousands of individuals and operations generating wastewater that falls into the category of “discharges of waste from irrigated lands,” as defined in Attachment A of Order No. R5-2006-0053 (hereafter “Order” or “Conditional Waiver”).
2. The Central Valley Region has thousands of miles of surface waters that are, or may be, affected by discharges of waste from irrigated lands. These discharges may adversely affect the quality of the “waters of the State,” as defined in Attachment A of this Order.
3. Irrigated lands are lands where water is applied to produce crops including, but not limited to, land planted to row, vineyard, pasture, field and tree crops, commercial nurseries, nursery stock production, managed wetlands, rice production, and greenhouse operations with permeable floors that do not currently discharge under waste discharge requirements (WDRs), National Pollutant Discharge Elimination System (NPDES) permits, Municipal Separate Storm Sewer System permits, or other NPDES permits.
4. Regional water quality data from the Surface Water Ambient Monitoring Program, the Stormwater Monitoring Program, NPDES Receiving Water Monitoring Reports, and other monitoring programs identify waters of the State with impaired water quality that appears attributable to or influenced by agriculture in areas of irrigated lands.
5. Some water bodies within the Central Valley Region have been listed as impaired pursuant to Clean Water Act Section 303(d). The 303(d) list of impaired water bodies identifies agriculture as a potential source of constituents that impair beneficial uses of some waters within the Central Valley Region and threaten the quality of waters of the State.

#### LEGAL AND REGULATORY CONSIDERATIONS

6. California Water Code (Water Code) Section 13260(a) requires that any person discharging waste or proposing to discharge waste within any region that could affect the quality of the waters of the State, other than into a community sewer system, shall file with the appropriate Regional Board a report of waste discharge (RWD)

containing such information and data as may be required by the Central Valley Water Board, unless the Central Valley Water Board waives such requirement.

7. Whether an individual discharge of waste from irrigated lands may affect the quality of the waters of the State depends on the quantity of the discharge, quantity of the waste, the quality of the waste, the extent of treatment, soil characteristics, distance to surface water, depth to groundwater, crop type, management practices and other site-specific factors. These individual discharges may also have a cumulative effect on waters of the State. Waste discharges from some irrigated lands have impaired and will likely continue to impair the quality of the waters of the State within the Central Valley Region if not subject to regulation pursuant to the Porter-Cologne Water Quality Control Act (codified in Water Code Division 7).
8. Water Code Section 13263 requires the Central Valley Water Board to prescribe WDRs, or waive WDRs, for the discharge. The WDRs must implement relevant water quality control plans and the Water Code.
9. Water Code Section 13269(a) provides that the Central Valley Water Board may waive the requirements to submit a RWD and to obtain WDRs for a specific discharge or specific type of discharge, if the Central Valley Water Board determines that the waiver is consistent with any applicable water quality control plan and such waiver is in the public interest. Water Code Section 13269 further provides that any such waiver of WDRs shall be conditional, must include monitoring requirements unless waived, may not exceed five years in duration, and may be terminated at any time by the Central Valley Water Board.
10. As authorized by Water Code Section 13269, this Order conditionally waives the requirement to file RWDs and obtain WDRs for Dischargers, as defined in Attachment A, who are participants in a Coalition Group that complies with the *Coalition Group Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands*. Some Dischargers will seek coverage under the Individual Discharger Conditional Waiver, and some Dischargers will seek coverage under the Coalition Group Conditional Waiver by joining a Coalition Group.
11. For the purposes of the Conditional Waiver, Water Districts, as defined in Attachment A, may join a Coalition Group for coverage under the Water Code for their discharges from operational spills, discharges resulting from facility maintenance activities, and discharges from drainage and stormwater facilities containing tailwater and/or stormwater from irrigated lands.
12. Attachment A to this Order identifies plans and policies, which contain regulatory requirements that apply to the discharge of waste from irrigated lands. Attachment A also provides definitions of terms for purposes of this Order and an Information Sheet that clarifies the “tributary rule.”

13. The Conditional Waiver is for owners and/or operators of irrigated lands who have knowingly elected to participate in a Coalition Group approved by the Central Valley Water Board that complies with the Conditional Waiver and formed on their behalf to comply with the Water Code and the Central Valley Water Board's plans and policies.
14. To implement the Conditional Waiver and to provide accountability, the Central Valley Water Board must receive sufficient information to identify Dischargers who have complied with the Water Code by knowingly electing to participate in a Coalition Group that complies with the Conditional Waiver. Attachment B requires that Coalition Groups maintain and annually submit an electronic list with specific information about the landowners and/or operators of irrigated lands that discharge waste to waters of the State who are knowingly participating in the Coalition Group. In addition, if directed by the Executive Officer, each Coalition Group must submit an electronic map, in GIS format specified by the Executive Officer, showing both participants and non-participants of the Coalition Group. The Central Valley Water Board acknowledges that the Coalition Groups are not responsible for enforcing the Water Code. The Central Valley Water Board acknowledges that the California Rice Commission (CRC) has formed a commodity specific Coalition Group under the Program. The CRC may not provide a list of participants that includes the names and addresses of members of the CRC because Food and Agricultural Code Sections 71089 and 71124(a)<sup>1</sup> specifically identify the names and addresses of members of the CRC as confidential and specifically prohibit the disclosure of such information except by court order. All rice growers in the Sacramento Valley region are mandated to participate in the CRC. The CRC may provide area maps that clearly delineate the rice acreage in the Sacramento Valley that is within the CRC's Coalition Group. Attachment B provides that participant information may be provided by submitting an electronic map(s).
15. Consistent with Water Code sections 13267 and 13269, this Conditional Waiver requires the implementation of a monitoring and reporting program (MRP) as set forth in MRP Order No. R5-2005-0833 for Coalition Groups that is intended to determine the effects of irrigated lands on water quality, to support the development and implementation of the Conditional Waiver, to verify the adequacy and effectiveness of the Conditional Waiver's conditions, and to evaluate each Coalition Group's compliance with the terms and conditions of the Conditional Waiver. A Coalition Group that is covered under the Conditional Waiver must comply with MRP Order No. R5-2005-0833, including future revisions.
16. Water Code Section 13267(b)(1) states: *In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged,*

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<sup>1</sup> Food and Agricultural Code §71089 states, in part: [The Rice Commission] "shall keep confidential and shall not disclose, except when required by court order after hearing in a judicial proceeding, . . . names and addresses of handlers, producers, [and] processors." Food and Agricultural Code §71124(a) states, in part: "All proprietary information obtained or developed pursuant to this article by the commission or the secretary from any source, including, but not limited to, the names and addresses of producers, is confidential and shall not be disclosed except when required by a court order after a hearing in a judicial proceeding."

*discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.*

17. Technical reports are necessary to evaluate each Coalition Group's compliance with the terms and conditions of the Conditional Waiver and to assure protection of waters of the State.
18. Water Code Section 13269(a)(4)(A) authorizes the Central Valley Water Board to include as a condition of a conditional waiver the payment of an annual fee established by the State Water Resources Control Board (State Water Board). On 16 June 2005, the State Water Board adopted Order No. 2005-0049 *Adopting Emergency Regulation Revisions to the Fee Schedules Contained in Title 23, Division 3, Chapter 9, Article 1, Section 2200.3 of the CCR*, approving a fee schedule for agricultural waivers. This Conditional Waiver requires each Discharger who participates in a Coalition Group, or the Coalition Group on behalf of its participants, to pay an annual fee to the State Water Board in compliance with the fee schedule in Title 23 of the California Code of Regulations.
19. The Central Valley Water Board's *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fourth Edition* and the *Water Quality Control Plan for the Tulare Lake Basin, Second Edition* (hereafter Basin Plans) designate beneficial uses, establish water quality objectives, contain programs of implementation needed to achieve water quality objectives, and reference the plans and policies adopted by the State Water Board. The water quality objectives are developed to protect the beneficial uses of waters of the State. Compliance with water quality objectives will protect the beneficial uses listed in Finding 21 below.
20. The Conditional Waiver is consistent with applicable Basin Plans because it requires compliance with applicable water quality standards, as defined in Attachment A, and requires the prevention of nuisance. It requires implementation of a monitoring and reporting program to determine effects on water quality and implementation of management practices to comply with applicable water quality standards.
21. Pursuant to the Basin Plans and State Water Board plans and policies, including State Water Board Resolution No. 88-63, and consistent with the federal Clean Water Act, the existing and potential beneficial uses of waters in the Central Valley Region include one or more of the following:

- a. Municipal and Domestic Supply
  - b. Agricultural Supply
  - c. Industrial Service Supply
  - d. Hydropower Generation
  - e. Water Contact Recreation
  - f. Non-Contact Water Recreation
  - g. Warm Freshwater Habitat
  - h. Cold Freshwater Habitat
  - i. Migration of Aquatic Organisms
  - j. Spawning, Reproduction and Development
  - k. Wildlife Habitat
  - l. Estuarine Habitat
  - m. Preservation of Biological Habitats of Special Significance
  - n. Shellfish Harvesting
  - o. Navigation
  - p. Rare, Threatened, and Endangered Species
  - q. Freshwater Replenishment
  - r. Groundwater Recharge
  - s. Industrial Process Supply
  - t. Aquaculture
  - u. Commercial and Sportfishing
22. In May 2004, the State Water Board adopted the *Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program* (NPS Policy). The purpose of the NPS Policy is to improve the State's ability to effectively manage NPS pollution and conform to the requirements of the Federal Clean Water Act and the Federal Coastal Zone Act Reauthorization Amendments of 1990. The NPS Policy provides a bridge between the State Water Board's January 2000 *NPS Program Plan* and its 2002 *Water Quality Enforcement Policy*. NPS Policy requires, among other key elements, that an NPS control implementation program's ultimate purpose shall be explicitly stated, and that the implementation program 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. The Conditional Waiver is consistent with the NPS Policy.
23. State Water Board Resolution No. 68-16 *Statement of Policy with Respect to Maintaining High Quality of Waters in California* (Resolution No. 68-16) requires Regional Water Boards, in regulating the discharge of waste, to maintain high quality waters of the State until it is demonstrated that any change in quality will be consistent with maximum benefit to the people of the State, will not unreasonably affect beneficial uses, and will not result in water quality less than that described in a Regional Water Board's policies (e.g., quality that exceeds applicable water quality standards). Resolution No. 68-16 also states, in part:

*Any activity which produces or may produce a waste or increased volume or concentration of waste and which discharges or proposes to discharge to existing high quality waters will be required to meet waste discharge requirements which will result in best practicable treatment and control of the discharge necessary to assure that (a) a pollution or nuisance will not occur and (b) the highest water quality consistent with maximum benefit to the people of the State will be maintained.*

The Central Valley Water Board has information in its records that has been collected by the Central Valley Water Board, dischargers, educational institutions, and others that demonstrates that many water bodies within the Central Valley Region are impaired for various constituents, including pesticides such as Diazinon and Chlorpyrifos, salt, boron, and others. Many water bodies have been listed as impaired pursuant to Clean Water Act section 303(d). Such impaired water bodies are not high quality waters with respect to those constituents within the meaning of Resolution No. 68-16 and it is not necessary for the Central Valley Water Board to conduct an anti-degradation analysis. This Order does not authorize further degradation of such waters.

The Order requires persons who obtain coverage under the Conditional Waiver to comply with applicable water quality standards, protect beneficial uses, and prevent nuisance by implementing MRPs, evaluating the effectiveness of management practices, and where water quality exceeds applicable water quality standards, by identifying and implementing additional management practices to comply with applicable water quality standards. The Conditional Waiver requires management practices to be implemented to achieve applicable water quality standards and to prevent nuisance. These conditions are enforceable and the Conditional Waiver may be terminated at any time.

Where water bodies within the Central Valley Region are of high quality, this Order is consistent with Resolution No. 68-16. This Order prohibits persons from discharging additional wastes not previously discharged. As described above, persons who obtain coverage under this Order are conducting water quality monitoring. The Central Valley Water Board will continue to evaluate the data collected pursuant to monitoring to determine if discharges from irrigated lands are causing degradation of those water bodies. This Order does not authorize further degradation of such water bodies. The Water Board is in the process of preparing an Environmental Impact Report (EIR) pursuant to the California Environmental Quality Act (CEQA). Through the preparation of the EIR, the Central Valley Water Board is evaluating management practices and will require implementation of practices to achieve best practicable treatment or control of discharges.

24. Neither the Water Code nor Resolution No. 68-16 requires instantaneous compliance with applicable water quality standards. Discharges from irrigated lands can and/or do contain wastes, as defined in Water Code section 13050, that could affect the quality of the waters of the State. The Conditional Waiver requires Coalition Groups and/or Dischargers to implement management practices to achieve best practicable

treatment or control of the discharge that will reduce wastes in the discharges to achieve compliance with applicable water quality standards, protect the beneficial uses of waters of the State, and to prevent nuisance. Upon notice by the Executive Officer, the Coalition Group and/or Dischargers must submit a Management Plan, as set forth in Attachment B to this Order, to evaluate existing management practices and identify and implement new actions to protect waters of the State. Changes in water quality that may occur as a result of the Conditional Waiver will be to improve, over time, the quality of the waters, not to cause further degradation. Thus, any change in water quality will be consistent with maximum benefit to the people of the State and will not unreasonably affect beneficial uses.

25. The United States Environmental Protection Agency adopted the National Toxics Rule (NTR) on 5 February 1993 and the California Toxics Rule (CTR) on 18 May 2000, which was modified on 13 February 2001. The NTR and CTR contain water quality criteria which, when combined with beneficial use designations in the Basin Plans, constitute enforceable water quality standards for priority toxic pollutants in California surface waters. In March 2000, the State Water Board adopted the *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* (known as the State Implementation Plan or SIP), which contains guidance on implementation of the NTR and the CTR. The SIP, which was amended on 12 August 2005, states that implementation of the NTR and the CTR for agricultural nonpoint sources of pollution shall be consistent with the State's NPS Policy.
26. This Order does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the Federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). This Order and Attachments require compliance with applicable water quality standards, including water quality objectives set forth in the applicable water quality control plans and federal water quality criteria set forth in federal regulations. Compliance with such objectives will result in protection of the beneficial uses of waters of the State. Attachment B sets forth a condition that requires compliance with the Endangered Species Acts. If a "take" will result from any action authorized under this Order, the dischargers shall obtain authorization for an incidental take prior to construction or operation of the project. The dischargers shall be responsible for meeting all requirements of the applicable Endangered Species Act.

#### **RATIONALE FOR CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS FOR DISCHARGES FROM IRRIGATED LANDS**

27. In 1982, the Central Valley Water Board adopted Resolution No. 82-036 that conditionally waived WDRs for 23 categories of discharges, including irrigation return water and storm water runoff (1982 Waiver). Pursuant to Water Code Section 13269, these waivers terminated on 1 January 2003. On 5 December 2002, prior to the termination of the 1982 Waiver, the Central Valley Water Board adopted Resolution No. R5-2002-0201 establishing a new *Conditional Waiver of Waste*

*Discharge Requirements for Discharges from Irrigated Lands Within the Central Valley Region (2002 Conditional Waiver).* On 11 July 2003, the Central Valley Water Board adopted Resolution No. R5-2003-0105 replacing the 2002 Conditional Waiver and establishing a new *Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands Within the Central Valley Region (2003 Conditional Waiver)*.

28. The Central Valley Water Board has reviewed the 2003 Conditional Waiver and has determined that additional conditions are required to implement amendments to Water Code section 13269 that have occurred since adoption of the 2003 Conditional Waiver and to assure protection of water quality.
29. The goal of the Conditional Waiver is to improve and protect water quality by reducing discharges of waste and by providing an interim program to regulate discharges of waste from irrigated lands that cause or contribute to conditions of pollution or nuisance (as defined in Water Code Section 13050) or that cause or contribute to exceedances of applicable water quality standards until a long-term water quality regulatory program can be developed for Dischargers covered by this Conditional Waiver.
30. The Conditional Waiver sets forth conditions that will require Coalition Groups and/or Dischargers to 1) conduct activities required by MRP Order No. R5-2005-0833 and any revisions thereto; 2) implement and evaluate management practices that will result in achieving compliance with applicable water quality standards in the waters of the State; 3) at the request of the Executive Officer, develop and implement Management Plans, as described in Attachment B, when discharges are causing or contributing to exceedances of applicable water quality standards; and 4) conduct activities in a manner to prevent nuisance.
31. At this time, it is appropriate to adopt a waiver of RWDs and WDRs for this category of discharges because: 1) the discharges have the same or similar waste from the same or similar operations and use the same or similar treatment methods and management practices (e.g., source control, reduced chemical use, holding times, cover crops, etc.); 2) the Central Valley Water Board has limited facility-specific information and limited water quality data on facility-specific discharges; 3) during the past two years, the Coalition Groups and agencies have been collecting water quality and management practice data in the region; and 4) additional assessment information continues to be collected.
32. In addition, it is appropriate to regulate discharges of waste from irrigated lands under a Conditional Waiver rather than individual WDRs in order to simplify and streamline the regulatory process. During this process, additional facility activity and water quality information will be collected during the term of the Conditional Waiver. An EIR is being prepared pursuant to the CEQA to assess alternatives for a long-term water quality regulatory program to ensure the protection of water quality from discharges of waste from irrigated lands to waters of the State.

33. It is not appropriate at this time to adopt individual WDRs to regulate discharges of waste from irrigated lands because there are estimated to be more than 25,000 individual owners and/or operators of irrigated lands who discharge waste from irrigated lands and it is neither feasible nor practicable due to limitations of Central Valley Water Board resources to adopt WDRs within a reasonable time. The Central Valley Water Board supports the approach of allowing Dischargers to be represented by Coalition Groups in that it can provide a more efficient means to comply with many of the conditions contained in the Conditional Waiver.
34. It is not appropriate at this time to adopt individual WDRs because although there is information that discharges of waste from irrigated lands have impaired waters of the State, information is not generally available concerning the specific locations of impairments, specific causes, specific types of waste, and specific management practices that could reduce impairments and improve and protect water quality. The conditions of the Conditional Waiver will result in the development of new and additional information on which to base the adoption of individual or general WDRs, if appropriate. The conditions of the Conditional Waiver require actions to protect and improve the quality of the waters of the State within the Central Valley Region. The conditions of the Conditional Waiver may be enforced in a manner similar to enforcement of WDRs. Coverage under the Conditional Waiver may be terminated at any time and the Executive Officer may require any person to submit a RWD and comply with the Water Code pursuant to individual or general WDRs.
35. Water Code section 13269 requires that the Water Board determine that any waiver of waste discharge requirements is in the public interest. The Water Board has considered all the comments of the public and finds that this Order waiving waste discharge requirements for dischargers of waste from irrigated lands is in the public interest as further described. The Water Board has many options to regulate discharges of waste, including through individual and general waste discharge requirements, prohibitions in the Basin Plan, and individual and general conditional waivers of waste discharge requirements. Due to the large numbers of dischargers within the scope of the Board's jurisdiction, the lack of direct regulation in the past, the lack of information about the specific sources of discharges of waste from such lands, and the unprecedented scope of the program, it is reasonable to establish an interim conditional waiver that sets forth a process to collect the necessary information and require management plans to control the sources of discharges of waste as that information is developed. The Central Valley Water Board finds that allowing the use of Coalition Groups provides a reasonable way to coordinate the efforts of large groups of dischargers that are not readily identified by the Central Valley Water Board and, if such Coalition Groups adequately comply with the conditions of the Conditional Waiver, the use of Coalition Groups will continue to be a reasonable manner of regulation. The adoption of this Conditional Waiver is also in the public interest because: 1) it was adopted in compliance with Water Code Sections 13260, 13263, and 13269 and other applicable law; 2) it requires compliance with water quality standards, 3) it includes conditions that are intended to reduce and

prevent pollution and nuisance and protect the beneficial uses of the waters of the State; 4) it contains more specific and more stringent conditions for protection of water quality compared to the 2003 Conditional Waiver; 5) it contains conditions that are similar to the conditions of municipal stormwater NPDES permits, including evaluation and implementation of management practices to meet applicable water quality standards and a more specific MRP; 6) given the magnitude of the discharges and number of persons who discharge waste from irrigated lands, it provides for an efficient and effective use of limited Central Valley Water Board resources; and 7) it provides reasonable flexibility for the Dischargers who seek coverage under the Conditional Waiver by providing them with the option of complying with the Water Code through participation in Coalition Groups.

36. This action to waive the requirement to submit RWDs and to obtain WDRs for discharges of waste from irrigated lands: 1) is conditional; 2) may be terminated at any time; 3) does not permit any illegal activity; 4) does not preclude the need for permits that may be required by other State or local government agencies; and 5) does not preclude the Central Valley Water Board from administering enforcement remedies (including civil liability) pursuant to the Water Code.
37. As part of the Central Valley Water Board's irrigated lands program strategy, the Central Valley Water Board has directed staff to prepare an EIR to evaluate alternatives for a comprehensive, long-term water quality regulatory program to regulate discharges of waste from irrigated lands. The long-term program will enable the Central Valley Water Board to track progress in reducing the amount of waste discharged to waters of the State and measure the effectiveness of management practices implemented in order to meet the goal of compliance with applicable water quality standards. The preparation of an EIR to evaluate currently available and new information will identify and assess alternatives to achieve compliance with applicable water quality standards. The Central Valley Water Board has hired a contractor to prepare the EIR. On 6 March 2006, a draft Existing Conditions Report prepared by the contractor was provided for a 60-day public comment period. During the public comment period, staff of the Central Valley Water Board and the contractor conducted seven public outreach meetings to introduce and discuss the draft Existing Conditions Report.
38. Resolution No. R5-2003-0105 implemented conditional waivers, which are provided for as the regulatory process under California's NPS Policy to meet the requirements of the Water Code. WDRs, including individual WDRs or general WDRs, may be adopted in the future for one or more types of discharges of waste from irrigated lands covered by the Conditional Waiver if, for example, it is determined that the Conditional Waiver is not effective at ensuring that water quality is protected.
39. As time and resources allow, the Central Valley Water Board will further evaluate discharges of waste from irrigated lands to determine if the Conditional Waiver is adequate to improve and/or protect water quality and the beneficial uses of waters of the State. This evaluation will characterize these discharges, evaluate the effects of these discharges on waters of the State, and assess the effectiveness of management

practices implemented to address impairments of waters of the State.

40. Where other State agencies have a regulatory role for activities or pollution addressed by the conditions of the Conditional Waiver, the Central Valley Water Board will work cooperatively with other State agencies in order to effectively regulate discharges of waste from irrigated lands.

#### **SCOPE AND DESCRIPTION OF COALITION GROUP CONDITIONAL WAIVER**

41. The Conditional Waiver applies to discharges of waste from irrigated lands to surface waters, which are waters of the State. The Conditional Waiver is not intended to regulate water in agricultural fields, including, but not limited to, furrows, beds, checks, and ancillary structures, contained on private lands associated with agricultural operations. The Conditional Waiver is not intended to address the lawful application of soil amendments, fertilizers, or pesticides to land.
42. Since the adoption of the 2003 Conditional Waiver, there has been some uncertainty in determining whether or not a particular parcel of irrigated land discharges waste to waters of the State, and if there may be discharges, whether such discharges are intended to be covered within the scope of the Conditional Waiver. This Order provides clarification for Dischargers to determine whether a particular parcel of land discharges waste and provides clarification of the intended scope of the Conditional Waiver with respect to stormwater discharges.
43. The Conditional Waiver applies to discharges of waste from irrigated lands to surface waters of the State, as described by the scope of the Conditional Waiver. A discharge of waste to surface water subject to the Conditional Waiver is one that could directly or indirectly reach surface waters of the State, which include natural streams, constructed agricultural drains, agricultural dominated waterways, and other non-stream tributaries (see Attachment A, Information Sheet), or to other waters which may be hydrologically connected to such waters of the State. Direct discharges may include, for example, discharges directly from piping, tile drains, ditches or sheet flow to surface waters of the State. Indirect discharges may include, for example, discharges from one parcel to another parcel and then to surface waters of the State. This Conditional Waiver applies to discharges of waste to surface waters of the State as a result of irrigation activities, certain water district operations, and stormwater runoff.
44. This Conditional Waiver is not intended to apply to those lands that discharge waste to waters of the State only on rare occasions during large storm events. Whether or not an individual parcel will discharge waste to surface waters of the State depends on a number of factors that vary significantly from site to site. These factors include the amount and timing of rainfall, land topography, soil type, and proximity to a surface water body. It is the responsibility of the potential discharger to determine whether or not they discharge waste to waters of the State. The Executive Officer will provide a

Fact Sheet to assist owners and operators of irrigated lands in determining whether or not there is a discharge of waste from their lands that is within the scope of this Conditional Waiver.

45. The Conditional Waiver does not cover discharges of waste from irrigated lands that receive liquid waste from sources such as dairy operations and food processors. Owners and/or operators of facilities that receive such liquid waste must obtain WDRs or a separate conditional waiver, as directed by the Central Valley Water Board.
46. The Conditional Waiver is not intended to cover discharges of waste from irrigated lands used for gardens, vineyards, small orchards, small pastures, and small greenhouses that are used for the purpose of producing crops and/or animals for personal consumption or use, and the product or service is not sold commercially. Owners and operators of irrigated lands described in this finding are not required to submit a RWD or obtain WDRs unless directed by the Executive Officer or Central Valley Water Board.
47. The Conditional Waiver does not apply to discharges that are subject to the NPDES permit program under the Clean Water Act. Discharges of waste from irrigated lands that constitute agricultural return flows as defined in the Clean Water Act are exempt from regulation under the NPDES permit program.
48. The Conditional Waiver does not apply to discharges of waste that are regulated under another Conditional Waiver, individual WDRs or general WDRs. This Order does not supercede the Central Valley Water Board's Basin Plans and policies, including prohibitions (e.g., pesticides) and implementation plans (e.g., Total Maximum Daily Loads), or the State Water Board's plans and policies.
49. The Conditional Waiver provides an alternative regulatory option to WDRs. Coalition Groups, on behalf of their participants, may seek coverage under the Conditional Waiver.
50. The formation, operation, and funding of Coalition Groups is the responsibility of the local entities and/or participants of the Coalition Group.
51. Dischargers are required to comply with the Water Code, but are not required to participate in a Coalition Group. Dischargers may comply with the Water Code by participating in a Coalition Group, by filing for coverage under the Individual Discharger Conditional Waiver, by filing a RWD to obtain individual or general WDRs, or by ceasing to discharge.
52. The Central Valley Water Board does not expect that all applicable water quality standards will be achieved in all waters of the State in the Central Valley Region within the term of this Order. The conditions of the Conditional Waiver, however, require actions that will lead to achieving applicable water quality standards. To

satisfy the conditions of the Conditional Waiver, Coalition Groups and/or Dischargers must submit technical reports, conduct monitoring of surface waters, implement management practices, evaluate the effectiveness of management practices, refine management practices to improve their effectiveness where necessary, protect against pollution and nuisance, and protect the quality of the waters of the State. MRPs must be submitted to the Central Valley Water Board as required by Water Code Section 13269. Technical reports must be submitted to the Central Valley Water Board in accordance with Water Code Section 13267. The technical reports must document the results of water quality and management practice monitoring, as defined in Attachment A, describe actions taken to correct water quality impairments and nuisance conditions, and identify future actions necessary to improve and protect water quality. The management practices must be designed and implemented to achieve improvements in water quality, achieve compliance with applicable water quality standards and demonstrate compliance with the conditions in the Conditional Waiver and with State and Central Valley Water Board plans and policies. As described in Attachment B, Coalition Groups are required, if requested by the Executive Officer, to develop and implement a Management Plan when a discharge is causing or contributing to an exceedance of an applicable water quality standard.

53. To apply for coverage under the Conditional Waiver, a Coalition Group must submit a complete Notice of Intent (NOI) to comply with the conditions of the Conditional Waiver for approval by the Executive Officer. Upon submittal of a complete NOI, the Executive Officer may issue a Notice of Applicability (NOA), after which the Coalition Group will be considered approved and its participants covered under the Conditional Waiver. Those Coalition Groups that submitted an NOI pursuant to Resolution No. R5-2003-0105 are not required to submit a new NOI unless so requested by the Executive Officer.
54. Attachment B of the Conditional Waiver describes the terms and conditions that apply to Coalition Groups that represent Dischargers as a common group.
55. Pursuant to Water Code Section 13263(g), discharge of waste to waters of the State is a privilege, not a right, and adoption of this Conditional Waiver and the receipt of an NOA from the Executive Officer do not create a vested right to continue the discharge.
56. This Conditional Waiver may be terminated at any time by the Central Valley Water Board and may be revised by the Central Valley Water Board after a public hearing. The Executive Officer may terminate the applicability of the Conditional Waiver with respect to a specific Discharger or Coalition Group upon notice to the Discharger or Coalition Group.
57. Interested persons were notified that the Central Valley Water Board will consider the adoption of a Conditional Waiver, which conditionally waive WDRs for discharges of waste from irrigated lands to surfaces waters, as described in this Order, and were

provided an opportunity for a public hearing and an opportunity to submit written comments.

58. In a public hearing, all comments pertaining to this Order were heard and considered.
59. The administrative record for this matter includes the administrative record for the 2003 Conditional Waivers and the Central Valley Water Board records since that time.

### **CALIFORNIA ENVIRONMENTAL QUALITY ACT**

60. For purposes of adoption of this Order, the Central Valley Water Board is the lead agency pursuant to the CEQA (Public Resources Code Sections 21100 et seq.). On 5 December 2002, the Central Valley Water Board approved an Initial Study and Negative Declaration in Resolution No. R5-2002-0201. Resolution No. R5-2003-0105 modified the Conditional Waivers contained in Resolution No. R5-2002-0201, but did not substantially change the project considered in the Initial Study and Negative Declaration. Additional documents that clarify the basis for the Conditional Waiver are attached to Resolution No. R5-2003-0103, which approved the Initial Study and adopted a Negative Declaration with the clarifications.
61. This Order is not a new project that requires preparation of any new environmental documents to comply with CEQA. It is a renewal of an existing project, with modifications. These findings, nevertheless, evaluate whether a subsequent environmental document is required. Public Resource Code section 21166 and Title 14 California Code of Regulations section 15162 (CEQA Guidelines) specify that when the lead agency has adopted a negative declaration for a project, the agency is not required to prepare a subsequent environmental document unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, that, in summary: 1) substantial changes are proposed in the project that involve new significant environmental impacts; 2) substantial changes occur with respect to the circumstances of the project; or 3) new information of substantial importance which was not previously known shows that the project will have significant effects. None of the circumstances requiring preparation of subsequent environmental document has occurred.
62. The project is the renewal of Conditional Waivers originally adopted in 2003; it is not a new project. Substantial changes are not proposed in the project or with respect to the circumstances of the project that would involve new significant environmental effects or a substantial increase in environmental effects. This Order will require actions to protect water quality as compared to Resolution No. R5-2003-0105. These actions include annual submittal of participant information, development, implementation of management practices, and implementation of Management Plans as requested by the Executive Officer, and enhanced reporting and communications with regard to exceedances of applicable water quality standards.

63. Since the adoption of Resolution No. R5-2003-0105 and the Negative Declaration, new information has become available to the lead agency. Central Valley Water Board staff has compiled two years of water quality monitoring data from Central Valley Water Board sources, Coalition Groups, Water Districts and others within the Sacramento River, San Joaquin River, and Tulare Lake Basins. Additional information has been provided by contract with the University of California (UC). Water quality monitoring data from Coalition Groups and Individual Dischargers identified exceedances of applicable water quality standards. Monitoring conducted through a contract with the University of California and monitoring from Coalition Groups and individual dischargers have identified problem sites in many water bodies since 2004. Information from about 110 monitoring sites through UC monitoring, about 90 monitoring sites from Coalitions, and 24 monitoring sites with Irrigation Districts is providing data that will prove invaluable in characterizing the effects of irrigated agriculture on water bodies in the Central Valley. About 1,758 samples were collected by all of the Irrigated Lands Coalitions, and approximately 739 through the UC contract.

Coalition monitoring consisted primarily of toxicity testing (Phase I) and represents approximately 20 percent of the water bodies within most individual coalition boundaries at this time. Coalitions are required to expand their monitoring sites each year to be able to assess all water bodies within their boundaries, as well as to expand into Phase II monitoring which will include pesticides, nutrients and general water quality parameters.

Much of the existing data provides information about agricultural monitoring sites that were tested for various parameters for the first time, in particular with respect to water column and sediment toxicity. The toxicity evaluates the overall quality of the water or sediment, and accounts for the cumulative effect of multiple stressors, such as combinations of pesticides that individually may not exceed water quality standards.

From the Coalition data, it is now known that sediment and water column toxicity exists throughout the Central Valley. Water column toxicity averages from 5.9 to 13 percent, and sediment toxicity ranges from 21 to 29 percent. Pesticide monitoring data, primarily through the UC contract also provides the information that approximately 92 percent of the water bodies tested indicated detectable levels, with approximately 64 percent exceeding water quality standards.

The UC monitoring data already provides information about toxicity in concert with pesticides, nutrients and other water quality parameters. With the commencement of Phase II monitoring by the Coalitions, the monitoring results will provide more data on additional monitoring sites that will attempt to explain the toxicity detected during Phase I.

Some water quality parameters and chemicals were tested for the first time in these water bodies. This information helps to substantiate that waters within the Central Valley Region are impacted by discharges of waste from irrigated lands but does not indicate that there are new impacts not already known at the time of the adoption of the

Negative Declaration that shows that this project has significant environmental effects. The Conditional Waivers require compliance with applicable water quality standards and require prevention of pollution and nuisance; they do not allow violation of water quality objectives or degradation of waters of the State. The Conditional Waiver establishes an iterative process that requires Dischargers to evaluate and then implement and/or improve management practices where it is determined that discharges of waste from irrigated lands have caused or contributed to exceedances of applicable water quality standards. In addition, when it is determined that discharges of waste from irrigated lands have caused or contributed to exceedances of applicable water quality standards, the Executive Officer may request a Management Plan, which will identify the management practices that may be implemented, evaluate the effectiveness of existing management practices in achieving applicable water quality standards, and identify additional actions, including, but not limited to, different or additional management practice implementation or education outreach to achieve applicable water quality standards. The Management Plan will also include a schedule to implement the management practices and the means of assessing and evaluating their effectiveness. These conditions are consistent with the Water Code and the Basin Plans.

64. The new data and information were considered in this Order. The new data and information confirm the effects of discharges of waste from irrigated lands on water quality that were previously discussed in the Initial Study and Negative Declaration. The new data and information do not show that there are any new effects of the project that were not discussed in the Initial Study and Negative Declaration, nor do they show that the effects discussed would be more severe than discussed in the Initial Study and Negative Declaration. The project is the conditional waiver of waste discharge requirements. This Conditional Waiver does not allow dischargers to degrade waters of the State and does require dischargers to comply with water quality standards, protect beneficial uses, and protect against pollution and nuisance. The project, therefore, does not cause effects that are more severe than discussed in the Initial Study and Negative Declaration. The conditions of the waiver, if complied with, will protect the waters of the State. Therefore, no subsequent environmental document is required for this Order.

**IT IS HEREBY ORDERED that:**

1. Pursuant to Water Code Sections 13263, 13267, and 13269, each Coalition Group, as defined in Attachment A, that is covered under the Conditional Waiver, in order to meet the provisions contained in Water Code Division 7 and regulations and plans and policies adopted thereunder, shall comply with the terms and conditions contained in Attachment B.
2. Dischargers may not discharge any waste not specifically regulated by the Conditional Waiver except in compliance with the Water Code.
3. Dischargers who are participants in a Coalition Group shall implement management practices, as necessary, to improve and protect water quality and to achieve compliance

with applicable water quality standards.

4. Pursuant to Water Code Section 13269, the Central Valley Water Board waives the requirement for Dischargers to submit a RWD and to obtain WDRs for discharges of waste from irrigated lands if the Discharger is a participant in a Coalition Group that complies with the Conditional Waiver and Monitoring and Reporting Program Order No. R5-2005-0833 and any revisions thereto.
5. Pursuant to Water Code Section 13269, this action waiving the issuance of WDRs for certain specific types of discharges: 1) is conditional; 2) may be terminated at any time; 3) does not permit any illegal activity; 4) does not preclude the need for permits which may be required by other local or governmental agencies; and 5) does not preclude the Central Valley Water Board from administering enforcement remedies (including civil liability) pursuant to the Water Code.
6. Coalition Groups and the Dischargers who are participants in Coalition Groups shall comply with the terms and conditions of the Conditional Waiver and take action to improve and protect waters of the State.
7. The Conditional Waiver shall not create a vested right, and all such discharges of waste shall be considered a privilege, as provided for in Water Code Section 13263.
8. A waiver of WDRs for a type of discharge may be superceded if the State Water Board or Central Valley Water Board adopts specific WDRs or general WDRs for this type of discharge.
9. The Central Valley Water Board may review this Conditional Waiver at any time and may modify or terminate the Conditional Waiver in its entirety. The Executive Officer may terminate applicability of the Conditional Waiver with respect to a Coalition Group or a Discharger who is a participant in a Coalition Group upon notice to the Coalition Group or Discharger.
10. This Order becomes effective on **1 July 2006** and expires on **30 June 2011** unless rescinded or renewed by the Central Valley Water Board. Upon completion of the EIR, the Central Valley Water Board may reopen this Order to reconsider the expiration date.

I, PAMELA C. CREEDON, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order and Attachments adopted by the California Regional Water Quality Control Board, Central Valley Region, on 22 June 2006.

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PAMELA C. CREEDON, Executive Officer

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ORDER NO. R5-2006-0053  
APPLICABLE WATER QUALITY CONTROL PLANS,  
DEFINITIONS AND INFORMATION SHEET  
FOR

COALITION GROUP CONDITIONAL WAIVER OF  
WASTE DISCHARGE REQUIREMENTS  
FOR  
DISCHARGES FROM IRRIGATED LANDS

Order No. R5-2006-0053 requires the Coalition Groups and individual Dischargers to comply with applicable state plans and policies and applicable state and federal water quality standards and to take actions to prevent nuisance. The water quality standards are set forth in state and federal plans, policies and regulations. The California Regional Water Quality Control Board, Central Valley Region's (Central Valley Water Board) Water Quality Control Plans (Basin Plans) contain specific water quality objectives, beneficial uses, and implementation plans that are applicable to discharges of waste and/or water bodies that receive discharges of waste from irrigated lands. The State Water Resources Control Board (State Water Board) has adopted plans and policies that may be applicable to discharges of waste and/or water bodies that receive discharges of waste from irrigated lands. The United States Environmental Protection Agency has adopted the National Toxics Rule and the California Toxics Rule, which constitute water quality criteria that apply to waters of the United States. The specific waste constituents to be monitored within each Coalition Group boundaries and the applicable water quality standards that protect identified beneficial uses for the receiving water will be set forth in the monitoring and reporting program.

This Attachment A lists the relevant plans, policies, and regulations, contains definitions of terms used in Order No. R5-2006-0053, and includes an Information Sheet to clarify the "tributary rule" in the Basin Plans.

**WATER QUALITY CONTROL PLANS**

The following Basin Plans have been adopted by the Central Valley Water Board and are available on the Central Valley Water Board's website at [www.waterboards.ca.gov/centralvalley](http://www.waterboards.ca.gov/centralvalley) or by contacting the Central Valley Water Board at (916) 464-3291. Basin Plans are revised periodically.

*Water Quality Control Plan for the Sacramento and San Joaquin River Basins, Fourth Edition*, revised September 2004

*Water Quality Control Plan for the Tulare Lake Basin, Second Edition*, revised January 2004

**OTHER RELEVANT PLANS AND POLICIES**

State Water Board Resolution No. 68-16, *Statement of Policy with Respect to Maintaining High Quality of Waters in California*

State Water Board *Water Quality Control Plan for Temperature in Coastal and Interstate Waters and Enclosed Bays and Estuaries in California*, June 1972

State Water Board Resolution No. 74-43, *Water Quality Control Policy for the Enclosed Bays and Estuaries of California*, May 1974

State Water Board Resolution No. 88-63, *Sources of Drinking Water Policy*, May 1988

State Water Board *Water Quality Control Plan for the San Francisco Bay/Sacramento San Joaquin Delta Estuary*, May 1995

*Consolidated Toxic Hot Spots Cleanup Plan*, June 1999

*Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program*, May 2004

*National Toxics Rule*, 40 CFR 131.36

*California Toxics Rule*, 40 CFR 131.38

## **DEFINITIONS**

The following definitions apply to the Conditional Waiver and Monitoring and Reporting Program as related to discharges of waste from irrigated lands. All other terms shall have the same definitions as prescribed by the Porter-Cologne Water Quality Control Act (California Water Code Division 7), unless specified otherwise.

1. Coalition Group - Any group of Dischargers, participants, and/or organizations that form to comply with the Conditional Waiver. Coalition Groups can be organized on a geographic basis or can be groups with other factors in common such as commodity groups.
2. Discharger - The owner and/or operator of irrigated lands that discharge or have the potential to discharge waste that could directly or indirectly reach surface waters of the State and could affect the quality of the waters of the State.
3. Discharges of waste from irrigated lands – Surface discharges, such as irrigation return flows, tailwater, drainage water, subsurface drainage generated by irrigating crop land or by installing and operating drainage systems to lower the water table below irrigated lands (tile drains), stormwater runoff flowing from irrigated lands, stormwater runoff conveyed in channels or canals resulting from the discharge from irrigated lands, and/or operational spills containing waste.
4. Exceedance - For the purposes of the Conditional Waiver, an exceedance is a reading using a field instrument or a detection by a California State-certified analytical laboratory where the detected result is above an applicable water quality standard for the parameter or constituent. For toxicity tests, an exceedance is a result that is statistically different from the control sample test result.

5. Irrigated lands – Lands where water is applied to produce crops, including, but not limited to, land planted to row, vineyard, pasture, field and tree crops, commercial nurseries, nursery stock production, managed wetlands, rice production, and greenhouse operations with permeable floors that do not currently discharge under waste discharge requirements, National Pollutant Discharge Elimination System (NPDES) permits, Municipal Separate Storm Sewer System permits, or other NPDES permits.
6. Irrigation return flow – Surface and subsurface water which leaves the field following application of irrigation water.
7. Liquid waste - Any waste materials, which are not spadable.
8. Monitoring - All types of monitoring undertaken in connection with determining effects on water quality, water quality conditions, and factors that may affect water quality conditions. Monitoring includes, but is not limited to, in-stream water quality monitoring undertaken in connection with agricultural activities, monitoring to identify short and long-term trends in water quality, active inspections of operations, and management practice implementation and effectiveness monitoring. The purposes of monitoring include, but are not limited to, supporting the development and implementation of the Conditional Waiver, verifying the adequacy and effectiveness of the Conditional Waiver's conditions, and evaluating each Coalition Group's compliance with the terms and conditions of the Conditional Waiver.
9. Operational spill – Irrigation water that is diverted from a source such as a river, but is discharged without being delivered to or used on an individual field.
10. Receiving waters - Surface waters that receive or have the potential to receive discharges of waste from irrigated lands.
11. Requirements of applicable water quality control plans - Water quality objectives, prohibitions, Total Maximum Daily Load Implementation Plans, or other requirements contained in water quality control plans adopted by the Central Valley Water Board and approved according to applicable law.
12. Stormwater runoff – The runoff of precipitation from irrigated lands.
13. Subsurface drainage – Water generated by installing and operating drainage systems to lower the water table below irrigated lands. Subsurface drainage systems, deep open drainage ditches, or drainage wells can generate this drainage.
14. Tailwater – The runoff of irrigation water from an irrigated field.
15. Waste – As defined in California Water Code (Water Code) Section 13050. Includes sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for the purposes

of disposal. Waste specifically regulated by the Conditional Waiver includes: earthen materials, such as soil, silt, sand, clay, and rock; inorganic materials, such as metals, salts, boron, selenium, potassium, and nitrogen; and organic materials, such as pesticides that enter or have the potential to enter waters of the State. Examples of waste not specifically regulated by the Conditional Waiver include hazardous and human wastes.

16. Water District – California law defines a water district. For purposes of the Conditional Waiver, a water district is any district or other political subdivision, other than a city or county, a primary function of which is the irrigation, reclamation, or drainage of land or the diversion, storage, management, or distribution of water primarily for domestic, municipal, agricultural, industrial, recreation, fish and wildlife enhancement, flood control, or power production purposes. (Water Code Section 20200.) Such districts include, but are not limited to, irrigation districts, county water districts, California water districts, water storage districts, reclamation districts, county waterworks districts, drainage districts, water replenishment districts, levee districts, municipal water districts, water conservation districts, community services districts, water management districts, flood control districts, flood control and floodwater conservation districts, flood control and water conservation districts, water management agencies, and water agencies. Water districts may be a discharger if the water district accepts or receives discharges from irrigated lands, and discharges or threatens to discharge irrigation return flows, tailwater, operational spills, drainage water, subsurface drainage generated by irrigating crop land or by installing and operating drainage systems to lower the water table below irrigated lands (tile drains) and/or stormwater runoff flowing from irrigated lands to other waters of the State.
17. Waters of the State – As defined in Water Code Section 13050. Any surface water or groundwater, including saline waters, within the boundaries of the State. The Conditional Waiver regulates discharges of waste from irrigated lands to surface waters.
18. Water Quality Standards – Water quality objectives in the Central Valley Water Board’s Basin Plans, water quality criteria in the California Toxics Rule and National Toxics Rule adopted by U.S. EPA, and/or water quality objectives in other applicable State Water Board plans and policies.

### INFORMATION SHEET\*

In July 2003, the Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) adopted *Conditional Waivers of Waste Discharge Requirements for Discharges From Irrigated Lands Within the Central Valley Region* (Conditional Waivers or Waiver) (Resolution No. R5-2003-0105). Various parties filed petitions with the State Water Resources Control Board (State Water Board) and filed petitions for writ of mandate in the Sacramento County Superior Court. On 10 May 2005, the Sacramento County Superior Court issued a ruling in the matter of *Deltakeeper, et al. v. California Regional Water Quality Control Board, Central Valley Region, et al.*, No. 04CS00235, and *California Farm Bureau Federation v. State Water Resources Control Board, et al.* No. 04CS00264 (Court Order). In that ruling, the Court remanded:

"this action so that Respondents may clarify in its findings the extent to which the Waiver is intended to apply to agricultural dominated waterways and constructed agricultural drains and other non-stream tributaries; the extent to which the Waiver purports to impose receiving water limitations upon such waterbodies; and, in light of the foregoing, the extent to which the Waiver may rely on application of the Tributary Rule for these purposes." (Court Order at 77).

In response to the Court's three questions:

1. The Conditional Waivers apply to all waters of the state within the Central Valley Region, including agricultural dominated waterways, constructed agricultural drains, and other non-stream tributaries.
2. The Conditional Waivers impose receiving water limitations upon agricultural dominated waterways, constructed agricultural drains, and other non-stream tributaries to the same extent as the Basin Plans.
3. The Central Valley Water Board has designated beneficial uses for listed water bodies, including uses for certain agricultural drains in its Water Quality Control Plans. See Chapter II of the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins and the Water Quality Control Plan for the Tulare Basin. To address water bodies that are not separately listed in the Water Quality Control Plans, the Regional Board set forth the so-called "tributary rule". The Regional Board generally does not use the tributary rule to determine beneficial uses for constructed agricultural drains and other non-stream tributaries. The tributary rule generally does apply to agricultural dominated water bodies. Even if a water body is not listed and the tributary rule does not apply, beneficial uses of water bodies may be designated pursuant to other laws or policies. For example, designated uses may be based on the United States Environmental Protection Agency's water quality standards regulations. See State Water Board Order WQO 2002-0016 at 6.

\*This Information sheet was added to the 2003 Conditional Waiver by Resolution R5-2005-0137 on 20 October 2005 to address the Court Order.

## AMENDED ATTACHMENT B

### CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD CENTRAL VALLEY REGION

ORDER NO. R5-2006-0053

#### TERMS AND CONDITIONS

#### COALITION GROUP CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS FOR DISCHARGES FROM IRRIGATED LANDS

Attachment B to Order No. R5-2006-0053 contains the terms and conditions of the *Coalition Group Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands* (Conditional Waiver). The Conditional Waiver conditionally waives waste discharge requirements (WDRs) and reports of waste discharge for discharges of waste from irrigated lands to surface waters within the Central Valley Region. The Conditional Waiver establishes terms and conditions with which Coalition Groups must comply to obtain coverage under and to be considered in compliance with the Conditional Waiver. Order No. R5-2006-0053 defines “discharges of waste from irrigated lands” as including surface discharges, such as irrigation return flows, tailwater, drainage water, subsurface drainage generated by irrigating crop land or by installing and operating drainage systems to lower the water table below irrigated lands (tile drains), stormwater runoff flowing from irrigated lands, stormwater runoff conveyed in channels or canals resulting from the discharge of waste from irrigated lands, and/or operational spills containing waste.

The Coalition Groups and/or Dischargers shall comply with the following conditions:

#### A. General

1. The Coalition Group and/or Dischargers shall comply with all conditions of the Conditional Waiver, including timely submittal of all technical reports specified in **Part B. Technical Reports**. Violations may result in enforcement action under the California Water Code (Water Code), including Central Valley Regional Water Quality Control Board (Central Valley Water Board) orders, or termination of coverage under the Conditional Waiver for Coalition Groups or for individual Dischargers who are participating in Coalition Groups.
2. The reports submitted to comply with the Conditional Waiver shall be signed by a representative authorized by the Coalition Group.
3. Any person signing a report submitted as required by the Coalition Group Conditional Waiver shall make the following certification:

*“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for knowingly submitting false information, including the possibility of fine and imprisonment for violations.”*

4. Coalition Groups shall comply with Coalition Group Monitoring and Reporting Program (MRP) Order No. R5-2005-0833, which is required by the Conditional Waiver, or as revised by the Executive Officer.
5. The Coalition Group shall maintain a Participant List with information concerning each Participant who is knowingly participating in the Coalition Group. The Participant List shall include, at a minimum, (a) an assessor parcel number, (b) parcel size, (c) parcel owner or operator name, and (d) parcel owner or operator mailing address.
6. Each Coalition Group shall submit an electronic list of the landowners and/or operators of irrigated lands that discharge waste to waters of the State who are knowingly participating in the Coalition Group. The list shall include: (a) assessor parcel number(s), (b) parcel size, (c) parcel owner or operator name, and (d) parcel owner or operator mailing address. To the extent information required by this section may not be disclosed because it requires the disclosure of confidential or proprietary information, including names and addresses, in violation of Food and Agricultural Code Sections 71089 and 71124(a), the Coalition Group must provide a detailed area map(s) that clearly delineates the coverage area and acreage. The initial electronic Participant List shall be submitted to the Central Valley Water Board by **30 September 2006**. Thereafter, by **31 July of each year**, the Coalition Group shall submit an updated Participant List. The information provided by a Coalition Group to comply with this condition is subject to public disclosure unless subject to an exemption under applicable law, including the California Public Records Act.
7. If required by the Executive Officer, each Coalition Group shall submit an electronic map, in GIS format specified by the Executive Officer, showing both participants and non-participants. The electronic map shall include the following information: (a) assessor parcel number; (b) parcel size; (c) parcel owner or operator name; (d) parcel owner or operator mailing address, and (e) whether the owner or operator of the parcel is knowingly participating in the Coalition Group. To the extent information required by this section may not be disclosed because it requires the disclosure of confidential or proprietary information, including names and addresses, in violation of Food and Agricultural Code Sections 71089 and 71124(a), the Coalition Group must provide a detailed area map(s) that clearly delineates the coverage area and acreage. The information provided by a Coalition Group to comply with this condition is subject to public disclosure unless subject to an exemption under applicable law, including the California Public Records Act.
8. Coalition Groups and/or Dischargers shall comply with applicable Total Maximum Daily Loads and implementation plans in the Basin Plans.

9. After **31 December 2006** no new participants may join a Coalition Group unless approved by the Executive Officer.
10. The Executive Officer may approve a new participant to join a Coalition Group, if one or more of the following conditions exists. Unless otherwise required by the fee schedules set forth in Title 23 California Code of Regulations, payment of a fee for the application to join a Coalition Group shall not be required:
  - A. The subject owner and/or property were not a “discharger” qualifying for coverage under the Coalition Group Conditional Waiver prior to 31 December 2006, but management or physical changes on the subject property, or on properties between the subject property and receiving surface waters to which the wastewater drains, have been modified such that the subject owner and property are now a “discharger” and qualify for Coalition Group membership.
  - B. The owner/property were participants in a Coalition Group under the Coalition Group Conditional Waiver, or covered under the Individual Discharger Conditional Waiver (Order No. R5-2006-0054), prior to 31 December 2006, but are transferring their participation to another Coalition Group.
  - C. Coalition Group boundaries change or a new Coalition Group is formed, such that an area not previously covered by any Coalition Group now is covered, so growers in those areas should be able to join the new or revised Coalition Group.
  - D. The property was transferred to a new owner after 31 December 2006.
11. The Executive Officer may approve a new participant to join a Coalition Group if the participant requests to join a Coalition Group, but does not meet one of the four conditions in Condition A.10. After 30 June 2008, the new participant shall submit the applicable fee (if any) with the application to join a Coalition Group, as set forth under the fee schedules contained in Title 23 California Code of Regulations.
12. Dischargers who are participating in a Coalition Group shall implement management practices, as necessary, to achieve best practicable treatment or control of the discharge to reduce wastes in the discharges to the extent feasible and that will achieve compliance with applicable water quality standards, protect the beneficial uses of waters of the state, and prevent nuisance.

13. Dischargers who are participating in a Coalition Group shall not discharge any waste not specifically regulated by the Conditional Waiver, cause new discharges of wastes from irrigated lands that impair surface water quality, or increase discharges of waste or add new wastes that impair surface water quality not previously discharged by the Discharger. Waste specifically regulated by the Conditional Waiver includes earthen materials, such as soil, silt, sand, clay, and rock; inorganic materials, such as metals, salts, boron, selenium, potassium, and nitrogen; and organic materials, such as organic pesticides, that enter or have the potential to enter into waters of the State. Examples of waste not regulated by the Conditional Waiver include hazardous waste and human waste.
14. The Central Valley Water Board staff may investigate the property of persons subject to the Conditional Waiver pursuant to Water Code Section 13267(c) to ascertain whether the purposes of the Porter-Cologne Water Quality Control Act are being met and whether the conditions of the Conditional Waiver are being complied with. The inspection shall be made with the consent of the owner or possessor of the facilities or, if the consent is withheld, with a warrant duly issued pursuant to the procedure set forth in Title 13 Code of Civil Procedure Part 3 (commencing with Section 1822.50). In the event of an emergency affecting the public health or safety, an inspection may be performed without consent or the issuance of a warrant.
15. The Coalition Group and/or Dischargers shall take all reasonable steps to prevent any discharge in violation of the Conditional Waiver.
16. The Coalition Group and/or Dischargers shall maintain in good working order and operate as efficiently as possible any facility or control system, including management practices and monitoring devices installed or used to achieve compliance with the Conditional Waiver.
17. The discharge of any waste not specifically regulated by the Conditional Waiver is prohibited unless the Discharger complies with Water Code Section 13260(a) and the Central Valley Water Board either issues WDRs pursuant to Water Code Section 13263 or an individual waiver pursuant to Water Code Section 13269 or the time frames specified in Water Code Section 13264(a) have elapsed.
18. This Order does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any action authorized under this Order, the dischargers shall obtain authorization for an incidental take prior to construction or operation of the project. The dischargers shall be responsible for meeting all requirements of the applicable Endangered Species Act.

## **B. Technical Reports**

1. A Coalition Group, on behalf of its Participants who are seeking to be covered under the Conditional Waiver, shall submit a completed Notice of Intent (NOI), which shall contain all of the information requested in the NOI form, which is included at the end of this Attachment B, in a format as approved by the Executive Officer.
  - a. The NOI shall identify the representative(s) authorized to sign reports submitted on behalf of the Coalition Group.
  - b. The NOI shall contain an electronic list of landowners and/or operators of irrigated lands that discharge waste to waters of the State, who are knowingly participating in the Coalition Group. This Participant List shall include: (1) assessor parcel number; (2) parcel size; (3) parcel owner or operator name; and (4) parcel owner or operator mailing address.
2. A Coalition Group that submits an NOI shall, concurrently, submit a General Report.
  - a. The General Report shall identify the lead agencies and/or organizations that will develop a watershed or sub-watershed program, the key contact(s), a description of the watershed, and a commitment to work with the Central Valley Water Board to satisfy the conditions of this Conditional Waiver.
  - b. The General Report shall provide a detailed map of the area included within the Coalition Group. The General Report and the map shall identify individual parcels and/or districts that are participating in the Coalition Group.
  - c. The General Report shall identify the funding mechanisms that will support the Coalition Group administrative costs, water quality monitoring, management practice evaluation and development, and other costs necessary to ensure compliance with the Conditional Waiver.
3. Upon submittal of a complete NOI and approval of the NOI, the Executive Officer may issue a Notice of Applicability (NOA) to extend coverage to the Coalition Group under the Conditional Waiver. Those Coalition Groups that submitted an NOI and received an NOA pursuant to Resolution No. R5-2003-0105 are not required to submit a new NOI unless so requested by the Executive Officer.
4. Each Coalition Group that receives an NOA shall submit and implement a Monitoring and Reporting Program (MRP) Plan as specified in Coalition Group MRP Order No. R5-2005-0833, or as revised by the Executive Officer, which is required by the Conditional Waiver. The purposes of the MRP Plan include, but are not limited to, the following: 1) to determine whether the discharge of waste from irrigated lands within the Coalition Group boundaries causes or contributes to exceedances of applicable water quality standards or causes nuisance; 2) to provide information about the Coalition Group area characteristics, including but not limited to, land use, crops grown, and chemicals used; 3) to monitor the effectiveness of management practices implemented to address exceedances of applicable water quality standards; 4) to determine which management

practices are most effective in reducing wastes discharged to surface waters from irrigated lands, 5) to specify details about monitoring periods, parameters, protocols, and quality assurance, 6) to support the development and implementation of the Conditional Waiver, 7) to verify the adequacy and effectiveness of the Conditional Waiver's conditions, and 8) to evaluate the Coalition Group's compliance with the terms and conditions of the Conditional Waiver.

5. If the Coalition Group wishes to terminate coverage under the Conditional Waiver, the Coalition Group shall submit a complete Notice of Termination (NOT). The NOT form is included at the end of this Attachment B. Termination from coverage will occur on the date specified in the NOT, unless specified otherwise. All discharges shall cease before the date of termination, and any discharges on or after this date shall be considered in violation of the Conditional Waiver, unless other Waivers of WDRs, General WDRs, or individual WDRs cover the discharge.
6. Upon a determination by either the Coalition Group or Dischargers that a discharge is causing or contributing to an exceedance of an applicable water quality standard, the Coalition Group or Discharger shall promptly notify the Central Valley Water Board in writing. Based on this information or other information available to the Central Valley Water Board, the Coalition Group or Discharger shall, upon written notice by the Central Valley Water Board Executive Officer, submit a technical report called a Management Plan to the Central Valley Water Board as follows:
  - a. The Management Plan shall evaluate the effectiveness of existing management practices in achieving applicable water quality standards, identify additional actions, including different or additional management practices or education outreach that the Coalition Group and/or its Participants propose to implement to achieve applicable water quality standards, and identify how the effectiveness of those additional actions will be evaluated.
  - b. The Management Plan shall include a waste specific monitoring plan and a schedule to implement additional management practices to achieve applicable water quality standards.
  - c. The Management Plan shall designate the person(s) who will implement, assess and evaluate the Management Plan and each person's area(s) of responsibility.
  - d. The Coalition Group and/or its Participants shall submit any modifications to the Management Plan required by the Central Valley Water Board and address the Central Valley Water Board's comments within 30 days of written notification, unless otherwise directed by the Executive Officer.
  - e. The Coalition Group and/or its Participants shall make Management Plan available to the public upon written request. The Central Valley Water Board may provide the public an opportunity to review and comment on submitted Management Plans.
  - f. The Management Plan may be incorporated into the Monitoring and Reporting Program Plan, unless the Central Valley Water Board Executive Officer directs an earlier submittal.

7. The Coalition Group shall submit a management plan when there has been more than one exceedance of a water quality standard in three years, unless the Executive Officer determines that the exceedance is not likely to be remedied or addressed by a management plan.
8. All reports submitted pursuant to the Conditional Waiver shall be available for public inspection at the Central Valley Water Board offices, except for reports, or portions of such reports, subject to an exemption from public disclosure in accordance with California law and regulations, including trade secrets and secret processes under Water Code Section 13267(b)(2), and the Public Records Act. NOIs shall generally not be considered confidential. If the Discharger asserts that all or a portion of a report is subject to an exemption from public disclosure, the Discharger must clearly indicate on the cover of the Report that the Discharger asserts that all or a portion of the report is exempt from public disclosure, submit a complete report with those portions that are asserted to be exempt in redacted form, submit separately-bound unredacted pages (to be maintained separately by staff), and provide an explanation of how those portions of the reports are exempt from public disclosure. The Central Valley Water Board staff shall determine whether any such report or portion of a report qualifies for an exemption from public disclosure. If the Central Valley Water Board staff disagrees with the asserted exemption from public disclosure, the Central Valley Water Board staff shall notify the Discharger prior to making such report or portions of such report available for public inspection.
9. All technical reports submitted pursuant to the Conditional Waiver are required pursuant to Water Code Section 13267. Failure to submit technical reports in accordance with schedules established by the Conditional Waiver and/or its attachments, or failure to submit a complete technical report (i.e., of sufficient technical quality to be acceptable to the Executive Officer), may subject the Discharger to enforcement action pursuant to Water Code Section 13268.

#### **C. Water Quality Standards**

1. Coalition Groups and Dischargers must comply with applicable water quality standards, as defined in Attachment A. The specific waste constituents to be monitored within each Coalition Group boundary and the applicable water quality objectives that protect identified beneficial uses for the receiving water will be set forth in the MRP. Dischargers shall not cause or contribute to an exceedance of any applicable water quality standard.
2. Coalition Groups and/or Dischargers shall implement management practices to achieve best practicable treatment or control of the discharge that will reduce wastes in the discharges to the extent feasible and that will achieve compliance with applicable water quality standards, protect the beneficial uses of waters of the State, and prevent nuisance.

#### **D. Time Schedule**

Pursuant to Water Code Section 13267, the following technical reports are required to be submitted to the Central Valley Water Board, as directed by the Executive Officer, as a condition of the Conditional Waiver.

<b><u>Task</u></b>	<b><u>Compliance Date</u></b>
Coalition Group Participant List	<b>30 September 2006</b>
Discharger Knowingly Elects to Join Coalition Group	<b>No later than 31 December 2006</b>
Discharger Must Apply for Executive Officer Approval to Join a Coalition Group	<b>1 January 2007</b>
MRP Plan	<b>30-150 days after filing of NOI</b>
Revised MRP Plan following revision of MRP	<b>As directed by the Executive Officer</b>
Wet Season Monitoring Report as required by the Coalition Group MRP Order No. R5-2005-0833	<b>30 June of each year*</b>
Updated Coalition Group Participant List	<b>31 July of each year</b>
Irrigation Season Monitoring Report as required by the Coalition Group MRP Order No. R5-2005-0833	<b>31 December of each year*</b>
Management Plan	<b>As required by the Executive Officer</b>

\*Or as otherwise directed by the Executive Officer

#### **E. Fees**

Each Discharger who participates in a Coalition Group, or the Coalition Group on behalf of its Participants, shall pay a fee to the State Water Resources Control Board in compliance with the fee schedule contained in Title 23 California Code of Regulations.

Amended by Resolution No. R5-2006-0077 and Resolution No. R5-2008-0052.

**NOTICE OF INTENT**  
**TO COMPLY WITH**  
**ORDER NO. R5-2006-0053**

**COALITION GROUP CONDITIONAL WAIVER OF**  
**WASTE DISCHARGE REQUIREMENTS**  
**FOR**  
**DISCHARGES FROM IRRIGATED LANDS**

**1. COALITION GROUP INFORMATION**

Coalition Group Name:				
Coalition Group Representative:				
Mailing Address:				
City/Locale:	County:	State:	Zip:	Telephone Number:

The Coalition Group representative's information shall be included in the above information box.

The NOI shall contain an electronic list of landowners and/or operators of irrigated lands that discharge waste to waters of the State, who are knowingly participating in the Coalition Group. This Participant List shall include: (1) assessor parcel number; (2) parcel size; (3) parcel owner or operator name; and (4) parcel owner or operator mailing address.

The Central Valley Water Board may further specify the information to be included. This information shall be provided to the Central Valley Water Board upon request, within the time specified by the Central Valley Water Board, which time shall not exceed 30 days.

**2. REASON(S) FOR FILING**

<input type="checkbox"/> New Discharge or Coalition Group	<input type="checkbox"/> Changes in Ownership/Operator or addition of Discharger(s) to Coalition Group
<input type="checkbox"/> Existing Coalition Group	
<input type="checkbox"/> Change of Coalition Group boundary	<input type="checkbox"/> Other:

**3. ADDITIONAL INFORMATION**

Please attach the following information to this NOI:

1. A site map, which shows the geographic boundaries of the Coalition Group and identifies the surface watercourses within these boundaries.
2. Use the space below, or attach additional sheets, to explain any response that needs clarification.



## NOTICE OF TERMINATION

TO COMPLY WITH  
ORDER NO. R5-2006-0053

### COALITION GROUP CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS FOR DISCHARGES FROM IRRIGATED LANDS

This document is only to be used for Coalition Groups that have been issued a Notice of Applicability by the Executive Officer. Submission of this Notice of Termination constitutes official notification to the Central Valley Water Board that the Coalition Group identified below elects not be covered under Order No. R5-2006-0053, *Coalition Group Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands*.

#### 1. COALITION GROUP INFORMATION<sup>1</sup>

Coalition Group Name:				
Coalition Group Representative:				
Mailing Address:				
City/Locale:	County:	State:	Zip:	Telephone Number:

<sup>1</sup> The Coalition Group representative's information shall be included in the above information box.

#### 2. REASON FOR TERMINATION

<input type="checkbox"/> Coalition Group is no longer functioning under the Conditional Waiver for Coalition Groups	<input type="checkbox"/> Other: Provide Comments <hr/>
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**3. CERTIFICATION**

I certify under penalty of law that (1) I am not required to be covered under the Coalition Group Conditional Waiver of Waste Discharge Requirements For Discharges From Irrigated Lands, and (2) this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations. I also understand that submittal of this Notice of Termination does not release a facility from liability for any violations of the Coalition Group Conditional Waiver.

Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## **ATTACHMENT 3**

# Economic and Cost Analysis Of the Proposed Ag Waiver and Ag Alternative

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**J. Bradley Barbeau, Ph.D.**  
**California State University, Monterey Bay School of Business**

**Kay L. Mercer, M.S., PCA**  
**KMI**

**August 1, 2011**

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This report was prepared for Farmers for Water Quality, Inc. However, the opinions expressed in this paper are those of the authors and do not represent Farmers for Water Quality or its member organizations.

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## Executive Summary

The proposed Central Coast Regional Water Quality Control Board (RWQCB) Conditional Ag Waiver for Irrigated Lands (Waiver) regulates discharges from irrigated agricultural operations. Proposed regulatory requirements depend on Tier designations which, in turn, depend on a grower's perceived threat to water quality. Tier, 1, 2 and 3 are, respectively, low, medium and high threat designations.

This paper examines the economic impacts of the proposed Waiver to growing operations and the local economy. Personal interviews were conducted of twelve growers with high nitrate crops. Acreage of interviewed growers represents about 6.1% of total regional acres and the 12 operations roughly reflect acreage distribution of high-nitrate crops in the region. It is estimated the average annual per acre costs of the proposed draft order across the sample population are: tier 1 = \$27.78 - \$51.8, tier 2 = \$67.54 - \$96.20, and tier 3 = \$128.79 - \$187.48. Averaged costs mask the economic impact on individual operations. The range of costs per acre for these surveyed operations is: tier 1 = \$4.66 - \$98.97, tier 2 = \$23.75 - \$231.19 and tier 3 = \$73.11 - \$620.55. There are several regulatory requirements which ALL growers must do that pose significant costs and so tier 1 costs were higher than anticipated. In-house or contracted labor represents the largest portion of costs across tiers. Some costs are difficult to estimate or predict, but will certainly impact a grower's bottom line. Many of the estimated costs will be offset by increased production efficiencies and input savings. There will also be indirect effects on agricultural-related industries and induced effects on general economic activity in the community.

This paper also presents a summary of annual grower and community costs as calculated by feeding survey generated data into the IMPLAN economic model. The region-wide estimated total cost to growers is between \$29,495,000 and \$43,181,000. The estimated total economic impact is between \$60,063,000 and \$87,932,000. The direct impact on the agricultural industry in the region is estimated at between \$34,866,000 and \$51,044,000. Indirect impacts on related industries are between \$18,401,000 and \$26,938,000; with induced impacts between \$6,796,000 and \$9,949,000. Labor income losses to the agricultural industry are estimated are \$3,851,000 and \$5,638,000; labor income losses to related industries are \$5,592,000 - \$8,188,000, and labor income losses in the general economy are \$1,682,000 - \$2,462,000. The largest effect is on total output. Output losses to the agricultural industry are \$29,495,000 - \$43,180,000. Losses to related industries are \$12,153,000 - \$17,791,000, and losses in the general economy are \$4,789,000 - \$7,011,000. These losses total to between \$46,436,000 and \$67,983,000 for the region. There will be an estimated total of 328 - 480 jobs lost, consisting of 164 - 241 jobs in agriculture, 130 - 191 in related industries, and 33 - 49 in the general economy.

Agriculture has proposed an alternative Waiver proposal which creates third-party groups (3PG) to provide assistance in identifying water quality risks, implementing management practices and conducting verification audits. This paper provides a comparison between Waiver approaches. Organizational startup costs of the Ag Alternative are estimated at \$125,000 to \$1 million. Annual organizational costs are estimated to be about \$1 million and the costs to conduct audits range from \$2.50 to \$10.00 per acre depending on several factors. The potential number of acres which might enroll

in the 3PG is 183,983. Per acre costs per year will vary with the level of growers participating in the 3PG. When evaluating the overall comparative costs of the two proposed Waiver, the Ag Alternative proposal has the greatest probability of being the least expensive Waiver approach. However, depending on what is eventually adopted, each individual grower will need to assess which approach best suits his farm while simultaneously addressing water quality protection.

## Introduction

In March 2011 the Central Coast Regional Water Quality Control Board staff produced a draft order R3-2011-0006 "Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands ("the Waiver")," plus accompanying documents including the Draft Monitoring Program ("MRP"). This report details the results of a six month study on the cost and economic impacts of implementing the Waiver and MRP, with particular focus on the costs to be born directly by growers and landowners and the associated economic impacts of those costs.

The Waiver addresses an important issue on the central coast, the threat to water quality posed by agricultural activity. Agriculture is a primary economic activity and driver in the region, with Monterey County alone accounting for \$4.06 billion of agricultural output in 2010 (County Crop Report), and the six counties in the region accounting for a total of \$7.03 billion. A disruption in the practice of agriculture in the region would have severe economic consequences, and the potential for serious disruption exists in both the short term and the long term, with the medium term having the least risk.

The goal of this study is to assess the cost to individual growers of implementing the proposed Waiver and, to the extent possible, extrapolate these costs to the agricultural community and to the economy of the region. The costs represented in this analysis consist of administrative costs of planning, monitoring, and reporting, costs of implementing best management practices (both those required by the Waiver and those practices implemented beyond the direct specification in the Waiver in order to achieve the mandated water quality standards), reduced revenue and income due to lower crop yields and land removed from production.

This analysis does not take into consideration the costs of implementing Best Management Practices (BMPs) unless they are mandated in the staff draft order. BMP implementation will represent additional costs. Further, there are requirements in the proposed Waiver for which the costs are very difficult to estimate, such as potential reductions in yield due to changes in management practices.

Costs of compliance with the proposed Waiver will in some cases be offset in part by increased efficiencies in irrigation and fertilization, and possibly reduced pesticide costs. Reduction in irrigation costs (less electricity for pumping, reduced labor if fewer irrigation events are used), fertilizer costs (lowered expenditure for fertilizer, reduced labor if fewer fertilization events are used), and pesticide costs (lowered expenditure for pesticides, reduced labor and professional services costs if fewer pesticide applications are used) may be offset by reductions in yields. This is discussed in more detail below.

Some of these costs (and efficiency gains) are very difficult to estimate, such as the extent of the efficiency gains in irrigation, fertilization and pest control), costs of non-mandated changes to management practices in order to achieve water quality goals, and reductions in rents to landowners and lost property value. These costs in some cases were beyond the scope of this study to estimate, due to time and cost constraints. While difficult to estimate, these costs are certainly nonzero and may in fact be larger than the costs we were able to estimate. They are discussed further below.

## **Background: Economic Impacts of the Ag Waiver**

The direct and immediate impact on growers will be an increase in the costs and a reduction in output of their operations. These cost increases will be due to increased costs of administration for planning, monitoring, and reporting, increased capital costs and operating costs due to required changes in management practice. Operations will also face decreased output from land taken out of production, decreased output from yield losses stemming from reductions in pest management (with likely increases in the cost of pest management) and reductions in fertilizer usage.

In the March 2011 Appendix F: Cost Considerations Concerning Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands, RWQCB staff has argued that a reduction in output may not result in a decrease in overall income. They argue that demand is inelastic for many of the crops grown and thus the reduction in output will result in an offsetting increase in consumer prices. However, prices at the field level and at the consumer level are very different and respond differently. The staff argument implies that growers' increased costs would be passed up the food chain, ultimately to consumers, increasing consumer food prices. This ignores that individual growers are price takers in the agricultural system and have a limited ability to pass higher costs upward through price increases. There is no evidence that individual growers have the market power to be able to control price in this way, nor that there are effective means of collusion to accomplish monopoly pricing by the growers. Individual growers are price takers; their prices are determined by market conditions at the time of sale. While at a market level the prices may adjust somewhat to reflect the increased costs, individual growers do not have the power to push through those increases themselves. Only a reduction in the quantity of each commodity produced, without a corresponding reduction in demand for the commodity, can drive the field price of the commodity upward. *Prices respond to the quantity of a good that is supplied, not to the cost of producing that supply.* Individual growers who face higher costs of implementing the Waiver relative to other growers will not be able to recoup these costs by raising their prices; they will of necessity be faced with lower margins.

The costs, and therefore economic impact, on the growers are directly related to the tier to which their land becomes assigned. This may be justified on the basis that operations assigned to higher tiers may represent an increased threat to water quality, but as will be seen below the costs associated with being assigned to tier 3 appear to be about four times the costs associated with being assigned to tier 1, so it is important to ensure that the tier structure is justified by the degree of water quality impact.

**Indirect and Induced Economic Impacts:** In addition to the direct costs to the growers, there will be indirect effects on agricultural-related industries and induced effects on general economic activity.

Increases in grower costs and resulting reductions in output will adversely effect those businesses that are suppliers to the growers, including seed, fertilizer, and pesticide suppliers, accounting and other professional service firms, and other. In addition, the increased cost will lead to an induced reduction in economic activity. In short, these increased costs per unit of production represent a decrease in the efficiency of production; that reduced efficiency leads to an overall loss of income to the community *beyond the lost income to the grower*. This is referred to in the economic literature as a multiplier effect. Reduced business income means less spending in the community and potential job reductions. Reduced employment leads to reduced consumer spending, which in turn reduces income to community businesses selling consumer goods. This will be further addressed in the Economic Section below.

**Time Frame of Impact:** We believe that the economic impact of the Waiver will be different in the short, medium and “long” term, as different factors come into play in different time frames. There are three factors that will affect the costs and economic outcomes of the Waiver: the cost of compliance to the grower (and the associated indirect and induced economic impacts of these costs), competitive effects, and land use impacts.

The first factor, the cost of compliance, is likely to be highest at the initial implementation of the Waiver, and look much as they are estimated in this study. This is because growers will initially respond to the Waiver with the skills, knowledge and technology at hand. As time goes on, we would expect the real costs of compliance (separate from general inflation) to fall, as learning curves and innovation lead to more efficient solutions. This, of course, assumes no future changes in the Waiver requirements.

The second factor, competitive effects, are likely to have the opposite time pattern. In the short run, increased costs of production in the region will likely fall heavily on growers, as individual growers have little bargaining power in the agricultural supply chain. Consumer prices may rise to some degree, but this would depend on reductions in total output of a given commodity resulting from the Waiver and the price elasticity of that commodity<sup>1</sup>. Over time, growers faced with higher costs of production in the region will be encouraged to shift production to other regions where costs may be lower, including nondomestic regions. The likely extent of this effect is not known.

The third factor, effects on land use, will also take time to occur. To the extent that the cost of implementing the Waiver reduces the agricultural value of the land, incentives increase to put the land to alternative uses such as commercial or residential development. This change in land use, however, would take time to occur even without land use restrictions, and land use is highly regulated in each of the counties. Nevertheless, it should be considered as a part a long-term, broad-scale economic impact analysis..

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<sup>1</sup> It is important to note the difference between the price elasticity of these commodities at the consumer level and the price elasticity faced by each grower. Although the staff in its economic analysis presented some evidence of price inelasticity at the consumer level, these are market elasticities of demand for the commodities. Growers, operating in an environment closer to economic perfect competition, face a highly elastic demand curve for their output.

## Methodology

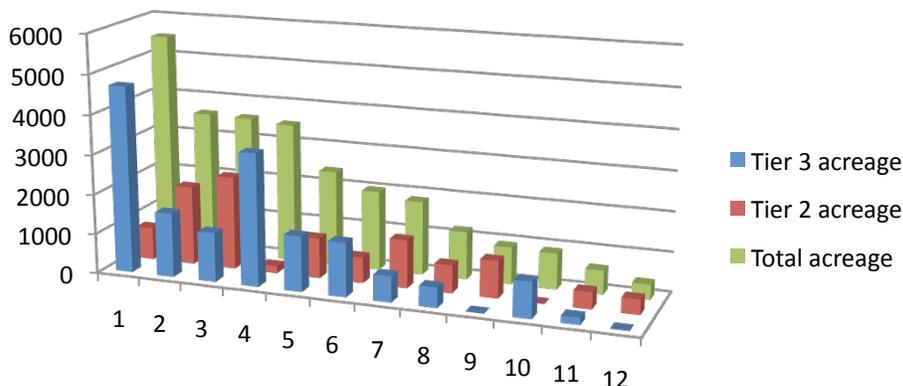
We interviewed 12 vegetable growers with operations ranging from 378 acres to 5510 acres, with the 12 operations totaling 26,448 acres. The 26,448 acres represents about 6.1% of the 435,000 irrigated acres in the Central Coast region. We estimate that 15,824 of these acres would fall into tier 3, with the rest in tier 2. Tier 3 criteria included growers who used chlorpyrifos or diazinon, growers who primarily farmed a commodity defined by RWQCB staff as having high nitrate requirements, or a farm size of greater than 500 acres.

The respondents were chosen to be representative of growers in the region. The sample is not “random” as it was not possible to determine the population of Tier 3 growers with Waiver tiering criteria using existing data sources. Extensive phone surveys would have been required. Hence there was not a cost-efficient means of creating a true random sample of growers in tier 3.

We believe the sample to be reasonably representative of operations in the region that have tier 3 acreage. Ten of the operations had significant tier 3 acreage, with two having only tier 1 & 2 acreage. Nine of the operations had a combination of Tier 2 and Tier 3 acreage, and one grower’s operation was 100% Tier 3. Two operations were initially thought to be in Tier 3, but upon examination it was determined that their operations were Tier 2. The distribution of the acreages of the respondent operations is shown in the figure below.

Distribution of the survey respondents is representative of Tier 3 acreage distribution in the region. The 12 respondents were located as follows: Eight have operations in Monterey county, 5 in Santa Maria (Santa Barbara county), and 1 in Santa Cruz county. The numbers do not add because one of the operations has acreage in all three of the counties.

### Distribution of Acreage in Sample



Interviews of the twelve growers were conducted between June 26 and July 12, 2011. On July 7, 2011 RWQCB staff released an update to the proposed Waiver containing multiple changes from the earlier version. Staff recommended changes in the regulatory requirements on July 7 and provided further

clarification in subsequent email correspondence with Farmers for Water Quality on July 28, 2011. The interview process was not altered to reflect recommended changes. Rather, potential changes in the cost structure resulting from Staff's recommended changes to the order were addressed later on as a comparative impact to the overall costs.

The surveys were conducted through personal interviews. For each of the actions required by the Waiver, the survey respondent was asked to identify for their operation the resources required to comply with the requirements over a five year time period, and to estimate the cost of those resources.

It should be noted that the proposed regulatory requirements were not very specific so growers were forced to speculate on what it would take to comply. This injects some level of uncertainty into the responses and it should be emphasized that these responses are the best estimates of costs rather than definitive numbers. The interviewer explored these resource requirements and costs for the list of 53 items extracted from the Waiver; 20 are required for all growers including those in Tier 1, five additional requirements for growers in Tier 2, and 28 are additional requirements for growers in Tier 3 (see the list in Appendix A). Cost estimates were supplemented by interviews with or prices obtained from vendors, service providers and consultants.

For Tier 1 and Tier 2 costs, we arrived at the minimum cost estimates by summing the minimum costs for each item in each tier across all of the acreage represented in the sample, and dividing that total number by the total acres in the sample (26,448). Similarly, we arrived at the estimated maximum cost by summing the maximum cost reported by each respondent, adding across all respondents, and then dividing by the total acreage. Total acreage was used because the Tier 1 and Tier 2 costs applied to all acreage in the respondent operations.

For Tier 3 costs, we summed the minimum costs reported by each respondent, across all respondents, and then divided by the number of Tier 3 acres in the sample (15,824), to arrive at the average minimum Tier 3 cost. We performed the same operation for the maximum Tier 3 costs to arrive at the average maximum Tier 3 cost.

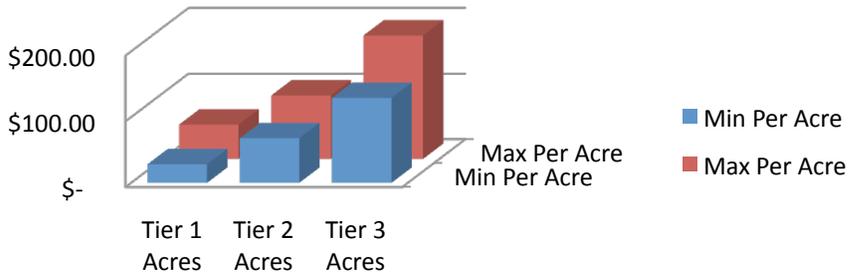
## **Grower Costs of Compliance for the Proposed Waiver**

### **Average Total Costs of Compliance**

Based on the data from our survey, supplemented by cost data from vendors, we estimated the annual costs for growers on a per-acre basis for each tier. The five-year costs were divided by five to arrive at an annual "average." An annual average is easier to interpret than five-year totals, but it should be kept in mind that the expenditures for many of the requirements will not be even across the years, but may fall more heavily in certain years. Capital investments in particular are likely to be more front-loaded, depending upon the implementation schedule required by the Waiver.

The figure "Annual Cost Per Acre" shows the pattern of minimum and maximum costs across the three tiers.

## Cost Per Acre - Average Across Sample

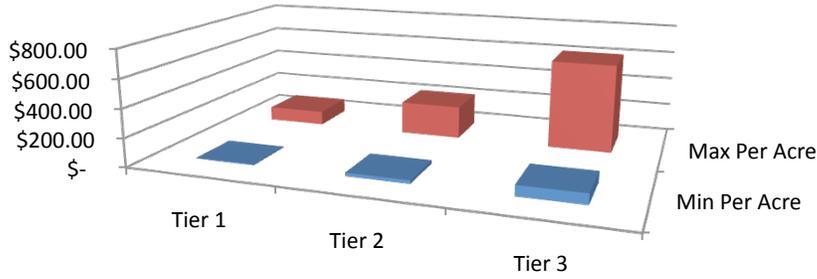


Tier 1 averaged cost estimates ranged from \$27.78 per acre to \$51.82 per acre, tier 2 averaged costs ranged from \$67.54 per acre to \$96.21 per acre, and tier 3 averaged costs ranged from \$128.79 to \$187.48. These numbers are represented graphically in the above figure. From this, it is expected that moving up a tier in classification approximately doubles the costs associated with compliance, with tier 3 costs per acre being nearly four times the cost of tier 1.

### Distribution of Costs by Operation

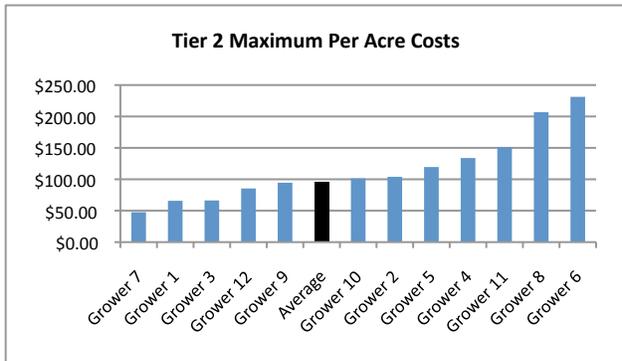
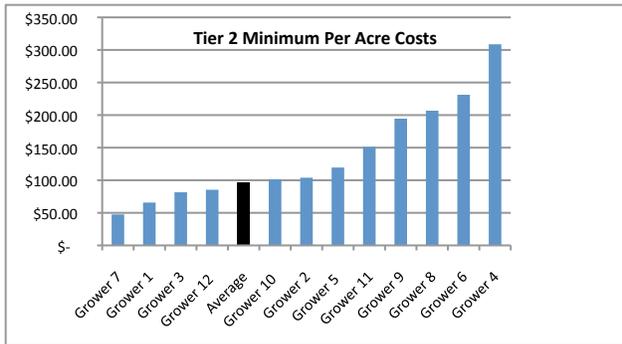
In addition to looking at averages, it is worthwhile also considering the range of costs across growers. This may give a picture of what an individual grower may face, since few operations will be “average.” For individual growers in the survey, tier 1 costs ranged from a low of \$4.66 per acre to a high of \$98.97 per acre, the tier 2 cost range was \$23.74 to \$231.19, and tier 3 costs ranged from \$73.11 to \$620.55. This would indicate that growers will likely face widely differing costs of implementing the Order, depending upon their current management practices, the particular characteristics of their ranches, and the choices they make in how to achieve compliance. These ranges are depicted in the following figure.

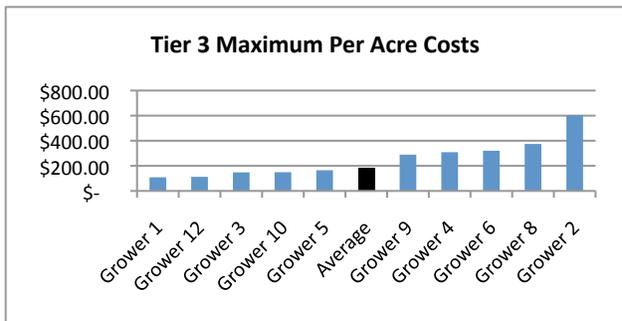
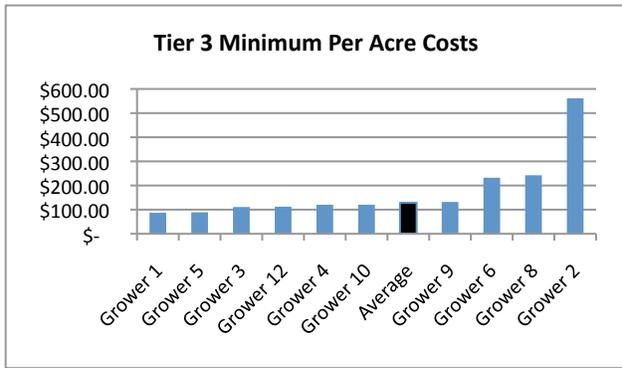
### Range of Annualized Cost Per Acre By Operation



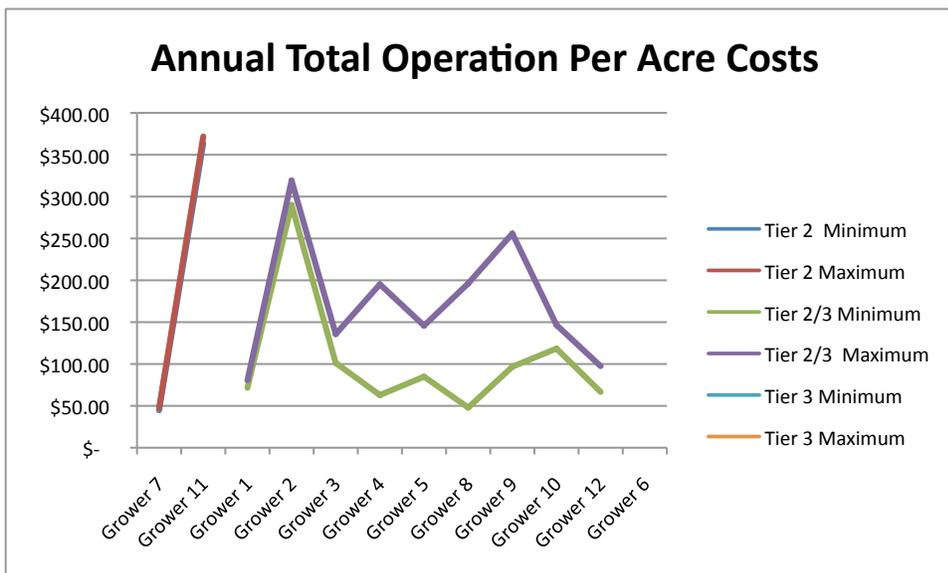
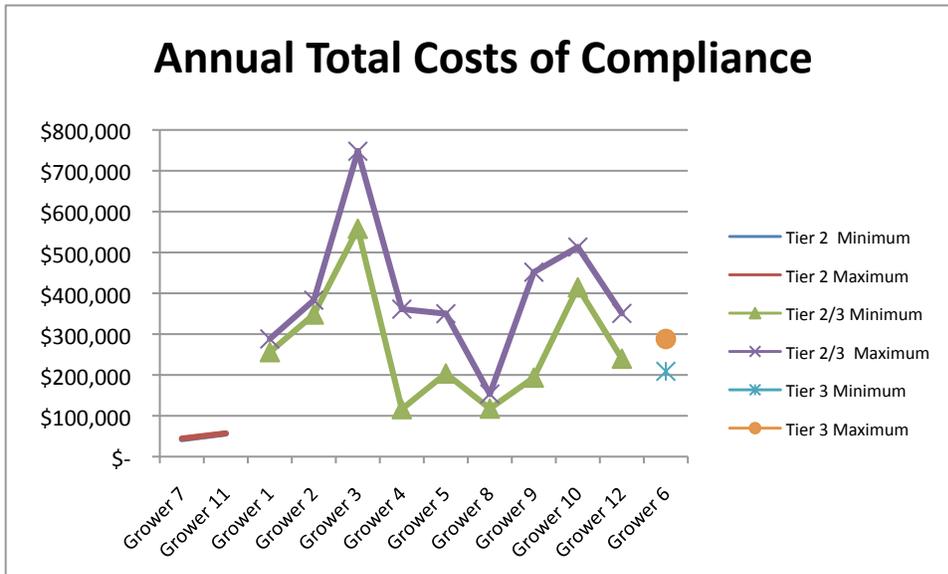
	Tier 1	Tier 2	Tier 3
Min Per Acre	\$4.66	\$23.74	\$73.11
Max Per Acre	\$98.97	\$231.19	\$620.55

The following four graphs show the distribution of costs across the operations, compared to the per-acre average across all respondents. From these we can see that there is a wide dispersion of costs that operations face.





Similarly, the total impact on an operation, which will depend on its mix of Tier 1, 2 and 3 acreage, its location, growing characteristics, etc., has a wide dispersion and will be quite large for some operations. The distribution of these total costs per year is shown in the following two graphs. The first graph shows the total annual operational costs of compliance with the Waiver for the twelve growers. Growers 7 and 11 had Tier 2 acreage only, grower 6 had Tier 3 acreage only, and the other growers had a mix of Tier 2 and 3 acreage. One respondent operation (grower 3) had estimated total costs of as high as \$755,000 per year, nearly 7-1/2 times the annual compliance costs of growers 4 and 8. The second graph shows the annual compliance costs on a per-acre basis, which also shows a wide variation among growers, with grower 2 having nearly six times the per-acre compliance costs of growers 4 and 8.



One effect of this dispersion is that the Waiver may create uneven competitive factors within the region. For some growers, differences in size, location of a farm or arrangement and characteristics of their land, may put some operations at a competitive disadvantage to growers who do not have these factors but, in essence, farm in essentially the same manner.

### Individual Items Representing Major Costs

**Tier 1 requirements:** Although tier 1 operations face the lowest costs of compliance per acre, there are several items in the proposed Waiver used for the survey which ALL growers must do and that pose significant costs. These include constructing and maintaining containment structures to avoid percolation of waste to groundwater to prevent percolation into groundwater, minimizing bare soil vulnerable to erosion and soil runoff to surface waters, erosion control, and eliminating discharge of chemicals used to control wildlife (such as bait traps or poison) into surface waters.

Lining water containment ponds presents a significant expense to some growers. The cost of lining an average pond 100' x 200' x 8' deep is about \$15,000. One large grower with 5500 acres has 16 of these ponds, for a total expense of \$240,000. Other growers who do not use containment ponds avoid this expense, but we would expect the use of these ponds to increase under the Order. Subsequent clarification by RWQCB staff has indicated that lining water containment ponds is not a stand-alone requirement; other alternatives such as denitrification of pondwater would also be acceptable if possible. However, this information was received too late to be included in this analysis.

The cost of minimizing bare soil vulnerable to erosion depends greatly on the interpretation of this requirement. This cost could be significantly lower, depending on the interpretation of the term "minimize" and the method used to achieve compliance. If all non-cropped bare soil were vegetated through the planting of annual grasses, the cost could be as high as \$22.31 per acre annually. Costs of planting perennial grasses might lower overall costs of compliance, but, since the vegetation would be permanent, it would increase the likelihood of conflict with food safety requirements.

Eliminating discharge of chemicals used to control wildlife into surface waters: Up to \$575,000 for one operation. However, this cost for this grower was an outlier; the grower assumed that he would need to discontinue all use of chemicals to control wildlife and that this would in turn lead to increased labor, increased buffers which would take land out of production, increased food safety requirements and corrective actions and the cost of trapping and additional fencing. For other growers, this was a small expense, and for several no cost was listed for this item.

**Tier 2 requirements:** Tier 2 operations face all of the requirements of tier 1, plus a set of additional requirements.

The most expensive of these, as reported in our survey, is the submission of an annual compliance form. Estimates range from an annual cost of \$30.32 per acre to \$34.88 per acre. As a total cost to an operation, the highest reported estimate was \$997,500 for the 5 years or about \$200,000 per year.

Large growers (regardless of whether they are in tier 2 or 3) believe that they will have to hire a full time technical person (e.g. an agronomist or soil scientist) to manage the data collection and reporting for the annual compliance form. These estimated compliance costs ranged from \$7.79 to \$7.85 annually per acre. One operation reported an estimate of \$150,000 per year.

**Tier 3 requirements:** Tier 3 operations face a considerable number of requirements in addition to the tier 1 and 2 requirements. High cost items include creating riparian buffers, soil sampling for nitrogen, individual surface water quality sampling, and additions to the annual compliance form.

Costs of riparian buffers will vary widely depending upon the location of a particular farm relative to impaired waterbodies. Costs for respondent operations ranged from \$36,000 to \$1.4 million.

Costs of soil sampling prior to planting ranged as high as \$75,000 per year, due to the large number of sampling events required.

**Adding Staff:** A large source of costs associated with the Waiver is the need to add staff to manage and undertake the various planning, monitoring and reporting requirements. Based on survey responses, smaller operations are likely to need to add part-time staff or rely on outside consultants, while growers with multiple Tier 3 farms and Tier 2 acreage will need to add employees with fertility and irrigation management experience. These staff will probably need to have an advanced degree. Further, depending on the number of acres in Tier 3, the grower may need to add a part- to full-time staff person to take field samples and a part- to full-time staff person to do data entry in order to comply with tracking and reporting requirements. A skilled full-time staff person, with benefits and adding a pickup truck for transportation, is estimated to cost upwards of \$150,000 per year.

### Costs difficult to estimate

Many of the costs associated with compliance with the Waiver proved difficult to estimate. In some cases this is because the Waiver provides insufficient specificity in the actions required of growers, in others it is because there are too many interacting factors affecting costs.

**Yield losses:** Changes to management practices with the intention of reducing the threat to water quality may result in reduced yields or reduced quality of the yield (or both), lowering the value of the output. Reduction in the use of fertilizer (nitrogen) below a certain level may reduce or slow plant growth. Defining what the minimum level is, or what the yield loss would be for a given reduction in fertilization, is beyond the scope of this study. While much is known about nitrogen uptake by different crops, that uptake is affected by factors beyond the plant itself, such as soil characteristics and weather factors. It may be the case that the level of nitrogen that can be added to the soil without leaching to groundwater may be below the level needed for optimum plant growth under a variety of conditions which fluctuate seasonally.

Similarly, reduction or discontinuance of the use of pesticides (chlorpyrifos and diazinon, potentially others depending on future regulations) may leave fields vulnerable to pest and disease infestations which are currently controlled. Strict pesticide registration and use laws and regulations and prioritization of pesticide registrations for commodity crops sometimes combine so that alternative pesticides may or may not be available for specialty crops such as fresh fruits and vegetables.

The potential buildup of salts when less irrigation is used (e.g., in the conversion from sprinklers to drip irrigation), combined with other factors such as an increase in pests or crop disease due to increased vegetation near the fields, has the potential of exponentially reducing yields and/or quality. These yield reductions could be from increases in pest damage, decreased plant growth from reduced nitrogen availability, or lost buyers due to increased food safety concerns. However, these yield reductions are very difficult to estimate, and range from a percentage reduction in the harvested yield from a field to the complete loss of yield if size, quality and food safety parameters are not met.

Further complicating the calculation of costs from yield losses are discontinuities and interacting factors. Reductions in yields of 10% or 20% are one thing; reductions in quality, as measured both in shelf life and aesthetic appearance, may lead to unfitness for sale for an entire field. Simple reductions in the size of a head of lettuce, for instance, may lead to severe decreases in the market price of the lettuce and

potential unsaleability; this makes for “all or nothing” (discontinuity) in some cases. Further, there can be interactions among factors, such as reduced fertilization along with cold weather leading to a larger reduction in yield than the effect of each factor independently.

**Tile Drains:** The RWQCB has recently recommended a requirement: “The focus of this Order is non-tile drain discharges, although Tier 3 tile drain discharges on individual farms/ranchers must be monitored. Dischargers with tile drains must also describe management practices used or proposed to be used to attain water quality standards or minimize exceedances in receiving waters while making progress to attain water quality standards. The Executive Officer will evaluate any proposed longer timeframes to address tile drain-discharges.” Costs related to this requirement have not been estimated but could be substantial for individual operations.

## Efficiency Gains

There is some evidence that both water and nitrogen usage can be decreased considerably without loss of yield.<sup>2</sup> The extent of these efficiencies will vary widely across operations, depending upon existing patterns of irrigation methods and fertilizer usage, weather conditions (temperature and moisture), soil type, and other factors. Many operations have already instituted drip irrigation and have tightened fertilizer usage, minimizing expected future gains.

Below are potential Savings from increased fertilizer and irrigation efficiencies realized as a result of Conditional Ag Waiver regulatory compliance. These numbers are derived from University of California Cooperative Extension Sample Productions Costs.

According to the University of California Cooperative Extension, the costs of sprinkler irrigation on head lettuce can vary from \$285 -\$477.00 per acre. For lettuce fields which have converted to drip tape from sprinkler or furrow irrigation, direct advantages are primarily generated by reduced water usage. This might or might not translate into direct cost savings, depending on whether the grower is purchasing his irrigation water or using groundwater for irrigation. However, there are numerous indirect savings. One is that more uniform irrigation water application can translate into more uniform yields and quality. The other is that less nitrate fertilizer may be required as the fertilizer is not being leached out of the soil profile. Drip irrigation reduces water contact with the crop leaves which could promote infection by some crop diseases such as downy mildew. Using drip irrigation could potentially reduce the number of fungicide applications needed. Also, most common weeds have very shallow seed germination. The fact that the soil surface remains drier reduces weed seed germination. Depending on the soil type where the crop is grown, drip irrigation may improve the soil condition by reducing soil “crusting”. Compaction may be less of an issue as less cultivation is needed to break the soil crust.

The direct and indirect advantages of drip irrigation may ultimately be off-set by increased production costs associated with the price of drip irrigation equipment which can vary from \$500-\$1200 more acre. The labor of moving sprinkler irrigation pipe or managing irrigation furrows may simply be displaced with the cost of maintaining drip irrigation tubing to avoid leakage. Comparison of labor costs

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<sup>2</sup>Cf. Tanji, Kenneth K., Gloria Helfand and Douglas M. Larson (1994), “BMP Assessment Model for Agricultural NPS Pollution.” Land, Air and Water Resources Hydrologic Science Paper.

associated with types of irrigation was not readily available. Additionally, there are costs associated with extra cleanup costs and disposal/recycling of irrigation tape after harvest.

Additional costs savings may be realized with reduced fertilizer use. Depending on soil nitrate residual levels, fertilizer can be substantially reduced, which is especially true later in the year. Using pre-sidedress soil nitrate testing or PSNT, University of California Cooperative Extension demonstrated as much as 45% fertilizer savings when adequate soil residual nitrogen is present to negate the need for additional nutrient inputs. This would be the equivalent of a 22.5% fertilizer savings for the year with 2 crops per season. This could range from \$50-\$200.00 per acre.

## **Landowner Impacts**

Agricultural land in the region has two potential sources of value. The first is the value from agricultural use of the land, and that value is directly related to the profitability (not the revenue) of farming it. The second is the value of alternative uses of the land, such as for residential or commercial development. The rent that a landowner can charge to a farmer for the land is dependent upon the value of the agricultural production on the land; if alternative uses of the land (development) have a higher value, the landowner would be financially better off to convert the land, either through developing it him or herself or by selling to a developer.

To the extent that implementation of the Order reduces the profitability of the land through higher costs of farming, lower yields, or land taken out of production, the landowner's incentive to convert the land to alternative uses increases. These alternative uses would likely have their own environmental challenges, and should be considered as a potential unintended impact of the Order.

## **Economic Impacts<sup>3</sup>**

In addition to considering the direct cost impact on growers, we must also consider the larger economic impact on the industry, related businesses, and the community. For this part of the study, we used the annual minimum and maximum costs to growers as input to IMPLAN, a set of computer-based modeling tools used to estimate economic impacts.

IMPLAN is used by government agencies, colleges and universities, non-profit organizations, corporations, and business development and community planning organizations. IMPLAN provides information about a local area's economy and can be used to project the broader economic impacts stemming from a change in the economy.

For the purposes of this study, data for the six counties of Monterey, San Benito, Santa Barbara, Santa Cruz, San Luis Obispo, and Santa Clara were used. These IMPLAN data sets are updated annually.

Total costs to growers were inputted to the IMPLAN model and the model was run to estimate impacts on industry output, employment, indirect business taxes, and labor income.

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<sup>3</sup> Analysis for this section was done by Sanjay Varshney, Ph.D., Dean of the College of Business Administration at California State University, Sacramento.

Total costs were based on the average minimum and maximum costs to growers for each of the three tiers, as calculated above. Acreage estimates for each tier were calculated as follows: For the high-nitrate crops, which total 205,000 acres (data drawn from county crop reports), we assumed that 10% would fall in Tier 1, 70% in Tier 2, and 20% in Tier 3. For the other crops, totaling 230,000 acres, we assumed 25% in Tier 1, 70% in Tier 2, and 5% in Tier 3. This gives a total of 78,000 acres in Tier 1, 304,500 acres in Tier 2, and 52,500 acres in Tier 3.

This assumed distribution of tier acreage results in an estimated total cost to growers of between \$29,495,000 and \$43,181,000 annually. Applying the multipliers derived from the IMPLAN model, the estimated total economic impact is between \$60,063,000 and \$87,932,000 annually. The direct impact on the agricultural industry in the region is estimated at between \$34,866,000 and \$51,044,000; indirect impacts on related industries of between \$18,401,000 and \$26,938,000; and induced impacts of between \$6,796,000 and \$9,949,000 annually.

Employment impacts are estimated at a total of 328 – 480 jobs lost, consisting of 164 – 241 in the industry, 130 – 191 in related industries, and 33 – 49 in the general economy.

While employment impacts measure the expected number of jobs lost, the effect on labor income measures that total expected lost income to labor. Labor income losses to the agricultural industry are estimated at between \$3,851,000 and \$5,638,000, labor income losses to related industries at \$5,592,000 – \$8,188,000, and labor income losses in the general economy at \$1,682,000 - \$2,462,000.

The largest effect is on total output. Output losses to the agricultural industry are estimated at \$29,495,000 - \$43,180,000, losses to related industries at \$12,153,000 - \$17,791,000, and losses in the general economy at \$4,789,000 - \$7,011,000. These losses total to between \$46,436,000 and 67,983,000.

## **Costs of the Third Party Plan**

As an alternative to monitoring and reporting by individual growers, a proposal has been put forward for the creation of third-party groups (3PG) to work directly with growers throughout the Central Coast to provide assistance in identifying and implementing appropriate management practices to improve water quality and comply with water quality standards, while providing accountability to the Regional Board and the public in general by ensuring that third party group grower members and their agricultural operations are subject to technically-sound, scientific and objective verification audits. It is worthwhile comparing the estimated costs of utilizing 3PGs as opposed to the growers doing their monitoring and reporting individually, to the extent that this comparison is possible.

For the purposes of this assessment, we will assume that a single 3PG is created for the region. It is possible that multiple 3PGs will be created, but a single group would be administratively most efficient.

Costs associated with the 3PG include organization costs of the TPG itself, initial startup and planning costs, auditing costs, and program review costs. Based on the work of Mercer (Mercer 7/16/11) and of

Marc Los Huertos (Los Huertos 7/29/11) we estimate the startup costs for the 3PG at \$110,000 and the annual costs for the TPG at \$1.085 million per year, plus audit costs.

Water Quality audit cost projections are based largely on a survey which was undertaken recently to assess the costs to growers and handlers of the national Leafy Green Marketing Agreement (LGMA)<sup>4</sup>. An important part of the LGMA is auditing of growers' food safety practices and outcomes by independent auditors. Costs of these audits are reported in the survey (citation). A typical audit costs \$92.00/hour plus expenses. For small growers (200 acres), the reported total audit costs are \$2000 or \$10 per acre. The survey postulated that costs for a 200 acre grower are roughly representative of costs for operations possessing between 10-500 acres. For large growers (10,000 acres), the reported audit costs range from \$2.50 to \$5.00 per acre.

We would expect the water quality audits to be substantially similar to the food safety audits. Further, it we anticipate that operations audited by the Third Party Group would range from less than 100 acres to as much as 10,000 acres. Farm demographics vary highly by county. According to the National Agricultural Statistics Service, average farm size was 70, 261, 492, 455 and 1,108 acres for all farms in Santa Cruz, Santa Clara, SLO, Santa Barbara and Monterey Counties, respectively. In SLO and Santa Barbara, the average size of irrigated farms is 365 acres. The bulk of operations participating in the Coalition are expected to be between 300 and 3,500 acres based upon county demographics provided by the National Agricultural Statistics Service and Conditional Ag Waiver Tier 2 and 3 designation criteria. Hence, an estimated mid-range of audit costs of \$5.00 per acre can safely be applied to the majority of growers participating in the Third Party Group.

As demonstrated above, these costs will vary depending on efficiencies of scale or the location of the farm. Additionally, the cost to individual growers would depend on the level of participation and the fee structure. As the costs above have been reported primarily on a per-acre basis, we will consider the TPG costs on the same basis.

Participation by growers in the TPG, which is required to be voluntary by the proposed Waiver, will depend in large part on the tier into which a grower falls. It is likely that only operations growing high-nitrate crops will participate, although many of these operations also grow other crops. So as a starting point, we will assume that the potential participants will represent the approximately 205,000 acres of high-nitrate crops grown in the five counties (drawn from county crop reports; see Appendix B). For strawberries, information from the Strawberry Commission indicated that 40% of the total strawberry acreage would fall into tier 1, leaving 14,491 acres of strawberries in tiers 2 and 3. For other high nitrate crops, we estimate that 90% of the ranches in Santa Clara, Santa Cruz, SLO, Santa Barbara, and San Benito counties are larger than 50 acres, yielding 43,028 acres above the 50 acre limit, and 95% in Monterey exceed the 50 acre size, yielding 126,464 acres, for a total of 183,983 acres that would potentially enroll in the TPG program.

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<sup>4</sup> Wetherington, Diane, Testimony at the National Leafy Green Marketing Agreement Hearings, Exhibit 34A , September 22, 2009, Monterey, CA.

We do not know what percentage of this 184,000 acres will actually enroll. If 50% of the acres enroll, then the cost per year for the 3PG would be approximately \$11.79 per acre, plus audit costs. Seventy-five percent participation would lower the costs to \$7.86 per acre plus auditing cost, and 85% participation would lower the cost to \$6.94 per acre plus audit costs.

## Conclusions, Implications and Recommendations

This report has had as its objective the estimation of costs to growers of complying with the proposed Ag Waiver. This estimation has been accomplished using multiple data sources, with the central source being twelve in-depth interviews of region growers. In addition, economic impacts on the industry, related businesses, and the general economy of the region have been estimated.

The research shows that there are significant costs of compliance for all three tiers that a grower might be assigned to. The level of these costs and their impact will vary considerably across the growers. Costs of as much as \$755,000 per year have been identified for a large grower (5500 acres), and costs per acre of as high as \$372 per acre have been identified.

On the plus side, there will likely be some efficiency gains from changes in practices that lead to lowered expenditures for water, fertilizer, and pesticides along with reductions in labor costs associated with applying these inputs. Quantifying these efficiency gains has been beyond the scope of what has been possible to accomplish during the time frame of this study.

There are also additional costs of compliance which we have not been able to estimate within the scope and timeframe of this study. Potential yield losses from reductions in irrigation, fertilization, and pesticide use, in particular, are controversial and difficult to assess. There may also be a loss of land value, to the extent that compliance with the Waiver results in reduced income from the land. We have not attempted to include these potential costs in our estimates.

Total costs to growers in the region have been estimated at between \$29,495,000 and \$43,181,000 annually. These estimate are very dependent upon the distribution of acreage among the tiers; we have attempted to use the most reasonable estimates of that distribution that we could, given the limitations of data sets for identifying tier assignments of acreage within the region.

Broader economic impacts of these costs have been identified, with a total negative impact of \$60 million - \$88 million per year. While these numbers are not large for a region whose economy is measured in billions, it is nevertheless a significant negative impact in the region.

The study has also considered the costs of a Third Party Group providing oversight of farmers' compliance and progress in improving water quality. Compared with the costs of compliance with the Waiver, the 3PG appears to be very cost efficient and may provide other benefits in achieving cooperation from growers in attaining water quality goals.

**Consider cost efficiency:** The goal from a cost and economic standpoint should be to achieve the desired water quality at the lowest cost possible and minimizing any negative economic impact. This

requires consideration of cost efficiency in selecting required actions by growers. Several Items that add significantly to the cost of compliance have been identified, and should be examined for their likely contribution to water quality.

**Reduce the number of plans and reports:** One aspect of minimizing costs is to minimize “bureaucracy” costs and ensure that as much of the money spent as possible should be going to directly impacting water quality. While oversight and reporting are necessary elements of a regulatory process, streamlining the reporting process can provide gains to everyone involved in it. The Waiver currently contains a confusing array of plans and reports that could be significantly reduced, possibly to a single Farm Plan.

## Appendix A: Actions Required by the Proposed Waiver

TIER 1 GROWER REQUIREMENTS	
1	Dischargers that apply fertilizers, pesticides, fumigants or other chemicals through an irrigation system must have functional and properly maintained back flow prevention devices installed at the well or pump to prevent pollution of groundwater or surface water consistent with any applicable DPR requirements or local ordinances.
2	Dischargers must properly destroy (i.e. plug) abandoned wells, exploration holes or test holes.
3	Dischargers must implement proper handling, storage, disposal, and management of pesticides, fertilizer, and other chemicals to prevent or control the discharge of waste.
4	Discharges who utilize containment structures (such as retention ponds or reservoirs) to achieve treatment or control of the discharge of wastes must construct and maintain such containment structures to avoid percolation of water to groundwater that causes or contributes to exceedances of water quality standards and to avoid surface water overflows that have the potential to impair water quality.
5	Dischargers must implement source control or treatment management practices to prevent erosion, reduce stormwater run-off quantity and velocity and hold fine particles in place. Practices must infiltrate, control or treat stormwater run-off for the first half inch of rain during each storm and further reduce the run-off of the next one inch of rain during each storm.
6	Discharges must comply with DPR Surface Water Regulations.
7	Must comply with any applicable stormwater permit
8	Must 1) maintain existing, naturally occurring, riparian vegetative cover (such as trees, shrubs, and grasses) in aquatic habitat areas as necessary to minimize the discharge of water; and b) maintain riparian areas for effective streambank stabilization and erosion control, stream shading and temperature control, sediment and chemical filtration, aquatic life support, and wildlife support to minimize the discharge of waste.
9	Dischargers must Update or develop a new Farm WQ Plan and implement it to achieve compliance
10	Must obtain appropriate farm WQ education and technical assistance necessary to achieve compliance with the Order

11	Must pay State Water Resources Control Board fees and relevant monitoring fees.
12	Must sample GW wells twice during the first year and again in four years and report results for analysis of 11 constituents (as per MRP) to RWQCB
13	Must file an NOI with information, as specified in the Order
14	The discharges of agricultural rubbish, refuse, irrigation tubing or tape, or other solid wastes into surface waters, or at any place where they may contact or may eventually be discharged to surface waters, is prohibited.
15	The discharge of chemical used to control wildlife (such as bait traps or poison) into surface waters, or at any place where the chemicals may contact or may eventually be discharged to surface waters, is prohibited.
16	Comply with any Stormwater permit.
17	The EO may require Dischargers to locate (inventory) and conduct sampling of private domestic wells in or near agricultural areas with high nitrate in groundwater and submit technical reports evaluating the sampling results. In addition, Dischargers may be required to provide alternative water supplies or replacement water service, including wellhead treatment, to affected public water suppliers or private domestic well owners.
18	Dischargers must submit any technical reports that the Executive Officer may require.
19	How much will it cost to negotiate Tier designations? <i>(Need ranch map, flow map, description of pollutant load, description of any WQ sampling info)</i>
20	How much will it cost to change Tier designations every time a grower changes a lease? <i>(Need ranch map, flow map, description of pollutant load, description of any WQ sampling info)</i>

Appendix A, Continued

<b>TIER 2 AND TIER 3 GROWER REQUIREMENTS</b>	
<b>1</b>	<b>Discharger must submit an annual compliance form</b>
<b>2</b>	<b>Photo-monitor riparian and wetland habitat every 4 years</b>
<b>3</b>	<b>Tier 2 growers with High NO<sub>3</sub> Loading Risk must record and report the total N applied per acre to each farm/ranch or NO<sub>3</sub> loading risk unit including organic and inorganic fertilizers, slow release products, compost, compost teas, manure, extracts, N present in the soil and NO<sub>3</sub> in irrigation water or propose an individual GW monitoring reporting program.</b>
<b>4</b>	<b>Determine GW NO<sub>3</sub> loading risk factor for each ranch/farm or "NO<sub>3</sub> loading risk units"</b>
<b>5</b>	<b>Calculate the NO<sub>3</sub> loading risk level as "low, medium or high".</b>

Appendix A, Continued

<b>TIER 3 GROWER REQUIREMENTS</b>	
<b>1</b>	<b>Must do individual surface WQ monitoring</b>
<b>2</b>	<b>Must submit an individual surface water discharge Sampling and Analysis Plan which includes</b>
<b>3</b>	<b>Individual Sampling and Assessment Plan and QAPP are subject to approval by Executive Officer.</b>
<b>4</b>	<b>Must select monitoring points to characterize at least 80% of the estimated irrigation runoff discharge volume from each farm-ranch at the point in time the sample is taken, including tailwater discharges and discharges from tile drains.</b>
<b>5</b>	<b>Tailwater ponds must be sampled twice during the dry season and 4 times during the wet season</b>
<b>6</b>	<b>Monitoring Parameters for tailwater ponds and other surface containment features are volume of pond and NO3 +Nitrite (as N).</b>
<b>7</b>	<b>Must include at least one monitoring point from each farm/ranch which drains areas where chlorpyrifos or diazinon are applied and monitoring of runoff or tailwater must be conducted within one week of chemical application.</b>
<b>8</b>	<b>Annually submit individual surface water discharge monitoring data and reports.</b>
<b>9</b>	<b>Must use a state registered professional engineer, registered geologist or certified laboratory to submit lab data.</b>
<b>10</b>	<b>Must develop a WQ Buffer Plan or submit evidence that discharge is adequately treated.</b>
<b>11</b>	<b>WQ Buffer Plan must include a minimum of a 30 foot buffer</b>
<b>12</b>	<b>Must maintain a filter strip of appropriate width between disturbed land and "surface water features". If doing any "construction" must maintain a 30' buffer strip.</b>
<b>13</b>	<b>Must include a WQ Buffer Plan or alternative in the Annual Compliance Plan.</b>
<b>14</b>	<b>Must add the following to the Annual Compliance Form</b>
<b>15</b>	<b>Must take an N soil sample prior to planting or seeding a field.</b>
<b>16</b>	<b>Must take a leaf sample prior to applying more N.</b>
<b>17</b>	<b>Must determine typical crop N uptake for each crop type and report the basis for determination</b>
<b>18</b>	<b>Must develop a certified Irrigation and Nutrient Management Plan using a professional soil scientist, professional</b>

18	Must develop a certified Irrigation and Nutrient Management Plan using a professional soil scientist, professional agronomist or crop advisor.
19	Must meet N Balance Ratio targets of no more than 100% of crop needs for annual crop rotation and 120% for strawberries and raspberries.
20	Must evaluate effectiveness of INMP.
21	Must submit an INMP Effectiveness Report prepared by a state registered professional engineer, professional geologist or similarly qualified professional. Dischargers may choose to comply by GW basin or subbasin.
22	Beyond 3 years, must demonstrate improved irrigation and nutrient management efficiency, N balance ratios, and reduced NO3 loading to GW
23	After 3 years, the N balance ratio must compare the total amount of N applied to the crop against total N removed rather than total N uptake.
24	By 2015, Tier 3 growers with high-NO3 loading risk levels must verify the overall effectiveness of INMP.
25	Within one year of adoption, must sample all domestic drinking water wells and Ag wells to evaluate GW conditions in Ag areas, identify areas of greatest risk for N loading and exceedances of drinking water standards and identify priority areas for followup actions.
26	Sample at least one GW well for each farm/ranch or NO3 loading unit in their operation. Initially conduct 2 rounds of sampling - one in spring and one in fall and annually thereafter during the quarter when NO3 concentration is highest.
27	GW samples must be collected by a state registered professional engineer, professional geologist, or other similarly qualified professional.
28	Lab analysis must be conducted by a state certified lab.

## Appendix B: IMPLAN Definitions

- **Direct costs** consist of economic activity contained exclusively within the designated sector(s). This includes all expenditures made and all people employed.
- **Indirect costs** define the creation of additional economic activity that results from linked businesses, suppliers of goods and services, and provision of operating inputs.
- **Induced costs** measure the consumption expenditures of direct and indirect sector employees. Examples of induced costs include employees' expenditures on items such as retail purchases, housing, banking, medical services, and insurance.

The total direct, indirect, and induced costs arising due to the multiplier effect are presented in four ways:

- **Output** accounts for total revenues lost including all sources of income for a given time period for an industry in dollars. This is the best overall measure of business and economic activity because it is the measure most firms use to determine current activity levels.
- **Employment** demonstrates the number of jobs not generated and is calculated in a full-time equivalent employment value on an annual basis.
- **Indirect Business Taxes** consist of property taxes, excise taxes, fees, licenses, and sales taxes that would have been paid by businesses but now lost. While all taxes during the normal operation of businesses are included, taxes on profits or income are not included.
- **Labor Income** includes all forms of employee compensation that would have been paid by employers but now lost (e.g., total payroll costs including benefits, wages and salaries of workers, health and life insurance, retirement payments, non-cash compensation), and proprietary income (e.g., self employment income, income received by private business owners including doctors, lawyers).

**From:** Crystal Rivera <crivera@somachlaw.com>  
**To:** "Jeffrey S. Young" <agorder@waterboards.ca.gov>  
**CC:** Lisa McCann <lmccann@waterboards.ca.gov>, Angela Schroeter <aschroeter@w...>  
**Date:** 8/1/2011 4:41 PM  
**Subject:** Comments on Addendum to Staff Report for an Updated Conditional Waiver of Waste Discharge Requirements for Irrigated Agricultural Waste Discharges, Draft Agricultural Order No. R3 2011 0006  
**Attachments:** 8-1-11 Comments2RWQCB re StaffAddendum FINAL w/Attachments.pdf

Dear Mr. Young:

Attached please find Farmers for Water Quality coalition's comments on the Addendum to Staff Report for an Updated Conditional Waiver of Waste Discharge Requirements for Irrigated Agricultural Waste Discharges, Draft Agricultural Order No. R3 2011 0006; Evaluation of New Information Provided by Agricultural Industry Representatives on March 17, 2011 and May 4, 2011.

Thank you.

>

Crystal Rivera, Secretary to Theresa "Tess" A. Dunham

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**Creation Date:** 8/1/2011 4:39 PM  
**From:** Crystal Rivera <crivera@somachlaw.com>

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To: (AgOrder@waterboards.ca.gov)			
CC: Abby Taylor-Silva (abby@growershipper.com)			
CC: Angela Schroeter (ASchroeter@waterboards.ca.gov)			
CC: Lisa McCann (Lmccann@waterboards.ca.gov)			
CC: Roger Briggs (Rbriggs@waterboards.ca.gov)			
CC: Tess Dunham (tdunham@somachlaw.com)			

**Comments on the California Regional Water Control Board Central Coast Region  
Draft Order No. R3-2011-0006 and the Staff Addendum**

**John Letey  
Distinguished Professor of Soil Science, Emeritus  
University of California, Riverside**

**General Comments**

A major part of my professional career as a Professor of Soil Science at the University of California, Riverside was devoted to doing research to develop and understand the scientific principles that govern the goal of maintaining a profitable agricultural industry in an environmentally protective manner. The research covered a broad array of topics including plant nutrients, pesticides, irrigation management, fertilizer management, salinity, drainage, and selenium. The research included a broad spectrum of carefully controlled laboratory and greenhouse experiments, controlled field plot experiments, research on actual farms operated by farmers, and computer driven models. Every statement in this report is documented by peer reviewed papers published in Technical Journals by myself and numerous colleagues. Rather than list the publications following each statement, I refer the reader to a document that summarizes the scientific findings with references. That document can be accessed at <http://worldcat.org/oclc/608114525/viewonline>.

My comments are restricted to the scientific validity of the Order as related to nitrogen; and more specifically nitrate impacts on ground water. I have not reviewed any aspects related to pesticides, but expect that I would also find major scientific deficiencies related to pesticides. Many controlling factors, very notably soil properties, are similar for pesticides and nitrogen.

I found the documents very difficult to review. There is no clear organization of the material with redundancy in some cases. A Table of Contents would be helpful. It appears that there have been incremental changes to the document with time that are additions rather than a coherent rewriting of the document.

**Definitions**

Proper definition and understanding of terms are essential in any communication. The terms concentration and load are used extensively. The stated definition of concentration is, "The relative amount of a substance mixed with another substance. An example is 5 parts per million (ppm) of nitrogen in water or 5 mg/L." This definition is correct. The definition of load is, "The concentration or mass of a substance discharged over a given amount of time, for example 10g/day (changed from the original 10 mg/L) or 5 Kg/day, respectively." Clearly the definition of load is erroneous because it potentially could be the same as concentration with a different definition for concentration than originally given for concentration. The accurate definition of load is, "The mass of a substance

discharged over a given amount of time, for example 5 Kg/day.” For discharge from a crop system to a ground water system the load would be mass/time/area.

The erroneous confusing definition of load creates uncertainty in properly understanding what is meant when ever the term load is used; or even when the term concentration is used in the Order as it is given two definitions. To make matters worse there is no scientific proportional relationship between concentration and load in the system to be monitored. Indeed, they are frequently inversely related where one can have a low concentration and high load or vice versa. Numerous examples can be found in the publications to verify this statement. One can log into the UC ANR site for the Nitrogen Hazard Index and click on the section that discusses concentration versus mass load for a more detailed discussion of this matter. This has tremendous implications on the monitoring requirements because it sometimes appears that monitoring a concentration is expected to provide the value of the load. I have not reviewed the monitoring sections; but I expect that there are scientific deficiencies, or at least clarifications, that should be addressed.

Now the question is whether this is just a matter of sloppy communication or indicative that the writers do not understand the complex relationships between load and concentration in a hydrologic system such agriculture. The latter consideration jeopardizes the credibility of the Document. It suggests that those proposing the regulations do not completely understand the system that they are proposing to regulate.

### **Tier Designation**

“Discharger grows crop types with high potential to discharge nitrogen to groundwater” is stated as the criterion for a farmer to be in each of Tiers 1, 2, and 3. What about farmers that grow crops with low potential? Are they excluded from any Tier or regulation? In other parts of the documents, reference is made to the nitrate loading risk factor. I assume that somewhere in the documents an explanation is given how the loading risk factor enters into the regulatory framework. One should not have to scan the massive documents to find this.

### **Nitrate Loading Risk Factor**

The Nitrate Loading Risk Factor and the U.C. Nitrate Hazard Index (NHI) are referred to in various places in the documents. The criteria for determining the Nitrate Loading Risk Factor (NLRF) is listed in Table 4 in Attachment 2. The NLRF is related to crop, irrigation system and concentration of nitrogen in the irrigation water. The NHI is related to the crop, irrigation system and soil. A major difference between the two is the inclusion of nitrate concentration in the irrigation water and the exclusion of soils for the NLRF. The NLRF uses the same rating as proposed in the NHI for rating crops. The NLRF states that the rating the irrigation system is based on the NHI but adapted to the Central Coast Region. In fact, the ratings of irrigation systems between the two have major significant differences. There is no explanation why it was necessary to adapt it to the Central Coast Region. The following compares the two.

### NLRF

1. Micro-irrigation year round.
2. Sprinklers used for pre-irrigation only then micro-irrigation.
3. Sprinklers to germinate or any time during the season.
4. Surface irrigation anytime.

### NHI

1. Micro-irrigation with fertigation.
2. Micro-irrigation without fertigation.
3. Sprinkler irrigation.
4. Surface irrigation.

(Although not specifically stated, sprinklers for pre-irrigation or germination does not raise the index number if micro-irrigation is used for the crop season.)

I will explain the rationale for the NHI. Micro-irrigation with fertigation allows the uniform application of the precise amount of water and fertilized at times to match the crop requirement for each. It provides very little opportunity for leaching and is the best management that can be adopted. This benefit is independent of the crop or soil. Thus it receives a number 1 ranking. Micro-irrigation without fertigation is good. However, if the fertilizer is applied to the soil at other times, the water flow from the emitters will tend to transport the nitrate to the outer edges of the wetted zone and create a disparity between the N and water availability in different segments of the root zone. Also a rain between soil applications of fertilizer could leach some of the applied N. Sprinklers for germination may be desirable, particularly for crops that require shallow placement of the seed. In this case the surface must be kept moist at all times, and small frequent application with sprinklers accomplishes this. Micro-irrigation systems such a drip release water at the emitters, and must be run sufficiently long for the lateral movement of water to wet the entire row surface. This may be less efficient than the sprinkler.

Sprinklers allow precise application on the amount of water desired. However, on a seasonal basis, the uniformity of application can be a problem associated with design, wind etc. Thus it is assigned a factor of 3. Sprinklers can be effective on any soil as long as the application rate is designed to not exceed the infiltration rate of the soil.

Surface irrigation systems lead to non uniform water application and there is little control on the amount of infiltrated water because that is largely controlled by the soil type. A factor of 4 is assigned to surface irrigation. These basic irrigation principles are universally valid and there is nothing about the Central Coast Region that would require modification. Although surface irrigation has an index of 4, there are management variables that improve their performance and should be adopted if a surface system is required for various reasons.

Contrary to fertigation reducing the risk in the NHI, the NLRF assigns an increasing load factor for fertigation. Fertigation adds N to the irrigation water. The following are the load factors associated with nitrate concentration in the irrigation water as proposed by NRLF.

#### Load Factor

1. 0 – 45 mg/L of nitrate
2. 46 – 60 “
3. 61 – 100 “
4. >100 “

I found no explanation for this grouping. Indeed, in fertigation a high concentration of N in the irrigation water may be necessary at times to meet periods of very high N demand consistent with a good Nutrient Management Plan.

The NLRF is calculated by multiplying the factor for crop, irrigation system and N concentration in the irrigation water. A factor < 10 was classified as low risk, 10 – 15 moderate risk and >15 high risk. Apparently a rating of moderate, has some significance some where in the Order that I did not see. I found no explanation as to how this scale was determined. It appears to be arbitrary without scientific basis.

The NHI is calculated by multiplying the factors for crop, irrigation system, and soil. A value less than 20 is considered to have very low risk and requires very little attention. A number higher than 20 indicates some degree of risk that requires further examination. The statement is made in Table 4 of the Order that a NHI value > 20 represents a HIGH risk. This is not necessarily true. The specific index number, other than < 20, has limited meaning and is not the most important use for the NHI.

I will now explain the rationale for selecting 20. The absolute best that a farmer can do to minimize groundwater degradation from nitrate is to fertigate with a micro-irrigation system. This is independent of soil or crop. Assume the most hazardous crop (4) and soil (5) is irrigated with fertigation and micro-irrigation (1), The NHI would be 20. Assume the crop with least risk (1) was grown on most hazardous soil (5) and irrigation system (4), The NHI would be 20. The crop features that cause it to be ranked 1 for being very low risk would not be greatly impacted by the soil or irrigation system. Thus, any combination that leads to 20 or less indicates a very low risk.

A NHI > 20 does not necessarily mean that there is a high risk; it simply implies that there is a potential risk that requires further evaluation. The major benefit of using the NHI approach is not derived from the specific number, unless it is <20. One can determine the primary causative factor(s) that provide the risk and then target management to mitigate that threat. The supplementary information provided with the NHI provides suggestions for management to mitigate the threat. Two crops may have the same assigned index number, but for different reasons. The two crops may require

different management strategies. I will discuss this further when I address the Nutrient Management Plan.

I was pleased to hear testimony by the Strawberry Board at the Hearing held in Watsonville. They reported the results from field tests on strawberries that were irrigated by micro-irrigation and fertigation. Acceptable nitrate concentrations were measured in the soil. Even though they were growing a crop with the highest risk factor (4), the NHI for their system would have been <20 and this was reflected in their observation. This is supporting evidence for the utility of the NHI on farmer fields.

The significance of the soil type related to nutrient and pesticide behavior in the soil is well documented by a vast array of my research and others reported in many papers. The general exclusion of soil effects in the over all Order, and very specifically in the NLRF, is a travesty. Apparently my testimony at Watsonville had some effect. The latest document allows the farmer to choose between using the NHI or NLRF. This was a simple means for the staff to claim accommodation of the criticism without making any major change. I get the feeling that this may have been the strategy on numerous other comments that were provided over the course of developing the Document. This leads to a large disoriented document.

I find the decision to allow the farmer to choose between the NHI and NLRF to be a paradox. My general impression is that the tenor of developing the Order has been more to dictate to farmers than to give and accommodate their choices. But in this case they give the farmer the choice. Furthermore, if there was an uncertain trade-off between a decision that would favor either agricultural production or water quality, the decision seemed to lean toward water quality protection. However, in the NHI and NLRF trade-off, the opposite is true. In the NHI, a soil factor is used in the multiplication. Most agricultural soils are in the 3 or 4 ranges. This contributes to a high NHI number whereas the NLRF does not have a soil factor. Instead they would multiply by a nitrogen concentration factor that can be 1 if the farmer does not fertigate; a choice that actually increases the risk. Clearly the farmer would choose the NLRF approach because the result would suggest a lower risk than NHI even though in reality there might be a significant risk. For example, assume the most hazardous crop (4) and no fertigation (1) then the farmer could chose any irrigation system other than surface and have a NLRF that is not classified as high hazard and avoid the mandates associated with a system that is classified as high risk. The irony is that a farmer by given the choice to use NLRF could adopt a practice that actually increases the risk for the purposes of getting classified as a low risk. I am very disturbed that the staff would choose this simple irresponsible approach to address my criticism rather than to evaluate the matter and come up with a valid decision and then defend it.

### **Item 75, p28**

This item mandates the development and initiation of an Irrigation and Nutrient Management Plan (INMP) certified by .....This is an **excellent requirement** because it focuses on what can best be done (management) to minimize ground water degradation.

Since the Plan is certified by a professional, the Board should trust this certified person to develop the Best Management Plan without dictating its components. Particularly because many of the mandates demonstrate considerable ignorance on the writer concerning the complex interactions and feed-back mechanisms involved in the plant-water-soil system. The mandate that a certified INMP be developed is excellent. However, some of the mandated components of the INMP are seriously flawed; and indeed, cannot be done with any degree of accuracy.

For example, Item 78, p29 mandates specific nitrogen balance ratios. The document presents a very elementary concept and analysis of mass balance. The simple explanation of mass balance is that the difference between what is added and removed represents the increase in mass. A balance is achieved when the inputs and out puts are equal. This simple concept ignores many complex dynamic factors in a nitrogen balance in an agricultural field. For example, organic N is neither available for the plant uptake nor leaching until it is mineralized. Addition of organic N is an input, but has no immediate impact and would be misleading in a balance computation. Therefore, the quantitative input of the N critical to the analyses follows a time dependent path that is impacted by the nature of the organic N, temperature, and soil water content. Furthermore the leaching potential is dependent on the chemical form of N. The nitrate form is very mobile and the ammonium form is not very mobile. I could not find any reference to denitrification in the Order. Denitrification represents an output. The rate of denitrification is affected by soil type, water amount, energy source, temperature etc. Much research was done related to denitification by my colleagues and I. This included measurement on a farmer field where the denitrification was about 15% of the N application. This was on a field that would not represent a soil system where one would expect the highest rates of denitrification. This is an example of the great deficiency in this document that tends to ignore the impact of soil type.

I have been involved with experiments on field plots where measurement of a nitrogen balance was desired. Even with the most sophisticated instrumentation and extensive sampling a good balance is not achieved. There simply are too many pools of nitrogen and transformations of nitrogen to achieve an accurate balance. Quantifying the amount of denitrification is particularly a problem.

The only more challenging thing to measure other than the nitrogen balance is the nitrogen load discharged from the root zone. To be absolutely clear, load is the mass of nitrogen discharged per unit area over a time period. The load is calculated by multiplying the concentration of nitrogen and the rate of water flow. Whereas the concentration can readily be measured, the rate of water flow is virtually impossible to measure. This factor is usually estimated by doing a water balance between water application and evapotranspiration (ET). Often overlooked in doing this balance is the fact that ET is a function of crop growth as well as climatic conditions. I will amplify on this matter more when I explain the feedback mechanism between the plant and soil. I repeat that concentration and load are neither synonymous nor proportional. Most often they are inversely related. **Measurement of load is virtually impossible in the field.**

The purpose that I invested time in developing the NHI was not primarily to get a number. It was to provide a valuable resource to a farmer, or his consultant, to develop effect irrigation and nutrient management plans that were specifically designed for his unique situation. The procedure would be to input the crop, soil, and irrigation system and learn what the NHI number is for this combination. If the value was <20, then there is very little hazard and very little resources or time would be required for this field. If the NHI >20 then one must determine whether the higher number was associated with the crop, soil, irrigation system or a combination of the three. One would first analyze the crop. Information is presented for each crop that identifies the characteristics of that specific crop that contribute to the index number and suggests practices to mitigate the impact of those with a high risk. The same applies to the soil and irrigation systems. All of these factors and information are then used in designing the Management Plan.

Clearly, factors related to a nitrogen balance must be, and will be, considered in developing a Management Plan. Furthermore, the goal will be to minimize the nitrate load discharged from the root system. The Plan will be designed with these factors in mind. The mandates to provide numerical values for these factors that can not be accurately quantified are more destructive than they are helpful. The mandate to achieve a prescribed nitrogen balance that is not properly defined is really bad. Different N balances, as defined in the Order, are justified for different soils and other factors. A soil with a high denitrification potential will require application of a higher ratio of N input to N uptake by the plant than a soil with low denitrification potential. **Trust the certified professional to do his or her job. They are better prepared to develop a good plan than meeting the mandates from those who have not demonstrated to me that they understand the complexity of the system that they propose to regulate.**

### **Plant-Soil Feedback Mechanism**

This is a very important consideration in developing regulations concerning N application. It is not widely understood so I am not surprised that it has not been considered in the Document. The typical expectation is that the amount of N leached can be decreased by applying less N. This is true if excessive N above that to achieve high yield has been applied. However, if only adequate N has been applied to achieve high yield, a further reduction in N application can lead to higher quantities of N to be leached and not less. How can this be? It is associated with a negative feed-back process. The crop ET is generally linearly related to the amount of plant dry matter production. Therefore, if a management factor leads to reduced plant size, it also leads to reduced ET. The simple water balance equation is

$$AW = ET + DP$$

where AW is the amount of applied water that infiltrates the soil, ET is evapotranspiration, and DP is deep percolation that leaches chemicals, including nitrate below the root zone toward ground water. If the plant size is reduced, ET is reduced and therefore DP is increased to compensate. The increased DP leaches increased amounts of N which further reduces plant growth because of the depleted N that leads to more N leaching. Also with this cycle of reduced plant growth, the amount of N uptake by the

crop is less than expected that impacts any N balance analysis that might be done. The net effect of this is increased, rather than decreased, N leaching.

An experiment in Israel measured increased leaching on plots that had reduced crop size, even though the same amount of water was applied to each plot. Also extensive field studies in the Central U.S. on nitrate loads from agriculture discharged to rivers found the loads were higher on years of lower crop yields as compared to years with higher crop yields. These results support the negative feedback mechanism.

**The bottom line is that high crop yields are compatible with low groundwater degradation goals if properly designed and managed. Higher crop yields remove more N and water that reduces the flow of water and N below the root zone than low crop yields.**

### **Tile Drainage**

I could not find a clear message about tile drainage from the lengthy documents. But my impression is that although there are no present proposed regulations concerning tile drainage water, the water must be monitored. The word “monitored” raises a red flag in my mind because of the inaccurate definitions of concentration and load. What is to be measured in the tile drainage water? I was personally involved in measuring the nitrate concentration and mass discharge of nitrate in tile drains on many farms throughout California. The concentration number was practically meaningless and in of itself could lead to erroneous conclusions. The mass load was much more meaningful. One of the key findings is that the load is greatly affected by the soil properties regardless of other factors. This is scientific evidence why the inclusion of soil properties in estimating load discharge risks is vital to an accurate estimate. The overall lack of reference to the impact of soil properties throughout the Order represents a gigantic scientific deficiency in the documents that I reviewed.

### **General Conclusion**

There are major scientific deficiencies in the proposal that I reviewed. Humans can enact any laws that they desire. However, the world operates on physical, chemical and biological laws that are fixed and cannot be altered by humans. Any human law that is derived on principles that are not consistent with these laws will not achieve the desired results. There is ample documentation that waters in California are being degraded by chemicals and that agriculture is a major contributor in many cases. There is ample justification to pass legislation that will address this problem and place some responsibility and regulation on farmer activity. However, the present Documents are laden with scientific deficiencies and apparent misunderstanding of the system to be regulated. These must be seriously addressed and modified if the desired results are to be achieved.

**From:** <lino@belliag.com>  
**To:** <aschroeter@waterboards.ca.gov>  
**Date:** 8/1/2011 8:11 AM  
**Subject:** CCRWQCB Request for Public Comments on Addendum to Draft Agricultural Order dated July 8, 2011

Raymond Belli  
President  
Belli Architectural Group  
313 Salinas Street  
Salinas, CA 93901-2708

August 1, 2011

Angela Schroeter  
Agricultural Regulatory Program Manager  
Central Coast Regional Water Quality Control Board  
895 Aerovista Place, Ste 101  
San Luis Obispo, CA 93401-7906

Dear Ms Schroeter:

I have been following the progress of this Board's renewal of the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands ("Ag Order") and am concerned with the contents of the Addendum to the Staff Report released on July 8, 2011. The Addendum to the Staff Report does not provide an objective review, contrast, or comparison of the Agricultural Alternative Proposal to Staff's Draft Agricultural Order as directed by the Central Coast Regional Water Quality Control Board. The analysis of the Agricultural Alternative Proposal contains numerous substantive flaws, misstatements, and incorrect assumptions leading to inaccurate and deleterious conclusions. Contrary to Staff's conclusions, the Agricultural Alternative Proposal is enforceable; contains a legally consistent approach for the use of third-party groups; provides accountability; will control waste discharges from irrigated agriculture; provides flexibility; and includes adequate surface water and groundwater monitoring components.

In addition, the Addendum to the Staff Report contains numerous additions and revisions to the Staff's Draft Agricultural Order. This revised Draft Ag Order will negatively impact my ability to continue farming. Of particular concern to my farming operation is:

That this action is not to work toward cleaner water, but to take farm land out of production with the mistaken idea that it would return to a fallow state and be pretty to look at. Our Water Board should be working with farmers not against them.

I urge the Board to listen to growers' feedback and suggestions, including mine, and incorporate their comments and recommendations into the formation of a new Ag Order. In order to actually improve water quality, any future Ag Order must be designed with feasible measures, achievable objectives, and a transparent and collaborative process that involves and utilizes agricultural stakeholders. To accomplish this, the new Ag Order

should be based upon the Agricultural Alternative Proposal rather than Staff's Draft Order.

Thank you for considering my views.

Sincerely,

Raymond Lino Belli, Jr.  
831.424-4620  
President  
Belli Architectural Group

**From:** <bulletranches@msn.com>  
**To:** <aschroeter@waterboards.ca.gov>  
**Date:** 7/28/2011 5:59 PM  
**Subject:** CCRWQCB Request for Public Comments on Addendum to Draft Agricultural Order dated July 8, 2011

Tom Nielsen  
Owner  
Bullet Ranches  
204 San Juan Dr.  
Salinas, CA 93901-3017

July 28, 2011

Angela Schroeter  
Agricultural Regulatory Program Manager  
Central Coast Regional Water Quality Control Board  
895 Aerovista Place, Ste 101  
San Luis Obispo, CA 93401-7906

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The change to the tiering criteria related to acreage and crop types with high potential to discharge nitrogen to groundwater. The new acreage trigger of 50 acres and 500 acres, depending on the tier classification, is not supported by any evidence, is arbitrary, and does not provide enough flexibility for situations unique to agricultural tenant practices.

The new definition to "farm/ranch" is overly broad, speculative, and inappropriate to encompass land where "commercial crops are produced or normally would have been produced."

The addition requiring a discharger to "provide adequate legal

justification pursuant to Water Code section 13267" when asserting that portions of a report contain trade secrets, proprietary information, or secret processes is inappropriate. The Water Code does not place this burden on dischargers.

Farm Plans have always remained on the farm and available to Regional Board staff upon request. The discontinuation of allowing farm plans to remain on the farm is unwarranted, unjustifiable and can have significant negative consequences for farming operations.

I urge the Board to listen to growers' feedback and suggestions, including mine, and incorporate their comments and recommendations into the formation of a new Ag Order. In order to actually improve water quality, any future Ag Order must be designed with feasible measures, achievable objectives, and a transparent and collaborative process that involves and utilizes agricultural stakeholders. To accomplish this, the new Ag Order should be based upon the Agricultural Alternative Proposal rather than Staff's Draft Order.

Thank you for considering my views.

Sincerely,

Tom Nielsen  
Owner  
Bullet Ranches

**From:** <bonnie.nielsen@msn.com>  
**To:** <aschroeter@waterboards.ca.gov>  
**Date:** 7/28/2011 5:59 PM  
**Subject:** CCRWQCB Request for Public Comments on Addendum to Draft Agricultural Order dated July 8, 2011

Gene Nielsen  
Owner  
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July 28, 2011

Angela Schroeter  
Agricultural Regulatory Program Manager  
Central Coast Regional Water Quality Control Board  
895 Aerovista Place, Ste 101  
San Luis Obispo, CA 93401-7906

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Thank you for considering my views.

Sincerely,

Tom Nielsen  
Owner  
Bullet Ranches

**From:** <pfb49@aol.com>  
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**Date:** 7/28/2011 8:09 PM  
**Subject:** CCRWQCB Request for Public Comments on Addendum to Draft Agricultural Order dated July 8, 2011

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July 28, 2011

Angela Schroeter  
Agricultural Regulatory Program Manager  
Central Coast Regional Water Quality Control Board  
895 Aerovista Place, Ste 101  
San Luis Obispo, CA 93401-7906

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Board staff upon request. The discontinuation of allowing farm plans to remain on the farm is unwarranted, unjustifiable and can have significant negative consequences for farming operations.

The Draft Order specifically states "the focus of this Order is non-tile drain discharges. However, new language has been added to specifically require individual monitoring, reporting of management practices, and attainment of water quality standards for tile drain discharges. These new requirements for tile drains are inconsistent with and contradictory to the very focus of the Order.

The addition requiring a discharger to "provide adequate legal justification pursuant to Water Code section 13267" when asserting that portions of a report contain trade secrets, proprietary information, or secret processes is inappropriate. The Water Code does not place this burden on dischargers.

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Thank you for considering my views.

Sincerely,

Nick Guriel  
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Coles Cattle Company

**From:** <frank@oceanviewflowers.com>  
**To:** <aschroeter@waterboards.ca.gov>  
**Date:** 8/1/2011 3:25 PM  
**Subject:** CCRWQCB Request for Public Comments on Addendum to Draft Agricultural Order dated July 8, 2011

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August 1, 2011

Angela Schroeter  
Agricultural Regulatory Program Manager  
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**From:** <doug@redblossom.com>  
**To:** <aschroeter@waterboards.ca.gov>  
**Date:** 7/26/2011 10:24 AM  
**Subject:** CCRWQCB Request for Public Comments on Addendum to Draft Agricultural Order dated July 8, 2011

doug turner  
GM  
Farmer  
67 la mirada ct.  
salinas, CA 93901-3820

July 26, 2011

Angela Schroeter  
Agricultural Regulatory Program Manager  
Central Coast Regional Water Quality Control Board  
895 Aerovista Place, Ste 101  
San Luis Obispo, CA 93401-7906

Dear Ms Schroeter:

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The addition requiring a discharger to "provide adequate legal justification pursuant to Water Code section 13267" when asserting that portions of a report contain trade secrets, proprietary information, or secret processes is inappropriate. The Water Code does not place this burden on dischargers.

I urge the Board to listen to growers' feedback and suggestions, including mine, and incorporate their comments and recommendations into the formation of a new Ag Order. In order to actually improve water quality, any future Ag Order must be designed with feasible measures, achievable objectives, and a transparent and collaborative process that involves and utilizes agricultural stakeholders. To accomplish this, the new Ag Order should be based upon the Agricultural Alternative Proposal rather than Staff's Draft Order.

Thank you for considering my views.

Sincerely,

doug turner  
831-229-4832  
GM  
Farmer

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Thank you for considering my views.

Sincerely,

Frank M. Costa Jr.  
805 448-9966

**From:** <twayment@nbcbsb.com>  
**To:** <aschroeter@waterboards.ca.gov>  
**Date:** 7/29/2011 9:59 AM  
**Subject:** CCRWQCB Request for Public Comments on Addendum to Draft Agricultural Order dated July 8, 2011

Tim Wayment  
Irrigation Manager  
French Camp Vineyards  
3555 Camatta Creek Roas  
Santa Margarita, CA 93453

July 29, 2011

Angela Schroeter  
Agricultural Regulatory Program Manager  
Central Coast Regional Water Quality Control Board  
895 Aerovista Place, Ste 101  
San Luis Obispo, CA 93401-7906

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French Camp Vineyards currently farms 1200 acres of wine grapes in eastern San Luis Obispo County. Over the past 10 years we have changed management practices to prevent tail water and storm water runoff. These practices include reducing commercial fertilizers by half and using compost tea. Installation of sediment basins to slow runoff that might occur and cutting irrigation used in the growing season by more than half. We have also done several tree planting along banks of ditches around the ranch for stabilization. Due to the acreage we farm we would be placed into tier 2, this would create a large amount of paper work and consume a lot of time that could be used in a more productive manor. For an operation that has taken great measures over the last decade to improve water quality

this seems unfair. The cost of this order if passed would have a cost of at least \$320,000 for facility improvements, and an additional \$60,000 per year in administration, monitoring and sampling cost. We believe that the water quality goals can be met with the alternative plan submitted by Agriculture. This plan sets more practical and achievable goals and is more feasible. The staffs draft ag order will have great financial impact to farmers that will be passed eventually for the people who work for the farms and the consumers.

I urge the Board to listen to growers' feedback and suggestions, including mine, and incorporate their comments and recommendations into the formation of a new Ag Order. In order to actually improve water quality, any future Ag Order must be designed with feasible measures, achievable objectives, and a transparent and collaborative process that involves and utilizes agricultural stakeholders. To accomplish this, the new Ag Order should be based upon the Agricultural Alternative Proposal rather than Staff's Draft Order.

Thank you for considering my views.

Sincerely,

Tim Wayment  
805-238-5811  
Irrigation Manager  
French Camp Vineyards

**From:** <chbunn@redshift.com>  
**To:** <aschroeter@waterboards.ca.gov>  
**Date:** 8/1/2011 2:54 PM  
**Subject:** CCRWQCB Request for Public Comments on Addendum to Draft Agricultural Order dated July 8, 2011

Christopher Bunn  
Manager  
General Farm Investment  
PO Box 247  
Salinas, CA 93902-0247

August 1, 2011

Angela Schroeter  
Agricultural Regulatory Program Manager  
Central Coast Regional Water Quality Control Board  
895 Aerovista Place, Ste 101  
San Luis Obispo, CA 93401-7906

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Thank you for considering my views.

Sincerely,

Christopher Bunn  
831 424-7923  
Manager  
General Farm Investment

**From:** <jastinchfield@yahoo.com>  
**To:** <aschroeter@waterboards.ca.gov>  
**Date:** 8/1/2011 4:14 PM  
**Subject:** CCRWQCB Request for Public Comments on Addendum to Draft Agricultural Order dated July 8, 2011

Joel Stinchfield  
Retired  
5135 Chaparral aaroad  
Paso Robles, CA 93446

August 1, 2011

Angela Schroeter  
Agricultural Regulatory Program Manager  
Central Coast Regional Water Quality Control Board  
895 Aerovista Place, Ste 101  
San Luis Obispo, CA 93401-7906

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Thank you for considering my views.

Sincerely,

Joel Stinchfield  
805 238-0696  
Retired

**From:** <njkwest@charter.net>  
**To:** <aschroeter@waterboards.ca.gov>  
**Date:** 7/29/2011 3:09 PM  
**Subject:** CCRWQCB Request for Public Comments on Addendum to Draft Agricultural Order dated July 8, 2011

Nancy Kawaguchi  
co-owner  
Kawaguchi Farms  
1010 Sycamore Drive  
Arroyo Grande, CA 93420-4132

July 29, 2011

Angela Schroeter  
Agricultural Regulatory Program Manager  
Central Coast Regional Water Quality Control Board  
895 Aerovista Place, Ste 101  
San Luis Obispo, CA 93401-7906

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Thank you for considering my views.

Sincerely,

Nancy Kawaguchi  
805-481-4194  
co-owner  
Kawaguchi Farms

**From:** <brian@bestberrys.com>  
**To:** <aschroeter@waterboards.ca.gov>  
**Date:** 8/1/2011 5:44 AM  
**Subject:** CCRWQCB Request for Public Comments on Addendum to Draft Agricultural Order dated July 8, 2011

Brian Driscoll  
President  
KB Farms, LLC  
P.O.Box 1115  
Aromas, CA 95004-1115

August 1, 2011

Angela Schroeter  
Agricultural Regulatory Program Manager  
Central Coast Regional Water Quality Control Board  
895 Aerovista Place, Ste 101  
San Luis Obispo, CA 93401-7906

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Thank you for considering my views.

Sincerely,

Brian Driscoll  
831.726.5120  
President  
KB Farms, LLC

**From:** <francis@hearneco.com>  
**To:** <aschroeter@waterboards.ca.gov>  
**Date:** 7/29/2011 6:09 AM  
**Subject:** CCRWQCB Request for Public Comments on Addendum to Draft Agricultural Order dated July 8, 2011

Francis Giudici  
President  
L.A. Hearne Co  
512 Metz Rd  
King City, CA 93930-2503

July 29, 2011

Angela Schroeter  
Agricultural Regulatory Program Manager  
Central Coast Regional Water Quality Control Board  
895 Aerovista Place, Ste 101  
San Luis Obispo, CA 93401-7906

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Sincerely,

Francis Giudici  
President  
L.A. Hearne Co

**From:** <paulnlvranch@earthlink.net>  
**To:** <aschroeter@waterboards.ca.gov>  
**Date:** 7/26/2011 10:49 AM  
**Subject:** CCRWQCB Request for Public Comments on Addendum to Draft Agricultural Order dated July 8, 2011

Paul Van Leer  
Manager  
Las Varas and Edwards Ranches  
RR2 Box 234-A  
Goleta, CA 93117-9798

July 26, 2011

Angela Schroeter  
Agricultural Regulatory Program Manager  
Central Coast Regional Water Quality Control Board  
895 Aerovista Place, Ste 101  
San Luis Obispo, CA 93401-7906

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Thank you for considering my views.

Sincerely,

Paul Van Leer  
805-968-9758  
Manager  
Las Varas and Edwards Ranches

**From:** <margaze@sbcglobal.net>  
**To:** <aschroeter@waterboards.ca.gov>  
**Date:** 8/1/2011 1:15 PM  
**Subject:** CCRWQCB Request for Public Comments on Addendum to Draft Agricultural Order dated July 8, 2011

Maria Azevedo  
819 W 21st Street  
Merced, CA 95340-3604

August 1, 2011

Angela Schroeter  
Agricultural Regulatory Program Manager  
Central Coast Regional Water Quality Control Board  
895 Aerovista Place, Ste 101  
San Luis Obispo, CA 93401-7906

Dear Ms Schroeter:

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Thank you for considering my views.

Sincerely,

Maria G Azevedo

**From:** <nbassettifarms@yahoo.com>  
**To:** <aschroeter@waterboards.ca.gov>  
**Date:** 7/28/2011 5:09 PM  
**Subject:** CCRWQCB Request for Public Comments on Addendum to Draft Agricultural Order dated July 8, 2011

Mary Ann Martinus  
LLC member  
Neil Bassetti Farms LLC  
Post Office Box 429  
Greenfield, CA 93927-0429

July 28, 2011

Angela Schroeter  
Agricultural Regulatory Program Manager  
Central Coast Regional Water Quality Control Board  
895 Aerovista Place, Ste 101  
San Luis Obispo, CA 93401-7906

Dear Ms Schroeter:

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I urge the Board to listen to growers' feedback and suggestions, including mine, and incorporate their comments and recommendations into the formation of a new Ag Order. In order to actually improve water quality, any future Ag Order must be designed with feasible measures, achievable objectives, and a transparent and collaborative process that involves and utilizes agricultural stakeholders. To accomplish this, the new Ag Order should be based upon the Agricultural Alternative Proposal rather than Staff's Draft Order.

Thank you for considering my views.

Sincerely,

Mary Ann Martinus  
LLC member  
Neil Bassetti Farms LLC

**From:** <sooz1966@yahoo.com>  
**To:** <aschroeter@waterboards.ca.gov>  
**Date:** 7/26/2011 10:24 AM  
**Subject:** CCRWQCB Request for Public Comments on Addendum to Draft Agricultural Order dated July 8, 2011

Suzanne Yamanishi  
Office Manager/Owner  
Yamanishi Farms  
2184 San Juan Hollister Rd.  
San Juan Bautista, CA 95045-9773

July 26, 2011

Angela Schroeter  
Agricultural Regulatory Program Manager  
Central Coast Regional Water Quality Control Board  
895 Aerovista Place, Ste 101  
San Luis Obispo, CA 93401-7906

Dear Ms Schroeter:

I have been following the progress of this Board's renewal of the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands ("Ag Order") and am concerned with the contents of the Addendum to the Staff Report released on July 8, 2011. The Addendum to the Staff Report does not provide an objective review, contrast, or comparison of the Agricultural Alternative Proposal to Staff's Draft Agricultural Order as directed by the Central Coast Regional Water Quality Control Board. The analysis of the Agricultural Alternative Proposal contains numerous substantive flaws, misstatements, and incorrect assumptions leading to inaccurate and deleterious conclusions. Contrary to Staff's conclusions, the Agricultural Alternative Proposal is enforceable; contains a legally consistent approach for the use of third-party groups; provides accountability; will control waste discharges from irrigated agriculture; provides flexibility; and includes adequate surface water and groundwater monitoring components.

In addition, the Addendum to the Staff Report contains numerous additions and revisions to the Staff's Draft Agricultural Order. This revised Draft Ag Order will negatively impact my ability to continue farming. Of particular concern to my farming operation is:

The change to the tiering criteria related to acreage and crop types with high potential to discharge nitrogen to groundwater. The new acreage trigger of 50 acres and 500 acres, depending on the tier classification, is not supported by any evidence, is arbitrary, and does not provide enough flexibility for situations unique to agricultural tenant practices.

The new definition to "farm/ranch" is overly broad, speculative, and inappropriate to encompass land where "commercial crops are produced or normally would have been produced."

Farm Plans have always remained on the farm and available to Regional

Board staff upon request. The discontinuation of allowing farm plans to remain on the farm is unwarranted, unjustifiable and can have significant negative consequences for farming operations.

The Draft Order specifically states "the focus of this Order is non-tile drain discharges. However, new language has been added to specifically require individual monitoring, reporting of management practices, and attainment of water quality standards for tile drain discharges. These new requirements for tile drains are inconsistent with and contradictory to the very focus of the Order.

The addition requiring a discharger to "provide adequate legal justification pursuant to Water Code section 13267" when asserting that portions of a report contain trade secrets, proprietary information, or secret processes is inappropriate. The Water Code does not place this burden on dischargers.

I urge the Board to listen to growers' feedback and suggestions, including mine, and incorporate their comments and recommendations into the formation of a new Ag Order. In order to actually improve water quality, any future Ag Order must be designed with feasible measures, achievable objectives, and a transparent and collaborative process that involves and utilizes agricultural stakeholders. To accomplish this, the new Ag Order should be based upon the Agricultural Alternative Proposal rather than Staff's Draft Order.

Thank you for considering my views.

Sincerely,

Suzanne Yamanishi  
Office Manager/Owner  
Yamanishi Farms

# \* CAUSE \* SAN JERARDO COOPERATIVE, INC. \*



July 28, 2011

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

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

Dear Board Members:

We are submitting comments on behalf of the above listed organizations regarding the Board's updated proposed agricultural order and the alternative proposal from the agricultural community.

Our organizations remain committed to a regulatory program that results in real and measurable improvements in both surface and groundwater quality. The following are essential factors for a successful program;

- Effective on-farm programs that actually reduce polluted runoff;

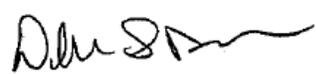
- Basic data, collected and made publicly available, on farm practices and water quality in order to establish a baseline, evaluate management practices and measure progress towards water quality objectives;
- Clear standards for compliance to ensure that water quality goals and timelines are met;
- Strong enforcement powers to ensure compliance; and
- Provisions for cleanup and abatement of legacy agricultural contamination.

While we appreciate the efforts of the agricultural community to provide an alternative to the staff proposal, we agree with staff’s assessment that the measures proposed do not meet the requirements of an effective regulatory program.

Staff’s July revision represents the 4<sup>th</sup> iteration of the draft order since February 2010. While we agree that the order could be improved, we feel even more strongly that continued delay endangers communities and the environment. Staff has provided ample evidence of the plight of Central Coast communities that lack safe drinking water and the fact that contamination is increasing. These are the communities that will pay the price of delay. The current program will provide essential information that will allow staff to assess its effectiveness, and provides incentives (through reduced regulation) for farmers to improve their practices.

We urge you, therefore, to adopt the proposed order at your September 1 meeting.

Sincerely,

 Jennifer Clary Clean Water Action California <a href="mailto:jclary@cleanwater.org">jclary@cleanwater.org</a>	 Elanor Starmer Food & Water Watch <a href="mailto:estarmer@fwwatch.org">estarmer@fwwatch.org</a>
Maricela P. Morales MA Deputy Executive Director Central Coast Alliance United for a Sustainable Economy (CAUSE) <a href="mailto:maricela@coastalliance.com">maricela@coastalliance.com</a>	Horacio Amezcuita San Jerardo Cooperative, Inc. <a href="mailto:horacioamezcuita@yahoo.com">horacioamezcuita@yahoo.com</a>
 Laurel Firestone Community Water Center <a href="mailto:Laurel.firestone@communitywatercenter.org">Laurel.firestone@communitywatercenter.org</a>	Marjorie Kay North Monterey County <a href="mailto:MARGIE17K@aol.com">MARGIE17K@aol.com</a>
 Debbie Davis Environmental Justice Coalition for Water	 Andrew Christie, Director Santa Lucia Chapter of the Sierra Club

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 Evon Chambers Planning and Conservation League <a href="mailto:echambers@pcl.org">echambers@pcl.org</a>	

**From:** <jclary@cleanwater.org>  
**To:** Lisa McCann <lmccann@waterboards.ca.gov>, Angela Schroeter <aschroeter@w...>  
**Date:** 8/1/2011 4:27 PM  
**Subject:** Joint Commemts on Conditional AG Waiver  
**Attachments:** Aug.1.2011.CC.ag.order.comments.doc

# California State Senate

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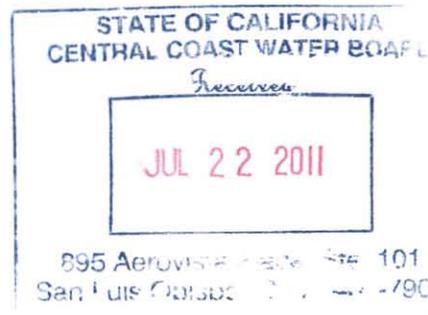
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July 20, 2011

Central Coast Regional Water Quality Control Board  
895 Aerovista Place, Suite 101  
San Luis Obispo, California 93401-7906

**RE: Addendum to Staff Report for an Updated Conditional Waiver of Waste Discharge Requirements for Irrigated Agricultural Waste Discharges, Draft Agricultural Order No. R3- 2011-0006; Evaluation of New Information Provided by Agricultural Industry Representatives on March 17, 2011 and May 4, 2011**



Regional Water Quality Control Board Members,

On November 19<sup>th</sup>, 2010, your staff released a document for public comment containing new regulations that will have a severe impact on agricultural business in the region. Since then your staff has made amendments to their recommendations, but have failed to sufficiently address the concerns of the agricultural producers that will be affected by the regulations. The Draft Staff Recommendations for an Updated Agricultural Order is of critical importance to all of the Central Coast as we explore how to improve water quality while maintaining a healthy agricultural community.

Central Coast farmers have a proven track record and lead the state in developing and integrating best management practices that protect water quality. In good faith, local agriculturalists worked collaboratively with this Board in 2004 to develop the current Conditional Waiver of Waste Discharge Requirements. They took ownership of the education and monitoring program, and made great investments in ensuring its success. Local agriculture has continued this collaboration and even stepped forward to propose an updated plan in the form of an alternative to your staff's recommendations.

The question is not *whether* to protect water quality, but *how* to protect water quality. With California's unemployment reaching near record levels and our state's economic recovery trailing the rest of the nation, it is imperative that regulators reject heavy-handed approaches which alienate stakeholders and make it more difficult to achieve the buy-in of the regulated entity.

Regulations developed in collaboration with the regulated entity; and regulations that take advantage of industry's insights and expertise, are far more likely to achieve meaningful compliance as opposed to regulations that are promulgated in an environment of hostility.

I am particularly troubled by the proposed heavy-handed approach, as it appears a counterproductive and divisive overreach, and reflects an unnecessarily dismissive attitude toward the concerns and thoughtful alternatives put forward by the agricultural community. A rejection of concerns about the economic and jobs impacts of proposed regulations is not in the best interest of a long-term partnership, and certainly unhelpful to protecting the economic viability of our rural community.

A sustainable environment is interdependent with a strong economy. It is our responsibility as lawmakers and regulators to recognize the consequences of implementing new policies and to proceed judiciously. These dire economic times remind us that economic prosperity and responsible resource stewardship are mutually reinforcing. Economic strength facilitates the incorporation of advanced technologies and innovative management practices necessary to produce our clean water goals. Similarly, the presence of abundant and healthy natural resources provides the ongoing basis for economic prosperity.

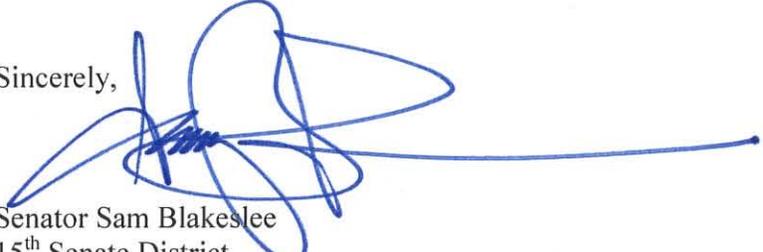
My record as the past representative of the 33<sup>rd</sup> Assembly District reflects the great consideration I give to forging collaborative partnership to achieve our environmental protection goals. Many of you will remember in 2006, I authored and the Governor signed legislation to resolve the Los Osos wastewater treatment plant impasse. That bill would not have been possible without direct coordination with, and cooperation of, this Board. It serves as an example of how disparate parties can collaborate to develop a water quality solution that works for the environment and the regulated community.

Let us be clear – every person in this room, agriculturalists and environmentalists alike, care about protecting water quality. The success of the agricultural industry depends on a healthy environment. Central Coast agriculture is particularly sensitive to this dependence as many agricultural operations are small family-run operations, passed down from generation to generation.

Since my election to the Assembly in 2004, I have worked closely with Central Coast agricultural organizations on the agriculture waiver in particular. Until this year, I have suspended legislative efforts to intervene at the request of the agriculture community predicated on the assumption that this Board was working cooperatively with agriculture. However, the draft ag orders your staff has proposed this year raise serious concerns across the Central Coast about whether the recommended approach is truly science-based, prudently designed to reduce economic and jobs impacts, and ultimately the most responsible approach available to the Board.

As legislators and board members, we have a duty to aggressively seek and develop options that achieve our goals while producing the least harm. I strongly urge your board to return to the precedent set in 2004 of treating the agricultural community as partners in this effort to improve the water quality of the Central Coast.

Sincerely,



Senator Sam Blakeslee  
15<sup>th</sup> Senate District



**BEST BEST & KRIEGER**  
ATTORNEYS AT LAW

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August 1, 2011

**SENT VIA EMAIL**

Roger Briggs, Executive Officer  
California Regional Water Quality Control Board  
Central Coast Region  
895 Aerovista Place, Suite 101  
San Luis Obispo, CA. 93401-7906

Re: Central Coast Agricultural Waiver

Dear Mr. Briggs:

1. Ocean Mist Farms and RC Farms and their related operations are major farm operations based in the Salinas/Castroville areas and hereby submit these comments suggesting either 1) adoption of the superior agriculture alternative, or 2) make necessary amendments to the recently slightly amended staff alternative.<sup>1</sup> Ocean Mist Farms and RC Farms have been aggressively engaged in water quality management on their farm properties and have been fully engaged in the Central Coast waiver implementation and in these deliberations over amendments to this waiver.

2. Pages 23 and 24 of the Staff Report for this hearing identify some 22 different amendments to the staff alternative. Most were technical non-substantive word changes or to correct errors in the Staff Alternative to make it consistent with existing law. Only the following four topics offered substantial amendments in the staff draft alternative numbers 2, 3, 15, and 19/20, and are addressed below. It should be noted that the hearing notice requests comments to be responsive to the staff amendments. We will focus accordingly; however, there were actually several hundred amendments to the staff proposal and its attachments, so we will add a few comments on those other problematic areas as well.

The Board had directed staff to do an analysis of the most recently amended agricultural alternative and compare that to the staff alternative. Staff did not fulfill that directive and instead of an objective comparison of the two alternatives, did an inaccurate and biased "hit piece" on the agricultural alternative and compounded that by setting up the staff alternative in a fully adoptable form for the Board meeting and did not do so relative to the agricultural alternative. (See responsive comments on the agricultural alternative below.)

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<sup>1</sup> We had on several occasions expressed an interest in and willingness to meet with Regional staff in an attempt to narrow or resolve differences in the agriculture and staff alternatives. Such outreach efforts were never accepted by the Regional staff.  
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Roger Briggs, Executive Officer  
August 1, 2011  
Page 2

The staff had prepared a 209 page action proposal built around their recently amended staff alternative. It is divided into a 30 page Staff Report where they attempt to criticize and lobby against the agricultural alternative proposal for some 20 pages and in 6 pages (pages 23, et seq.) summarize the amendments they presently propose in order to augment their staff alternative. There is also a 39 page redline version as attachment 1, a 55 page amended order as Attachment A, a 69 page redline MRP as Attachment 2A and an 8 page Supplemental Staff Report as Attachment 3. Also attached as Attachment B are the agricultural alternative proposals which had been advanced in March.

Thus the staff proposal has been substantially upgraded as of July for a September 1, 2011 vote and in all its “adoptable” form. The agricultural proposal was not so updated, not placed in adoptable form and the staff goes way out of its way to inappropriately and inaccurately criticize the agricultural alternative, which in many ways is far superior to the staff proposal.

In short, the Board has a choice between a bureaucratic and regulatory oppressive version (staff proposal) and an operative proposal designed to directly deal with addressing water quality issues (agricultural proposal)

A. The New Substantive Amendments to the Staff Alternative Outlined on Pages 23, 24.

1. Amendment #2, Pages 12/13 of Attachment 1. This change by which a farm operator can independently identify his separate farms so as to group those properties which fall within the same tiers, is a very positive amendment. There is, however, concern over related new amendments on page 16, Attachment 1, ¶¶ 18 and 19 which provide that the Executive Officer can elevate lands to a higher tier and may also require a landowner to group what the Executive Officer feels is “similar lands” as a single farm. These provisions may take away what was given in the new positive amendment.

2. Amendment #3 addressed in ¶¶ 15, 16 on pages 14, 15 of Attachment 1 reduces the 1000 acre threshold downward to 500. The two problems with the 1000 acre feature had been that it was meaningless, arbitrary, too small and detrimentally affected too many properties. The change to 500 acres makes each of these problems worse – not better. (See also Section B., #3 below.)

3. Amendment #15 (pg. 21, ¶ 45 of Attachment 1) dealing with field inspections merely makes this proposal consistent with the requirements of law.

4. Amendments #19, 20 dealing with nutrient management plans

Commencing on page 27, in ¶ 68 of Attachment 1 there are three pages of complex and severe regulatory obligations and restrictions dealing with nitrate. These regulations require calculation of nitrate risk by crop and by irrigation system. Among the duties imposed are reporting all nitrogen usage and report nitrate uptake, nitrate needs of the crop, nitrate in the water and nitrate in the soil – all to calculate a supposed nitrate risk.

Paragraphs 75 and 77 require development and implementation of an irrigation nutrient management plan certified by a professional soil scientist. Paragraphs 78 and 79 go completely off the chart by requiring that in three years, farmers would be restricted as to fertilization of their

Roger Briggs, Executive Officer

August 1, 2011

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crop by imposition of “nitrogen balance” limits, which in annual crops would be limited to 100% of the “calculated” crop needs, and in perennial crops 120% of the crop needs.

Subsection C of ¶ 78 thereafter requires demonstration of reduced nutrient loading and further requires that the nitrogen balance should compare the nitrate applied to the field to nitrate removed at harvest. This is completely insane. It totally ignores realities of agriculture. For example, in a field corn situation, perhaps 150# of nitrate may be required to produce the stalks and head out the corn. At harvest, less than 1# of nitrate (approximately 4 oz.) would be in the harvested and removed kernels. Certainly, 1# of nitrate will not commence to grow a corn crop. All crops vary widely in this “required” vs. “harvested” comparison, but this example merely points out the absurdity of having staff, who know nothing of agriculture, try to dictate farm practices. This is why Regional Board legal authority commences at the point of discharge and does not allow the Regional Board to dictate management practices in the factory, in the plant or on the farm.

The staff approach to control agriculture’s important use of nitrogen/nitrate is oppressively regulatory, simplistic and does not reflect an understanding of either agricultural production or soil chemistry dynamics. The staff approach entirely ignores the major relevant components of the assimilative capacity of the soil column, temperature (season), and depth of aquifers. The staff approach is to concoct a staff generated regulatory limitation on a farm’s ability to provide nutrients essential for plant function. Clearly, nitrates are issues of proper concern to the Regional Board, but it should not jump to a non-agronomic and simplistic regulatory mechanism.

B. Additional Problems with the Staff Alternative.

1. Tier System.

Notwithstanding the amendments, the Tier system is arbitrary and inappropriately attempts to lump virtually all agricultural operations into the most severely regulated categories merely based on size, proximity to water and two particular agricultural chemicals used.

Tier 1 lands have to be less than 50 acres, so virtually no commercial operations can qualify. Even if a plot is less than 50 acres of vegetables if the farmer used either of the regulatory targeted two organophosphate insecticides (chlorpyrifos or diazinon) they cannot qualify for Tier 1 even if this little field does not drain to waters of the state. (Pg. 14, ¶14.)

We submit that merely the size of the farm operation and the use of certain individual pest control agents should not automatically subject the farm to the unprecedentedly strict Tier 3 regulatory regime. Mere acres or use of a particular agricultural management product does not necessarily equate to a discharge problem. The regulatory criteria should instead focus on identified discharge problems. The larger sized operations may actually increase a farm operation’s ability to implement management strategies to eliminate or control discharge. Similarly, good farm practices coupled with irrigation controls can avoid problems even if a large farm responsibly relies on chlorpyrifos, diazinon or any other crop protection pesticide.

The focus only on a couple of organophosphate pesticides is meritless. These chemistries are heavily regulated by CDPR and local agricultural commissioners and employ the most focused management practices, all designed around water quality. Further, this proposal loses sight of the

fact that if pests cannot be controlled by one of these organophosphate pesticides, alternative pesticides without such protections will have to be used. Many alternatives are themselves toxic at low dosage and may also result in sediment toxicity, which has been particularly problematic to some sensitive aquatic species. When you target regulations on a particular pesticide, it will shift utilization to other products which may have equal or different toxic results. This approach also fails to take into account that the implementation of certain BMPs may be more effective in protecting water quality than merely shifting pesticide use.

2. Tile Drains.

The original staff alternative had targeted tile drains, but after the Board had focused on that misstep the Board members indicated that all provisions regarding these important tile drain irrigation facilities would be removed from the waiver. Now, as we are presented with a proposal prepared for adoption (see Attachment 2, page 2), tile drains are once again targeted.

Tile drains are widely used to remove excessive and problem water from the crop root zone. The drains have been relied on by California agriculture for decades and have been responsible to make otherwise unproductive areas productive. Any restricting of the use of the tile drains would limit the productivity of land where they are used and likely require significant land to be taken out of production altogether. The Regional Board's authority covers the issue of water quality not the control of irrigation infrastructure improvements.

Tile drains are absolutely required for much of California agriculture. To restrict tile drains would not just eliminate agricultural productivity on an immediate basis, but could also render the farm land virtually unproductive and worthless forever. Instead of trying to regulate tile drains and thereby taking this land out of production, the Regional Boards, universities and agriculture should collectively focus research on how to effectively reclaim tile drainage for particular uses.

The use of recycled water has reached widespread acclaim from municipal users, regulators, environmentalists, and those interested in water conservation and reuse. For purposes of this discussion, agriculture in Monterey County has taken low quality municipal discharges that would otherwise have gone directly into the ocean and have used them for irrigation and thereby dramatically improved the quality of the water as it returns to the environment. Consequently, not only are we 1) conserving water, 2) reusing water, and 3) taking problem discharges from municipalities, but we are discharging far cleaner water than what would have been discharged by the municipalities. It is for those reasons that these programs have reached widespread acclaim.

The Regional staff proposal must take care not to impact these programs. California Water Code section 13241 (F) expressly encourages the use of recycled water. This revised staff proposal could put this highly acclaimed water re-use program in jeopardy.

3. Nutrient Management / Regional Board's Authority is Exceeded.

The attempt to control a farmer's on-farm crop nutrient management (see above Section A.4.) is beyond the Board's authority. The simple formula advanced is an attempt to limit a farmer's management of his crops' nutrition is completely void of any consideration of soil types, soil compaction, or amount of organic material. Also, there is no consideration of the crop nutritional needs,

or the differences as a result of microclimate or demand difference due to the growing season (there are large differences in crop demands from summer to winter). The overarching issue is that the Board cannot dictate specific management practices on the farm. (See Section A.4 above on Nutrient Management.)

4. Monitoring.

The agricultural alternative and staff alternative each call for extensive monitoring and reporting. The staff alternative in ¶ 72 (Attachment 1) for Tier 3 lands calls for such farms to engage individual discharge monitoring at the edge of their fields. This is a severe and impacting requirement. The cooperative monitoring program will be more than sufficient to identify where problems exist and inform as to the source of problems. Therefore, it is unnecessary to selectively impose this extreme and burdensome obligation on the region's most significant farms. Monitoring field drainage does not reflect the overall quality of the region's water. Representative monitoring of the region's waters is sacrificed in an effort to regulatorily target the larger farms.

5. Milestones.

Interim milestones are important provisions in regulations, however, those advanced by staff are totally unreasonable. The agricultural alternative advances aggressive yet reasonable milestones for this new landmark regulatory program. The milestones advanced in the staff alternative waiver are completely unrealistic. Agriculture cannot meet all water quality standards on the timelines demanded (¶¶ 84-87, Attachment 1) (pesticides in two years, sediment in three years). We, however, believe it is possible and reasonable to reduce toxicity exceedances by 50% within four years and sediment toxicity substantially in five years. (see the agricultural alternative) Those are significant improvements to shoot for.

Significant research, study and trial and error management systems are needed to determine the effectiveness of BMPs, and the ability of certain BMPs to ensure compliance with water quality standards. There are no existing BMPs that can guarantee 100% compliance with water quality standards, 100% of the time in surface water, or even approaching that without greatly impacting the productivity of Central Coast agricultural operations.

The draft waiver also requires that within four years Tier 3 dischargers must demonstrate that they are not causing or contributing to exceedances of water quality standards for nutrients and salts. This nitrate groundwater issue is far more complex than surface water, and four years is totally unsupportable. Experts such as Dr. Thomas Harter have pointed out that the nitrate situation will take many, many years to evidence any trend of improvement.

6. Cost Evaluations.

The staff hit piece on the agricultural alternative on page 28 makes the uninformed and inaccurate comment that the agricultural alternative would be more costly than the staff alternative. Each alternative will be costly and each will vary depending on the tier (staff alternative) and the management plans and audits of the agricultural alternative.

The agricultural alternative will cost growers between \$10-15 per acre. The staff alternative may require changing agriculture management, pesticide use, farm size, altering tile drains and defending enforcement actions for any off field exceedance. The impact is incalculable.

C. The Agricultural Alternative.

The agricultural alternative waiver is not just an equivalent approach to water quality regulation, it (a) is responsive to the requested points originally suggested by the Regional Board staff, (b) avoids the several legal shortcomings of the staff draft, and (c) offers several features not included in the staff draft. Therefore, it offers the superior alternative.

The agricultural alternative waiver was the product of many meetings with the Regional Board staff and significant amendments were made to accommodate points raised by the Regional Board staff and Regional Board members. Therefore, the agricultural alternative is of a very similar structure to the staff draft with filing NOIs, monitoring/reporting of the region's waters, developing farm plans with the same components as the staff draft, and has additional important features such as completion of water quality surveys, groundwater monitoring, farm audits, verification monitoring and other provisions that assure even further protection of the region's waters.

1. Summary of the agricultural alternative.

The agricultural alternative proposal regulates discharges from irrigated agricultural lands as authorized by Water Code section 13269. It requires farm dischargers to:

- Participate in a region-wide monitoring program that will conduct monitoring and report annually on monitoring results, including the identification of water quality benchmark exceedances;
- Develop a proprietary farm water quality management plan (Farm Plan), which identifies management practices in a) irrigation, b) pesticides, c) nutrients, and d) sediment that will address water quality benchmark exceedances;
- Complete a Farm Water Quality Survey, submit it to the Regional Board and implement it;
- Complete a verifiable grower survey, Farm Water Quality Survey, to determine what general practices farmers are using to improve surface water and groundwater quality. This document will serve as an educational tool for each grower in order for individuals to make direct changes in order to protect water quality and will also be submitted to the Regional Board.
- Be subject to a verification review of a statistically significant sample of Farm Water Quality Surveys per year by a third-party entity or the Regional Board to confirm compliance and determine where educational and management practice implementation efforts should be focused;

- Assess the effectiveness of implemented agricultural management practices in attaining water quality benchmarks and identify any necessary upgrades to management practices.
  - Either participate in the Agricultural Water Quality Coalition to review by audit if management practices are adequate or be required to conduct individual on-farm monitoring. The Coalition will audit Farm Water Quality Survey and management practices through a multi-phase audit program.
  - Complete 5 hours of Farm Water Quality Education.
  - Conduct annual groundwater sampling of one primary groundwater well on their operation for nitrates, TDS or EC, and pH.
  - Comply with reasonable and achievable milestones and timelines in order to achieve water quality improvements.
2. Staff presented an inappropriate critique of the agricultural alternative.

Staff's comparison of the two alternatives is biased and inaccurate. The staff's hit piece on the agricultural alternative (commencing on page 5) includes the following erroneous points.

a. Staff asserts that this proposal may not be consistent with California Water Code (CWC) section 13269, the NPS or the Basin Plan. This is completely untrue. The agricultural alternative would be by far the most aggressive regulatory program ever enacted. Each of the several waivers that have been adopted across several regions (all much less regulatory than the agricultural alternative) have all been legally sufficient.

b. The staff falsely contends that the agricultural alternative is not enforceable – totally untrue - and asserts that it may exempt dischargers from complying with the CWC or Basin Plan objectives. This is completely untrue as nothing in any of the waivers dilutes the Regional Board from using any and all of their enforcement authority to enforce either the CWC, the Basin Plan or regulatory the waiver provisions or any water quality objectives.

c. Staff apparently criticizes the use of third party groups to monitor or implement the waiver. This is unfounded as third parties and coalitions have been the basis of implementing the Central Valley, Lahontan and other regional waivers.

d. Many of the nit points staff use to condemn the agricultural alternative is quibbling over a few months (i.e., 12 months v. 15 months) to file or implement various components of the order. In other places, their criticism is that the agricultural order compels more aggressive compliance than what staff think possible. The reality is that staff administered regulations will often fall behind schedule, but if agricultural says it will do something, it will always get done.

d. The staff comparison fails to point out several areas where the agricultural alternative goes well beyond the staff alternative, such as mandated on-farm audits of the

Roger Briggs, Executive Officer  
August 1, 2011  
Page 8

farm plans to both assure implementation and suggesting additional management practices to address any problems. This actually gets to water quality improvement as opposed to the staff approach of monitoring at the field edge and then leaving some uncertain regulatory enforcement follow-up by staff. The agricultural alternative approach is effective and will involve all agricultural properties. The alternative of awaiting staff enforcement against some select Tier 3 dischargers will deal with only a few properties many years down the road.

This Board should align with the agricultural alternative which advances water quality rather than the over regulatory and less effective staff approach.

Sincerely,



William J. Thomas  
for BEST BEST & KRIEGER LLP

WJT:lmg

cc: Roger Briggs  
Ocean Mist Farms  
RC Farms

**From:** Lisa McCann  
**To:** Steve Saiz  
**Date:** 8/9/2011 10:54 AM  
**Subject:** Fwd: Comment Letter on Staff Addendum re Draft Agricultural Waiver  
**Attachments:** 6803512\_1.pdf; Roger Briggs9.vcf

Sincerely,

Lisa Horowitz McCann  
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[www.waterboards.ca.gov/centralcoast/](http://www.waterboards.ca.gov/centralcoast/)

>>> Roger Briggs 8/8/2011 1:47 PM >>>  
Lisa, I don't know if they resent to you and Angela, but here it is.  
Roger

Roger W. Briggs PE  
Executive Officer  
Central Coast Regional Water Quality Control Board  
805-549-3140  
fax 805-788-3511  
[rbriggs@waterboards.ca.gov](mailto:rbriggs@waterboards.ca.gov)  
<http://www.waterboards.ca.gov/centralcoast/>

>>> Linda Graham <[Linda.Graham@bbklaw.com](mailto:Linda.Graham@bbklaw.com)> 8/1/2011 4:55 PM >>>

Attached please find the comment letter by William Thomas submitted on behalf of Ocean Mist Farms and RC Farms. We respectfully request that copies be provided to the Board Chair and Board Members.

Thank you,  
Linda Graham

**Linda Graham| Legal Secretary**

William Thomas - Samuel Emerson - Carissa Beecham - Kevin Wang  
400 Capitol Mall, Suite 1650, Sacramento, California 95814  
916.325.4000 Office | 916.551.2083 Direct | 916.325.4010 Facsimile  
( <http://www.bbklaw.com/> )

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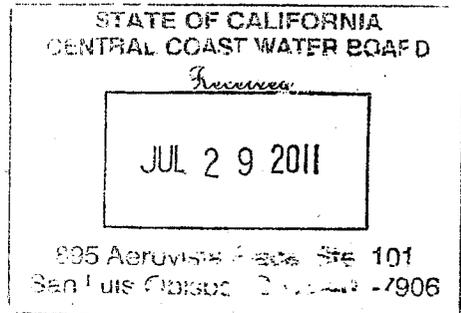
# SAN LUIS OBISPO COUNTY FARM BUREAU

651 TANK FARM ROAD ♦ SAN LUIS OBISPO, CA 93401

PHONE (805) 543-3654 ♦ FAX (805) 543-3697 ♦ [www.slofarmbureau.org](http://www.slofarmbureau.org)

July 28, 2011

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



Re: July 6, 2011 Staff Report and Draft Agricultural Order

Dear Board Members:

Representing the San Luis Obispo County Farm Bureau I would like to express some thoughts and concerns relating to the renewal of the Irrigated Ag. Discharge Conditional Waiver.

We are very concerned with the Regional Staff's review and comparison of the Agricultural Alternative. For some reason the staff chose not to give the Agricultural Alternative an unbiased review. There are arbitrary statements about the Agricultural Alternative with no evidence or facts to support the conclusions. Staff says the Agricultural Alternative is not enforceable. This is not true, the Alternative has full accountability and enforceability. Relating to the Staff Report, the Addendum has changed and requirements and conditions have been added that create even greater problems for growers. I would like to address just a few of these specifically.

1. The change in the new acreage trigger (pages 14 and 15) from 1,000 acres to 50 and 500 acres is highly problematic. This change arbitrarily and unnecessarily brings many more farms under the classification of Tier 2 or 3 only because of the new reduced acreage. Where is the justification for this? This is especially true when this is connected with the issue I address in #2 below.
2. The acreage trigger (pages 14 and 15) along with other conditions is tied to "crop types with high potential to discharge nitrogen...". In the new Staff Report it states, "the farm/ranch total irrigated acreage is less than 50 acres" (Tier 1). What if you had a total of 50 acres of which 49 acres are not crops with high potential to discharge nitrogen and only 1 acre was a high nitrogen potential crop? The total number of acres triggers you into Tier 2 yet the high potential to discharge nitrogen is minimal, based on 1 acre. Where is the justification of this statement?
3. The addition of "or normally would have been produced" to the definition of "farm/ranch" (page 48) is unacceptable. Where did this erroneous addition come from? Who has the right to say that someone could "normally" produce commercial crops on a certain piece of land? This wide open statement could catch almost every acre of land

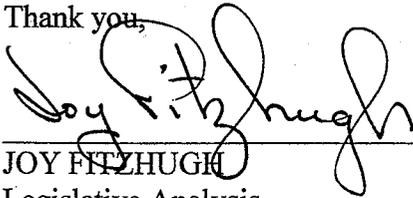
that is not irrigated agriculture today even if it is class III or IV, even class VI land, and would never be considered for irrigated ag by the average landowner. Is the Staff trying to guess that ten or twenty years from now that a parcel of land might become irrigated land?

4. Discharges are prohibited "where they may eventually be discharged to surface waters" (page 18, #28). Thus this leads to speculation that gives someone the right to make a totally erroneous judgment call as to whether a "discharge" might ever reach surface waters. Where does the speculation end?

5. The removal of "Farm Plans may be kept on the farm" (page 20) is very troubling. This is an important condition for those of us in agriculture. If the Farm Plan is required to go to the Regional Board offices, it becomes the public information giving everyone the right to make production judgments and demands on growers. The Plan should stay on the farm and be made available for review by Staff upon request.

These are only a few of the concerns our Farm Bureau has with the latest Staff Report and the Review of the Agricultural Alternative. The intent of an Irrigated Ag. Order should be to improve water quality, not increase costs, paperwork and make unachievable requirements. We ask that the Board give serious consideration to the Agricultural Alternative Proposal as protecting our Central Coast waters is the goal of the Agricultural Alternative.

Thank you,



---

JOY FITZHUGH  
Legislative Analysis

SAM FARR  
17TH DISTRICT, CALIFORNIA

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August 1, 2011

The Honorable Jeffrey Young, Chair  
California Regional Water Quality Control Board  
Central Coast Region  
896 Aerovista Place, Suite 101  
San Luis Obispo, CA 93401



Dear Mr. Chairman:

I am writing to reiterate with the Central Coast Regional Water Quality Control Board (RWQCB) my deep concerns regarding the direction taken by the RWQCB staff as part of the ongoing renewal of the Central Coast Ag Waiver process.

Unfortunately, there is nothing in the latest July 6, 2011 staff recommendations that would alter anything I wrote in my Feb 18, 2011 letter to the RWQCB. I remain concerned that the RWQCB staff is too wedded to a heavily prescriptive and regulatory approach that will do little to improve water quality. In the long run, I fear that this approach will undercut the trust and cultural changes that are, I believe, the key to widespread and sustained agricultural water quality improvements. Indeed, given its complete rejection of any of the proposals made in the May 2011 agricultural alternative, I wonder what scenarios the RWQCB staff actually considered. To me it seems they would prefer to replace a successful integrative partnership with burdensome and legalistic regulations. That, I believe, dooms the progress and flexibility that has been the hallmark of the Central Coast program.

Here in California we pride ourselves on being a model for national policy. Without the best practices as evidenced in the successful California model, states along the Mississippi, Missouri, and Ohio River basins will lose the opportunity to adopt similar programs to tackle their own tremendous ag water quality challenges. RWQCB staff resistance to 'thinking out of the box' relegates us to using old solutions that are lacking to address today's new problems.

Accordingly, I again urge the RWQCB to base its Ag Waiver on the collaborative success of the past decade with the goal of achieving steady, consistent, and demonstrable water quality improvements on the Central Coast. Accordingly, I believe that the ideal Ag Waiver will:

- Utilize sound science;

The Honorable Jeffrey Young  
February 18, 2011  
Page Four

- Require accountability based on water quality results, not process;
- Foster trust and collaboration, not third party litigation;
- Acknowledge the capabilities and limitations of the technologies currently available to farmers; and
- Look past the immediate debate to establish a long term commitment to both sustained water quality gains and agriculture's continued economic and environmental viability.

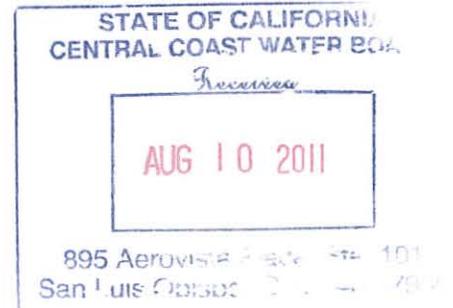
Thank you for your time and attention to my concerns. Please direct any correspondence related to this matter to Alec Arago in my Salinas District Office.

Sincerely,



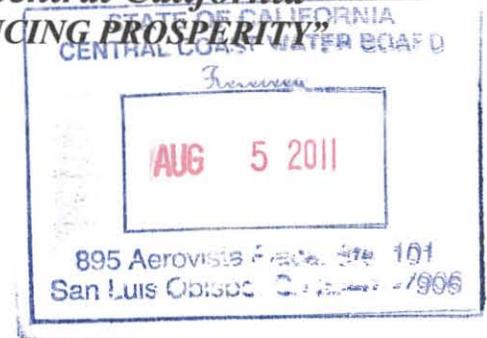
Sam Farr  
Member of Congress

SF/aa





**Grower-Shipper Association of Central California**  
**"OUR MEMBERS: PARTNERS PRODUCING PROSPERITY"**



August 1, 2011

Mr. Jeffrey Young, Chairman of the Board  
California Regional Water Quality Control Board, Central Coast Region  
895 Aerovista Place, Suite 101  
San Luis Obispo, California 93401-7906

Dear Chairman Young,

We are commenting on behalf of the Grower-Shipper Association's more than 300 members in the counties of Monterey, San Benito, Santa Clara and Santa Cruz in regard to the Addendum to Staff Report for an Updated Conditional Waiver of Waste Discharge Requirements for Irrigated Agricultural Waste Discharges, Draft Agricultural Order No. R3-2011-0006; Evaluation of New Information Provided by Agricultural Industry Representatives on March 17, 2011 and May 4, 2011 (Staff Addendum). We have three main concerns with the Staff's report, including the subjective and incomplete nature of their report; their misrepresentation of economic cost; and a lack of clarity in regard to groundwater objectives and the tasks associated with meeting them.

**Actions vs. Reports**

There's a basic disagreement that's permeated this multi-year Ag Order renewal. The Central Coast Regional Water Quality Control Board (CCRWQCB) Staff's priority value is reportable measurements of water quality while the agricultural community's priority value is improving water quality through actions based upon science and technology. In our view, the CCRWQCB attempted, over the course of more than 10 years, to evaluate management practices using millions of dollars of grant funding and highly qualified experts. Where are the measurable water quality effectiveness evaluations generated by 15 years of this grant work? Why hasn't this information been made available?

In actuality, Staff was unable to produce the very type of information (with funding and knowledge resources) that they are now demanding from growers who have neither the funding nor, in many cases, the scientific background. Subsequently, it is clear that Staff has turned from a solutions approach to an enforcement focus and it needs to use individual monitoring as its basis for heavy-handed enforcement actions. In the end, Staff is recommending a point-source solution to a non-point source situation. Staff will likely state that inherent in their proposed order is the implementation of BMPs that improve water quality, but they've set up a system that instead of valuing such implementation focuses on an individual monitoring program that will incur expense, generate reams of useless information and, in many cases be ineffective in a non-point source environment.

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In our reading, Staff did not provide the objective, thoughtful approach requested of them by the Board at your May 4 hearing when reviewing the Agricultural Alternative. Instead, their assumptions and conclusions sought to find flaws without giving much thought to how a Third Party Group may function in practice, in order to raise up their own alternative. It is surprising that the Staff doesn't see the Coalition/Third Party Approach laid out in the Agricultural Alternative as an opportunity to use the CCRWQCB's limited resources efficiently. Had they embraced it and taken the opportunity to provide constructive feedback, they'd see that the Ag Alternative provides them the ability to focus their efforts on the information gleaned from coalition reports. These reports would be significantly more beneficial to understanding the watershed than the individual monitoring they've proposed. Instead, they'd be able to direct their attention to what we presume we all want: improvements on the ground that will benefit water quality.

Additionally, the Ag Alternative will provide a mechanism for the Staff to communicate and work more collaboratively with the agricultural community in Region 3, something that is currently lacking. Instead of becoming inundated with difficult to navigate data and reports, the CCRWQCB and Staff will be provided a comprehensive representation of water quality throughout coalition participants to help them focus their efforts.

#### **Misrepresentation of economic cost**

In the Staff addendum, there are inaccurate claims which state that agricultural representatives made certain representations in their May 25, 2011 meeting with them. Staff said on page (28) that "Agricultural Proposal will likely cost more than the Draft Agricultural Order." Abby Taylor-Silva of our Staff was one of those in attendance. The agricultural representatives there that day simply made no such statement. Instead, it was represented that an economic analysis was in progress and at that time we were unaware of the final costs of the Coalition, but were in the process of responding to the CCRWQCB's request to provide that information. We also stated that a grower may prefer the Agricultural Alternative, even if it did cost more, instead of meeting their regulatory requirements as they're detailed in the Draft Order. That complete misrepresentation of the conversation is concerning and cuts to the reason for the underlying mistrust of this process as it's being conducted by Staff.

To address the economic questions Farmers for Water Quality, a group in which we hold a leadership role, we asked Professor Brad Barbeau of CSUMB to conduct an economic study on the costs to the grower of implementing the proposed Waiver, and on the resulting broader economic impact. Costs associated with the Third-Party Group/Coalition (TPG) concept include organization costs of the TPG itself, initial startup and planning costs, auditing costs, and program review costs. Participation by growers in the Coalition/Third Party Group, which is required to be voluntary by the proposed Waiver, will depend in large part on the tier into which a grower falls under the Staff order. It is likely that only operations growing high-nitrate crops will participate, although many of these operations also grow other crops.

This information directly contradicts Staff's comments in their "Addendum to Staff Report for an Updated Conditional Waiver of Waste Discharge Requirements for Irrigated Agricultural Waste Discharges, Draft Agricultural Order No. R3-2011-0006" (page 28), published 7.7.11, stating that the Staff report will cost less than the Third Party Group/Coalition approach as presented by agriculture. Note that none of these figures represent the cost of implementing BMPs for either program, unless they're mandated in the Staff draft (i.e. riparian buffers). Costs represented include administrative costs of planning, monitoring, and reporting, costs of implementing management practices (both those required by the Waiver and those practices implemented beyond the direct specification in the Waiver in order to

achieve the mandated water quality standards), reduced revenue and income due to lower crop yields and land removed from production<sup>i</sup>.

**Bottom Line Third Party Group Coalition Annual Costs:**

Participation in Coalition: \$6.94/acre - \$11.79/acre<sup>ii</sup>, depending on participation level and based on a per-acre average cost, at 50-85% enrollment. Audit Cost as a Coalition Requirement: \$5.00 per acre<sup>iii</sup> in the on the farm(s) audited in the year of that audit.

**Per Acre Cost Ranges for Growers with High Nitrate Crops - Bottom Line Staff Draft Annual Costs:**

Tier 1<sup>iv</sup>: \$4.66/acre - \$98.97/acre

Tier 2: \$23.74/acre to \$231.19/acre

Tier 3: \$73.11/acre to \$620.55/acre

Growers will likely face widely differing costs of implementing the Draft Order, depending upon their current management practices, the particular characteristics of their ranches, and the choices they make in how to achieve compliance.

Dr. Barbeau, in his report, stated that “the costs associated with being assigned to tier 3 appear to be about four times the costs associated with being assigned to tier 1, so it is important to ensure that the tier structure is justified by the degree of water quality impact.”<sup>v</sup> This comment again cuts directly to our concern, as previously expressed in written comment, about the arbitrary nature of the triggers in Staff’s tiering mechanism.

**Groundwater options**

In regard to the Staff Addendum’s comments about the groundwater monitoring program proposal titled “Part 2. Groundwater Assessment, Monitoring and Reporting Requirements” submitted on May 4, 2011, we find the review to be short-sighted. Staff is proposing a groundwater monitoring program that does not align with their stated objectives for water quality improvement. They state in their Addendum that “this type [of] monitoring should already be routine under the existing 2004 Agricultural Order since this is such a fundamental practice,” (page 17). Testing and understanding the amount of nitrogen in groundwater for incorporating into a nutrient management program may be a practice used by many farmers, but Staff is missing an important linkage in their arguments. Growers are using that information so that they may make more informed fertilizer application choices. The Staff’s use of that same information would be used for an ulterior purpose: “The resulting water quality data will provide the Central Coast Water Board with necessary information to prioritize areas and farms for follow-up actions related to the implementation of nutrient management practices and drinking water protection,” (page 17). This is not only absurd, it doesn’t apply sound science, characterization of aquifers, well construction information, gradient or hydrology.

In Monterey County, depending on the hydro-geologic area, some of the shallowest agriculture wells are 90 feet while other wells are upwards of 1,000 feet below ground surface. And, in the deeper wells the water may be drawn from hundreds of feet in depth. Because of the complexity of the hydrogeology<sup>vi</sup>, it could take anywhere from 10 to 50 years for the surface water to reach the well source water in deep wells<sup>vii</sup>. We have a hard time understanding how monitoring deep wells will help Staff understand a grower’s contribution to the first groundwater. The source water nitrate loads in many of these wells are not indicative of current management practice source-nitrate, yet Staff is trying to write a regulation that

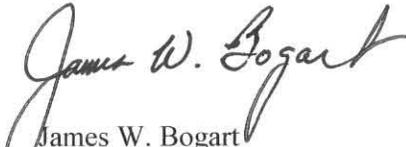
pins blame for the legacy nitrate in an agricultural well on the grower who happens to be farming the land during that year, that season, or that month.

Regional Board staff are also unscientifically comparing unrelated items when water quality samples from shallower and deeper wells are bundled together to try to decipher water quality in an area. The Ag Alternative Proposal would take well construction, hydrogeology and aquifer characterization into consideration to measure improvements in surface best management practices related to groundwater, while the Staff would simply be reporting groups of unrelated data and would serve no regulatory purpose. A more comprehensive system makes more sense. We need a system that takes into account current groundwater quality data, determines data gaps, and involves the network of local and county public agencies that are familiar each of the groundwater areas and are charged with protecting our community. This would provide a clear three-dimensional focus on the hydro-geologic system as a whole. Unfortunately, Staff recommendations are directing resources to address lower risk issues instead of scientifically comparing equivalent data.

The Grower-Shipper Association has a history of successful public-private partnerships and collaboration. Even though this process has been complicated and contentious we are hopeful that there's still an opportunity to find common ground.

Thank you for your consideration of these comments.

Sincerely,

  
James W. Bogart  
President & General Counsel

  
Abby Taylor-Silva  
Vice President, Policy & Communications

cc:

California State Governor Jerry Brown  
United States Senator Barbara Boxer  
United States Senator Dianne Feinstein  
United States Congressman Sam Farr  
United States Congresswoman Anna Eschoo  
United States Congressman Jerry McNerney  
United States Congressman Mike Honda  
California State Secretary of Food & Agriculture Karen Ross  
California State Water Resources Control Board Chairman Charles R. Hoppin  
California State Water Resources Control Board Vice Chairwoman Frances Spivy-Weber  
California State Water Resources Control Board Member Tam Doduc  
California State Water Resources Control Board Executive Director Dorothy Rice  
California State Water Resources Control Board Irrigated Lands Program Manager Johnny Gonzales  
California State Senator Sam Blakeslee  
California State Senator Anthony Canella  
California State Senator Elaine Alquist

California State Senator Joe Simitian  
California State Assembly Member Luis Alejo  
California State Assembly Member Bill Monning  
Monterey County Supervisor Fernando Armenta  
Monterey County Supervisor Louis Calcagno  
Monterey County Supervisor Simon Salinas  
Monterey County Supervisor Jane Parker  
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Santa Cruz County Supervisor John Leopold  
Santa Cruz County Supervisor Ellen Pirie  
Santa Cruz County Supervisor Neal Coonerty  
Santa Cruz County Supervisor Greg Caput  
Santa Cruz County Supervisor Mark W. Stone  
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Central Coast Regional Water Quality Control Board Member John Hayashi  
Central Coast Regional Water Quality Control Board Member David Hodgins  
Central Coast Regional Water Quality Control Board Member Monica Hunter  
Central Coast Regional Water Quality Control Board Member Jean-Pierre Wolff  
Central Coast Regional Water Quality Control Board Executive Officer Roger Briggs

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<sup>i</sup> From report titled “Economic and Cost Analysis of the Proposed Ag Waiver and Ag Alternative”, submitted as an addendum to the Farmers for Water Quality letter submitted on 8.1.11, written by J. Brad Barbeau, Ph.D. and Kay Mercer, M.S., P.C.A.

<sup>ii</sup> Based on assumptions about where acreage will fall in the tiers, we assume 184,000 acres will consider the coalition as a viable option for compliance and actually enroll. If 50% of the acres enroll, then the cost per year for the 3PG would be approximately \$11.79 per acre, plus audit costs. Seventy-five percent participation would lower the costs to \$7.86 per acre plus auditing cost, and 85% participation would lower the cost to \$6.94 per acre plus audit costs.

<sup>iii</sup> A survey undertaken recently to assess the costs to growers and handlers of the national Leafy Green Marketing Agreement (NLGMA) was used to estimate audit costs for this program. We would expect the water quality audits to be substantially similar to the food safety audits, and the audited operations to range from 50 to greater than 10,000 acres. Costs of audits are expected to range from \$2.5 -\$10.00 per acre depending on efficiencies of scale so we use an estimated mid-range cost of \$5.00 per acre for the audit costs. The cost to individual growers would depend on the level of participation and the fee structure. As the costs for compliance with the staff proposal occur on a per-acre basis, we have considered the TPG costs on the same basis.

<sup>iv</sup> No Tier 1 growers were interviewed. These Tier 1 costs are calculated from costs that ALL growers must implement regardless of their Tier. Thus, they were called Tier 1 costs.

<sup>v</sup> “Economic and Cost Analysis of the Proposed Ag Waiver and Ag Alternative”, Page 5

<sup>vi</sup> CA Dept. of Water Resources, Bulletin 118, 2004

<sup>vii</sup> Fogg et. al., *Matrix Diffusion and Contaminant Transport Salinas Valley*, 1995

**From:** Lisa McCann  
**To:** Steve Saiz  
**Date:** 8/11/2011 4:35 PM  
**Subject:** Fwd: Letter for Inclusion in Public Comment  
**Attachments:** GSA Comment Letter 8.1.11.pdf; Roger Briggs9.vcf

Sincerely,

Lisa Horowitz McCann  
Watershed Protection Section Manager  
Central Coast Regional Water Quality Control Board  
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>>> Roger Briggs 8/11/2011 3:25 PM >>>

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>>> Abby Taylor-Silva <[abby@growershipper.com](mailto:abby@growershipper.com)> 8/1/2011 5:00 PM >>>

Dear Mr. Briggs,  
Please include this letter in public comments in regard to the Addendum to Staff Report for an Updated Conditional Waiver of Waste Discharge Requirements for Irrigated Agricultural Waste Discharges, Draft Agricultural Order No. R3-2011-0006; Evaluation of New Information Provided by Agricultural Industry Representatives on March 17, 2011 and May 4, 2011 (Staff Addendum).

Thank you,  
Abby

( <http://www.growershipper.com/> )  
Our Members: Partners Producing Prosperity

**Abby Taylor-Silva**

Vice President, Policy and Communications  
**Grower-Shipper Association of Central California**

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# Assembly California Legislature



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*Received*  
AUG 5 2011

895 Aerovista Place, Ste 101  
San Luis Obispo, CA 93401-7906

August 1, 2011

Chairman Jeffery Young  
Central Coast Regional Water Quality Control Board  
895 Aerovista Place, Suite 101  
San Luis Obispo, CA 93401-7906

Re: CCRWQCB Request for Public Comments on Addendum to Draft Agricultural Order dated

Chairman Young:

I have been following the progress of this Board's renewal of the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands (Ag Order) and am concerned with the contents of the Addendum to the Staff Report released on July 8, 2011. The Addendum to the Staff Report does not provide an objective review, contrast, or comparison of the Agricultural Alternative Proposal to Staff's Draft Agricultural Order as directed by the Central Coast Regional Water Quality Control Board.

The Agricultural Alternative Proposal seems enforceable; contains a legally consistent approach for the use of third-party groups; provides accountability; will control waste discharges from irrigated agriculture; provides flexibility; and includes adequate surface water and groundwater monitoring components. I believe the Agriculture Alternative proposal deserves another review and comparison to the staff proposal.

I urge the Board to listen to growers' feedback and suggestions, and incorporate their comments and recommendations into the formation of a new Ag Order. In order to actually improve water quality any future Ag Order must be designed with feasible measures, achievable objectives, and a transparent and collaborative process that involves and utilizes agricultural stakeholders.

Sincerely,

A handwritten signature in blue ink, appearing to read "Khatchik H. Achadjian".

Khatchik H. "Katcho" Achadjian  
33<sup>rd</sup> Assembly District