



California Regional Water Quality Control Board Central Coast Region



Linda S. Adams.
*Acting Secretary for
Environmental Protection*

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Edmund G. Brown Jr.
Governor

Draft Agricultural Order
Public Comments
for
March 17, 2011 Board Meeting

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21 December 2010

Ms Angela Schroeter
Senior Engineering Geologist
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA. 93401-7906
USA

Dear Ms Schroeter

Further to the release of the draft order R3-2011-0006, we believe that there are some key opportunities that arise to strengthen the flexibility of farmers and stakeholders to deliver the environmental outcomes sought by the waiver without significant compromise to the agricultural production system that it seeks to address.

Critically, in this regard, there appears to be no clear method to move between tiers, thus appearing to pre-empt certain decision rights for farmers around their operations. Of most concern is the Tier 3 status for all diazinon and chlorpyrifos use in production systems which appears to heavily impose on the operator that chooses to use these pesticides without consideration to the available options to mitigate the environmental impact or take account of the environmental and economic consequences of switching away from this class of insecticide.

While enzyme technologies, such as LandGuard™, are still in late (field trial) development, the current approach appears to remove the possibility that this, or indeed any, mitigating technology could emerge that could deliver the desired levels of pesticide of 25 ppt chlorpyrifos (and the associated environmental benefits sought). We would therefore request that the emerging or alternative approaches be contemplated in the waiver structure so that farmers can make operational choices from both economic and environmental stand points.

It is our current view that LandGuard™ can deliver the outcome sought for between \$1500 - \$3000 per crop (depending on a range of factors - including but not limited to volume of water, ability to hold the water, soil type, offsite movement of soil) and that this is a genuine choice for farmers who wish to use OP insecticides (for various operational reasons) when compared to other proposed mitigation strategies (such as tail water retention, vegetative ditches or indeed switching to alternative (likely synthetic pyrethroid) insecticides. Some published studies are available on the performance of enzyme based approaches, for example, "Controlling Offsite Movement of Agricultural Chemical Residues - Alfalfa", Draft, Prichard et al, 2010 <http://cesanjoaquin.ucdavis.edu/files/82948.pdf> and "Pesticide and toxicity reduction using vegetated treatment systems and Landguard OP-A. Data Summary and Final Report", Central Coast Regional Water Quality Control Board San Luis Obispo, CA., Anderson BS et al, 2008.

Further, in respect of the switching options, it is noteworthy that other classes of pesticides are not specifically addressed in the proposed waiver - specifically synthetic pyrethroids. We anticipate that, even with our proposed changes being accepted, there will be certain circumstances that may induce farmers to switch from OP to SP insecticides as it appears that there is no limit set for SP as there is for OP insecticides. This would likely result in unintended consequences as while OP utilization may drop, the SP increase will result in other eco-tox outcomes that do not appear to be contemplated or regulated in the draft waiver. We would suggest that this "loop hole" requires some attention in the final waiver.

With the introduction of alternative remediation approaches that meet the required standard, it is our view that farmers should then be able to migrate to less onerous tiers of the waiver with demonstrated compliance in their operations. This is important as, notwithstanding whatever economic incentives exist to continue to use OP, there are the additional incentives for the operator in reduce compliance complexity and incentives for the Water Board in the demonstration of genuine environmental reforms being implemented at lower governance cost to the state.

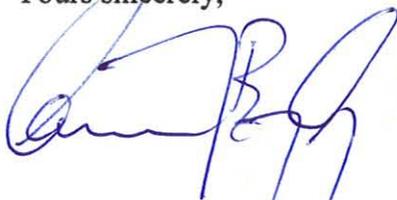
In summary, our key recommendations in response to the draft waiver are:

- 1) Alternative technologies, such as the Landguard enzyme technology, are contemplated and allowed for use on farm given that the proposed alternative technology complies with all relevant federal and state laws around their registration and use and that the proposed approach has demonstrated efficacy to achieve the desired water quality.
- 2) There is flexibility to move between Tiers. Specifically, if a grower can demonstrate that he is not causing toxicity or exceeding water quality standards in his/her tail water that is entering waters of the state AND using chlorpyrifos or diazinon, they can move freely and appropriately from Tier 3 to Tier 2 (or Tier 2 to Tier 1).

Finally, we do see great merit in the alternative proposal that has been placed before you from Kari Fisher at CFBB. We do however believe that irrespective of the final form of the waiver, that achieving the desired environmental outcomes will require a mix of approaches from technology to practices and that ongoing monitoring is necessary but insufficient to effect the outcomes that are sought. As such, we believe that clearly articulated consequences for breach of the waiver are necessary to generate profound and lasting environmental changes to the production system.

Thank you for the opportunity to provide comments on the proposed waiver and we look forward with great anticipation to matters being settled in the near future and working constructively with the Water Board, growers and stakeholders to deliver the environmental outcomes that this waiver seeks.

Yours sincerely,



Cameron Begley
General Manager - Business Development and Commercialisation
Nominee CEO - BioRemCo Pty Ltd

Points to address to RWQCB

From: "Keith M. Backman" <kbackman@dellavallelab.com>
To: <AgOrder@waterboards.ca.gov>
Date: 12/22/2010 11:13 AM
Subject: Points to address to RWQCB
Attachments: Points to address to RWQCB.doc

See attached

Points to address to RWQCB #3 regarding draft order R3-2011-0006

From the standpoint of a CCA involved with the Central Valley Dairy Order

Regarding INMP - regarding nitrogen loading

Well & Pump Volume

Nitrogen application needs to be measured and projected in areas with significant well water nitrogen. This cannot be done without a water meter or at least a professional pump test indicating gallons per minute.

This needs to be stipulated in the order. They should have this information in order to make use of the water nitrate tests. All tiers?

Soil Sample depth and frequency should be specified for any tier that needs to fertilize accurately. (page 57)

Page 25

Nitrate \leq 10 mg/L NO₃ (N)

Not good nomenclature. Does the 10 refer to nitrate or nitrate-N?
[drinking water MCL is 10 NO₃-N or 45 NO₃]

Will the order stipulate what happens when the grower shifts crops from year to year or has a small percentage of risky crops?

Fields are rented for 1 season?

Keith M. Backman 559 647-5330
Consultant Manager – Dellavalle Laboratory, Inc.
Certified Crop Advisor – State Board

AgOrder - Ag discharge

From: Mike Hollarman <mhollarman@hotmail.com>
To: <AgOrder@waterboards.ca.gov>
Date: 12/31/2010 10:28 AM
Subject: Ag discharge

As a consultant for the agricultural farming groups (vegetables and grapes) many of the Nitrate and runoff issues could be solved by requiring all fertilizer uses are signed off on by a licensed Certified Crop Advisor (CCA). These people must pass a federal and state test on nutrient and pesticide use and must have continuing education hours every year to maintain the license. Also the pesticide runoff issues may be improved with the requirement that all pesticide uses must have a recommendation written only by a Pest Control Advisor (PCA) which are also licensed by the state of California and also need continuing education requirements for license continuation.
Sincerely, Mike Hollarman

AgOrder - Ag Order Comments

From: Joel Wiley <JWILEY@wilburellis.com>
To: <AgOrder@waterboards.ca.gov>
Date: 12/31/2010 12:41 PM
Subject: Ag Order Comments

December 31, 2010

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

Dear Chairman Jeffrey Young,

As a Certified Crop Advisor on the Central Coast I have been following the progress of this Board's renewal of the Conditional Waiver of Waste Discharge Requirements for discharge from irrigated lands and have concerns with the staff's draft by order. As someone who has met with staff to "help" establish benchmarks for the draft I have various reservations on how much of the criteria was established.

My first concern is that staff, after meeting with the scientific community and individuals with "boots on the ground", established benchmarks with no science bases behind it. There is no science developed to support the assertions that nitrate levels can be reduced to comply with the benchmarks established within the 4 year time frame. They did not take into consideration soil types and geology for ground water percolation, well nitrate loads or legacy nitrates. Base line legacy nitrate loads are necessary prior to measuring possible nitrate loads from farming practices. Different soils types, percolation rates, water table levels, and nitrate application methods must be considered prior to determining possible nitrates contributed by the farm practices.

I am very concerned about the thresholds of 1,000 acres for inclusion the Tier 3 level. It appears to be very generic and does not differentiate enough to establish flexibility for unique agricultural practices. I have many growers that have adopted Best Management Practices that should be highlighted and not penalized for their size – Each Grower, each Ranch, and each Crop is unique. Establishment of a generic tier program trivializes the work that has been done to improve the farming operation. The grower that does not discharge into a 303(d) water body and has eliminated all chemicals listed in the order would be placed into Tier 3 if their land is within the 1,000 feet set back specified from that body of water.

In the past I wrote a letter of concern about the lack of professionals available to meet the needs of the Ag Order. There appears to be this mass scramble to get your "CCA" certificate. How many of these individuals will have the knowledge to do the things the Ag Order is requiring? There are many great individuals with the best of intentions trying to "get up to speed" to fulfill the regulations. How many of them understand the liability and responsibility placed on them to fill the "New Regulation's Needs"?

The cost to implement the Ag Order is going to create a heavy burden on many growers already facing financial strain. That is why I support the Ag Alternative Proposal. It provides for industry wide collaborated effort. It places fewer burdens on government regulation and more on the industry. It establishes a launching point for education, testing, cost distribution, and benchmarks excepted by all parties. It gives CCWQCB and staff the ability to monitor and regulate without creating more

government.

My greatest hope is that the CCWQCB and the Ag Industry use the past process to forage a sustainable future for generations to come.

Best regards,

Joel Wiley

19281 Pioneer Place

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CCA #03817

Cc: Vice Chairman Russell Jeffries

John Hayashi

David Hodgin

Monica Hunter

Tom O'Malley

Gary Shallcross

Roger Briggs, Executive Officer

Angela Schroeter, Senior EG

Monica Barricarte

JOEL WILEY

Area Manager



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Darlene Din, Ag Land Use Consultant

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Phone (831) 682-0734

January 3, 2010

Mr. Jeffery Young, Chairman of the Board
Members of the Board
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906

Re: CCRWQB Request for Public Comments on Draft Agricultural Order dated November 19, 2010

Dear Chairman Young and Fellow Board Members:

Thank you for the opportunity to provide comments on the Draft Agricultural Order dated November 19, 2010 and for your consideration of my observations of the process to date and suggestions for improving water quality with a "holistic approach". I support the Ag Alternative Proposal because of this approach focuses on water quality improvements using the "carrot and the stick approach" of incentives, science and research, implementing of management practices, and accountability through the use of coalitions.

I have been involved with agricultural issues for many years and have a strong understanding of the Clean Water Act and Porter-Cologne. Through Porter-Cologne, the Regional Water Boards have been entrusted with broad duties and powers to preserve and enhance all beneficial uses of the state's complex waterscape. A part of your charge is to reasonably oversee the state's water resources and balance the complex issues of the various entities and for diverse uses, that also requires understanding of complicated systems. A "balanced approach" is the key to improvement of water quality impairments that are well documented. The data provided by the Cooperative Monitoring Program (CMP) does indicate that discharges of waste associated with agriculture (e.g., pesticides, sediment, nutrients) are a major cause of water pollution in the Central Coast region. The general public that has brought this documented data to the Board Members have a valid concern regarding impairments. However, the solutions require complex answers. Agricultural operators recognize that changes in management practices, or "boots on the ground", can improve water quality provided that tools are available. Agriculture is requesting that a research-implementation coalition approach be the focus of the next waiver.

In my research on state and regional water board responsibilities for protecting the surface, ground and coastal waters of their regions I came across this quote from the late SWRCB chairman, Don Maughan, who wrote: *"The State Water Board has never had the luxury of*

advocating protection of just one water need, such as the environment or agriculture or that of large cities. Our charge is to balance all water needs of the state. Some call it a superhuman task, but through the years this Board, aided by its excellent staff, has done what I call a superhuman job of accomplishing that mandate despite the intensive historical, political, and economic pressures that always accompany California water issues."

Because a "superhuman job" is what is needed now I would request that the Board Members, the staff, and the public to re-engage in the process with the Ag Alternative as a basis, using the Coalition to focus grower management practices on watersheds and sub-watersheds shown by the CMP data to be priority areas. This approach allows the academic community to "catch" up with the regulatory data and provide the necessary research to address the challenges ahead. Ag is a non-point source discharger, meaning the solutions are complex and the research is ongoing. Understanding data and making on-farm decisions will make those improvements successful in the short term and the long term. Solutions must be adaptable within the framework of the farming system. I have serious concerns regarding the proposed Staff Draft of the Ag Waiver as the proposed changes will have a major economic impact to many growers in the region being that they're punitive in nature, although that may not have been the intent. The staff proposal will not allow funds to be used to implement management practices on many agricultural operations. Instead, they will need to be used to conduct individual monitoring. *Regulation* is not actual improvement; a *plan* is not actual improvement; *data* is a tool to measure; a *change continuum* is needed; *action* on the ground is the only way to get there. The continued development of the carrot and the stick approach needs to be our focus. It requires changes in farming (along with implementation changes) that allows growers to look for solutions within their own operations while working with their neighbors in the watershed to develop management practices that can show improvement. What is needed currently is governmental regulation with a holistic approach. Most regulations operate as though they're in "farm silos" (single focus, tall towers) that stand alone.

According to staff, healthy watersheds and a sustainable agricultural economy can coexist. We agree but it requires a different approach than the current staff report can model. It is my belief that the staff is using a point-source approach because that is the regulatory model they have a proven track record with to improve water quality. According to staff, *"healthy watersheds and a sustainable agricultural economy can coexist. Protecting water quality and the environment while protecting agricultural benefits and interests will require change, and may shift who bears the costs and benefits of water quality protection. Continuing to operate in a mode that causes constant or increasingly severe receiving water problems is not a sustainable model."* Let's look at the past twenty years of discussions around water quality issues so that we can move forward. The majority of that time was focused on data collection and understanding the sources of discharge, and rightly so. We first worked on "point-source" discharge because they were systems that could be controlled with a uniformed approach. Non-point source is complicated, the tools are limited, the research gaps are great, and the regulated community is just beginning to understand data. With this data in-hand, agriculture is beginning to understand why the regulations are needed, what the standards are, and most importantly "how" to comply to standards that appear unreachable. Regulation must take into account the "psychology of change" and allow for sufficient time for that change to occur. The staff report, with its standards and requirements, has outpaced technological "fixes" and tools available for on-the-ground management changes. The last waiver allowed for data collection, outreach and education. This

waiver should require an understanding of the data, “matching” the tools that we currently have along with investment of financial capital in science to develop and evaluate management practices to improve water quality.

I would suggest that the Board consider adoption of the Ag Alternative to the new Ag Waiver as submitted. I was involved in the process to develop the Ag Alternative and feel it, if adopted, would result in true improvements to water quality in the region by matching practices to data. The concept of a coalition-based approach has value and I believe is the best way to involve growers to make meaningful changes. Currently there are limited tools that improve water quality. Industry experience has shown the benefits of sharing ideas and technology on the ranch with the assistance of experts has improved practices. New ideas and practices need to be cultivated to achieve meaningful long-term improvements to water quality. A system in which growers can, through the coalition, share advances made on each ranch will be invaluable. I realize that many details of the proposed coalition have yet to be submitted, but the concept is sound. Details regarding how to aggregately report data of value to the Board, staff and public need to be further defined as well. The coalition’s technical team will need to include diverse experts to ensure accountability to the public.

The proposed Ag Alternative is designed to focus on those growers who pose the greatest risk to water quality. Efforts will be directed to address those problems which can result in the greatest improvements. It is my belief that the agricultural industry can address problems associated with water quality in a cooperative and effective way and the proposed growers will be held accountable to the coalition and, through it, to each other. Individual accountability is assured as those that do not cooperate will not be allowed to operate within the coalition without changing their practices.

As a part of the next waiver we understand that the Regional Water Quality Control Board is responsible for swift and fair enforcement when the laws and regulations protecting California's waterways are violated. Enforcement serves many purposes. First and foremost, it assists in protecting the beneficial uses of waters of the State. We understand that enforcement not only protects the public health and the environment, but also creates an "even playing field," ensuring that dischargers who comply with the law are not placed at a competitive disadvantage by those who do not. Enforcement is why we raise a concern with the Staff Draft order the standards requirement within the time frames cannot met, staff will be forced to “select” operations to enforce against which will not create an even playing field.

In fact, the “tiering” proposal embodied in the staff draft Ag Order is an example of an arbitrary and punitive approach in that it assigns select operations to high risk Tiers based on size, proximity to surface water and/or crops grown regardless of the actual risk those operations may present. Once in a higher Tier the requirements for an owner/operator are much more stringent and there are no clear paths out of that Tier despite the best practices, mitigation measures, or improvements present or made by the owner/operator.

Under the proposed standards, growers who farm within 1,000 feet of a 303(d) listed waterway and who farm over 1,000 acres or who rent from a landlord who owns over 1,000 acres in the region would find themselves in Tier 3, regardless of the nitrate loading potential of the crop they grow, the pesticides they use or the farming practices they utilize. The 1,000 acre standard

appears to be totally arbitrary and has nothing to do with the risk to water quality a growing operation may pose. In addition, many ranches adjacent to waterways do not discharge surface water into those waterways as they are graded to drain away from it. Growers long ago realized to mitigate potential problems associated with discharging into rivers and streams they could level their ranches to avoid direct discharge into them. Thus, the 1,000 acre standard and 1,000 foot from an impaired waterway standard appear to have nothing to do with the risk a growing operation poses to water quality. Growers who find themselves in Tier 3 with no hope of improving their position will not be motivated to make changes that result in true improvements to water quality.

The staff draft of the Ag Waiver does not take into account baseline levels of both nutrient and toxicity levels in either ground or surface water. These levels have been caused by decades of inputs, both agricultural and otherwise. The impact of practices long ago abandoned by the agricultural industry because of their impact on water quality is still being manifested in background levels in both ground and surface water. Undoubtedly, some of these levels are due to agriculture and there is certainly room for growers to improve practices that impact water quality, but to set timelines and milestones for improvement in a matter of a few years to problems that were caused many years ago is unrealistic and impossible for the industry to achieve.

Achieving real improvements to water quality in our region requires that standards have realistic goals and focus on where the problems truly lie. An Ag Order must be designed with achievable objectives and must be a transparent and collaborative process that encourages agricultural stakeholders. They are uniquely positioned to provide innovative solutions to enhance the region's water quality. The failure to constructively engage growers and landowners will be counterproductive to short and long-term efforts to improve water quality.

Thank you for considering my views.

Sincerely,

Darlene Din

Ag Land Use Consultant

From: <gjohnsen@wilburellis.com>
To: <aschroeter@waterboards.ca.gov>
Date: 12/30/2010 3:03 PM
Subject: CCRWQB Request for Public Comments on Draft Agricultural Order dated November 19, 2010

Gregg Johnsen
Branch Manager
Wilbur Ellis Co.
P.O. Box 693
King City, CA 93930-0693

December 30, 2010

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:

Protecting the environment, groundwater and wildlife should be and is important to all of us. Our future children will be drinking the water, and using the land. Agriculture is necessary to feed the ever growing population. Food is not manufactured in the store, it is grown in the valley by people trying to grow a quality crop the best way they can. They don't intentionally try to damage the environment, they are doing things they were taught to do by their fathers and teachers. The way they farm can be changed, but it will be hard on everybody to do overnight. These practices have been going on for decades. I think it would be going to an extreme to force them to change their practices immediately. I agree something needs to be done, but I think it would be wiser and more accepted to do it in stages, so people don't feel overwhelmed with regulations. Agriculture can and will survive with fewer more efficient inputs, and the rest of us need food to survive. Please think of the whole picture while making the decisions that will affect us all.

I urge the Board to listen to growers' feedback and suggestions, including mine, and incorporate that feedback into the draft Ag Order. Any future Ag Order must be designed with achievable objectives and must be a transparent and collaborative process that utilizes agricultural stakeholders. Loss of grower cooperation will be counterproductive to improving water quality.

Thank you for considering my views.

Sincerely,

Gregg Johnsen
831- 595-7759
Branch Manager
Wilbur Ellis Co.



January 3, 2011

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

Regarding: Comments to Order # R3-2011-0006/November 19, 2010

Mr. Howard Kolb
Agricultural Order Project Lead Staff
HKolb@waterboards.ca.gov

Crop Production Services (CPS) is a national company that commercially applies pesticides and nutrients. CPS is one of the largest application companies nationally and in California. CPS is a strong steward of business practices that support both the environment, and human health and safety. In California specifically, we have been on the cutting edge of developing equipment and technology to prevent soil erosion/loss, reduced use of pesticides, integrated pest management, and to reduce off site movement of pesticides. We have accomplished this working collaboratively with Department of Pesticide Regulation, state colleges and universities, and our own agronomy and research programs.

This letter is to express our support for the "Draft Central Coast Agriculture's Alternative Proposal" letter submitted to Jeffrey S. Young and Roger Briggs on December 3, 2010, by the California Farm Bureau Federation. This alternative proposal is supported by CPS in that it is much less complex than the proposed Order; it is designed around the requirements of the Water Codes enforced by the Water Boards; and the alternative proposal is more workable for Agriculture as compared to the draft Order. In addition, the objectives and the goals of the Central Coast Water Board Order are not changed and can be met with this alternative proposal.

A key element of the "alternative proposal" is that all seven impacted Farm Bureaus support this concept as well as the majority of the agricultural community impacted by the proposed "draft Order". This is important because it is always easier for a regulatory agency to implement a regulatory program that is supported by the majority of the impacted stakeholders and still meets the regulatory requirements.

Additionally, we would like comment on the broader issue of water quality as it relates to agriculture in the Central Coast Region. Compared to just a few short years ago, today we have a far better understanding of the environmental impacts of pesticides, fertilizers and plant nutrients, particularly their impact on water quality. Through research and best management practices adoption the industry has improved nutrient uptake and reduced losses. With additional

work in this area and the implementation of stewardship programs economic and environmental performance can be improved further.

In many parts of the country, the agricultural community is now embracing a proactive approach to balance competing goals. The 4R nutrient stewardship framework allows growers to meet their sustainability goals through the adoption of best management practices by using the Right Product and Right Rate at the Right Time and Right Place. The framework recognizes that what is right for one area may not work in another. Best Management Practices must be customized to address ecological and social differences. It is also clear that practices must be implemented in all four areas to be effective. While this adds some complexity, it is a scientific reality. By recognizing this within the framework, we can achieve more consistent and real improvements in performance.

It offers a sustainable solution through a science based and practical approach to nutrient use.

The 4R framework provides policy makers and researchers with a foundation they can use to sustainably improve performance through the development and implementation of best management practices.

We would like to offer our help as the board continues the rulemaking process. We believe that the Farm Bureau alternative, along with the general approach outlined above, will provide a more workable strategy to address the water quality concerns that prompted this proposed rule and look forward to working with you on this critical issue.

Thank you for your consideration.

A handwritten signature in cursive script that reads "Stephen Dyer".

Stephen Dyer



PRECISION AG
CONSULTING

179 Niblick Road #330 * Paso Robles, CA 93446 * 805-434-3331

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

Comments and Question Regarding
Central Coast Regional Water Quality Control Board's
Draft Agricultural Order 2011

Thank you for the opportunity to comment on the draft Ag Order No R3-2011-0006 regarding waste water discharge from agricultural lands. These comments are made in the spirit of cooperation with the hope that a better regulatory product will be developed if these points are considered.

As very brief background on Precision Ag Consulting (PAC), we are an agricultural consulting firm which specializes in irrigation management of various crops on the central coast, but primarily wine grapes. Lowell Zelinski, the owner, has a Ph.D. from UC Davis in Soil-Plant-Water relations and has been involved with irrigated agriculture in California his entire professional career, which began in 1980.

The development of the Tiered approach to waste water regulation is a substantial improvement over the previous draft order, but there are numerous unanswered questions regarding the placement of farming operations into the various tiers. My comments will be in the form of questions which I hope the Board and Staff will address.

- 1) The table of tier definitions (p. 16) appears to be in conflict with some of the text describing the tiers. For example: looking at the table, where would a small vegetable or strawberry grower (<1,000 acres) who does not use the pesticides labeled would fit and who is more than 1,000 feet from a 303d impaired water body would fit?
- 2) What is the justification for the apparently arbitrary distinctions of 1,000 acres and 1,000 feet relative to the order?
- 3) The Clean Water Act's 303d list of impaired water bodies gives reasons for the impairment. Do the reasons for listing of an impaired have any impact on the

determination of which tier a farm will be in? Meaning is the type of impairment relevant to tier determination? If it is not – should it be?

- 4) What happens to a farmer's tier designation if a water body gets newly listed or delisted from the 303d list?
- 5) It appears that there is more than one 303d list, will the various lists be consolidated within the order so that there is less confusion regarding the aspect of the proposed order?
- 6) How are tributaries to impaired water bodies dealt with in the 1,000 foot distance test?
- 7) When considering the 1,000 foot distance to an impaired water body, what location on the farm and on the impaired water body is used? The closest distance or the centers or the main channel of a stream or the maximum extent of the stream bed.
 - a. Is the 1,000 foot distance measured from the edge of the property in question or from the edge of the farmed part of the property?
- 8) Again, considering the 1,000 foot distance requirement, if a farm has discontinuous land holdings where on the farm do you measure from? Taking this to its logical conclusion, is it possible for one farm with various discontinuous properties to be in all three tiers?
- 9) Regarding the Notice of Intent requirement:
 - a. It is stated that the information MUST be filed electronically, what if a farmer does not have access to an electronic means of filing the information?
 - b. In the section on supplying the GPS coordinates of the farm, the instructions indicate that you are to use the "centroid" of each ranch, how should the centroid be determined and what should a farmer do if they are unable to make that calculation?
 - c. On the farm maps that are required to be submitted, the maps are required to locate and provide the names of water bodies – what if the water bodies have no names?
 - d. If an entity, other than an individual, owns the property, how is that listed?
 - e. The NOI allows for signing-up with Preservation Inc. for cooperative monitoring – it is currently known if they are going to be able to provide this service?
 - f. The NOI form asks if the farmer is producing a commercial agricultural commodity. Some commodities take a number of years from planting to the first harvest. Are farms who are not currently selling a product exempt from the order until they are actually selling a commodity?
 - g. I have many additional questions for this section – but these comments capture the flavor of my concerns
- 10) Has a realistic estimate of the amount of information that can be processed by staff been done?

- a. And if this is more than staff can processes why is it being requested?

11) Regarding water quality education hours:

- a. If you already have the required 15 hours, will you need an additional 15 hours?
- b. If you do not have the required 15 hours, has staff determined when and how those education classes/events will be held?
- c. Is there a time frame for acquiring the 15 hours?
- d. Has a curriculum for the hours been developed?
- e. How is compliance with this requirement going to be monitored?
 - i. Are there adequate staff resources to do the monitoring?
- f. What happens if a farmer is out of compliance with this requirement?
- g. Who will offer the educational hours?
 - i. Have they been contacted and are they willing to do this?

12) Regarding the tone of the proposed order:

- a. Is there a particular reason that the staff tone is adversarial?
 - i. If so – what are the reasons?
- b. Has consideration of incentives for achieving compliance been considered?

13) Though staff indicates that economics are not necessarily a consideration in development and promulgation of the regulations regarding the order does the board realize that 43% of farmers in region 3 are small farmers with annual gross incomes in the \$10,000 a year or less range and net income most likely in the \$1,000 per year range?

- a. Has the cost of compliance versus potential improvement in water quality for small farmers been evaluated?
- b. Is there a good justification for not having a lower limit on farms, either acreage or gross income, below which they are exempt from the order?
- c. If the cost of compliance will make it economically unjustifiable for small farmers to continue farming, it is very likely that larger farmers will take over those farmers. Large farms can do this because they can spread the fixed cost of compliance over more acres and it has a smaller impact on their bottom line. Does the board realize that this order will lead to an increase in the number of acres farmed by large farmers and decrease the number of small farms?

14) The introduction to the Ag Order indicates that thousands of people are or may be drinking water with polluted by nitrate. Does the incidence of methemoglobinemia on the central coast support this statement?

15) Regarding the Farm Plan requirement:

- a. A farm plan is required. What are the necessary elements of a farm plan?
- b. Is there a model farm plan upon which farmers can pattern their farm plans?
- c. Farm plans may include trade secret or proprietary information regarding farming operations. Keeping in mind that farming is a highly competitive

enterprise and the release of information in farm plans to the general public, and more especially to a farms competitors, may endanger the future viability of individual farms, what steps will be implemented to insure confidentiality of the information in a farm plan?

- 16) Why can farmers not collect their own groundwater quality samples? With basic guidelines developed by the board, farmers should be able to accomplish this requirement at much less cost to themselves.
- 17) Why should the board require the analysis and report of those constituents of groundwater quality that are not a concern for water quality? The only constituents that are truly needed are Nitrate, Sodium and Chloride.
- 18) Is the board mindful of the fact that the quality of groundwater under a particular parcel may or may not be related to the overlying landowner's use of the land? Impairments of groundwater quality from a particular parcel are based on both spatial and temporal factors over which the current farmer or landowner may have no influence or control.
- 19) Regarding nutrient budgets: the order requires that nutrient budgets be prepared for various crops depending on a farmers tier designation.
 - a. Is the board aware that because of the limitation of nutrient uptake efficiency not equaling 100% – the ratio of Nitrogen applied to Nitrogen removed cannot equal one unless a nutrient deficiency and potential reductions in both yield and quality occurs?
 - b. If a farm grows multiple crops both spatially and temporally on a particular parcel, is a nutrient budget required for each incidences of planting?
 - i. Does staff have time to review the potentially 10,000's of nutrient budgets it is requesting.
- 20) Does the proposed ag order harmonize with other regulations for items such as food safety, farm labor health and air quality?

As the board can see there are many questions regarding the new proposed ag order and the above is only a partial list. Had the timing of the request for comments not coincided with Thanksgiving and the December holidays I know I would have more and I am confident so would many others.

Best of luck in the contemplation and development this order. It is a major undertaking which will require considerable deliberation and skill. Hopefully the farming community and the board staff can work together to develop workable regulations.

Sincerely

Dr. Lowell Zelinski

President,
Precision Ag Consulting.

Dow AgroSciences LLC
Regulatory Success Americas
9330 Zionsville Road, Bldg 308/2E
Indianapolis, Indiana 46268



3 January 2011

Via Email: AgOrder@waterboards.ca.gov

Howard Kolb, Agricultural Order Project Lead Staff
California Regional Water Quality Control Board
Central Coast Region
895 Aerovista Place, Suite 101
San Luis Obispo, CA. 93401-7906

Re: Ag Order Comment, Central Coast Ag Waiver

Dear Mr. Kolb:

The following comments are provided by Dow AgroSciences, a manufacturer and registrant of crop protection tools, including chlorpyrifos. Chlorpyrifos is an important pest management tool of choice for coastal agriculture for the control of soil-borne pests such as root maggots on broccoli and cauliflower and a valuable component of Integrated Pest Management programs. Thus any proposed regulations should balance the need for this pest management tool with efforts to address adverse impacts on surface water quality. The Central Coast draft waiver is a very lengthy document with multiple components including an aggressive Time Schedule of Milestone Compliance Dates. These extensive materials are totally new regulatory concepts deserving of more thorough review.

Dow AgroSciences responds only to the draft waiver itself and the monitoring portions of the proposed regulatory package. While Dow AgroSciences agrees with the focus placed on managing irrigation water runoff from farms that transport farm inputs, we disagree with the prioritization of criteria in the proposed Tiers, the primary focus on chlorpyrifos and diazinon use alone as a criterion for categorization in the proposed scheme, and the use of edge of field sampling to predict ecological impacts. Dow AgroSciences suggests a more holistic systems approach to managing water quality that equally addresses all farm input components. Experience in other watersheds has shown that overly conservative restrictions on one group of pest management compounds, as exemplified by the focus on chlorpyrifos in this draft, only shifts the issues to another group of compounds without addressing the root cause.

I. The proposed tiered system establishes criteria that fail to address the core issues.

1. The proposed waiver covers all irrigated lands growing commercial crops and expressly addresses all tail water discharges to surface waters.

All commercial farm operations will have to file a new Notice of Intent (NOI) to operate consistent with the waiver requirements within 30 days of adoption. These extensive NOIs will, among other purposes, characterize the farm operation and thereby place the lands into one of three "Tiers" based on four factors which are alleged to determine water quality. This new regulatory system and these four factors are of particular concern to Dow AgroSciences given that these criteria involve 1) size of operation, 2) crop types, 3) proximity to water courses, and 4) whether the operator uses chlorpyrifos or diazinon.

The size of the farm operation and the use of chlorpyrifos should not automatically subject the farm to the unnecessarily strict Tier 3 regulatory regime. Number of acres or use of a particular agricultural pest management tool do not necessarily equate to a discharge problem. The regulatory criteria should instead focus on identified discharge problems. The larger size of operations may actually increase the ability of a farm operation to implement management strategies to eliminate discharge. Similarly, good farm practices coupled with irrigation controls can avoid problems even if the farm responsibly relies on chlorpyrifos, or any other crop protection pesticide, for effective pest management.

Use alone is not a predictor of surface water toxicity and should not be a specific criterion for the Tiered system. As part of the CA Department of Pesticide Regulations' ongoing Reevaluation of Pesticide Products Containing Chlorpyrifos related to surface water concerns, Central Coastal Valley surface water exceedances as a function of chlorpyrifos use per delineated watershed were analyzed and found no significant correlation. Figure 1 is a scatter plot that shows a cluster of low detections with high chlorpyrifos use and high detections with low chlorpyrifos use. Surface water exceedances can occur independent of the amount of use. Regression analysis with total use as the independent variable and maximum reported concentration as the dependent variable indicated only a small amount of the variation in concentrations could be explained by use intensity. R-squared values were only 0.0516, 0.0570, and 0.126 for granular, liquid, and the sum of granular and liquid formulations, respectively¹.

Even though the cropping patterns and pesticide use scenarios with chlorpyrifos are very different in the San Joaquin Valley, analysis in that area also corroborates this lack of relationship between amount of use and exceedances.

¹ Bret and Poletika. 2009. Historical Trend Analysis and Field Investigations of Chlorpyrifos Exceedances in Surface Water. Dow AgroSciences report to CA DPR, 30 April 2009. 119pp.

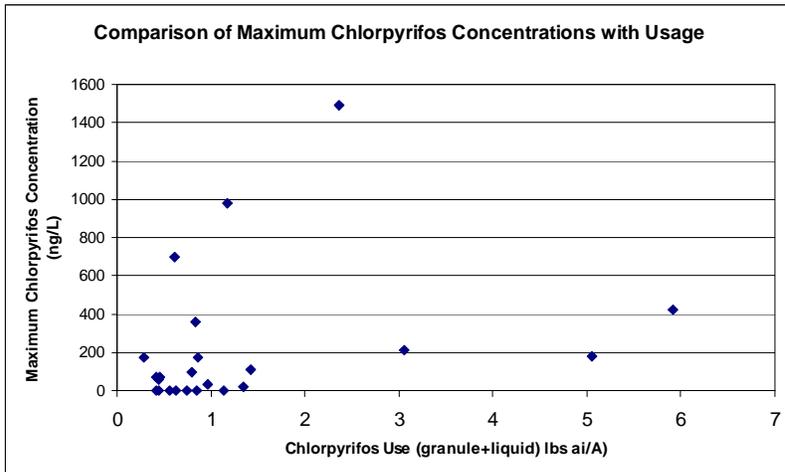


Figure 1. Scatter plot comparison of maximum chlorpyrifos concentrations with usage.

These data reinforce that the mere “use” of a pesticide should not be a distinguishing criteria for onerous restrictions and conditions that do not directly address the issue of concern, but do likely contribute to changes and disruptions of Integrated Pest Management programs.

Any regulatory programs should focus on fields that actually contribute to drainage problems and reasonable characterizations of ecological impairment – not those selected by farm size or the use of chlorpyrifos, which may actually not be responsible for problems.

Even though the waiver advances the notion that "good farmers" could qualify for Tier 1 and therefore have only moderate regulatory interference to their operations, the criteria are actually set up to make this a false premise as all farms which are over 1,000 acres or if they need to use the important pesticides chlorpyrifos or diazinon, or if they are within 1000 feet of a watercourse, they are thrust to Tier 3. The tiering structure is arbitrary, and would result in unnecessary and costly changes to farm operations, requiring growers to either reduce operation sizes or switch to less effective pest management strategies.

This arbitrary system also does not allow a farmer to identify those portions of his operations that a) do not discharge at all, b) may discharge, but do not contribute to exceedance issues, and c) may have the potential of contributing to water quality issues. This is a major shortcoming of this draft and should be modified.

2. The proposed staff waiver requires farmers to have 15 hours of water quality education within the first 18 months. Dow AgroSciences supports continuing education for water quality issues, and has been a leader in product stewardship and grower outreach and education. In the past few years, Dow AgroSciences has made on-site visits to numerous farms representing a majority of the vegetable acreage in the Coastal

Valleys, met with individual growers, grower groups, and professional crop advisors, and supported BMP research, education, and outreach. We look forward to continuing our support for grower education.

3. The waiver also requires each farm to have an individual farm water management plan identifying the implementation of management practices in five areas: 1) irrigation management, 2) pesticide management, 3) nutrient management, 4) sediment control, and 5) aquatic habitat protection. It is Dow AgroSciences' position that the focus should be management of irrigation run-off as the key transport mechanism for multiple stressors of concern including pesticides, nutrients, and sediment. The pesticide component of this effort should be informed by comprehensive analyses conducted by CA DPR for pesticides such as chlorpyrifos, diazinon, and pyrethroids, as well as the realities of crop production and the need for effective pest management.

4. Growers are compelled to select either individual farm monitoring or participate in a regional cooperative monitoring program. Dow AgroSciences' experience with other water monitoring efforts throughout the state and elsewhere compels our support of an organized region-wide monitoring program. That approach provides the benefit of a region-wide data set which allows the assessment of the actual water body as well as allowing tracking back to identify source problems. While voluntary individual farm monitoring can be a useful diagnostic self-assessment tool for growers, such assessments may entail in-field or edge of field monitoring and therefore should not be used for regulatory compliance. Further, a scatter of data taken by individual farmers inconsistent with monitoring protocols will not assess the water body, will not be part of a descriptive monitoring database, and will not be scientifically useful.

This concern also relates to the unreasonable requirement that all Tier 3 farms would be required to do on-farm monitoring, and in drains within a week of chlorpyrifos use. Analyses that focus solely on one chemical obviously overlook and would fail to identify other sources of surface water toxicity, particularly if growers simply shift products used.

II. The requirement for edge of field monitoring overestimates ecological impacts and is inconsistent with established water quality management programs.

1. Water quality standards for the protection of aquatic life established for chlorpyrifos and diazinon and expressed as chemical concentrations are applicable only to surface water aquatic life habitat receiving discharge, not the discharge itself. While edge of field monitoring may be useful for individual farmers to assess their own management practices, it is not appropriate for assessing water quality.

As to the proposed provisions on pesticides, we understand the derivation of the unnecessarily low limit on chlorpyrifos of 0.025 µg/l and the use of *Ceriodaphnia dubia* as a standard US EPA toxicity test species. Table 2 in the MRP sets forth the reporting limit and Table 4A identifies the EPA methodology for chlorpyrifos. The very low limit

on chlorpyrifos was determined according to the 1985 US EPA guidelines² that recognize some perturbation of aquatic systems is acceptable. Therefore this limit should be interpreted as a conservative protection level but not a level that predicts the occurrence of adverse effects if exceeded. There are multiple lines of evidence indicating this predictive value is considerably higher than 0.025 µg/l. A reasonable alternative of 0.10 µg/l has been proposed, taking into account all available information³.

Thus, the draft waiver takes a conservative criterion for water quality and compounds the conservatism by applying it to edge of field discharge which is not representative of aquatic life habitat.

2. The waiver has several provisions relative to aquatic habitat, riparian areas, and vegetative cover. Dow AgroSciences and others have researched, supported, and promoted the use of vegetative buffers and their importance in controlling residue run off^{4,5}. Therefore, we support reasonable efforts to provide for such mitigation strategies. However, this waiver should be amended to reward and encourage such buffer vegetation rather than making it a regulatory requirement. Considerable research has also been conducted on the use of flocculating agents such as polyacrylamide (PAM) and degradative enzymes such as Landguard™ that can reduce chlorpyrifos levels in irrigation water run-off. The ability to use these mitigation tools should be an important component of mitigation measures permitted under the waiver.

3. The milestones advanced in the waiver are important, but in our view, are unrealistic. Agriculture cannot meet all water quality standards in such a short time frame (pesticides in two years, sediment in three years). Since the water quality concerns of the Central Coastal Valleys were brought to our attention, Dow AgroSciences has been supporting continued monitoring to develop a consistent database for historical comparisons, investigated use patterns and application practices, and supported educational outreach and stewardship efforts. These efforts have begun to show success. In areas where four or more years of monitoring data are available from the same stations, 10 of 13 sites show improvements in reductions in chlorpyrifos levels. Additional improvements need to be made, including continued efforts to create awareness as well as development and adoption of innovative mitigation measures consistent with Integrated Pest Management goals. A reasonable and pragmatic approach should be supportive of such goals without adversely impacting the agricultural economy of the region.

² Stephan, C.E., D.I. Mount, D.J. Hansen, J.H. Gentile, G.A. Chapman, and W.A. Brungs. 1985. Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses. United States Environmental Protection Agency. PB85-227049.

³ Giesy, J.P., K.R. Solomon, J.R. Coates, K.R. Dixon, J.M. Giddings and E.E. Kenega. 1999. Chlorpyrifos: Ecological Risk Assessment in North American Aquatic Environments. *Rev Environ Contam Toxicol* 160: 1-129.

⁴ Poletika, N.N., P.N. Coody, G.A. Fox, G.J. Sabbagh, S.C. Dolder, and J. White. 2009. Chlorpyrifos and Atrazine Removal from Runoff by Vegetated Filter Strips: Experiments and Predictive Modeling. *J. Environ. Qual.* 38:1042-1052.

⁵ USDA NRCS. 2000. Conservation Buffers to Reduce Pesticide Losses. March 2004. 25 pp.

III. Summary

Chlorpyrifos is an important pest management tool for Coastal growers. Use of an individual pesticide should not be a criterion for water quality regulation within the context of this waiver. Rather, irrigation management practices are necessary to address transport mechanisms responsible for pesticide, fertilizer, and sediment runoff. Finally, surface water quality monitoring for regulatory purposes should occur in receiving waters, not edge of field monitoring.

Dow AgroSciences is actively working to address to water quality issues in Coastal Valleys and looks forward to continuing our efforts with growers, CA DPR, and Region 3 Water Quality Control Board.

Sincerely,

Brian L. Bret

Brian L. Bret, Ph.D.
Regulatory Manager

Nick Poletika

Nicholas N. Poletika, Ph.D.
Research Leader

Darlene Din, Ag Land Use Consultant
921 Brewington Avenue, Watsonville, Ca 95076
Phone (831) 682-0734

August 27, 2010

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

Re: Central Coast Staff New Order Proposal for the Regulation of Waste Discharge from
Irrigated Lands

Dear Mr. Roger Briggs, Executive Officer;

This comment letter is submitted on behalf of myself working with many clients that are involved in agriculture and affected by the proposed action of the Central Coast Regional Water Quality Control Board in response to request from the CEQA scoping meeting. During the course of the public meeting held August 16, 2010 it became apparent that the standards recommended by staff to meet the protection of water quality in surface, storm, and ground water could have unintended consequences to everyone on the Central Coast. In order to provide solutions in one aspect of the agricultural operation you would need to migrate another aspect- in short agricultural operations are very much ever-changing large ecosystems- that are complex and "circular" in the need for constant stewardship. We as members of the community all need both water and food; we must renew an approach that is focused on true water quality solutions and not regulations that are data and documents in nature. Changes in on farm culture practices are happening on the central coast and this work must continue in a proactive approach.

As such, the Central Coast Regional Water Quality Control Board should adopt a significantly different proposal with less stringent terms and conditions than that proposed in the renewed "Conditional Waiver of Waste Discharge Requirements for Irrigated Lands" (New Order). The focus of the new order should solely on water quality solution with a "carrot and stick" (by providing proactive incentives) rather than regulations that are punitive.

As the New Order purportedly stands, it is in direct conflict with Porter-Cologne, CEQA, and the Williamson Act as well as possibly sets itself up to be preempted due to direct conflicts with the current existing codes under the California Water Codes, Food and Agriculture Codes, the Department of Fish & Game, the Department of Pesticide Regulation, NEPA and the Farmland Protection Policy Act.

Alternative revisions of the New Order should be constructed within the proper parameters set forth through the Porter-Cologne Water Quality Control Act and CEQA (California Water Code [CWC] §§'s 13000 et seq.) that are at least feasible to all present and probable future beneficial uses of water within the Central Coast. The Porter Cologne Act denotes that any water quality plans/proposals *must* consider all demands upon the water source and that each regional water board shall establish such water quality objectives in water quality control plans as in its judgment *will ensure the reasonable protection of beneficial uses of that water.* (CWC § 13241) It has been recognized through state and federal policies that agriculture is a beneficial use of water. No where does that ring more true than here in the Central Coast, where we generate \$13 billion dollars worth of food products annually, growing over 200 different crops, and employing over 60,000 people. (American Farmland Trust, US Agriculture Statistics - 2007 Ag Census www.farmland.org, <http://www.awqa.org/ag/statistics.html>)

Water quality issues *do* exist on the Central Coast, and agricultural practices *should* continue to be amended in order to further protect our surface and ground water. The primary concern or contention with this proposal is the feasibility, reasonability, and achievability of the proposed New Order.

Agriculture is non-point source – is not a finite project

Non-Point source impacts to water quality are difficult to define and they are equally difficult to remediate. These are not engineered systems subject to formulaic approaches. Instead, non-point sources are generally dynamic and ever-changing large ecosystems that are conditions by varying degrees of management. Non-point sources are difficult to study as variables cannot be controlled, and in reality, are a discipline which is in the rudimentary stages of development.

Under CEQA Agriculture is a beneficial use of water and declared a resource, and therefore must be considered in water quality proposals/plans.

The purpose of the New Order should consider the protection of agricultural resources as a rather vital beneficial past, present and probable future use of the areas water.

It has been recognized and established that agriculture is a beneficial use of water, through state and federal policies such as CEQA, the Farmland Protection Policy Act and the National Environmental Policy Act. Agriculture is the number one industry in California, providing employment for one in ten Californians and producing a safe and reliable food and fiber source depended on throughout the world. (CALFED Final Programmatic EIS/EIR, July 2000, pg. 7.1-1) In this current climate of high unemployment rates, July of 2010 saw an unemployment rate of 12.3%, up from 5.1% in July of 2000, it can be argued that Agriculture, and Agricultural resources, should be preserved, sustained and maintained now more than ever. (Bureau of Labor Statistics Data, <http://data.bls.gov>) The Legislature has declared that a sound natural resource base of soils, water, and air must be maintained in order to preserve agriculture and ensure a healthy farming industry, and thereby a healthy(ier) economy. (Food & Agriculture Code § 802(g)) It is imperative that Agriculture's beneficial use of water be taken into account in this New Order, and that any and all alternative proposals should be looked into for less detrimental, yet still effective, plan for the beneficial use of this finite resource.

CEQA sets forth guidelines and provides direction that agencies should refer to the 1997 California Agricultural Land Valuation and Site Assessment Model as prepared by the California Department of Conservation an optimal model to use in assessing impacts on agriculture and farmland. It asks agencies to take into account whether a proposed project would:

- 1) Convert prime farmland, unique farmland, or farmland of state-wide importance to non-agricultural use
- 2) Conflict with existing zoning for agricultural use or a Williamson Act contract
- 3) Involve other changes in the existing environment, which, due to their location or nature, could result in conversion of farmland to non-agricultural use.

California Code of Regulations, Title 14, CEQA Guidelines Appendix G, § II, Agricultural Resources.

The CCRWQCB instead asks “interested persons” to provide information with specificity as to potentially significant environmental impacts, including unavoidable significant adverse environmental impacts associated with the means of compliance. The boards vested obligation through the Porter-Cologne Act (see below) is to “attain the highest reasonable water quality considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible.” (US v. State Water Resources Control Board (1986) 182 Cal.App.3d 82, 116)

The CCRWQB staff does not generate this New Order proposal within the authority in which CEQA and the California Code of Regulations, title 14 sets forth. It seems, (without seeing the actual proposal), that if the New Order the Region 3 Water Quality Control Board is proposing may even be exceeding its authority and abusing it’s discretion.

Intent of the Porter-Cologne Water Quality Control Act

The intent of the Legislature in creating the Porter-Cologne Act can best be determined by taking a plain adaptation of the wording of the statutes. The Act states

“The people of the State [which includes the Agricultural Community] have a primary interest in the conservation, control and utilization of the water resources of the state and that quality shall be protected for the use and enjoyment... activities and factors which 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, tangible and intangible.”

CWC §§’s 13000 et. seq.

I would request that staff responds to the comments provided by the public at the hearing on August 16th and to evaluative as having impacts that cannot be mitigated.

Another rather pertinent CEQA related concern, as was requested to be brought forth by “interested individuals” in response letters regarding the CEQA scoping meeting held on August 16th, 2010, brings about Water Code § 13241. While the Region 3 Water Quality Control Board *does* follow § 13242 in that an implementation plan must contain a description of the nature of specific action that are needed to achieve the water quality objectives, a time schedule, and a plan for monitoring compliance, they *do not* follow 13241, which states that statutory considerations are set forth that must be considered when establishing water quality objectives –

- **Past, present, and probable future beneficial uses of water**
- Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto
- Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area
- **Economic considerations**
- The need to develop and use recycled water.

Economic considerations

As stated in the letter dated March 1, 2010 from James W. Bogart President & General Counsel, the Grower-Shipper Association of Central California has reviewed the "Preliminary Draft Staff Recommendations for an Agricultural Order" prepared by the Central Coast Regional Water Quality Control Board staff (hereafter referred to as "Staff") dated February 1, 2010. Please review and response to the issues raised in this letter. As acknowledged in the document, this region is one of the largest agricultural regions in the U.S., "reflecting a gross production value of more than six billion dollars in 2008, contributing 14 percent of California's agricultural economy." On behalf of our more than 300 members throughout the Central Coast we are writing to express our immense concern with this proposed document, specifically with the economic consequences that are sure to follow if it is implemented.

Due to the short time frame, we were unable to conduct a statistically relevant survey of our members to determine the economic costs of implementing the draft waiver as proposed by staff. However, we have conducted surveys of growers throughout the seven counties to gauge the costs implementation on a per acre basis and determined costs to range from \$354 to \$445 for wine grapes and \$250 to \$916 for cool season vegetables per acre. Based on conversations with growers and a review of 2008 crop reports published by agricultural commissioner's in the seven affected counties we have determined costs for implementation by region. The numbers are staggering. For wine grape production the costs for the entire seven county region range from \$36 Million to more than \$45 Million. For cool season vegetables, the costs are a drastic \$48 Million to more than \$176 Million. After years of profit margin decline an agricultural waiver that costs industry hundreds of millions to implement has the potential to destroy numerous farms on the Central Coast.

After including these overlooked factors, not only will the Ag industry be adversely affected in a significant economic fashion, it is highly probable that entire commodities will fall vulnerable due to this imposition – in conflict with the Food & Agr. Code § 802 (a), Farmland Protection Policy Act, and the California Code of Regulations title 14, Appendix G, § II, regarding Agricultural resources. Castroville alone could stand to lose the ability to farm artichokes, when Castroville accounts for more than 80% of the world's artichoke production. An additional example of another specialty crop primarily in this region would be brussels sprouts. There are acres planted in coastal areas of San Mateo, Santa Cruz, and Monterey Counties of California, most of the United States production is in California.

In closing, it is urged that the board keep in mind the various possible conflicts that the staff's proposal could bring about in the New Order. An alternative proposal should be drafted to reflect the concerns with the adverse economic and environmental effect that these policy considerations that would likely be brought about by this New Order. The (new) New Order should be drawn with heed to the dozens of competent, relevant and meaningful responses to the February 1, 2010 Preliminary Draft Staff Recommendations, with special consideration spent on:

- Preliminary Alternative Agricultural Proposal provided by the California Farm Bureau Federation, April 1, 2010 Group 1, FB6
- Somach, Simmons & Dunn, April 1, 2010 Group 4, A21
- Central Coast Agriculture Water Quality Coalition, Group 4, A24
- Western Growers, April 17, 2010 Group 13, A29
- Best, Best & Kreiger, March 31, 2010 Group 4, FB6
- William Elliot, dated April 1, 2010, Group 6 F47

After considerable effort has been made in the preparation of these responses containing possible alternative plans as well as various areas of concern, be they economic or environmental, as well as possible conflict with local, state and federal laws that would be brought about in the adoption of the staff recommendations. The production of these letters should not be in vain, they should be read, reviewed, and responded to as according to CEQA, Porter-Cologne, and the California Code of Regulations, in order to form a more reasonable, attainable, and feasible water quality management plan.

Sincerely

Darlene Din

cc: Russell M. Jefferies Vice Chair
Monica S. Hunter, Board Member
Gary C. Shallcross, Board Member
David T. Hodgin, Board Member
John H. Hayashi, Board Member

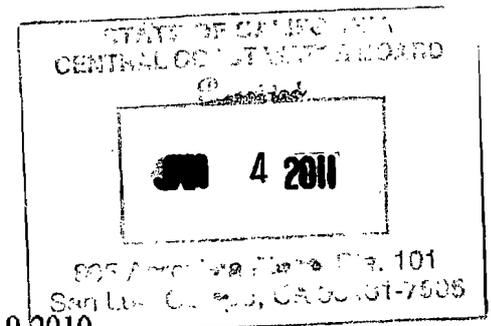
2 pages

January 3, 2011

Mr. Jeffrey Young
 Chairman
 Regional Water Quality Control Board
 895 Aerovista Pl, Ste 101
 San Luis Obispo, CA 93401-7908

Sent by Fax: 805-543-0397 and email

Re: Request for Public Comment on Draft Agricultural Order 11-19-2010



Dear Chairman Young:

We are writing to provide comments to you on the draft agricultural order of 11-19-2010. In general this draft agricultural order is fatally flawed from its inception in that it ignores the economic impact of its policies on California agriculture, the California economy at large, including employment and earnings, and by necessary extension, the national economy. Furthermore, it fails to address the impact of these proposed restrictions on food supply, food prices, and food safety and security. The draft order should include a section quantifying the following issues:

1. Loss of earnings/employment by agriculture due to reduction in acres planted
2. Loss of earnings/employment in ancillary businesses due to reduction in acres planted
3. Loss of earnings/employment due to reduced incomes/lost jobs of agricultural employees
4. Increased costs to agriculture due to additional compliance measures
5. Reduction in food supply
6. Likely response to reduction in food supply (higher prices or increase in foreign agricultural imports/comboination thereof
7. Impact on food safety and security due to potential increase in food imports

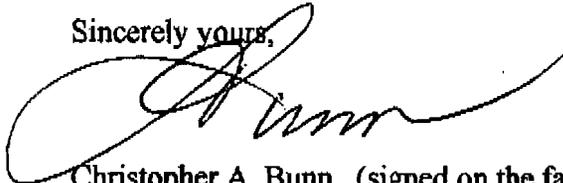
Addressing specific points of the draft agricultural waiver, we note the following areas of grave concern:

1. The "1,000 foot setback of 303(d) listed water bodies" is unwarranted and economically unbearable. This provision does not take into effect the work landowners and growers have done to physically protect water bodies from agriculture, and vice-versa. It would result in the loss of substantial agricultural acreage resulting in damages in earnings, employment, food production and American food security referred to above. It would constitute a legal "taking" that would automatically trigger legal action costing all parties staggeringly large sums of money.

2. The proposed standards are not necessarily based on scientifically proven and objective studies. Any such standards must be the result of studies that have occurred over longer periods of time and that fairly relate current practices of farming to the data observed and gathered. A widespread consensus on what current practices are and what they result in must be the basis of any adopted standards.
3. Contemporary agriculture must not be faulted and therefore regulated based on materials and practices from the past. Any presence of such materials must be separated out from required standards and dealt with as a separate matter from current practices. Public monies, not private monies, must be used to address environmental damages from past generations, and any measures adopted to solve past practices must have a sunset clause.
4. Timelines are unrealistic and unjust. Not only is more time necessary to reach a just and practical resolution of these issues, unlike the current draft, but more time is needed to study these matters to get unquestionable data.

We need a balanced, realistic approach to addressing the water quality issues of the Central Coast region, one that is honestly holistic in recognizing the impact of laws on all parties concerned. This draft agricultural order of 11-19-2010 fails to meet these objectives. We support the Ag Alternative Draft Waiver submitted on December 3, 2010.

Sincerely yours,



Christopher A. Bunn, (signed on the fax)
President

Crown Packing Company

Darlene Din, Ag Land Use Consultant
921 Brewington Avenue, Watsonville, Ca 95076
Phone (831) 682-0734

January 3, 2010

Mr. Jeffery Young, Chairman of the Board
Members of the Board
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906

Re: Request for Extension of Time during Which the Public and Interested Persons and Entities May Make Comment To Draft Ag Order Resolution No. R3-2011-006 and Extension of time along with written submittal of Notice of Intent (NOI).

Dear Chairman Young and Members of the Board,

This letter will serve as a request of the Board to extend the time during which the public and interested persons/entities may make comments to Draft Ag Order Resolution No. R3-2011-006.

It is also my request that you delay the deadline to submit an updated Notice of Intent (NOI) for Ag operations and individual ranch(es)/farm(s), as described in the 13267 letters sent to Ag operations, until the new Ag order is adopted.

There is a concern by those affected by this regulation that the e-filing does not allow you to print the NOI document PRIOR to submitting the information, thus it does not allow for you to review the complete document. Additional concerns are that many leases require the landowner and/or their representative to review and approve compliance documents that could affect their property prior to submitting those documents to a public agency. My last concern is that many property owners/operations have limited or no computer access, limited computer skills, limited or no staffing, and possible language barriers.

It is the responsibility of the landowner and operator to understand that this is a compliance document, not a technical document, prior to submitting information. The technical providers listed by the RWQCB to assist growers are not legal representatives able to advise landowners or operators on compliance matters. Upon review of the RWQCB's current extension of the 2004 Ag Order I could not find a compliance requirement of an electronic filing of a NOI-Notice of

Intent by January 31, 2011. I am also requesting that you allow for written submittal (mail or hand delivery) of the document or e-submittal at the time the new Ag Order is adopted. There is a requirement of filing a NOI in the Draft Ag Order Resolution No. R3-2011-006 and the timing upon adoption of that order would be more appropriate.

It is an undeniable fact that this Draft Ag Order, if adopted, will cause major changes in the way in which farming and other agricultural endeavors will conduct their business in the coming years. This requires that all land owners, and operators, fully understand the data in the CMP and Draft Ag Order and what will be required of them to comply with these regulations. The landowners have additional time constraint issues. Some are governmental agencies (there will be a delay to meet and present information to their own agency), non-profit organizations that are just becoming aware of the issues, and property owners that are held in family trusts with multiple interests. Each of these different groups need time in order to review the staff's documents and understand how this will affect their property and provide comments for your Board's consideration.

It is also undeniable that the issues presented are important to the public as well as to the Board. Knowing this, the Board did increase from the minimum amount of time allowed by law 30 days to - 45 days within which comments may be made. Although the Board initially stated that the proposal would be issued on or about November 1, 2010 - a date which may have accommodated the 45-day comment period since comments would be due in mid-December - it did not issue the proposal until November 19, 2010 thus requiring that all comments be received by January 3, 2011. Quite frankly, that period minimized the time in which the public could effectively make comment. During the 45 day period there were: Three Federal and State holidays (Thanksgiving, Christmas, and New Years); Fourteen weekend days; and periods of time when individuals are usually off from work on holiday (including no doubt a substantial number of Board employees who should have been available for consultation and questioning concerning the proposal).

The breadth and scope of the proposal (which includes hundreds of pages of text due to its various attachments, all of which must be read, reviewed, and digested before comments may be intelligently made) demand that more time be given for the public to prepare and make their comments.

I therefore request that the Board grant this extension of time to receive public comments regarding Draft Ag Order Resolution No. R3-2011-006. Also, for the reasons listed above I would request that you delay the filing of the NOI until adoption of the new Ag Order.

Sincerely,

Darlene Din

Ag Land Use Consultant

cc: State Water Board Members