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**State Water Resources Control Board**

**REVISED**  
**NOTICE OF PUBLIC HEARING ON STAY REQUEST**

The State Water Resources Control Board will hold a hearing to consider issuance of a stay of specified provisions in:

Order No. R3-2012-0011  
Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands  
and Order Nos. R3-2012-0011-01, R3-2012-0011-02, and R3-2012-0011-03  
Monitoring and Reporting Programs  
Issued by the Central Coast Regional Water Quality Control Board

REQUESTS FOR STAY FILED BY  
OCEAN MIST FARMS AND RC FARMS;  
GROWER-SHIPPER ASSOCIATION OF CENTRAL CALIFORNIA, GROWER-  
SHIPPER ASSOCIATION OF SANTA BARBARA AND SAN LUIS OBISPO COUNTIES,  
AND WESTERN GROWERS

**SWRCB/OCC FILES A-2209(c) and (d)**

**Thursday, August 30, 2012 - 9:30 a.m.**

**Joe Serna Jr. - Cal/EPA Headquarters Building  
Coastal Hearing Room  
1001 I Street, Second Floor  
Sacramento, CA 95814**

**PURPOSE OF HEARING**

The State Water Resources Control Board (State Water Board) has received requests from Petitioners in SWRCB/OCC Files A-2209(b)-(e) to stay all or certain provisions of Order No. R3-2012-0011 and the accompanying Monitoring and Reporting Program Orders (collectively Central Coast Agricultural Order or Order) issued by the Central Coast Regional Water Quality Control Board (Central Coast Water Board). The State Water Board requested responses to the stay requests by letter dated June 26, 2012, and received numerous responses by July 13, 2012. The State Water Board has reviewed the stay requests and the responses. The State Water Board has determined that it will hold a hearing to consider issuance of a stay of certain provisions of the Central Coast Agricultural Order based on the stay requests submitted by petitioners above in SWRCB/OCC Files A-2209(c) and (d). These two stay requests were supported by declarations as required by the State Water Board regulations at California Code of Regulations, title 23, section 2053.

If the State Water Board stays any of the provisions of the Order, those provisions will not be operative for any dischargers pending the State Water Board's final action on the petitions. All other provisions of the Order will remain in effect.

A stay of the Order may be granted only if petitioners allege facts and produce proof of (1) substantial harm to themselves or to the public interest if a stay is not granted, (2) a lack of substantial harm to other interested persons and to the public interest if a stay is granted, and (3) substantial questions of fact or law regarding the permit. The grounds for considering a stay are limited to those allegations set forth in the stay requests. Parties and interested persons have been given an opportunity to oppose or respond to the stay requests. The purpose of this hearing is to receive relevant testimony and other evidence on a narrow set of issues to assist the Board in its determination of whether to grant petitioners' request that certain provisions of the Order be stayed. The hearing will be focused on the specific issues identified by the State Water Board in this Hearing Notice under the heading "ISSUES TO BE ADDRESSED." The hearing will be conducted by the full Board.

### **HEARING PARTICIPATION**

Participants at the hearing are either "parties" or "interested persons."

#### **Parties:**

Parties to the hearing may present legal argument, testimony by witnesses, other evidence, and policy statements. Their witnesses are subject to cross-examination. Parties may also cross-examine other parties' witnesses. Requirements for submission of written statements, witness lists and testimony, and exhibits are described below.

The State Water Board provided an opportunity to all interested persons to request to be designated as a party by the letter dated June 26, 2012, with a deadline of July 6, 2012. Environmental Defense Center was the only interested person that requested party status. For purposes of this hearing on the stay requests, the designated parties are:

- Central Coast Water Board;
- Monterey Coastkeeper, Santa Barbara Channelkeeper, San Luis Obispo Coastkeeper (Keepers);
- Ocean Mist Farms and RC Farms (Ocean Mist);
- Grower-Shipper Association of Central California, Grower-Shipper Association of Santa Barbara and San Luis Obispo Counties, and Western Growers (Grower-Shipper);
- California Farm Bureau Federation, Monterey County Farm Bureau, San Benito County Farm Bureau, San Luis Obispo County Farm Bureau, San Mateo County Farm Bureau, Santa Barbara County Farm Bureau, Santa Clara County Farm Bureau, Santa Cruz County Farm Bureau (Farm Bureau);
- Jensen Family Farms, Inc., and William Elliott (Jensen); and
- Environmental Defense Center (EDC).

All parties participating in the hearing must submit the following no later than **12:00 noon on Monday, August 27, 2012**: (a) written responses to the questions posed under section "ISSUES TO BE ADDRESSED," (b) any exhibits they wish to introduce into the record, (c) a list of their witnesses, along with a summary of the testimony for each witness, and (d) any visual aids, including powerpoint presentations, they intend to use at the hearing. Parties who propose to offer expert testimony must include a statement of qualifications for each of their expert witnesses. Any written statements that are not sworn will be treated as non-evidentiary policy statements.

Parties will not be allowed to submit any additional documents at the hearing. Oral testimony by witnesses that goes beyond the scope of written submittals will be excluded. Written declarations from persons who are not present at the hearing and subject to cross-examination will not be made part of the record. If the declaration is already part of the record, i.e. it was submitted as part of the petition and stay request, it will remain in the record but, if the declarant does not appear at the hearing, the declaration will be treated as hearsay testimony.

**Interested persons:**

All other participants in the hearing are interested persons. Interested persons may present oral or written non-evidentiary policy statements. Interested persons are not subject to cross-examination and may not cross-examine other participants. Written policy statements may refer to evidence in the record but will not be treated as presenting evidence. Written policy statements must be limited to five pages, double-spaced, with a font no smaller than 12. Written policy statements may be submitted prior to the hearing or at the hearing.

**SUBMISSIONS**

All party submissions must be received by the State Water Board and the other parties no later than **12:00 noon on Monday, August 27, 2012**. Interested persons are encouraged to submit written policy statements to the State Water Board by 12:00 noon on Monday, August 27, 2012. Interested persons do not need to send their written policy statements to the parties.

Parties and interested persons are encouraged to submit their materials electronically, in pdf text format (if less than 15 megabytes in total size), to the Clerk to the Board via email at [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov). If the file is greater than 15 megabytes in total size, then the materials may be submitted by fax at (916) 341-5620. Please indicate the subject line: **"Comment Letter – Central Coast Agricultural Order Stay Hearing"**

Materials may also be mailed or hand delivered. Mailed materials must be addressed to:

Jeanine Townsend, Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24th Floor  
Sacramento, CA 95814

Persons hand delivering written materials must check in with lobby security personnel on the first floor of the Cal/EPA Building at the above address. Questions about submitting materials may be directed to Ms. Townsend, at (916) 341-5600.

## HEARING PROCEDURES

To ensure that everyone has an opportunity to participate in the hearing, the following time limits will apply to the parties. Central Coast Water Board: 60 minutes; Keepers: 30 minutes; Ocean Mist: 30 minutes; Grower-Shipper: 30 minutes; Farm Bureau: 15 minutes; Jensen: 15 minutes; EDC: 15 minutes. The parties may allocate this time as desired to present evidence, testimony, cross examination, rebuttal, cross examination of rebuttal testimony, and legal and policy argument. Additional time may be provided, if necessary, at the discretion of the Chair. Before the close of the hearing, each party will be afforded an additional 5 minutes to present a closing statement. Parties with similar interests are encouraged to coordinate their submissions and testimony.

Interested persons will have up to 3 minutes each to present a policy statement. Additional time limitations may be imposed to give all interested persons an opportunity to participate. Interested persons with similar concerns are strongly encouraged to select a representative to speak before the Board or to participate in a joint presentation. The Board Chair may limit repetitive policy statements. Persons who are members of a group that is a party are not entitled to submit or make a separate policy statement.

The Board will conduct the hearing in accordance with the State Water Board's regulations governing adjudicative proceedings and Chapter 4.5 of the Administrative Procedure Act (APA). The State Water Board's regulations are in the California Code of Regulations, title 23, section 648 et seq. (<http://www.calregs.com>) and will be provided upon request. The APA provisions are at California Government Code section 11400 et seq. The hearing will not be conducted as a formal hearing under Chapter 5 of the APA (commencing at Government Code section 11500).

The State Water Board will strictly enforce the deadlines, page limits, and limits on oral presentations and written submissions described herein.

## ISSUES TO BE ADDRESSED

The parties are asked to address the following with regard to specific provisions in the [Order](#):

### All Parties:

Provide cost estimates, and the underlying assumptions for those cost estimates, for specific actions through the end of 2013 necessary to comply with each of the following provisions. Each provision should be addressed separately. Where feasible, cost estimates should be expressed as both per acre and total farm costs. Ranges of costs are acceptable.

- *Installation of back flow prevention devices (Provision 31)*
- *Maintenance of containment structures (Provision 33)*
- *Maintenance of riparian vegetative cover and of riparian areas (Provision 39)*
- *Practice effectiveness and compliance reporting (Provision 44(g))*
- *Groundwater monitoring (Provision 51, MRPs Tiers 1-3, Part 2, Sections A & B)*
- *Annual compliance form reporting (Provision 67, MRPs Tiers 2-3, Part 3)*
- *Determination of nitrate loading risk factors, determination of total nitrogen applied (Provision 68, MRPs Tiers 2-3, Part 2, Section C)*
- *Photo monitoring (Provision 69, MRPs Tiers 2-3, Part 4)*

- *Individual surface water discharge monitoring and reporting (Provision 72 and 73, MRPs Tier 3, Part 5)*

Explain the benefit to the environment or to the irrigated lands regulatory program that will accrue from compliance with the following provisions prior to the end of 2013:

- *Annual compliance form reporting (Provision 67, MRPs Tiers 2-3, Part 3)*
- *Determination of nitrate loading risk factors, determination of total nitrogen applied (Provision 68, MRPs Tiers 2-3, Part 2, Section C)*
- *Individual surface water discharge monitoring and reporting (Provisions 72 and 73, MRP Tier 3, Part 5)*

Central Coast Water Board:

Explain what actions the Central Coast Water Board believes are required for compliance with the following provisions prior to the end of 2013:

- *Water quality standards compliance (Provisions 22 and 23)*
- *Maintenance of containment structures (Provision 33)*
- *Maintenance of riparian vegetative cover and of riparian area (Provision 39)*

**ADDITIONAL INFORMATION**

For the convenience of the parties and interested persons, the State Water Board has developed a website for the petitions for review and requests for stay related to Order No. R3-2012-0011. The website will contain the petitions for review and requests for stay, the parties' submittals, public comments, and related documents. The website is accessible at [http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality/a2209centralcoast\\_ag.shtml](http://www.waterboards.ca.gov/public_notices/petitions/water_quality/a2209centralcoast_ag.shtml).

**CLOSED SESSION**

Following the hearing, the State Water Board may meet in closed session to deliberate on a proposed order regarding the requests for stay. (This closed session is authorized under Government Code section 11126, subdivision (c)(3).)

**LOCATION AND ACCESSIBILITY**

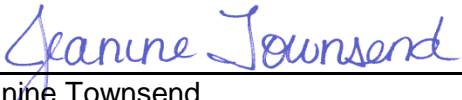
For directions to the Joe Serna Jr.-Cal/EPA Building and public parking information, please refer to the map on the State Water Board's Web site at: <http://www.calepa.ca.gov/EPAbldg/location.htm>.

The Joe Serna Jr.-Cal/EPA Building is accessible to persons with disabilities. Individuals requiring special accommodations are requested to call (916) 341-5880 at least five working days prior to the meeting. TDD users may contact the California Relay Service at (800) 735-2929 or voice line at (800) 735-2922.

**QUESTIONS**

Questions concerning the hearing may be addressed to Emel Wadhvani, Staff Counsel, at (916) 322-3622 or at [ewadhvani@waterboards.ca.gov](mailto:ewadhvani@waterboards.ca.gov), or to Bethany Pane, Senior Staff Counsel, at (916) 341-5173, or at [bpane@waterboards.ca.gov](mailto:bpane@waterboards.ca.gov).

August 21, 2012  
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Date

  
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Jeanine Townsend  
Clerk to the Board