

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Comment Letter – San Diego – Revised Conditional Waivers of Waste Discharge Requirements.”

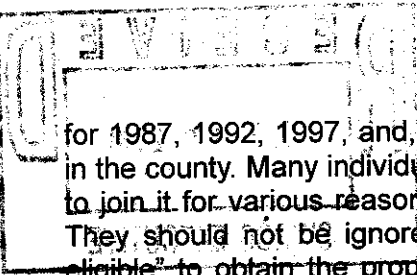
Dear Ms. Townsend:

Please accept this letter as my request for your Board's vote to **not approve** the San Diego - Revised Conditional Waivers of Waste Discharge Requirements, **Conditional Waiver No. 4.**

First, I want to thank your Board for the opportunity to comment on the waivers as proposed by the San Diego Board. This new opportunity to comment only came to my attention recently. During 2007 I had a personal medical issue that garnered most, if not all, of my attention. I had believed that any opportunity to comment on this proposal ended with the approval of this proposal by the San Diego Board on October, 10, 2007. And, I had thought that the waivers were now in place without your Board's final approval. Again, thank you for a chance to explain my issues and serious concerns with conditional waiver (No. 4) as currently proposed.

My comments pertain to the impact of the proposed waiver No. 4 on agricultural operations; not on nursery operations, for reasons that will become apparent. In the interest of and, in compliance with full disclosure, my husband and I reside on 1.14 acres of residential land in the township of Fallbrook. On that 1.14 residential acres we have 125 lime trees (bearing/commercial), 6 guava trees (bearing/commercial), 8 avocado trees (4 bearing/ all non commercial), and 1 each, Peach, Apricot, and Plum trees (bearing/non commercial). We have an operator permit (# 37P6675) issued by the San Diego County Department of Agriculture, and report all pesticide applications to the bearing/commercial trees, or the weeds adjacent to them, in compliance with applicable state laws and regulations. We obtained that permit in 1994 when we purchased this property. I am also an elected Director, North County Fire Protection District and a San Diego County Board of Supervisor's appointed Director, Mission Resource Conservation District. My comments are mine alone.

As way of background, I am the recently (2006) retired Agricultural Commissioner for the County of San Diego. It was my pleasure to serve in that position for 23 years (1983-2006). In that capacity, during those years, I was an ex-officio member of the Board of Directors of the San Diego County Farm Bureau. I never "joined" nor did I ever pay any membership dues. I do, however, know that group to be an extra-ordinarily effective "trade organization". It does not, however, represent all, or even most, of the approximately 6,000 (plus or minus 5%; average from USDA / Agriculture Census Data



for 1987, 1992, 1997, and, 2002; 2005 not yet available) agricultural/nursery operations in the county. Many individuals involved in agriculture in San Diego County do not chose to join it for various reasons. Reasons that I believe should be respected, not ignored. They should not be ignored simply to appear to enable those who would "like to be eligible" to obtain the proposed conditional waiver number 4. (Resolution finding 23) I have attached for your reference a recent President's Message from the San Diego County Farm Bureau newsletter. It is self explanatory re my concerns about Resolution finding 23.

The areas of concern within Conditional Waiver No. 4 are: the date(s) of implementation; the impact of the MWD 30% reduction on San Diego county agricultural operations; the impact of the proposed costs to comply with waiver No. 4 on small, incidental, agricultural operations; the dilemma of small, incidental, agricultural operations being forced into joining a trade organization in order to obtain "reasonable costs" to obtain the waiver; the lack of utilization of readily available data to provide a tiered approach to enable small agricultural operations to comply with the requirements and to be covered by the conditions of the waiver; and finally, the lack of data to support the categorization of all agricultural operations as the same for purposes of obtaining the waiver and the apparent use of other regions as a template. I also have a few proposed wording suggestions with regard to Waiver no. 4 (and No. 3) and have included them to provide you with the opportunity to review them in comparison with those waivers as proposed.

My first comment is with regard to the dates of implementation as outlined in the proposed conditional waiver No. 4. The waiver states that those affected by, or who wish to be eligible for, waiver No. 4 must be doing certain prescribed things on a prescribed and outlined time line. If your State board does not approve this proposal then which waiver is in place? Is it the prior approved waiver, which I understand has expired, or the proposed waiver or some version of the proposed waiver which your Board may outline or prescribe? If your Board does not approve the waiver what happens to the dates of implementation of the various stages to the proposed waiver? Thank you for outlining what the status is and/or will be.

The Metropolitan Water District (MWD) has never permitted farms under two (2) acres to participate in the "growers discount" program. These growers are referred to the landscape program. As a result these agricultural operations pay residential water rates (in Fallbrook over \$800/acre foot); these are among the highest water rates in the nation. A recent report to the San Diego County Board of Supervisors, on supporting, sustaining and maintaining agriculture in San Diego County, used the term "working landscape" to describe the uniquely San Diego small farm operations. These small (less than 2 acres) farms are perhaps the best example of that concept. Those "working landscapes", especially those who also have agriculture annual sales values of less than, \$4,999 or even perhaps less than \$2,500, should have been tiered in No. 4, not simply "integrated" without consideration of the sustainability of their operation within the proposed conditions of waiver No. 4. To further compound the water availability and cost issues MWD recently announced that it plans to entirely end the discount program. The move is likely to further reduce the amount of agriculture and food production in the region. Growers in San Diego account for two thirds of the water sold through this

program. Those in that program have had (effective January 1, 2008) their water allotment cut by 30%. This has already remarkably affected those agricultural operations. While the water cut was not probably "foreseen" by the Regional Board when it approved the waiver last October there certainly were rumors that such a cut was imminent, due to the bay delta court decisions and the continuing drought conditions. However, now that the 30% cut is in effect AND since MWD is proposing to entirely eliminate (through a phase out in cost offsets) the discount by 2013 your Board must reconsider the costs, the economic burden, of implementing the amendment to the basin plan to the affected agricultural operations. Current circumstances require it.

My next area of concern relates to the response provided by the Regional Board staff to the comments regarding item 4.6 submitted during the comment period. In that response the costs associated with the preparing of the Monitoring and Reporting Program Plan (MMRP) are listed as \$7,200. The cost of the Quality Assurance Project Plan (QAPP) is also listed as \$7,200. "Each sample collection and monitoring event is \$1,440, each sample analysis is \$635, and each MPR (Monitoring Program Report) is \$3,600." The response also indicates that the costs "will be significantly" lower for operations that enroll as part of a monitoring group. I would like now to draw your Board's attention to a recent column in the San Diego County Farm Bureau newsletter (July 2008, page 10). "Because it will be promoted as a member benefit, Farm Bureau membership is mandatory to participate in the monitoring program. An entrance fee of \$1,000 per member has been set; however, members who sign up by Dec. 1, 2008 will pay only \$500, and members who sign up between Dec.2, 2008 and June 30, 2009 will pay \$750. After July 1, 2009 all members joining the monitoring group will pay the full \$1000 fee." I became aware of this only because I attended a meeting hosted by the USDA on the 2008 Farm Bill, held at the Farm Bureau office, and picked up a copy of the newsletter (a friend was on the cover and I wanted to know more about her recent award). To my knowledge there is no outreach to non members of Farm Bureau that would assist the small, incidental, agricultural operations to join and pay the entrance fee prior to December 1, 2008 and obtain the lowest, but certainly not low, price to join the only monitoring group that is available.

By integrating neither the economic value of the agricultural operation nor the size of the agricultural operation proposed waiver No. 4 fails to consider the costs, the economic burden, of implementing the proposed Basin Plan amendment to the affected operations. USDA statistics from each of the last four census of agriculture (2002, 1997, 1992, and 1987; the 2005 is still not available) are readily available. The data for San Diego County shows: approximately 6000 (plus or minus 5%) farms; approximately 3,800 less than 9 acres, with approximately 2,800 between 0.1 and 4.9 acres; the median farm size is 5 acres; the average farm is 80 acres; the average market value sold per farm is \$109K (this is most likely due to the preponderance of propagative nursery and horticultural acreage in the county and to the high value per acre of such nursery operations); however, 2,400 farms have total annual sales less than \$2,500, and an additional 600 (plus) farms have annual sales less than \$4,999. Clearly the small production value and small size agricultural operations can not be "integrated" into the "average" and be expected to have the exact same waiver conditions applied to their significantly smaller than average agricultural operation.

The interesting anomaly in the Basin plan, as it is proposed to be amended, occurs with the reasonableness given to small animal operations and grazing operations. Animal operations, Waiver No. 3, are provided a size or tier approach to comply and obtain the waiver. One must ask: why was no such opportunity provided to small size and small sale value agricultural operations? In fact under the conditions of waiver No.3 only medium or larger AFO's need file a Notice of Intent. Grazing operations are also not required to do so. However, ALL agricultural operations must file or join a monitoring group. The information available on Form 1040, Schedule F and the assessors parcel data should be sufficient to establish such a reasonable tier for small agricultural operations. To ignore this data and to approve No. 4 as proposed is to create a less stringent requirement for one sector of agriculture (small animal operations/grazing operations) than another (small size/small value agricultural operations). What is the rationale for this?

In Appendix A, in other appendices, and throughout the Technical Report, this paragraph appears:

"The San Diego Region has agriculture operations on a wide variety of parcel sizes. According to the San Diego County Farm Bureau (Farm Bureau), more than half (60 percent) or more of the farms in the San Diego Region are small agriculture operations on parcels with 10-acres or less, with *owners that do not occupy the parcels or are present only part of the year, and/or operate on a seasonal, part-time, or sporadic schedule.* There are thousands of these small growing operations in the San Diego Region. *The rest of the farms (40 percent or less) are probably implementing MMs/BMPs and/or affiliated with or getting information or assistance from organizations such as the Farm Bureau, UCCE, NRCS, Regional RCD's or other organizations.*"
(Italics added)

This is not entirely correct. Again, using the readily available USDA agriculture census data, on approximately 4,000 of the approximately 6,000 farms the resident is the farmer. This is one of the highest percentages of farmer occupied farms in the United States. The fact is the percentage of the farms where the farmer is the resident in this county has remained relatively constant over the past 30 years. Crops are mostly "seasonal" in their harvest, not perhaps true of green house grown nursery crops, so that is why they operate on what is a "seasonal" basis. However, the growing process may encompass the entire year; this is especially true of tree crops. Approximately 3,600 of the approximately 6,000 farmers have a principal occupation other than farming. So is that perhaps why they are "part time"? As so many (approximately 3,000, or at least 50%) have gross annual sales of less than \$4,999 it is certainly reasonable to be part time. As for "sporadic" that is not defined in the Regional Board's documentation so I am unable to either question or verify its inclusion in the paragraph. I am puzzled as to why we must also assume that the majority of farmers are not considered to be "implementing MMs/BMPs". Where is the evidence of this in any of the Regional Boards documents? Where can one find and review the "available evidence" cited in the last paragraph of A-41?

The information on pesticide use found for San Diego County on the CAL/EPA Department of Pesticide Regulation web site is also interesting to review. Specifically the top 5 pesticides used (pounds of active ingredient), and the top 5 sites (crops or locations) and the state wide ranking in pounds used versus the market value of agriculture. These are particularly important in asking why the approach for the Central Valley, Los Angeles and the Central Coast were seen as applicable to the San Diego Region. These other areas have little, if any, relation to the realities of the San Diego Region. In San Diego the top five sites are structural pest control, avocado, tomato, landscape and strawberry, with only 23% of all pesticide usage left for all other sites. The top five pesticides used are sulfuryl fluoride, mineral oil, petroleum oil, methyl bromide and chloropicrin with only 34% left for all other active ingredients. A significant part of the sites are non agriculture locations and the majority of the pesticide active ingredients are those with neither ground water nor surface water detriment concerns. It is also interesting to note that San Diego which ranks number 8 in California in agriculture value ranks number 24 in pesticide use (out of 58); Los Angeles ranks number 17 in the amount of pesticides used. The application of the waiver conditions found in other areas of the state is problematic for the San Diego Region. It does not seem to be warranted by the available pesticide use data.

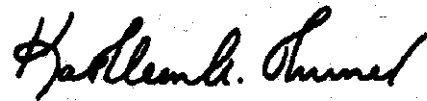
I am also including proposed changes to the waiver conditions that I believe can be made under item 6.in the Resolution letter from the San Diego Region, where it reads: "if during the approval process..." The first pertains to 4.1.C, number 4. My suggestion is that "to the extent practicable and appropriate" be added to the final version as it now reads that one should at minimum use plastic sheeting. This is simply not always possible or appropriate depending on the size of the compost pile and the rain event amount predicted. This suggestion also applies to Conditional Waiver 3.1.B.e) and 3.1.C.3. My second suggestion pertains to item 4.1.D, number 4. My suggestion is that the sentence commencing with "Application rates must take into account storm events..." be deleted as it is in conflict with best agronomic practices and is adequately covered by the sentence which follows it.

I understand that San Diego Farm Bureau currently represents about 35% of the farmers in the county. Inadvertently, it appears that the Regional Board has promoted a membership drive. I cannot believe that it is, or ever was, the intent of the Regional Board to make it necessary to join a "trade group" in order to "like to be eligible" for conditional Waiver No. 4. I also cannot believe that it was really the intent of the Regional Board that small, incidental value agricultural operations, unlike their counterparts in animal operations or grazing operations, who seek another option than the Farm Bureau would be required to enroll, prepare an MPPP (estimate \$7,200), a QAPP (estimate \$7,200), conduct sample collection and monitoring events (estimate \$1,400), sample analysis (estimate \$635) and complete an MRP (estimate \$3,600). Above 50% of the agricultural operations have annual sales value (gross, not profit) of less than \$4,999. Simply put these operations are too small, too diverse and too disparate to "form a monitoring group" and the Farm Bureau for them is an "economic burden". For, even under the most optimistic scenario, for these small size/value operations, they face an annual Farm Bureau mandatory membership fee of \$125 and an entrance fee of, at minimum \$500 or, more likely \$1,000, due to lack of knowledge about the new waiver and the basin plan amendment; plus the associated costs of the various phases of the waiver conditions. This is the unfortunate outcome and result of

applying an "integrated" and "simplified" approach to a complex agricultural operation scenario in a large urban county. Value, size and even perhaps the crop type should have been included in the analysis. At least some of this was done with grazing operations and animal operations. Now this same analysis process must be required for establishing the conditions in waiver No. 4 before it is approved by your Board.

Small agricultural operations, not just small animal operations and grazing operations, should be eligible for a conditional waiver without enrollment so long as they are properly managed, operated and maintained and do not discharge any pollutant to waters of the United States through any man made conveyance or directly to waters of the United States as a result of growing operations, irrigation return flows, storm water runoff and other activities associated with the production of a commercial crop. There is no reason to believe that in the San Diego Region small agricultural operations are any less inclined, to not just do what is right but to do the right thing, than small animal operations or grazing operations. For this reason, and the reasons outlined above, I ask for your vote to **not approve** Conditional Waiver No. 4 as submitted by the San Diego Regional Board.

Sincerely,



Kathleen Thuner

President's message

**The more who join the monitoring group,
the lighter the burden will be**

by Chuck Badger

None of us enjoy working with the myriad government regulations that affect nearly every aspect of our operations. Unfortunately, these intrusions are growing and becoming more onerous each year. Such is the case with the stormwater runoff monitoring requirements instituted by the State Water Quality Control Board. State and federal legislative acts have finally reached the farm as we are being required to monitor our water runoff. Fortunately, the San Diego County Farm Bureau is stepping up to help each of us meet the requirements that might otherwise force many of us to go out of business if we were to comply one by one.

We are not the first region in the state to deal with monitoring water runoff. When our 9th Regional Water Quality Control Board (RWQCB) began writing the regulations concerning this issue, the SDCFB began asking other county Farm Bureaus how they had dealt with the problem in their areas. Several of them had organized a monitoring group to help their members. The county Farm Bureaus already have an administrative infrastructure in place to organize such a monitoring group, and our county Farm Bureaus obviously know our membership better than anyone else.

Hence, in San Diego, we decided that organizing a monitoring group would become an invaluable member benefit for county farmers. And now that we have seen the RWQCB's finished regulations, we have been proven correct. To comply with the monitoring requirements by yourself will require an \$ 18,000 fee to be paid, *plus* the cost of monitoring the water runoff from your operation. The monitoring group that SDCFB is organizing will also have to pay the \$18,000 fee, but just once—no matter how many members we have. In addition, we'll be able to

(Continued on page 9)



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