

1 SOMACH SIMMONS & DUNN
A Professional Corporation
2 THERESA A. DUNHAM, ESQ. (SBN 187644)
500 Capitol Mall, Suite 1000
3 Sacramento, CA 95814
Telephone: (916) 446-7979
4 Facsimile: (916) 446-8199

5 Attorneys for Petitioners GROWER-SHIPPER
ASSOCIATION OF CENTRAL CALIFORNIA,
6 GROWER-SHIPPER ASSOCIATION OF SANTA
BARBARA AND SAN LUIS OBISPO COUNTIES,
7 and WESTERN GROWERS



8
9 BEFORE THE
10 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD
11

12 In the Matter of the Petition of Grower-Shipper
Association of Central California, Grower-
13 Shipper Association of Santa Barbara and San
Luis Obispo Counties, and Western Growers for
14 Review of Action and Failure to Act by the
Central Coast Regional Water Quality Control
15 Board.

SWRCB/OCC File No. _____
GROWER-SHIPPER ASSOCIATION OF
CENTRAL CALIFORNIA, GROWER-
SHIPPER ASSOCIATION OF SANTA
BARBARA AND SAN LUIS OBISPO
COUNTIES, and WESTERN GROWERS'
PETITION FOR REVIEW AND
STATEMENT OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF
[Wat. Code, § 13320]

16
17
18
19 The Grower-Shipper Association of Central California, Grower-Shipper Association of
20 Santa Barbara and San Luis Obispo Counties, and Western Growers (collectively, Petitioners)
21 submit this Petition for Review and Statement of Points and Authorities (Petition) to the State
22 Water Resources Control Board (State Water Board) in accordance with Water Code
23 section 13320. Petitioners respectfully request that the State Water Board review the Central
24 Coast Regional Water Quality Control Board's (Central Coast Water Board) actions and inactions
25 related to its adoption of Order No. R3-2012-0011, *Conditional Waiver of Waste Discharge*
26 *Requirements for Discharges from Irrigated Lands* (Conditional Waiver) and Monitoring and
27 Reporting Program Order Nos. R3-2012-0011-01 (Tier 1 MRP), R3-2012-0011-02 (Tier 2 MRP),
28 and R3-2012-0011-03 (Tier 3 MRP) (collectively, MRP Orders).

1 This Petition satisfies the requirements of title 23, section 2050 of the California Code of
2 Regulations. Petitioners request the opportunity to file supplemental points and authorities in
3 support of this Petition once the administrative record becomes available. Petitioners also reserve
4 the right to submit additional argument and evidence in reply to the Central Coast Water Board or
5 other interested parties' responses to this Petition.

6 **1. NAME, ADDRESS, TELEPHONE NUMBER, AND EMAIL ADDRESS OF THE**
7 **PETITIONERS**

8 Petitioners are: Grower-Shipper Association of Central California, Grower-Shipper
9 Association of Santa Barbara and San Luis Obispo Counties, and Western Growers.

10 Petitioners' addresses are as follows:

11 Abby Taylor-Silva, Vice President
12 Policy and Communications
13 Grower Shipper Association of Central California
14 512 Pajaro Street
15 Salinas, CA 93901
16 Phone: (831) 422-8844
17 Email: abby@growershipper.com

18 Richard S. Quandt, President
19 Grower-Shipper Association of Santa Barbara and San Luis Obispo Counties
20 245 Obispo Street
21 P.O. Box 10
22 Guadalupe, CA 93434
23 Phone: (805) 343-2215
24 Email: richard@grower-shipper.com

25 Hank Giclas, Senior Vice President
26 Strategic Planning, Science & Technology
27 Western Growers
28 P.O. Box 2130
Newport Beach, CA 92658
Phone: (949) 885-2205
Email: hgiclas@wga.com

In addition, Petitioners request that all materials in connection with the Petition and
administrative record be provided to Petitioners' special counsel:

Theresa A. Dunham, Esquire
Somach Simmons & Dunn
500 Capitol Mall, Suite 1000
Sacramento, CA 95814
Phone: (916) 446-7979
Email: tdunham@somachlaw.com

1 **2. PETITIONERS**

2 **A. Grower Shipper Association of Central California**

3 The Grower Shipper Association of Central California is a trade association that includes
4 growers of vegetables, strawberries, mushrooms, and wine grapes operating in Monterey, Santa
5 Cruz, San Benito, and Santa Clara Counties. More than 100 of the Grower Shipper Association
6 of Central California’s grower members are impacted by the Central Coast Water Board’s
7 Conditional Waiver and associated MRP Orders.

8 **B. Grower-Shipper Association of Santa Barbara and San Luis Obispo Counties**

9 The Grower-Shipper Association of Santa Barbara and San Luis Obispo Counties is a
10 trade association representing 65 producers of vegetables and strawberries with farming
11 operations located in the Santa Maria, Lompoc, and Arroyo Grande Valleys along California’s
12 Central Coast. Crops subject to the Orders are produced on over 100,000 acres resulting in over
13 \$1 billion in gross revenue annually to the economy of this region.

14 **C. Western Growers**

15 The Western Growers Association is an agricultural trade association whose members
16 from Arizona and California grow, pack, and ship over 200 commodities which is 90 percent of
17 the fresh fruits, nuts, and vegetables grown in California and 75 percent of those commodities in
18 Arizona. This totals about half of the nation’s fresh produce. Of its more than 2,000 members,
19 approximately 500 are located in the Central Coast of California and are subject to the
20 Conditional Waiver and associated MRP Orders.

21 **3. THE SPECIFIC ACTION OR INACTION OF THE CENTRAL COAST WATER**
22 **BOARD WHICH THE PETITIONERS REQUEST THE STATE WATER BOARD**
23 **TO REVIEW**

24 The Petitioners request that the State Water Board review the Central Coast Water
25 Board’s adoption of the Conditional Waiver and MRP Orders, and other action or inaction related
26 thereto, as more fully described herein. Petitioners are also requesting a stay of certain provisions
27 of Order Nos. R3-2012-0011, R3-2012-0011-01, R3-2012-0011-02, and R3-2012-0011-03. (See
28 Grower-Shipper Association of Central California, Grower-Shipper Association of Santa Barbara
and San Luis Obispo Counties, and Western Growers’ Request for Stay and Memorandum of

1 Points and Authorities in Support Thereof (Stay Request), filed concurrently herewith.) A copy
2 of Order No. R3-2012-0011 (Conditional Waiver) is attached hereto as Exhibit A. A copy of
3 Order No. R3-2012-0011-01 (Tier 1 MRP) is attached hereto as Exhibit B. A copy of Order
4 No. R3-2012-0011-02 (Tier 2 MRP) is attached hereto as Exhibit C. A copy of Order
5 No. R3-2012-0011-03 (Tier 3 MRP) is attached hereto as Exhibit D. Also attached as Exhibit E
6 are copies of the alternatives prepared by the Petitioners and other agricultural organizations that
7 were not properly considered by the Central Coast Water Board.

8 The specific actions and inactions of the Central Coast Water Board, and requirements of
9 the Conditional Waiver and associated MRP Orders that Petitioners request the State Water Board
10 to review are:¹

11 1. The Central Coast Water Board's failure to proceed in a manner required by law
12 with respect to the adoption of the Conditional Waiver on March 15, 2012;

13 2. The Central Coast Water Board's failure to proceed in a manner required by law
14 with respect to giving proper consideration to the agricultural alternative proposed by Petitioners
15 and other agricultural organizations;

16 3. Conditional Waiver Provision 11, which was unlawfully adopted by the Central
17 Coast Water Board with no notice or opportunity for dischargers and other parties to provide
18 public comment or rebuttable testimony with respect to its content and application to Petitioners'
19 members (Conditional Waiver, pp. 14-15);

20 4. Conditional Waiver Provisions 13-21 of Part A, Tiers, which arbitrarily classify
21 dischargers based on criteria that are unrelated to the threat and risk of water quality (Conditional
22 Waiver, pp. 16-18);

23 5. Conditional Waiver Provision 22 of Part B, General Conditions and Provisions for
24 All Dischargers – Tier 1, Tier 2, and Tier 3, which requires all dischargers to immediately
25 “comply with applicable water quality standards, as defined in Attachment A, protect the
26

27 ¹ In addition to the specific actions and inactions identified here, Petitioners also support review of the actions and
28 inactions that are identified in the Petition filed by the California Farm Bureau Federation, et al., which was timely
filed with the State Water Board on April 16, 2012.

1 beneficial uses of waters of the State and prevent nuisance as defined in Water Code
2 section 13050.” (Conditional Waiver, p. 18);

3 6. Conditional Waiver Provision 23 of Part B, General Conditions and Provisions for
4 All Dischargers – Tier 1, Tier 2, and Tier 3, which requires all dischargers to immediately
5 “comply with applicable provisions of the Central Coast Region Water Quality Control Plan
6 (Basin Plan) and all other applicable water quality control plans as identified in Attachment A.”
7 (Conditional Waiver, p. 18);

8 7. Conditional Waiver Provision 31 of Part B, General Conditions and Provisions for
9 All Dischargers – Tier 1, Tier 2 and Tier 3, which requires all dischargers to install and/or
10 maintain back flow prevention devices for any irrigation system that is used to apply fertilizers,
11 pesticides, fumigants, or other chemicals by October 1, 2012 (Conditional Waiver, pp. 19-20);

12 8. Conditional Waiver Provision 39 of Part B, General Conditions and Provisions for
13 All Dischargers – Tier 1, Tier 2 and Tier 3, which requires all dischargers to immediately
14 “a) maintain existing, naturally occurring, riparian vegetative cover (such as trees, shrubs, and
15 grasses) in aquatic habitat areas as necessary to minimize the discharge of waste; and b) maintain
16 riparian areas for effective streambank stabilization and erosion control, stream shading and
17 temperature control, sediment and chemical filtration, aquatic life support, and wildlife support to
18 minimize the discharge of waste;” (Conditional Waiver, p. 20);

19 9. Conditional Waiver Provision 40 of Part B, General Conditions and Provisions for
20 All Dischargers – Tier 1, Tier 2, and Tier 3, which limits all dischargers from disturbing aquatic
21 habitat, unless it is for a specified purpose (Conditional Waiver, p. 21);

22 10. Conditional Waiver Provision 44 of Part B, General Conditions and Provisions for
23 All Dischargers – Tier 1, Tier 2, and Tier 3, which requires Farm Plans to be given to Central
24 Coast Water Board staff upon request, instead of requiring that they be made available to Central
25 Coast Water Board staff at the farm during an on-site inspection (Conditional Waiver, p. 21);

26 11. Conditional Waiver Provision 44, subsection g, of Part B, General Conditions and
27 Provisions for All Dischargers – Tier 1, Tier 2, and Tier 3, which requires all dischargers to
28

1 describe and include results of methods used to verify practice effectiveness and compliance with
2 this Order by October 1, 2012 (Conditional Waiver, p. 22);

3 12. Conditional Waiver Provision 67 of Part E, Additional Conditions that Apply to
4 Tier 2 and Tier 3 Dischargers, which requires dischargers meeting the criteria or designation as
5 Tier 2 and/or Tier 3 to file by October 1, 2012 (and annually thereafter), an Annual Compliance
6 Form that includes all of the information requested, which is identified in the Tier 2 MRP and
7 Tier 3 MRP (Conditional Waiver, p. 27);

8 13. Conditional Waiver Provision 68 of Part E, Additional Conditions that Apply to
9 Tier 2 and Tier 3 Dischargers, which requires dischargers meeting the criteria or designation as
10 Tier 2 and/or Tier 3 to file by October 1, 2012, their determination of nitrate loading risk factor(s)
11 in accordance with requirements specified in the Tier 2 MRP and Tier 3 MRP, and to report by
12 October 1, 2012, the nitrate loading risk factors and overall Nitrate Loading Risk level calculated
13 for each ranch/farm or nitrate loading risk unit in the Annual Compliance Form (Conditional
14 Waiver, p. 28);

15 14. Conditional Waiver Provision 69 of Part E, Additional Conditions that Apply to
16 Tier 2 and Tier 3 Dischargers, which requires dischargers meeting the criteria or designation as
17 Tier 2 and/or Tier 3, and that have farms/ranches that are adjacent to or contain a waterbody
18 identified on the 2010 List of Impaired Waterbodies as impaired for temperature, turbidity, or
19 sediment to, by October 1, 2012, conduct and report photo monitoring of the condition of
20 perennial, intermittent, or ephemeral streams and riparian and wetland area habitat, and
21 demonstrate compliance with erosion and sedimentation requirements identified in Provision 80
22 of Part F (Additional Conditions that Apply to Tier 3 Dischargers), which requires dischargers to
23 show compliance with maintaining a filter strip of appropriate width, and consisting of
24 undisturbed soil and riparian vegetation or its equivalent between significant land disturbance
25 activities and watercourses, lakes, bays, estuaries, marshes, and other waterbodies (Conditional
26 Waiver, pp. 28, 31);

27 15. Conditional Waiver Provision 70 of Part E, Additional Conditions that Apply to
28 Tier 2 and Tier 3 Dischargers, which requires dischargers meeting the criteria or designation as

1 Tier 2 and/or Tier 3 to record and report the total amount of nitrogen applied for any farm/ranch
2 with a High Nitrate Loading Risk by October 1, 2014, and annually thereafter, or alternatively to
3 propose an individual discharge groundwater monitoring and reporting program for Central Coast
4 Water Board Executive Officer approval that evaluates waste discharges to groundwater from
5 each farm/ranch (Conditional Waiver, p. 28);

6 16. Conditional Waiver Provision 72 of Part F, Additional Conditions that Apply to
7 Tier 3 Dischargers, which requires dischargers meeting the criteria or designation as Tier 3 to
8 initiate individual surface water discharge monitoring in accordance with the requirements
9 specified in the Tier 3 MRP by October 1, 2013, or initiate an alternative that is approved by the
10 Central Coast Water Board's Executive Officer (Conditional Waiver, p. 29);

11 17. Conditional Waiver Provision 73 of Part F, Additional Conditions that Apply to
12 Tier 3 Dischargers, which requires dischargers meeting the criteria or designation as Tier 3 to
13 submit by March 15, 2014, individual surface water discharge monitoring data and reports as
14 required by the Tier 3 MRP, or submit alternative monitoring reporting program data approved by
15 the Central Coast Water Board's Executive Officer (Conditional Waiver, p. 29);

16 18. Conditional Waiver Provision 74 of Part F, Additional Conditions that Apply to
17 Tier 3 Dischargers, which requires dischargers meeting the criteria or designation as Tier 3 and
18 that have High Nitrate Loading Risk farms/ranches to, by October 1, 2013, determine typical crop
19 nitrogen uptake for each crop type produced and report the basis for the determination as required
20 by the Tier 3 MRP (Conditional Waiver, p. 29);

21 19. Conditional Waiver Provisions 75-77 of Part F, Additional Conditions that Apply
22 to Tier 3 Dischargers, which collectively require dischargers meeting the criteria or designation as
23 Tier 3 to develop and implement an Irrigation and Nutrient Management Plan (INMP) that is
24 certified by a named or qualified professional, and to report specific elements from the INMP by
25 October 1, 2015, and annually thereafter, or alternatively to propose an individual discharge
26 groundwater and monitoring program plan for Central Coast Water Board Executive Officer
27 approval that evaluates waste discharge to groundwater from each farm/ranch and assesses the
28

1 waste discharge to see if it is of sufficient quality to not cause or contribute to exceedances of any
2 nitrate water quality standard applied to the groundwater (Conditional Waiver, p. 29);

3 20. Conditional Waiver Provision 78 of Part F, Additional Conditions that Apply to
4 Tier 3 Dischargers, which requires dischargers meeting the criteria or designation as Tier 3 and
5 that have High Nitrate Loading Risk farms/ranches to, by October 1, 2015, report progress
6 towards meeting Nitrogen Balance ratios, or implement an alternative that demonstrates an
7 equivalent nitrogen load reduction, of a target of one (1) for crops grown in annual rotation (e.g.,
8 cool season vegetables) and a target equal to 1.2 for annual crops (e.g., strawberries or
9 raspberries) (Conditional Waiver, pp. 29-30);

10 21. Conditional Waiver Provision 79 of Part F, Additional Conditions that Apply to
11 Tier 3 Dischargers, which requires dischargers meeting the criteria or designation as Tier 3 and
12 that have High Nitrate Loading Risk farms/ranches to verify the overall effectiveness of the
13 INMP per the requirements in the Tier 3 MRP by October 1, 2016 (Conditional Waiver, p. 30);

14 22. Conditional Waiver Provisions 80-81 of Part F, Additional Conditions that Apply
15 to Tier 3 Dischargers, which require dischargers meeting the criteria or designation as Tier 3 and
16 that have farms/ranches that are adjacent to or containing a waterbody identified on the 2010 List
17 of Impaired Waterbodies as impaired for temperature, turbidity, or sediment, by October 1, 2016,
18 to develop and initiate implementation of a Water Quality Buffer Plan that meets the
19 requirements contained in the Tier 3 MRP (Conditional Waiver, pp. 30-31);

20 23. Conditional Waiver Provision 84 of Part G, Time Schedule, which requires
21 dischargers meeting the criteria or designation as Tier 3, by October 1, 2014, to effectively
22 control individual discharges of pesticides and toxic substances (Conditional Waiver, p. 32);

23 24. Conditional Waiver Provision 85 of Part G, Time Schedule, which requires
24 dischargers meeting the criteria or designation as Tier 3, by October 1, 2015, to effectively
25 control individual discharges of sediment and turbidity (Conditional Waiver, p. 32);

26 25. Conditional Waiver Provision 86 of Part G, Time Schedule, which requires
27 dischargers meeting the criteria or designation as Tier 3, by October 1, 2016, to effectively
28 control individual discharges of nutrients to surface waters (Conditional Waiver, p. 32);

1 26. Conditional Waiver Provision 87 of Part G, Time Schedule, which requires
2 dischargers meeting the criteria or designation as Tier 3, by October 1, 2016, to effectively
3 control individual discharges of nitrate to groundwater (Conditional Waiver, p. 32);

4 27. MRP Orders, Sections A and B of Part 2, Groundwater Monitoring and Reporting
5 Requirements, which requires dischargers to sample private domestic drinking water and
6 agricultural groundwater wells by March 15, 2013, and to report the results to the Central Coast
7 Water Board by October 1, 2013 (Tier 1 MRP, pp. 8-10; Tier 2 MRP, pp. 8-10; Tier 3 MRP,
8 pp. 8-10);

9 28. Tier 2 MRP, Section C of Part 2, Groundwater Monitoring and Reporting
10 Requirements, which requires dischargers meeting the criteria or designation as Tier 2 to
11 calculate the nitrate loading risk factor for each ranch/farm included in their operations, and
12 requires such Tier 2 dischargers with individual farms/ranches that have a HIGH nitrate loading
13 risk to report total nitrogen applied per crop, per acre, per year on the Annual Compliance Form
14 by October 1, 2012, and annually thereafter (Tier 2 MRP, pp. 11-12);

15 29. Tier 2 MRP, Part 3, Annual Compliance Form, which requires dischargers meeting
16 the criteria or designation as Tier 2 to submit by October 1, 2012, and annually thereafter, an
17 Annual Compliance Form that includes, but is not limited to: identification of the application of
18 any fertilizers, pesticides, fumigants, or other chemicals through an irrigation system, proof of
19 proper backflow prevention devices, description of method and location of chemical applications
20 relative to surface water, Nitrate Loading Risk Factors; and, for dischargers meeting the criteria
21 or designation as Tier 2 and that have farms/ranches that contain or are adjacent to a waterbody
22 impaired for temperature, turbidity, or sediment photo monitoring to document conditions of
23 streams, riparian, and wetland area habitat (Tier 2 MRP, pp. 12-13);

24 30. Tier 2 MRP, Part 4, Photo Monitoring and Reporting Requirements, which
25 requires dischargers meeting the criteria or designation as Tier 2 to conduct and submit by
26 October 1, 2012, photo monitoring consistent with yet to be established protocols, and explain
27 and demonstrate compliance with erosion and sedimentation requirements (Tier 2 MRP, p. 14);
28

1 31. Tier 3 MRP, Section B of Part 2, Groundwater Monitoring and Reporting
2 Requirements, which requires dischargers meeting the criteria or designation as Tier 3, by
3 October 1, 2013, and annually thereafter, to electronically submit individual groundwater
4 monitoring data to the Central Coast Water Board (Tier 3 MRP, p. 10);

5 32. Tier 3 MRP, Section C of Part 2, Groundwater Monitoring and Reporting
6 Requirements, which requires dischargers meeting the criteria or designation as Tier 3 to
7 calculate the nitrate loading risk factor for each ranch/farm included in their operations, and
8 requires such Tier 3 dischargers with individual farms/ranches that have a HIGH nitrate loading
9 risk to report total nitrogen applied per crop, per acre, per year on the Annual Compliance Form
10 by October 1, 2012, and annually thereafter (Tier 3 MRP, pp. 10-12);

11 33. Tier 3 MRP, Part 3, Annual Compliance Form, which requires dischargers meeting
12 the criteria or designation as Tier 3 to submit by October 1, 2012, and annually thereafter, an
13 Annual Compliance Form that includes, but is not limited to: identification of the application of
14 any fertilizers, pesticides, fumigants, or other chemicals through an irrigation system, proof of
15 proper backflow prevention devices, description of method and location of chemical applications
16 relative to surface water, Nitrate Loading Risk factors; and, for dischargers meeting the criteria or
17 designation as Tier 2 and that have farms/ranches that contain or are adjacent to a waterbody
18 impaired for temperature, turbidity, or sediment photo monitoring to document conditions of
19 streams, riparian, and wetland area habitat (Tier 3 MRP, pp. 12-13);

20 34. Tier 3 MRP, Part 4, Photo Monitoring and Reporting Requirements, which
21 requires dischargers meeting the criteria or designation as Tier 3 to conduct and submit by
22 October 1, 2012, photo monitoring consistent with yet to be established protocols, and explain
23 and demonstrate compliance with erosion and sedimentation requirements (Tier 3 MRP, p. 14);

24 35. Tier 3 MRP, Part 5, Individual Surface Water Discharge Monitoring and Reporting
25 Requirements, which requires dischargers meeting the criteria or designation as Tier 3 to submit
26 an individual surface water discharge Sampling and Analysis Plan and Quality Assurance Project
27 Plan (QAPP) by March 15, 2013, to monitor individual discharges of waste from their
28 farm/ranch, including irrigation run-off (including tailwater discharges and discharges from tile

1 drains, tailwater ponds, and other surface water containment features); and, which requires
2 dischargers meeting the criteria or designation as Tier 3 to initiate individual surface water
3 discharge monitoring per the Sampling and Analysis Plan and QAPP by October 1, 2013 (Tier 3
4 MRP, pp. 14-16);

5 36. Tier 3 MRP, Part 6, Irrigation and Nutrient Management Plan, which requires
6 dischargers meeting the criteria or designation as Tier 3 and that have farms/ranches with high
7 nitrate loading risk to: (1) develop and initiate implementation of an INMP that is certified by an
8 identified or qualified professional and that includes all of the elements identified in Part 6, A.4 of
9 Tier 3 MRP; (2) evaluate effectiveness of the INMP that is conducted or supervised by a
10 professional engineer, geologist, certified crop advisor, or similarly qualified professional; (3) by
11 October 1, 2015, report specified elements from the INMP; and, (4) by October 1, 2016, submit
12 an INMP Effectiveness Report that evaluates progress in reducing loadings and measuring
13 changes in the uppermost aquifer (Tier 3 MRP, pp. 17-20); and,

14 37. Tier 3 MRP, Part 7, Water Quality Buffer Plan, which requires dischargers
15 meeting the criteria or designation as Tier 3 and that have farms/ranches that contain or are
16 adjacent to a waterbody identified on the 2010 List of Impaired Waterbodies as impaired for
17 temperature, turbidity, or sediment, by October 1, 2016, to prepare and initiate implementation of
18 a Water Quality Buffer Plan that includes a minimum 30 foot buffer, or a functional equivalent
19 that is approved by the Central Coast Water Board Executive Officer (Tier 3 MRP, pp. 20-21).

20 **3. THE DATE ON WHICH THE CENTRAL COAST WATER BOARD ACTED OR**
21 **REFUSED TO ACT**

22 The Central Coast Water Board adopted the Conditional Waiver and MRP Orders, and
23 failed to properly consider the agricultural alternative on March 15, 2012.

24 **4. A STATEMENT OF THE REASONS THE ACTION OR FAILURE TO ACT IS**
25 **INAPPROPRIATE OR IMPROPER**

26 A full and complete statement of the reasons why the Central Coast Water Board's actions
27 were inappropriate or improper is provided in the accompanying Statement of Points and
28 Authorities.

1 **5. THE MANNER IN WHICH THE PETITIONERS ARE AGGRIEVED**

2 The Petitioners are filing this Petition on behalf of their members that are subject to the
3 terms and conditions of the Conditional Waiver and MRP Orders. Petitioners' members are
4 aggrieved by the actions or inactions of the Central Coast Water Board because they will bear the
5 costs of, and risks of potential liability arising from, the Central Coast Water Board's actions and
6 inactions that are the subjects of this Petition.

7 **6. THE SPECIFIC ACTION REQUESTED BY THE PETITIONERS**

8 The Petitioners request that the State Water Board review the record, the Conditional
9 Waiver, MRP Orders, and this Petition, and that the State Water Board issue an order or orders
10 accomplishing one of the following:

11 A. Vacate the Central Coast Water Board's illegal adoption of the Conditional Waiver
12 and the MRP Orders in their entirety (discussed below in section III.A of the Statement of Points
13 and Authorities), use its independent authority under Water Code section 13320(c) to develop a
14 new Conditional Waiver and MRP Orders, and extend the existing 2004 Conditional Waiver in
15 the interim.

16 B. Or, in the alternative,

17 1. Amend the Conditional Waiver to include the agricultural alternative
18 (discussed below in section III.B of the Statement of Points and Authorities), and make related,
19 consistent, and conforming revisions to the Conditional Waiver and MRP Orders as follows:

20 Insert New Part E, which is set forth in "Central Coast Irrigated Lands
21 Presentation of CFBF & Farmers for Water Quality" PowerPoint Presentation (Mar. 14,
22 2012), attached hereto as Exh. E, pp. 20-22 ["Part E. Additional Conditions That Apply to
23 Tier 2 and Tier 3 Dischargers Through Participation in Third-Party Group"]; and,

24 2. Vacate all of the following requirements of the Conditional Waiver and
25 MRP Orders (discussed below in section III.C of the Statement of Points and Authorities), and
26 make related, consistent, and conforming revisions to the Conditional Waiver and MRP Orders:

- 27 • Conditional Waiver Provision 22 (Conditional Waiver, p. 18);
28 • Conditional Waiver Provision 23 (Conditional Waiver, p. 18);

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- Conditional Waiver Provision 39 (Conditional Waiver, p. 20);
- Conditional Waiver Provision 40 (Conditional Waiver, p. 21);
- Conditional Waiver Provision 44, subsection g (Conditional Waiver, p. 22);
- Tier 1 MRP, Section A, paragraphs 1 through 5, and Section B of Part 2 (Tier 1 MRP, pp. 8-10);
- Tier 2 MRP, Section A, paragraphs 1 through 5, and Section B of Part 2 (Tier 2 MRP, pp. 8-10);
- Tier 3 MRP, Section A, paragraphs 1 through 5, and Section B of Part 2 (Tier 3 MRP, pp. 8-10); and,

C. Or, in the second alternative,

1. Vacate all of the following requirements of the Conditional Waiver and MRP Orders (discussed below in section III.C of the Statement of Points and Authorities), and make related, consistent, and conforming revisions:

- Conditional Waiver Provisions 13-23 (Conditional Waiver, pp. 16-18);
- Conditional Waiver Provision 39 (Conditional Waiver, p. 20);
- Conditional Waiver Provision 40 (Conditional Waiver, p. 21);
- Conditional Waiver Provision 44, subsection g (Conditional Waiver, p. 22);
- Conditional Waiver Provision 67 (Conditional Waiver, p. 27);
- Conditional Waiver Provision 68 (Conditional Waiver, p. 28);
- Conditional Waiver Provision 69 (Conditional Waiver, p. 28);
- Conditional Waiver Provision 70 (Conditional Waiver, p. 28);
- Conditional Waiver Provision 72 (Conditional Waiver, p. 29);
- Conditional Waiver Provision 73 (Conditional Waiver, p. 29);
- Conditional Waiver Provision 74 (Conditional Waiver, p. 29);
- Conditional Waiver Provisions 75-77 (Conditional Waiver, p. 29);
- Conditional Waiver Provision 78 (Conditional Waiver, pp. 29-30);
- Conditional Waiver Provision 79 (Conditional Waiver, p. 30);
- Conditional Waiver Provisions 80-81 (Conditional Waiver, pp. 30-31);

- 1 • Conditional Waiver Provision 84 (Conditional Waiver, p. 32);
- 2 • Conditional Waiver Provision 85 (Conditional Waiver, p. 32);
- 3 • Conditional Waiver Provision 86 (Conditional Waiver, p. 32);
- 4 • Conditional Waiver Provision 87 (Conditional Waiver, p. 32);
- 5 • Tier 1 MRP, Section A, paragraphs 1 through 5, and Section B of Part 2
- 6 (Tier 1 MRP, pp. 8-10);
- 7 • Tier 2 MRP, Section A, paragraphs 1 through 5, and Section B of Part 2
- 8 (Tier 2 MRP, pp. 8-10);
- 9 • Tier 2 MRP, Section C of Part 2 (Tier 2 MRP, pp. 11-12);
- 10 • Tier 2 MRP, Part 3 (Tier 2 MRP, pp. 12-13);
- 11 • Tier 2 MRP, Part 4 (Tier 2 MRP, p. 14);
- 12 • Tier 3 MRP, Section A, paragraphs 1 through 5, and Section B of Part 2
- 13 (Tier 3 MRP, pp. 8-10);
- 14 • Tier 3 MRP, Section B of Part 2 (Tier 3 MRP, p. 10);
- 15 • Tier 3 MRP, Section C of Part 2 (Tier 3 MRP, pp. 10-12);
- 16 • Tier 3 MRP, Part 3 (Tier 3 MRP, pp. 12-13);
- 17 • Tier 3 MRP, Part 4 (Tier 3 MRP, p. 14);
- 18 • Tier 3 MRP, Part 5 (Tier 3 MRP, pp. 14-16);
- 19 • Tier 3 MRP, Part 6 (Tier 3 MRP, pp. 17-20);
- 20 • Tier 3 MRP, Part 7 (Tier 3 MRP, pp. 20-21); and,

21 2. Amend the Conditional Waiver as follows:

- 22 • Conditional Waiver Provision 44, clarify that Farm Plans must be made
- 23 available at the farm upon request by Central Coast Water Board staff, but
- 24 are not required to be submitted to the Central Coast Water Board's office
- 25 upon request.

26 E. Make any other necessary conforming changes consistent with the above or the

27 Statement of Points and Authorities, and modify other Findings of the Conditional Waiver

28 consistent with the State Water Board's order.

1 **7. A STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF LEGAL**
2 **ISSUES RAISED IN THIS PETITION**

3 As required by title 23, section 2050(a)(7) of the California Code of Regulations,
4 Petitioners include a statement of points and authorities in support of this Petition beginning on
5 page 16.

6 **8. A STATEMENT THAT THIS PETITION WAS SENT TO THE CENTRAL**
7 **COAST WATER BOARD**

8 A true and correct copy of this Petition was mailed by First Class mail to the Central
9 Coast Water Board. The address to which Petitioners mailed the copy to the Central Coast Water
10 Board is:

11 Roger W. Briggs, Executive Officer
12 Central Coast Regional Water Quality Control Board
13 895 Aerovista Place, Suite 101
14 San Luis Obispo, CA 93401-7906

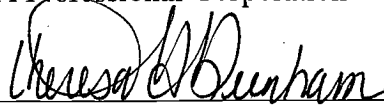
15 Petitioners are filing this Petition on behalf of their members, who are the dischargers
16 subject to the terms and conditions of the Conditional Waiver and MRP Orders.

17 **9. A STATEMENT AS TO WHETHER THE PETITIONERS RAISED THE ISSUES**
18 **OR OBJECTIONS IN THE PETITION TO THE CENTRAL COAST WATER**
19 **BOARD**

20 Petitioners timely raised the substantive issues and objections in this Petition before the
21 Central Coast Water Board in written comments and in testimony provided between February 1,
22 2010, and March 15, 2012.

23 **SOMACH SIMMONS & DUNN**
24 **A Professional Corporation**

25 DATED: April 16, 2012

26 By: 
27 Theresa A. Dunham, Attorneys for Petitioners
28 Grower-Shipper Association of Central
California, Grower-Shipper Association of Santa
Barbara and San Luis Obispo Counties, and
Western Growers

1 **STATEMENT OF POINTS AND AUTHORITIES**

2 Petitioners file this Petition in accordance with title 23, section 2050(a) of the California
3 Code of Regulations. Petitioners request the opportunity to file a supplemental or reply
4 memorandum after receipt of the administrative record and the Central Coast Water Board's
5 response.

6 **I. INTRODUCTION**

7 On March 15, 2012, the Central Coast Water Board adopted Conditional Waiver Order
8 No. R3-2012-0011, *Conditional Waiver of Waste Discharge Requirements for Discharges from*
9 *Irrigated Lands* and Tier 1 MRP, Tier 2 MRP, and Tier 3 MRP (Monitoring and Reporting
10 Program Order Nos. R3-2012-0011-01, R3-2012-0011-02, and R3-2012-0011-03, respectively)
11 (collectively, MRP Orders). The Conditional Waiver and the MRP Orders contain many new
12 restrictive requirements that will severely affect the agricultural community and the agricultural
13 economy in the Central Coast Region. The Central Coast Region contains approximately
14 435,000 acres of irrigated land. (Conditional Waiver, p. 1; see J. Bradley Barbeau, Ph.D.,
15 California State University, Monterey Bay School of Business, and Kay L. Mercer, M.S., PCA,
16 KMI, *Economic and Cost Analysis of the Proposed Ag Waiver and Ag Alternative* (Aug. 1, 2011)
17 (Barbeau Report), attached as Exh. B to the Stay Request, p. 4.) The estimated total economic
18 impact of the Conditional Waiver and MRP Orders ranges between \$60,063,000 and \$87,932,000
19 annually.² (Barbeau Report, p. 17.) Of this total estimated cost, the direct impact to the region's
20 agriculture industry is estimated between \$34,866,000 and \$51,044,000 annually. (Barbeau
21 Report, p. 17.) When considering these economic impacts to agriculture, it is important that the
22 State Water Board understand that growers in the Central Coast and elsewhere are price takers,
23 and have limited ability to pass on higher costs associated with production – including regulatory
24 costs. (Barbeau Report, p. 5.)

25
26
27 ² The costs estimated in the Barbeau Report were based on the provisions contained in the March 2011 draft
28 Conditional Waiver. Although the Conditional Waiver and MRP Orders were subsequently revised, the estimates
provided in the Barbeau Report are still relevant to indicate the potential scope of the economic impact.

1 Moreover, besides the economic impact that the Conditional Waiver and MRP Orders will
2 have on individual growers and the region in general, the Conditional Waiver and MRP Orders
3 collectively put growers and landowners in immediate jeopardy for not complying with water
4 quality standards. Petitioners, Petitioners' members, and the agricultural community in general
5 understand that there is a need to implement management practices that are protective of both
6 surface and groundwaters. Many in agriculture already are implementing such practices.
7 However, there is general acknowledgment that water quality improvements will take time, and in
8 some instances protective management practices must be developed. Unfortunately, the
9 Conditional Waiver and MRP Orders fail to provide growers with any legal protection for any
10 time period.

11 Conversely, the exorbitant price tag associated with the Conditional Waiver and MRP
12 Orders is unlikely to result in improvements in water quality because it shifts limited grower
13 resources away from investing in new technology and implementing new management practices
14 because of the orders' focus on expensive monitoring and reporting requirements. In response to
15 the Central Coast Water Board's proposed approach, Petitioners and other agricultural
16 organizations presented an alternative that was designed to assist growers in implementing
17 management practices, and included independent audits of all participating growers to ensure that
18 management practices were being implemented, and accountability. However, Central Coast
19 Water Board staff routinely dismissed the merits of the agricultural alternative, and conveyed
20 misinformation to the Central Coast Water Board claiming that the agricultural alternative was
21 illegal.

22 Even more troubling is the fact that the Central Coast Water Board ultimately adopted the
23 Conditional Waiver and MRP Orders because of last minute amendments that were presented by
24 one Board member to the others only *after the close of the public hearing*. Unbeknownst to the
25 Board members (or at least to Petitioners' knowledge unknown to the Board members), these last
26 minute amendments resulted from improper, indirect ex parte communications. This action alone
27 is cause for invalidation.
28

1 the May 4, 2011 hearing, Central Coast Water Board staff were directed to make changes in a
2 manner consistent with that provided by Central Coast Water Board members taking into
3 consideration Board member comments given at the March 17 and May 4, 2011 hearings. (See,
4 e.g., Transcripts, Central Coast Regional Water Quality Control Board Panel Hearing, March 17,
5 2011, Conditional Waiver of Waste Discharge Requirements for Discharge From Irrigated Lands
6 (March 17, 2011 Transcript), p. 221:10-13 [Dr. Hunter: “Well, I really do appreciate the idea of
7 doing things collectively and trying to maximize resources and then the collaboration that may
8 come in sharing knowledge and experience.”]; Transcript, Central Coast Regional Water Quality
9 Control Board Panel Hearing, May 4, 2011, Volume II, Continuation of the Hearing on the
10 Waiver of Waste Discharge Requirements for Discharged From Irrigated Lands (May 4, 2011
11 Transcript), p. 623:23-24 [Dr. Hunter: “Innovative meaning we need solutions to individual farm
12 operations.”].)

13 This Central Coast Water Board direction resulted in the preparation of a Staff
14 Addendum, and public notice and review with respect to the agricultural alternative. That public
15 comment period closed on August 1, 2011. After August 1, 2011, the Central Coast Water Board
16 considered the written comment period closed and did not allow any more written comments or
17 evidence into the record. (See Chair’s Order on Admission of New Information (Feb. 16, 2012),
18 p. 4 [denies admission of a report prepared by Dr. Marc Los Huertos into the record, and declares
19 that no new written comments or evidence will be accepted into the record prior to the
20 March 2012 hearing].) A revised draft order was issued on August 16, 2011, in anticipation of a
21 September 1, 2011 public hearing. However, there was no quorum for action on this item and the
22 hearing was canceled. After new appointments were made early in 2012, the Central Coast Water
23 Board held a public workshop on February 1, 2012, for the benefit of the new Board members,
24 and scheduled the final public hearing for March 14-15, 2012.

25 At the March 14-15, 2012 hearing, Petitioners and the California Farm Bureau Federation,
26 and other agricultural organizations jointly presented a revised alternative to address criticisms
27 raised in the Central Coast Water Board Staff Addendum. The revised agricultural alternative
28 was presented as New Part E, “Part E. Additional Conditions That Apply to Tier 2 and Tier 3

1 Dischargers Through Participation in Third-Party Group” (New Part E) (“Central Coast Irrigated
2 Lands Presentation of CFBF & Farmers for Water Quality” PowerPoint Presentation (Mar. 14,
3 2012), attached hereto as Exh. E, pp. 20-22.) This presentation occurred early on March 14,
4 2012, and copies of the presentation were provided to the Central Coast Water Board, Central
5 Coast Water Board staff, and any member of the public that requested a copy of the presentation,
6 which included New Part E. Members of the public were encouraged to respond to New Part E
7 during their testimony. (Transcript, Central Coast Regional Water Quality Control Board,
8 March 14, 2012, Continuation of the Hearing on the Waiver of Waste Discharger Requirements
9 Discharged from Irrigated Lands (March 14, 2012 Transcript), p. 158:9-12.)

10 On the same day after the agricultural presentation, Mr. Steve Shimek (Shimek)
11 representing Monterey Coastkeeper and The Otter Project, gave his public testimony that
12 included a PowerPoint presentation. Shimek offered no new proposed language for Central Coast
13 Water Board consideration, and provided limited comment on New Part E. (March 14, 2012
14 Transcript, pp. 260:12-276:24.) By the end of the day on March 14, 2012, all public testimony
15 had concluded except for closing statements and rebuttal from the agricultural community,
16 closing statements from Central Coast Water Board staff, and Central Coast Water Board
17 deliberations.

18 On March 15, 2012, after receiving closing statements from agriculture and Central Coast
19 Water Board staff, the Central Coast Water Board entered into deliberations. Immediately after
20 the matter was turned over to the Central Coast Water Board, Board Member Johnston presented
21 additional amendments for Central Coast Water Board consideration. According to Board
22 Member Johnston, he had prepared these amendments in advance with assistance from the
23 Central Coast Water Board’s Executive Officer Roger Briggs (Executive Officer Briggs) and
24 legal counsel Ms. Frances McChesney (Counsel McChesney). Once these amendments were
25 presented, Board members shifted their focus to them, and declined to independently evaluate the
26 merits of New Part E because in part Central Coast Water Board staff and legal counsel advised
27 the Central Coast Water Board that it did not meet the “legal standard.” (Transcript, Central
28 Coast Regional Water Quality Control Board, March 15, 2012, Continuation of the Hearing on

1 the Waiver of Waste Discharger Requirements Discharged from Irrigated Lands (March 15, 2012
2 Transcript), p. 52:15-17.) Ultimately, after some discussion, the Central Coast Water Board
3 adopted the Conditional Waiver and MRP Orders with Mr. Johnston's amendments and others.

4 III. ARGUMENT

5 A. The Central Coast Water Board's Adoption of the Conditional Waiver on March 15, 6 2012, Violated the Due Process Rights of Petitioners' Members

7 In an unfortunate turn of events, the Central Coast Water Board's two-year public process
8 for adoption of the Conditional Waiver ended with the adoption of substantial amendments to the
9 Conditional Waiver that had not been publicly disclosed as part of the adoption process until after
10 the public hearing had been closed, and that were developed and conveyed indirectly to Board
11 Member Johnston through improper ex parte communications. The release of such significant,
12 prepared language during Board deliberations on its own violated the due process rights of the
13 agricultural dischargers that are regulated under the terms of the Conditional Waiver. However,
14 the fact that the proposed amendments resulted from improper ex parte communications
15 magnified the violation of the due process rights of Petitioners' members. Because the Central
16 Coast Water Board's final action so clearly violated the due process rights of those regulated, the
17 Board's action is tainted and must be vacated in its entirety. Further, in light of these
18 circumstances, any subsequent action to revise, amend, or rectify the Central Coast Water
19 Board's unlawful adoption must be remedied by the State Water Board under its own authority.

20 1. The Conditional Waiver Is a Quasi-Judicial Order and Petitioners' Members 21 Must Be Afforded All Appropriate Due Process Rights Under the Law

22 The Conditional Waiver adopted by the Central Coast Water Board is a quasi-judicial
23 order, and the process for adoption of the Conditional Waiver was quasi-adjudicative in nature.
24 Thus, the Central Coast Water Board was required to comply with the Administrative Procedure
25 Act (APA), the California Administrative Adjudication Bill of Rights, and other related
26 requirements that afford interested members of the public, including Petitioners' members due
27 process and a fair, transparent process.
28

1 The Central Coast Water Board may adopt waste discharge requirements for individual
2 dischargers or groups of dischargers. (See Wat. Code, § 13260 et seq.) Water Code
3 section 13269(a) provides that the State and Central Coast Water Boards may waive waste
4 discharge requirements for specific discharges or specific types of discharges “if the state board
5 or a regional board determines, after any necessary state board or regional board meeting, that the
6 waiver is consistent with any applicable state or regional water quality control plan and is in the
7 public interest.” (Wat. Code, § 13269(a)(1).) The Central Coast Water Board proceedings
8 involved in the adoption of the Conditional Waiver are formal hearings designed to allow the
9 Board to receive evidence and determine facts. (See Memorandum from Craig M. Wilson, State
10 Water Board, to Water Quality Attorneys (June 2, 2005) re: *Procedural Requirements and*
11 *Appellate Review of Waivers of Waste Discharge Requirements*, attached hereto as Exh. F.)
12 These proceedings ultimately result in an order which determines a legal right, duty, or other legal
13 interest of a particular group of individuals, in this case, agricultural dischargers. As applied to
14 these individual dischargers, the Conditional Waiver contains detailed and specific requirements
15 as well as significant individual determinations. Thus, the adoption of the Conditional Waiver
16 was a quasi-adjudicative act, and the procedural safeguards attendant to such actions are
17 applicable.

18 One such procedural safeguard governing adjudicative proceedings before the Central
19 Coast Water Board is the APA (Gov. Code, § 11400 et seq.), which includes the California
20 Administrative Adjudication Bill of Rights (Gov. Code, § 11425.10 et seq.). (Cal. Code Regs.,
21 tit. 23, § 648(b).) The California Administrative Adjudication Bill of Rights specifies the
22 minimum due process and public interest requirements that must be satisfied in a hearing that is
23 subject to its provisions. Specifically, as applicable to this Petition, these provisions require that
24 an agency conduct its proceeding while adhering to the following requirements:

25 (1) The agency shall give the person to which the agency action is directed
26 notice and an opportunity to be heard, including the opportunity to present and
rebut evidence.

27 ...
28 (8) Ex parte communications shall be restricted as provided in Article 7
(commencing with Section 11430.10). (Gov. Code, § 11425.10(a).)

1 The Central Coast Water Board failed to satisfy these requirements. Specifically, the
2 Central Coast Water Board failed to adhere to subdivisions (a)(1) and (a)(8), because it failed to
3 provide provide Petitioners' members an opportunity to comment on the significant, new
4 provisions that were presented after the close of the public hearing, and because at least one of
5 these provisions was the result of ex parte communications. In short, the affected dischargers
6 were never afforded the opportunity to present any evidence or comments related to those
7 amendments. Accordingly, the Central Coast Water Board's process violated Petitioners' rights.³

8 Central Coast Water Board decisions must fully comport with due process requirements.
9 (See *Voices of the Wetlands v. State Water Resources Control Bd.* (2011) 52 Cal.4th 499, 528.)
10 This due process requirement means that affected parties must have the opportunity to be heard at
11 a meaningful time and in a meaningful manner. (*Natural Resources Defense Council v. Fish &*
12 *Game Com.* (1994) 28 Cal.App.4th 1104, 1126, citing *Mathews v. Eldridge* (1976) 424 U.S. 319,
13 333.) In order for the opportunity to comment to be considered "meaningful" and satisfy due
14 process considerations, the affected parties must receive adequate time to prepare a response.
15 (See generally *Kempland v. Regents of University of California* (1984) 155 Cal.App.3d 644, 649.)
16 By failing to provide agricultural dischargers and other interested members of the public an
17 opportunity to provide any meaningful comment on the adoption of substantial amendments at the
18 March 15, 2012 hearing, the Central Coast Water Board violated this fundamental principle of
19 due process. The revelation and adoption of substantial amendments after the public hearing had
20 been closed provided the affected agricultural dischargers with no meaningful time to comment,
21 and no meaningful manner to prepare a response, clearly violating their due process rights.

22 Moreover, the rules with respect to ex parte communications as applied to the Central
23 Coast Water Board are clear. First, Government Code section 11430.10 states that "[w]hile the
24 proceeding is pending there shall be no communication, direct or indirect, regarding any issue in
25

26 ³ The Central Coast Water Board and its legal counsel are fully aware of this legal responsibility. On the previous
27 day when agricultural organizations presented proposed language changes, the Central Coast Water Board and legal
28 counsel discussed the need to provide staff and other parties with additional time to respond. (March 14, 2012
Transcript, pp. 157:18-158:12.) However, no such opportunity was provided after Board Member Johnston
introduced his proposal.

1 the proceeding, to the presiding officer from an employee or representative of an agency that is a
2 party or from an interested person outside the agency, without notice and opportunity for all
3 parties to participate in the communication.” Second, in a memorandum to all State and Regional
4 Board Members, Chief Counsel Michael Lauffer explains the fundamental purposes behind
5 limiting such communications, and states that such rules apply to the adoption of Conditional
6 Waivers, such as the one at issue here. (Memorandum to Board Members, State Water Board and
7 California Regional Water Quality Control Boards from Michael Lauffer, Chief Counsel
8 (Sept. 17, 2008), re: Transmittal of Ex Parte Communications Questions and Answers Document
9 (Ex Parte Q&A), pp. 2, 4.)⁴ Specifically, the rules with respect to ex parte communications “have
10 their roots in constitutional principles of due process and fundamental fairness.” (Ex Parte Q&A,
11 p. 2.) And,

12 Ex parte communications are fundamentally offensive in adjudicative proceedings
13 because they involve an opportunity by one party to influence the decision maker
14 outside the presence of opposing parties, thus violating due process requirements. Ex
15 parte communications can frustrate a lengthy and painstaking adjudicative process
16 because certain decisive facts and arguments would not be reflected in the record
17 or in the decisions. Finally, ex parte contacts may frustrate judicial review since
18 the record would be missing such communications. (Ex Parte Q&A, p. 2.)

19 In this case, the improper ex parte communication was an indirect communication
20 between Shimek and Board Member Johnston (one of the presiding officers) through Executive
21 Officer Briggs. More specifically (the details and evidence are provided in section 2 below),
22 Shimek presented proposed amendments (hereafter referred to as the Shimek Proposal) for the
23 Conditional Waiver to Central Coast Water Board staff, including Executive Officer Briggs.
24 Executive Officer Briggs took the Shimek Proposal and included it in amendments he prepared at
25 the request of Board Member Johnston. In other words, Executive Officer Briggs acted as a
26 conduit between Shimek and Board Member Johnston. The result is that one interested party
27 influenced the decision makers outside the presence of opposing parties, which violates the law
28 ands principles with respect to limitations on ex parte communications. Whether or not Board

⁴ http://www.waterboards.ca.gov/laws_regulations/docs/exparte.pdf (as of April 15, 2012).

1 Member Johnston was aware of the origins of the language provided to him by Executive Officer
2 Briggs, the fact is that the prohibited ex parte communication occurred, at minimum due to the
3 actions of Executive Officer Briggs. Such ex parte communications – direct or indirect – are
4 expressly prohibited under the law.

5 **2. Adoption of Amendments to the Conditional Waiver Were the Result of**
6 **Improper Ex Parte Communications, Which Invalidates the Central Coast**
7 **Water Board's Action in its Entirety**

8 As indicated previously, the Central Coast Water Board's adoption hearing spread across
9 two days, March 14 and March 15, 2012. The second day was primarily for limited rebuttal from
10 the agricultural community, Central Coast Water Board staff response, and Board deliberations—
11 in that order. After Central Coast Water Board staff provided its responses and proposed
12 changes, the Board Chair transitioned the meeting to Board deliberations. (March 15, 2012
13 Transcript, p. 93:11-15 ["MR. YOUNG: Okay . . . We are at the point where we heard from Staff.
14 And the Board is now at the point where it can begin to deliberate."]; March 15, 2012 Transcript,
15 p. 93:24-25 ["MR. YOUNG: We're at the point where it's in the Board's hands."].) Only at this
16 point in the process did Petitioners become aware of alternative language (hereafter referred to as
17 Johnston Proposal) that had been prepared by Board Member Johnston in consultation with
18 Executive Officer Briggs and Counsel McChesney, and potentially other Central Coast Water
19 Board staff. (March 15, 2012 Transcript, p. 94:5-11 ["MR. JOHNSTON: I gather you're aware,
20 Mr. Chairman, because it was shared with you, although none of the other Board members, is I
21 worked with the Executive Officer and counsel over the last week or two on a couple of different
22 pieces of language. And the principal stuff in there is – well, three things, really."].)

23 While discussing the Johnston Proposal, the following exchange occurred.

24 MR. YOUNG: I think it's a great proposal. I think what you've done is taken what
25 Staff has always said was achievable as part of what they have been proposing,
26 and essentially put down in writing what it might look like, and make that part of
27 what we're going to incorporate in the Order and the Monitoring Program.
28 So how much of this did you write?

MR. JOHNSTON: About half.

MR. YOUNG: Good. It's great.

MR. BRIGGS: Mr. Chair.

MR. YOUNG: Yes.

1 MR. BRIGGS: Mr. Johnston asked --

2 MR. JOHNSTON: In answer to your question about what I wrote, this was a back
and forth between --

3 MR. YOUNG: I understand.

4 MR. JOHNSTON: -- myself, Roger, Frances. And I would imagine that Roger
was consulting other Staff on it.

5 MR. YOUNG: Right.

6 Is this acceptable to Staff?

7 MR. BRIGGS: That was the reason Mr. Johnston wanted to vet it instead of
8 dropping it here was to see if it would be acceptable. Mr. Johnston asked me to
9 help flesh out some ideas for a technical advisory committee. But I wanted just
10 one -- I think it's a typo type of admission. In the last paragraph that you just
referred to, the second line, that parenthetical -- I think my intent was for that to be
an, e.g., for example NRCS, or RCD. And we should spell that out, too, instead of
using acronyms. (March 15, 2012 Transcript, pp. 113:18-114:21.)

11 Based on this exchange, it is clear that Central Coast Water Board staff assisted Board Member
12 Johnston in preparing the Johnston Proposal. However, additional emails and phone calls with
13 respect to this issue,⁵ and knowledge from individuals participating in this process, provides
14 significant evidence that demonstrates a significant portion of the Johnston Proposal was the
15 result of improper ex parte communications.

16 The evidence that supports this is as follows. First, phone notes from Executive Officer
17 Briggs and Central Coast Water Board staff person Lisa McCann clearly indicate that they
18 received communications from Shimek regarding meetings that Shimek had with the State Water
19 Board and California Environmental Protection Agency (CalEPA) Undersecretary Gordon Burns
20 and calls with others with respect to the Shimek Proposal. (Exh. G, April 6, 2012 PRA
21 Documents, pp. 1-3 [Roger Briggs Phone Notes, "tc Shimek . . . Steve took draft to Sacto . . .";
22 "Steve Shimek . . . Here @ Wed. Would like to meet w/ only people re: supplemental"; "Steve
23 Shimek -- getting calls, wanted to be sure I'm O.K."]; *id.*, p. 13 [Lisa McCann Phone Notes,
24 3/8/12, "Shimek re: conversation w/ Rick Tomlinson [and] Gordon Burns."].)

25
26 ⁵ On April 6, 2012, Central Coast Water Board Staff Counsel, Frances McChesney, responded to a Public Records
27 Act (PRA) request from Kari Fisher, Associate Counsel, California Farm Bureau Federation, and provided copies of
28 documents that were responsive to the request. The documents in question are related to this matter and Petitioners
presume are considered to be part of the Administrative Record. (See Exh. G attached hereto (April 6, 2012 PRA
Documents).)

1 Second, there is clear evidence that Central Coast Water Board staff had the Shimek
2 Proposal in hand. Shimek told CalEPA Undersecretary Burns and Rick Tomlinson in a
3 teleconference that he had presented the Shimek Proposal to Central Coast Water Board staff.
4 (Declaration of Rick Tomlinson in Support of Grower-Shipper Association of Central California,
5 Grower-Shipper Association of San Luis Obispo and Santa Barbara Counties, and Western
6 Growers' Petition for Review (Tomlinson Decl.), ¶ 4.) Central Coast Water Board staff knew of
7 this conference call. (Exh. G, April 6, 2012 PRA Documents, p. 13 [Lisa McCann's phone
8 notes].) It appears that Central Coast Water Board staff also met with Shimek regarding the
9 Shimek Proposal. (*Id.*, pp. 1-5 [Roger Briggs' phone notes].)

10 Third, emails between Board Member Johnston and Executive Officer Briggs show that
11 Executive Officer Briggs provided edits to Board Member Johnston for the Conditional Waiver,
12 and provided Board Member Johnston a final version with edits in *red* to identify new language
13 after they were reviewed by legal counsel. (Exh. G, April 6, 2012 PRA Documents, pp. 20-24.)
14 Part of the language in red includes new Condition 11, which is essentially the Shimek Proposal.
15 (Exh. G, April 6, 2012 PRA Documents, pp. 15 and 17 [Email from Roger Briggs to Mike
16 Johnston on 3/10/2012, 3:00 PM: "Mike, Here are possible edits for the order (two docs here), . . .
17 [language redacted]"; Email from Mike Johnston to Roger Briggs on 3/12/2012, 9:42 PM,
18 requesting that copies of the language be left at hotel desk for Board Member Johnston]; see also
19 *id.*, p. 18 [Email from Roger Briggs to mjohnston890@gmail.com on 3/13/2012, 8:17 AM,
20 conveying the final language and that copies would also be provided to the Board Chair, Jeff
21 Young].)

22 Further, as indicated above, both Board Member Johnston and Executive Officer Briggs
23 acknowledged that Johnston had only developed about half the language, and that Briggs and
24 others at the Central Coast Water Board helped to develop it more fully. The records provided in
25 response to California Farm Bureau Federation's Public Record Act request did not include the
26 original language conveyed from Board Member Johnston to Executive Officer Briggs before it
27 was revised by Briggs and staff.
28

1 Fourth, the Shimek Proposal as compared to the Johnston Proposal, shows that they are
2 remarkably similar. The Shimek Proposal is as follows:

3 Inserted between Staff Proposal Condition 10 and 11:

4 Groups may form around watersheds or other commonalities to propose creative
5 water quality projects and solutions, and to clarify group efforts which could lead
6 to compliance with this order (i.e. commodity based certification programs such as
7 SIP). At the discretion of the executive officer, groups may be granted down-
8 classifications (i.e. Tier 3 to Tier 2) and project-specific timelines, benchmarks,
9 and monitoring requirements. The purpose of this provision is to encourage
10 innovations, site-specific solutions, and to remove barriers to long-term
11 investments (i.e. engineered wetlands).

12 Projects will be evaluated for, among other things:

- 13 • Scale. Solutions must be scaled to address impairment
- 14 • Chance of success. Projects must demonstrate a reasonable chance of
15 eliminating toxicity within the permit term (5 years) and reducing
16 discharge of nutrients to surface and groundwaters.
- 17 • Commitment to solving the problem. Proposals must address what new
18 actions will be taken if the project does not meet goals and how the project
19 will be sustained through time.
- 20 • Benchmarks and accountability. Proposals must set benchmarks and
21 describe monitoring and measuring methods. Monitoring points must be at
22 the point of discharge but may not always be at the edge-of-field, so long
23 as monitoring results demonstrate water quality improvement and the
24 efficacy of a project.

25 Project proposals will be evaluated by a committee comprised of: [Two?] Three
26 researchers or academics skilled in agricultural practices and/or water quality, one
27 farm advisor (NRCS or RCD), one grower representative, one environmental
28 representative, one environmental justice or environmental health representative,
and one RWQCB staff member. The RWQCB Executive Officer has sole
discretion in giving final approval of any project after receiving project evaluation
results and recommendations from the committee. (See Shimek Proposal, Exh. 1,
Tomlinson Decl.)

29 In comparison, Condition 11 of the Johnston Proposal is as follows:

30 New Condition 11 (all new language):

31 Dischargers may form third party groups to develop and implement alternative
32 water quality management practices (i.e., group projects) or cooperative
33 monitoring and reporting programs to comply with this Order. At the discretion of
34 the Executive Officer, Dischargers that are a participant in a third party group that
35 implements Executive Officer-approved water quality improvement projects or
36 Executive Officer-approved alternative monitoring and reporting programs may be
37 moved to a lower Tier (e.g., Tier 3 to Tier 2, Tier 2 to Tier 1) and/or provided
38 alternative project-specific timelines, and milestones.

1 To be subject to Tier changes or alternative timelines, Projects will be evaluated
2 for, among other elements:

- 3 • Project Description. Description must include identification of
- 4 participants, methods, and time schedule for implementation.
- 5 • Purpose. Proposal must state desired outcomes or goals of the project (e.g.,
- 6 pollutants to be addressed, amount of pollution load to be reduced, water
- 7 quality improvement expected).
- 8 • Scale. Solutions must be scaled to address impairment
- 9 • Chance of Success. Projects must demonstrate a reasonable chance of
- 10 eliminating toxicity within the permit term (five years) or reducing
- 11 discharge of nutrients to surface and groundwater.
- 12 • Long term solutions and contingencies. Proposals must address what new
- 13 actions will be taken if the project does not meet goals and how the project
- 14 will be sustained through time.
- 15 • Accountability. Proposals must set milestones that indicate progress
- 16 towards goals stated as above in "purpose."
- 17 • Monitoring and reporting. Description of monitoring and measuring
- 18 methods, and information to be provided to the Water Board. Monitoring
- 19 points must be representative but may not always be at the edge-of-farm so
- 20 long as monitoring results demonstrate water quality improvement and the
- 21 efficacy of a project. In addition, monitoring must 1) characterize and be
- 22 representative of discharge to receiving water, 2) demonstrate project
- 23 effectiveness, 3) and verify progress towards water quality improvement
- 24 and pollutant load reduction,

13 Project proposals will be evaluated by a Technical Advisory Committee (TAC)
14 comprised of: Two researchers or academics skilled in agricultural practices
15 and/or water quality, one farm advisor (NRCS or RCD), one grower
16 representative, one environmental representative, one environmental justice or
17 environmental health representative, and one Regional Board staff. The TAC must
18 have a minimum of five members to evaluate project proposals and make
19 recommendations to the Executive Officer. The Executive Officer has discretion
20 to approve any project after receiving project evaluation results and
21 recommendations from the committee. If the Executive Officer denies approval,
22 the third party group may seek review by the Regional Board. As stated in the
23 NPS Policy, management practice implementation is not a substitute for
24 compliance with water quality requirements. If the project is not effective in
25 achieving water quality standards, additional management practices by individual
26 Dischargers or the third party group will be necessary. (Exh. G, April 6, 2012
27 PRA Documents, pp. 22-23 [Johnston Proposal]; Conditional Waiver, pp. 14-15.)

22 Clearly, the new Condition 11 in the Johnston Proposal is the Shimek Proposal with some
23 changes. For example, both set forth a very similar process for third party groups, and allow for
24 the lowering of tier designation if approved by the Executive Officer. Both also include almost
25 the same exact elements for projects to be evaluated, and both require review by a Technical
26 Advisory Committee that is composed of the same category of individuals, including the "typo"
27 Executive Officer Briggs described (i.e., failed to spell-out NRCS and RCD). (See March 15,
28 2012 Transcript, p. 114:16-20.) Some of the language between the two is verbatim. The

1 similarities between the Shimek Proposal and Johnston Proposal are far too great to be a
2 coincidence.

3 Considering the fundamental principles associated with due process and the prohibition
4 against ex parte communications, it is patently unlawful – not to mention bad policy – for a
5 regional water board’s Executive Officer to serve as a conduit of information between an
6 interested person and a water board member – whether or not such actions were known by the
7 water board member. Providing language that was developed by an interested party to a Board
8 member who may have been trying to develop his own alternative, clearly allowed one party (i.e.,
9 Shimek) to influence the decision maker (i.e., the Central Coast Water Board) outside the
10 presence of opposing parties. Notably, Shimek could have presented the Shimek Proposal as part
11 of his 24 minute presentation on March 14, 2012, but did not. (See March 14, 2012 Transcript,
12 pp. 260:11-276:24.) Instead, it came in by the back door.

13 Because of the improper ex parte communication, the Central Coast Water Board’s
14 adoption of the Conditional Waiver and MRP Orders was illegal and must be set aside in its
15 entirety. When an improper ex parte communication occurs and the APA is violated, the
16 agency’s action must be invalidated or reversed. (*Dept. of Alcoholic Beverage Control v.*
17 *Quintanar* (2006) 40 Cal.4th 1, 17; see *Rondon v. Alcoholic Beverage Control Appeals Bd.*
18 (2007) 151 Cal.App.4th 1274, 1290 [“... based on the violation of statutory protections designed
19 to ensure due process and a fair hearing, we conclude that ‘reversal of the Department’s order is
20 required.’ [citation omitted.]”].) Accordingly, the State Water Board has no option but to
21 invalidate the Central Coast Water Board’s adoption of the Conditional Waiver and the MRP
22 Orders in their entirety. Because the action is invalid, and due to the circumstances that require
23 its invalidation, Petitioners request that the State Water Board utilize its authority to further
24 consider this matter and adopt a new Conditional Waiver and MRP Orders.

25 **B. The Central Coast Water Board Failed to Properly Consider the Agricultural**
26 **Alternative When it Unlawfully Adopted the Conditional Waiver With Improper**
27 **Amendments**

28 As already discussed above, the Central Coast Water Board acted improperly when it
adopted the Conditional Waiver and MRP Orders due to the prohibited ex parte communication.

1 Further, the Central Coast Water Board's decision to adopt the Johnston Proposal prevented the
2 Central Coast Water Board from properly considering the alternative proposal set forth in New
3 Part E (sometimes referred to by Central Coast Water Board members and staff as the agricultural
4 alternative). The decision to adopt the Johnston Proposal was in large part based on a mistaken
5 belief that the New Part E was not a viable option because it failed to meet "legal standards."
6 Collectively, these two factors prevented the Central Coast Water Board from engaging in open
7 deliberations regarding the merits of the New Part E and its various components. While the
8 Central Coast Water Board was under no legal obligation to adopt or incorporate New Part E,
9 they were legally required to consider, in an open and transparent manner, all of the information
10 properly put before them as part of the administrative process. New Part E was properly
11 presented and deserved fair consideration as part of the Central Coast Water Board's deliberative
12 process.

13 **1. New Part E Was Incorrectly Portrayed as Not Meeting Legal Standards**

14 Throughout this process, the agricultural community worked diligently to develop an
15 alternative that would provide growers in the region with an option between complying with the
16 prescriptive Tier 2 and Tier 3 requirements in the Conditional Waiver, or participating in a third
17 party group that would audit Tier 2 and Tier 3 farms/ranches and would work directly with
18 growers to help develop and implement protective management practices. (See *Comments on*
19 *Addendum to Staff Report for an Updated Conditional Waiver of Waste Discharge Requirements*
20 *for Irrigated Agricultural Waste Discharges, Draft Agricultural Order No. R3-2011-0006;*
21 *Evaluation of New Information Provided by Agricultural Industry Representatives on March 17,*
22 *2011 and May 4, 2011*, letter submitted to Mr. Jeffrey S. Young, Chair, from Somach Simmons &
23 Dunn on behalf of the Farmers for Water Quality Coalition⁶ (Aug. 1, 2011) (Farmers
24 August 2011 Comments and Evidence), p. 4.) Based on numerous comments received from
25 Central Coast Water Board members, Central Coast Water Board staff and others, the agricultural
26 community revised its alternative, which ultimately culminated in New Part E. (March 14, 2012

27 _____
28 ⁶ The Farmers for Water Quality Coalition is an informal coalition of agricultural organizations, including all of the
Petitioners.

1 Transcript, pp. 155:19-25, 160:16-24.) However, despite these diligent efforts, the Central Coast
2 Water Board staff repeatedly discounted the agricultural alternative because it did not include the
3 same prescriptive requirements as contained in the then pending Central Coast Water Board draft
4 order. (Staff Addendum, pp. 6-8.) And, Central Coast Water Board staff incorrectly
5 characterized the agricultural alternative as inappropriately allowing third party groups. (Staff
6 Addendum, p. 7.)

7 As explained exhaustively in the Farmers August 2011 Comments and Evidence, the
8 Central Coast Water Board's staff addendum mistakenly characterized the Central Coast Water
9 Board's authority under Water Code section 13269, and the State Water Board's position with
10 respect to the value and legality of third party groups in implementing waivers and other nonpoint
11 source regulatory vehicles. (Farmers August 2011 Comments and Evidence, pp. 5-8; see *In the*
12 *Matter of the Petitions of Agricultural Water Quality Coalition, et al.* (Jan. 22, 2004),
13 Order WQO 2004-0003, pp. 9-10.) The Staff Addendum also claimed that the agricultural
14 alternative was not consistent with the state's Nonpoint Source Policy. Again, complete
15 responses to the Staff Addendum's allegations were provided in the Farmers August 2011
16 Comments and Evidence.

17 Even though Petitioners disagreed with the Staff Addendum's legal characterization of the
18 agricultural alternative that was presented on March 17, 2011, and as revised on May 4, 2011,
19 Petitioners and other agricultural organizations continued to strive to address Central Coast Water
20 Board staff's concerns. This resulted in the New Part E that was presented on March 14, 2012.
21 In its response to New Part E, Central Coast Water Board staff commented before the Central
22 Coast Water Board that, "the language and the approach does not meet the legal standard. We
23 talked to our attorney about this last night and this morning." (March 15, 2012 Transcript,
24 p. 52:15-17.) However, in subsequent comments provided to the Central Coast Water Board from
25 legal counsel, her legal concerns (although not agreed upon by Petitioners) were with respect to
26 proposed Conditional Waiver changes unrelated to New Part E.

27 Specifically, Counsel McChesney conveyed legal concerns with proposed changes that
28 would have incorporated compliance schedule provisions into requirements for complying with

1 water quality standards, and proposed changes with respect to providing the Farm Plan to Central
2 Coast Water Board staff upon request. (March 15, 2012 Transcript, pp. 53:3-55:21, 57:1-12.)
3 Neither of these issues is relevant to New Part E. When discussing New Part E, Counsel
4 McChesney commented that there was “great improvement” but that some areas could be
5 “clarified better.” (March 15, 2012 Transcript, p. 58:12-15.) A statement with respect to better
6 clarification does not support staff’s statement that New Part E “does not meet the legal
7 standard.”

8 Furthermore, staff provided significant other comments on New Part E, but none
9 explained why, in their opinion, New Part E was not consistent with Water Code section 13269 or
10 other applicable statutory authority. (See, e.g., March 15, 2012 Transcript, pp. 46:23-48:10,
11 50:7-15, 52:6-14.)

12 Yet, despite the lack of a clear explanation as to why New Part E was unlawful, Central
13 Coast Water Board members were left with the perception that they could not adopt New Part E
14 because it was fundamentally flawed. (See, e.g., March 15, 2012 Transcript, p. 130:1-8
15 [“MR. JEFFRIES: I have mixed emotions. I was really in favor after I heard all the testimony
16 yesterday ask what the Ag presented and all the testimony. I was really -- after I heard all the
17 testimony because I'm the type of person -- it's a public hearing. I like to hear all the information
18 before I make a decision. I was really leaning toward the Ag Proposal, and then the legality issues
19 came up.”].) Consequently, the Board members grabbed onto the Johnston Proposal as if it was a
20 life preserver instead of properly considering New Part E.

21 2. The Johnston Proposal Deflected Proper Consideration of New Part E

22 Besides being left with the impression that New Part E was legally not a viable option, the
23 Johnston Proposal gave the Central Coast Water Board members an “out” from properly
24 considering New Part E. (See, e.g., March 15, 2012 Transcript, p. 117:6-13 [“Well, I do
25 appreciate this last conceptual and also very well-defined and spelled-out opportunity to open the
26 door to the intent New Part E. So I really appreciate that language, and I believe – and I'm glad to
27 know that there was time for Staff and Mr. Briggs and Frances McChesney to also consider the
28 language. Knowing that, I would like to propose that we accept those suggest revisions

1 wholesale.”]; p. 101:14-19 [“... I am not in favor of going through the con list and trying to work
2 that in terms of the Ag Alternative. I am in favor of taking the language that I saw that you
3 worked on, I think that that has merit. And I'd like to see that offered up and brought into the
4 recommendation.”].)

5 Unfortunately, this easy-out happened without any comment or feedback from those
6 subject to the Conditional Waiver. As discussed above, much of Condition 11 came directly out
7 of the Shimek Proposal. Presumably then, Shimek supported the concept that was ultimately
8 adopted. Central Coast Water Board staff also appear to have had sufficient opportunity to
9 review and consider the merits of the Johnston Proposal, including Condition 11. (See, e.g.,
10 March 15, 2012 Transcript, p. 114:8-9, 12-14, p. 117:10-12.) However, because the Johnston
11 Proposal, including its new Condition 11, were presented after the close of public comments,
12 agricultural dischargers and other members of the public were given no opportunity to comment
13 on the merits of these changes.

14 Substantively, the Johnston Proposal shifts consideration of third party groups and their
15 role in this process to a Technical Advisory Committee and the Executive Officer to be
16 determined at a later date. Its most significant change was to add Condition 11 to the Conditional
17 Waiver. (Conditional Waiver, pp. 14-15.) Condition 11 was portrayed as a “great compromise”
18 that would provide a process for evaluating proposals by third party groups, including potentially
19 the third party program established in New Part E. (March 15, 2012 Transcript, p. 116:7-15,
20 132:4-5.) However, the language of Condition 11 suggests that a program like the one articulated
21 in New Part E would not qualify for approval because it appears to be more project oriented.
22 (Conditional Waiver, p. 14 [“... Projects will be evaluated for, among other elements: ...”].)
23 Specifically, the criteria for evaluation of projects submitted under this provision severely limit
24 the type of third party program that could be approved. For example, an approvable project must
25 include monitoring results that demonstrate water quality improvement. An approvable project
26 must also demonstrate that it has a reasonable chance of eliminating toxicity within five years or
27 reducing discharge of nutrients to surface and groundwater. Both of these requirements may be
28 appropriate for water quality improvement projects; however, they are not applicable to third

1 party audit programs like that proposed in New Part E, nor do they promote a coalition approach
2 for implementing the goals of the Conditional Waiver. Had the Johnston Proposal been available
3 to all members of the public for review and comment as part of the public hearing, the Central
4 Coast Water Board may have gained insight into the practical application, or impractical
5 application, of Condition 11 before it was adopted.

6 Furthermore, a last minute effort by one board member to engage in a discussion with
7 respect to the differences between New Part E and Condition 11 was thwarted because other
8 Board members argued that it would be unfair to stakeholders to have that discussion. (March 15,
9 2012 Transcript, pp. 142:15-144:25.) In other words, it was okay to adopt language developed
10 outside of the transparent, public process but it was not okay to allow a public discussion with
11 respect to the differences between the Johnston Proposal and agriculture's publicly-presented
12 New Part E. Due to the improper actions of many, New Part E did not receive appropriate and
13 deliberate consideration by the Central Coast Water Board.

14 **C. Conditional Waiver and MRP Orders Contain a Number of Inappropriate and**
15 **Unsupported Provisions**

16 Petitioners challenge a number of the requirements contained in the Conditional Waiver
17 and attendant MRP Orders. For some of these requirements, they are improper because they do
18 not comply with the law. For others, they are not supported by proper findings. And yet for
19 others, they were improperly adopted because the language of the provision is not consistent with
20 the Central Coast Water Board's actual understanding of their impact. To officially address the
21 specifically identified challenged provisions and to avoid duplication of argument, Petitioners
22 have grouped them according to their primary legal deficiency for purposes of this Statement of
23 Points and Authorities.

24 As a preliminary matter, Petitioners take issue with the structure of the Conditional
25 Waiver and MRP Orders as a whole. The Conditional Waiver as adopted includes 43 initial
26 findings and an additional 140 findings in Attachment A, which is incorporated into the
27 Conditional Waiver via Finding 43 in the Conditional Waiver. (Conditional Waiver, p. 12.)
28 However, the adopted findings are not proper findings under the law.

1 In California, the Central Coast Water Board must support its decisions with specific
2 findings based on evidence in the record. Findings must “bridge the analytical gap between the
3 raw evidence and the ultimate decision or order.” (*Topanga Assn. for a Scenic Community v.*
4 *County of Los Angeles* (1974) 11 Cal.3d 506, 515 (*Topanga*); see also *In Re Petition of the City*
5 *and County of San Francisco, et al.* (Sept. 21, 1995) SWRCB Order No. WQ 95-4, pp. 10, 13.)
6 Further, the findings must be supported by evidence in the record. (*Topanga*, pp. 514-515.) In
7 this case, the findings are numerous, broad and generic, and do not actually explain why the
8 requirements in the Conditional Waiver and MRP Orders are appropriate. Thus, despite the
9 volume of findings, as shown further below, they do not actually bridge any gap between the
10 evidence and the requirements in the Conditional Waiver.

11 **1. The Tiering Criteria in Part A Are Not Associated With Risk to Water**
12 **Quality, and Thus Are Arbitrary**

13 Central to the Conditional Waiver and its requirements is the tiered system proposed in
14 Provisions 13-21. (See Petition, above, section 3, ¶ 4.) The tiering system attempts to equate
15 threat to water quality based on pesticides used, type of crop grown, size of the operation, and
16 physical location as compared to surface waterbodies listed as impaired on the state’s 303(d) list.
17 It fails to recognize or take into account that the implementation of certain management practices
18 and/or certain cultural practices by various commodities may be more effective in protecting
19 water quality than the mere presence of the physical factors identified in the Conditional Waiver.

20 Specifically, under the Conditional Waiver farms/ranches may only be in Tier 1 if they do
21 *not* use chlorpyrifos or diazinon; are located more than 1000 feet from a surface waterbody listed
22 for toxicity, pesticides, nutrients, turbidity, or sediment on the 2010 Clean Water Act
23 Section 303(d) List of Impaired Waterbodies; and, if the farm/ranch grows crops with a high
24 potential to discharge nitrogen to groundwater,⁷ is less than 50 acres, and is not within 1000 feet
25 of a public water system that exceeds drinking water standards for nitrate. Or, if the farm/ranch is
26

27 ⁷ The Conditional Waiver defines crops with a high potential to discharge nitrogen to groundwater to include the
28 following: beet, broccoli, cabbage, cauliflower, celery, Chinese cabbage (napa), collard, endive, kale, leek, lettuce
(leaf and head), mustard, onion (dry and green), spinach, strawberry, pepper (fruiting), and parsley.

1 in a certified program like the Sustainability in Practice (SIP) program and it is approved by the
2 Executive Officer, then it too is categorized as Tier 1. (Conditional Waiver, p. 16.) These criteria
3 are unrelated to water quality because they are not actually related to potential discharges of
4 pollutants of concern. For example, the use of chlorpyrifos or diazinon (or absence thereof) does
5 not automatically determine threat to water quality. There are many agricultural dischargers that
6 use these products and that have no irrigation or stormwater runoff. In those cases, the use of the
7 specified products should not prevent a farm/ranch from being considered Tier 1, which is
8 supposed to represent those operations with the least threat to water quality. Likewise, acreage
9 size (i.e., <50 acres) is also irrelevant. There are probably hundreds of farms/ranches that exceed
10 the 50 acre threshold that are less of a threat to water quality than some small 50 acre parcels.
11 The size and crop type are not determining factors for assessing threat to water quality.

12 In comparison to those farms/ranches in Tier 1, a farm/ranch of any size that uses
13 chlorpyrifos or diazinon, and discharges irrigation or stormwater runoff to an impaired waterbody
14 is automatically designated as Tier 3. This criteria fails to consider the timing of application of
15 the pesticide as compared to when runoff may occur. Thus, it has little correlation to actual threat
16 to water quality. Likewise, categorizing farms/ranches as Tier 3 merely based on crop type and
17 acreage size also has no actual correlation to the threat to water quality. And again, the
18 Conditional Waiver provides no findings that directly support the tier classification as proposed.

19 Also as proposed, the establishment of tiers is somewhat illusory. Specifically,
20 Provision 14 would allow the Executive Officer of the Central Coast Water Board to elevate
21 Tier 1 or Tier 2 dischargers to a higher tier, if the Executive Officer finds the discharger poses a
22 higher threat. However, there are no objective criteria listed to determine when a discharger is to
23 be elevated from one tier to another. Thus, there is nothing in the Conditional Waiver that would
24 provide an agricultural operator and/or landowner with any guidance as to what might trigger
25 their elevation to a higher tier, nor are there any procedural or due process elements included that
26 would allow an agricultural landowner or operator to challenge the Executive Officer's decision
27 before the Central Coast Water Board.

1 Water Code section 13223(a) provides the Central Coast Water Board with the authority
2 to delegate its powers to the Executive Officer with the exception of, among others, the
3 promulgation of any regulation and the issuance, modification, or revocation of any water quality
4 control plan, water quality objective, or waste discharge requirement. The amount of discretion
5 given to the Executive Officer under this provision, and in numerous other provisions within the
6 Conditional Waiver, seemingly delegates to the Executive Officer the authority to revise
7 requirements in the Conditional Waiver. Although revisions to conditional waivers adopted
8 pursuant to Water Code section 13269 are not specifically enumerated in Water Code
9 section 13223(a), revisions to waivers are akin to revisions in waste discharge requirements.
10 Specifically, changing the status of a discharger from a lower tier to a higher tier fundamentally
11 alters the burdens and regulatory requirements placed on that discharger – much like a revision to
12 waste discharge requirements. Considering the potential changing regulatory burden and
13 fundamental due process concerns, such an action should not be delegated to the Executive
14 Officer.

15 Accordingly, the tiering provisions are not based on threat to water quality, are not
16 supported by findings, and therefore are arbitrary. Unless the Petitioners' other remedies are
17 implemented, the State Water Board must vacate the tiering provisions.

18 **2. Provisions 22 and 23 Require Immediate Compliance With Water Quality**
19 **Standards**

20 Provision 22 states, “[d]ischargers must comply with applicable water quality standards,
21 as defined in Attachment A, protect the beneficial uses of waters of the State and prevent
22 nuisance as defined in Water Code section 13050.” (Conditional Waiver, p. 18.) Provision 23
23 states, “[d]ischargers must comply with applicable provisions of the Central Coast Region Water
24 Quality Control Plan (Basin Plan) and all other applicable water quality control plans as identified
25 in Attachment A.” (*Ibid.*) These provisions collectively require immediate compliance with all
26 water quality standards, without due regard for time schedules or other considerations. It also
27 assumes that management practices exist and if utilized will ensure compliance with water quality
28 standards. However, as repeatedly indicated by agricultural specialists and researchers that is not

1 necessarily the case. For example, in testimony provided by Dr. Timothy K. Hartz, Extension
2 Specialist and Agronomist with the University of California, to the Central Coast Water Board at
3 its July 8, 2010, workshop, he stated that, “[t]here are practical limitations on agriculture that will
4 make control of nitrate losses especially concentration based control down to 10 ppm, very
5 difficult or impossible to reach.” (Central Coast Water Board Workshop to Discuss Preliminary
6 Draft Staff Report Recommendations for an Updated Agricultural Order, Public Comments and
7 Alternative (July 8, 2010) (July 2010 Workshop), Audio 4, 40:30.) Dr. Hartz also testified that,
8 “[c]ertain conservation measures discussed to remove discharge from fields such as vegetative
9 ditches and filter strips may have good effectiveness for certain pollutants, but for nitrates they
10 have very limited effectiveness.” (July 2010 Workshop, Audio 4, 38:30.)

11 Similarly, Mr. Michael Kahn, an Irrigation Water Resource Advisor for the University of
12 California Cooperative Extension, testified that, “UC researchers and advisors like myself
13 participate in evaluation and development of practices that can improve farm water quality.
14 However, although we are developing effective practices, these practices can’t be used in every
15 situation.” (Transcript of pertinent part of July 2010 Workshop, attached hereto as Exh. H,
16 p. 9:8-15.)

17 Representatives for agriculture repeatedly raised this as an issue to the Central Coast
18 Water Board. Further, Central Coast Water Board members agreed that they did not expect
19 immediate compliance to occur. “MR. YOUNG: Before I call for a vote on Dr. Hunter’s motion,
20 I just want to say to the Ag community and the public that I certainly don’t expect to see possibly
21 even immediate, you know, water quality changes I know that this is going to take in some
22 regions -- some part of our regions years and years and years to get to where we want to be.”
23 (March 15, 2012 Transcript, p. 137:8-19.) However, Counsel McChesney advised the Central
24 Coast Water Board that changes were not necessary because “. . . compliance with Water Quality
25 Standards means to implement management practices. If they aren’t effective in reducing
26 discharges to meet Water Quality Standards, that they revise or do new management practices.”
27 (March 15, 2012 Transcript, p. 54:1-5.) Counsel McChesney further stated that the same
28 language is in the Central Valley Order. (March 15, 2012 Transcript, p. 54:6-8.)

1 Unfortunately, Counsel McChesney was mistaken. The Central Valley Regional Water
2 Quality Control Board's Order No. R5-2006-0053, *Coalition Group Conditional Waiver of Waste*
3 *Discharge Requirements for Discharges from Irrigated Lands* (June 22, 2006), includes a
4 provision that requires, "[d]ischargers who are participants in a Coalition Group shall implement
5 management practices, as necessary, to improve and protect water quality and to achieve
6 compliance with applicable water quality standards." (Order No. R5-2006-0053, pp. 16-17.) The
7 Central Valley's provision is equivalent to Conditional Waiver Provision 12, which is not being
8 challenged in this Petition. The language in question here, Provisions 22 and 23, are stand-alone
9 provisions. They are not modified by or subject to any additional language that suggests
10 compliance with these provisions is limited by the ability to implement management practices.

11 Recently, the Ninth Circuit Court of Appeals found that receiving water limitations
12 language, similar to the Conditional Waiver provisions cited above, prescribed in an NPDES
13 Permit for municipal storm water discharges in the County of Los Angeles required strict
14 compliance with water quality standards even though language explaining how compliance with
15 those receiving water limitations would be achieved over time (referred to as the "iterative
16 process") was included as part of the NPDES Permit. (See *Natural Resources Defense Council v.*
17 *County of Los Angeles* (9th Cir., July 13, 2011, No. 10-56017), 2011 U.S. App. Lexis 14443,
18 at *42.) The court found that without textual support, the receiving water limitations language
19 was an independent requirement regardless of the iterative language. (*Id.* at **43-44.)

20 Likewise, the Conditional Waiver does not appear to contain any additional, enforceable
21 language that "absolves noncompliance," as was argued (unsuccessfully) in the County of Los
22 Angeles' NPDES Permit. (See *Natural Resources Defense Council v. County of Los Angeles*,
23 *supra*, 2011 U.S. App. Lexis 14443, at **43-44.) While the Conditional Waiver includes a
24 finding that recognizes immediate compliance may be infeasible, and appears to reference
25 provisions of the Conditional Waiver that provide dischargers with additional time to comply,
26 such findings are not enforceable provisions of the Conditional Waiver, and no timetable for
27 achieving compliance appears to specifically apply to Conditions and Provisions 22 and 23. (See
28 Conditional Waiver, Provision 82 (excluding Table 4 milestones and time schedule for

1 compliance from applicability to Conditions and Provisions); Attachment A, Additional Findings,
2 Applicable Water Quality Control Plans and Definitions, ¶ A.2, p. 41; see also Staff Report for
3 Regular Meeting of September 1, 2011, prepared on July 6, 2011, at p. 18, stating, “[t]he
4 milestones, as described in Table 4 of the Draft Agricultural Order are not in of themselves
5 compliance conditions and are not enforceable. They are targets or goals that staff will use to
6 evaluate effectiveness of implementation efforts and progress improving towards water quality.”)

7 In sum, the Conditional Waiver provisions establish stand-alone, independent applicable
8 requirements that discharges must comply with applicable water quality standards and any other
9 relevant provision of the Central Coast Regional Water Quality Control Plan, those provisions
10 apply to all dischargers who operate under the terms of the Conditional Waiver, and the
11 Conditional Waiver requires monitoring and reporting requirements to determine compliance.
12 (See Conditional Waiver at pp. 13, 18; see also MRP Order No. R3-2012-011-01, at p. 1; MRP
13 Order No. R3-2012-011-02, at p. 1; and MRP Order No. R3-2012-011-03, at p. 2.)

14 Accordingly, monitoring data and information reported to the Central Coast Water Board
15 by regulated entities in accordance with the terms of the Conditional Waiver and MRP Orders
16 could create immediate liability and may be used in immediate enforcement actions against
17 dischargers subject to the terms of the Conditional Waiver, even if the discharger is in compliance
18 with all other provisions of the Conditional Waiver.

19 Considering the uncertainty associated with meeting water quality standards immediately,
20 the State Water Board must vacate these provisions from the Conditional Waiver, or modify them
21 to appropriately recognize time is needed to develop and implement management practices in an
22 iterative process.

23 **3. The Conditional Waiver Includes a Number of Provisions That Constitute**
24 **Dictating the Manner of Compliance**

25 As part of this Petition, Petitioners challenge certain provisions because they unlawfully
26 dictate the manner of compliance. Specifically, Conditional Waiver Provisions 31, 39, 40, 80-81,
27 and Tier 3 MRP, Part 7 (Petition, above, section 3, ¶¶ 7, 8, 9, 22, and 37) require agricultural
28 dischargers subject to the Order to comply in a specific manner. Water Code section 13360 states

1 that the Central Coast Water Board may not specify the manner of compliance with orders of the
2 Central Coast Water Board, but rather that the discharger may comply with the order in any
3 lawful manner. As applied to the Conditional Waiver, the Central Coast Water Board may adopt
4 waiver conditions that identify what must be done, however, the Central Coast Water Board
5 cannot prescribe the methods used to accomplish that objective.

6 For example, Conditional Waiver Provision 31 (Petition, above, section 3, ¶ 7) requires
7 the installation and maintenance of backflow prevention devices to any irrigation system that is
8 used to apply fertilizers, pesticides, fumigants, or other chemicals. It also requires that this be
9 completed for all irrigation systems by October 1, 2012. Although this may be an appropriate
10 practice, the Central Coast Water Board does not have the authority to require agricultural
11 dischargers to implement such specific practices. At most, the Central Coast Water Board can
12 require that irrigation systems be operated in a manner that is protective of water quality, but it
13 cannot dictate how water quality should be protected.

14 With respect to Conditional Waiver Provisions 39, 40, 80-81, and Tier 3 MRP, Part 7
15 (Petition, above, section 3, ¶¶ 8, 9, 22, and 37), the Central Coast Water Board is attempting to
16 dictate buffers between fields and cropland. Collectively, these provisions require maintenance
17 of naturally occurring riparian vegetative cover, aquatic habitat, and for Tier 3 growers, 30 foot
18 buffers. By requiring growers to maintain riparian vegetative cover and 30 foot buffers, the
19 Central Coast Water Board is dictating how someone should protect water quality. Instead of
20 dictating such specific practices, the Central Coast Water Board could have required that
21 management practices to protect from sediment and erosion be implemented – leaving the choice
22 of practice up to individual agricultural operations.

23 Of particular concern is the requirement for a water quality buffer plan that includes a
24 minimum 30 foot buffer, or equivalent if approved by the Executive Officer. The 30 foot buffer
25 requirement constitutes a governmental regulation that may deprive agricultural landowners near
26 streams of the economic benefit of their private property. The state and federal Constitutions
27 guarantee real property owners just compensation when their land is taken for public use.
28 (*Allegretti & Co. v. County of Imperial* (2006) 138 Cal.App.4th 1261, 1269.) Regulatory takings,

1 though not direct appropriation or physical invasion of private property, are compensable under
2 the Fifth Amendment. (*Lingle v. Chevron U.S.A. Inc.* (2005) 544 U.S. 528, 537.) Courts
3 examining regulatory takings challenges generally analyze three factors to determine whether a
4 taking has been effected, including the economic impact of the regulation on the claimant, the
5 extent to which the regulation has interfered with distinct investment-backed expectations, and
6 the character of the governmental action. (*Penn Central Transp. Co. v. City of New York* (1978)
7 438 U.S. 104.) The requirements in the Conditional Waiver relating to riparian and aquatic
8 habitat protection and the establishment of 30 foot buffers would likely be considered a
9 regulatory taking.

10 The economic impact of 30 foot buffers on Tier 3 farms/ranches is potentially significant
11 given that productive farmland will be forced out of production as a result of the buffer
12 requirements. In addition, this requirement that a landowner or operator essentially dedicate
13 portions of productive agricultural land to the Central Coast Water Board unreasonably impairs
14 the value or use of the property. The land subject to the 30 foot requirement is most likely
15 dedicated to the production of agriculture, a use that would be completely eliminated by these
16 regulatory requirements. Such a buffer also severely interferes with the investment-backed
17 expectations of the landowners who operate under the assumption that these buffers and riparian
18 corridors would be put to productive agricultural use. By depriving landowners of all
19 economically beneficial use of land designated as a riparian area or buffer, the proposed
20 regulation will severely interfere with the investment-backed expectations of landowners.

21 Finally, while the proposed regulation may not constitute a typical physical invasion or
22 appropriation of land, the proposed regulation would effectively appropriate these riparian areas
23 to the Central Coast Water Board for a public use. Even if no such appropriation is found, the
24 severity of the economic impact and the devastation of the investment-backed expectations of the
25 landowners are sufficient to demonstrate a regulatory taking.

26 Accordingly, the State Water Board must vacate the Conditional Waiver provisions
27 identified in section 3 of this Petition in paragraphs 7, 8, 9, 22, and 37 because they improperly
28 dictate the manner of compliance, and may constitute a regulatory taking.

1 **4. Nutrient-Related Requirements for Teir 2 and Tier 3 Farms/Ranches Are**
2 **Inappropriate**

3 Parts E and F of the Conditional Waiver and corresponding Monitoring and Reporting
4 Requirements in the Tier 2 MRP and Tier 3 MRP include significant new requirements applicable
5 to Tier 2 and Tier 3 farms/ranches. Of particular concern are the requirements associated with
6 determining nitrate hazard, certification and submittal of elements of an Irrigation and Nutrient
7 Management Plan (INMP), and application of nitrogen balance ratios. (Section 3, §§ 12, 13, 15,
8 18, 19, 20, 21, 29, 32, 33, and 36.) In general, the approach in the Conditional Waiver looks to
9 individual farms/ranches to determine if there is a risk of nitrate loading to the groundwater.
10 (Conditional Waiver, pp. 28.) To determine risk, agricultural dischargers are required to use one
11 of two methodologies: (1) a Central Coast Water Board staff developed methodology contained in
12 Table 4 of Tier 2 MRP and Tier 3 MRP; or (2) the Nitrate Groundwater Pollution Hazard Index
13 developed by the University of California Division of Agriculture and Natural Resources
14 (UCANR). (Tier 2 MRP, p. 11; Tier 3 MRP, p. 11.) While UCANR's approach might be slightly
15 better, both are inappropriate for such determinations in a regulatory order that has consequences
16 for noncompliance. Based on the determined risk from these methodologies, Tier 2 and Tier 3
17 farms/ranches are subject to additional requirements. These additional requirements are
18 problematic because they stem from the inappropriate risk determination, and because they are
19 unlawful in their own right.

20 **a. Nitrate Loading Risk Factor Determinations Are Arbitrary**

21 First, with respect to the nitrate loading risk factor criteria and risk level calculation
22 methodology set forth in Table 4 of the Tier 2 MRP and Table 4 of the Tier 3 MRP, it is woefully
23 inadequate. It is not consistent with the nitrate Hazard Index Concept developed by the UCANR.
24 For example, it identifies three criteria for determining nitrate loading risks. (Tier 2 MRP,
25 pp. 21-22; Tier 3 MRP, pp. 21-22.) The three factors include crop type, irrigation system type,
26 and irrigation water nitrate concentration. Missing from the Central Coast Water Board's
27 proposed criteria is a criterion related to soil type. As indicated in testimony, the elimination of
28 soil is contrary to any appropriate approach for determining risk.

1 [DR. LETEY:] I looked at Appendix B, Table 4, which contains the proposed
2 nitrate loading risk factor criteria. It completely guts the University of California
3 hazard index. The soil factor is completely eliminated. That's just like staying the
4 body doesn't need the heart or lungs

5 Two major factors which contribute to the loading is --one is denitrification,
6 which completely removes nitrogen from the system

7 The other is the water movement through the soil, which carries the nitrogen.

8 Those are the two main factors on the load. Both of those are intimately tied to the
9 soil profile characteristics, and you cannot come up with a reliable index by
10 neglecting the soil. (March 2011 Transcript, pp. 168:21-169:15.)

11 Further, in supporting evidence for the Hazard Index Concept, the UCANR identifies soil and
12 sediment texture as a key factor in the hazard index. The UCANR specifically found that NO₃
13 (nitrate) concentrations were not significantly correlated to the estimated amount of nitrogen
14 fertilizer, and concentrations, therefore, "were most likely affected by factors such as soil and
15 sediment texture." (Supporting Evidence for the Nitrate Groundwater Pollution Hazard Index
16 Concept, Attachment 3, p. 2.) In the same document, the UCANR also notes as follows:

17 Letey et al. (1977) reported the results of an extensive investigation of agricultural
18 tile drain effluents in California. The annual total mass of the NO₃ collected in tile
19 drainage water was inversely correlated to the highest percent of clay in the soil
20 above the tile depth. This is consistent with the hypothesis that clay layers in the
21 soil reduce the hazard index by restricting the rate of water flow and/or causing
22 denitrification. Other studies in California have shown that textural changes in
23 profiles can have significant effects on NO₃ loss below the root zone (Lund et al.
24 1974, Pratt et al. 1972). (Supporting Evidence for the Nitrate Groundwater
25 Pollution Hazard Index Concept, Attachment 3, p. 2.)

26 Considering the UCANR's evidence with respect to soil characteristics and effects on NO₃
27 concentrations, a nitrate loading risk factor determination that ignores soil types and
28 characteristics is seriously flawed. Also, the UCANR does not include irrigation water
concentration in its hazard index concept. Instead, it consists of an overlay and index using soils,
crops and irrigation systems. Accordingly, the Central Coast Water Board's inclusion of
irrigation water nitrate concentration is inconsistent with the UCANR's hazard index concept and
is not supported by evidence in the record.

Second, with respect to the UCANR's nitrate hazard index, although this methodology is
scientifically superior to the Central Coast Water Board's methodology, it too has fundamental
flaws. Most importantly, the purpose of the nitrate Hazard Index Concept developed by the

1 UCANR for Water Resources is “[t]o provide information for farmers to voluntarily target
2 resources for management practices that will yield the greatest level of reduced nitrogen
3 contamination potential for groundwater by identifying the fields of highest intrinsic
4 vulnerability.” (See Hazard Index Concept, Attachment 2, p. 2.) In other words, it is a guideline
5 tool – not a regulatory tool. It was not developed, nor was it intended to be used, for regulatory
6 purposes. Further, its use as a regulatory tool is improper and unlawful for it has not been
7 adopted into the Basin Plan pursuant to relevant Water and Government Code statutory
8 provisions. (See Wat. Code, §§ 13240, 13242, 13244, 13245; see also Gov. Code, § 11353(b).)
9 Moreover, like the Central Coast Water Board’s, it is too simplistic to accurately determine
10 nitrate loading risk to individual farms/ranches. The most important factor in determining risk is
11 site-specific management practices, which are not comprehensively captured in either
12 methodology. (March 17, 2011 Transcript, p. 171:12-17 [“DR. LETEY: . . . -- the thing that’s
13 going to dictate what goes down is the farmer management. And we can, and should, monitor
14 and focus attention on monitoring the farmer management. And -- and induce those management
15 practices that lead to reduced loading.”].)

16 Next, there are no findings in the Conditional Waiver that properly support the use of
17 either methodology for the Central Coast Water Board’s regulatory purposes, and the information
18 to be obtained through the methodologies is not relevant to site-specific risk. Accordingly, to
19 require agricultural dischargers to determine nitrate loading risk for Tier 2 and Tier 3
20 farms/ranches is inappropriate.

21 **b. INMP Elements and the Reporting Thereof Are Improper**

22 Petitioners do not oppose the need for agricultural dischargers to have and implement
23 irrigation and nutrient management plans. Irrigation and nutrient management plans serve an
24 important role to ensure that proper irrigation and nutrient management occurs to protect water
25 quality. However, the Conditional Waiver includes impossible requirements and then makes
26 them public. (See Conditional Waiver, p. 24-25; Tier 3 MRP, p. 19.) Specifically, the Tier 3
27 MRP includes 11 different elements for the required INMP, which includes the following
28 4 elements that would need to be publicly reported: (a) identification of crop nitrogen uptake

1 values for use in nutrient balance calculations; (b) annual balance of nitrogen applied per crop as
2 compared to typical crop nitrogen uptake (nitrogen balance ratio); (c) annual estimation of
3 nitrogen loading to groundwater and surface water; and, (d) annual evaluations of reductions in
4 nitrate loading. (Tier 3 MRP, pp. 18-19.) The Tier 3 MRP also requires agricultural dischargers
5 with Tier 3 farms/ranches to submit an INMP Effectiveness Report that measures progress
6 towards improving groundwater and reducing loadings. This report must be prepared by a
7 registered professional engineer, professional geologist, certified Crop Advisor, or similarly
8 qualified professional. (Tier 3 MRP, p. 19.)

9 The information required to be reported with respect to the INMP, including the
10 Effectiveness Report, is highly speculative. First, as testified to by many, including the California
11 Department of Food and Agriculture, most crops grown in the Central Coast have no
12 scientifically valid uptake values. (See, e.g., May 4, 2011 Transcript, p. 450:18-25
13 [“MR. HARD: This regulation as it currently stands, that’s in all tiers, would have growers trying
14 to figure out what the nutrient uptake values are. There are 52, by our count, crops grown in this
15 region, give or take one [or] two. Of those 52 crops only two have ever had scientifically
16 evaluated uptake values. And those two that have been done are not scientifically valid.”].)

17 Second, as is discussed further below, compliance (or progress towards) the nitrogen
18 balance ratios contained in the Conditional Waiver is likely unrealistic. For crops such as cool
19 season vegetables, the Central Coast Water Board presumes that producers can effectively and
20 efficiently grow these types of crops by applying only the exact amount of nitrogen that the crop
21 takes up. (Conditional Waiver, p. 30.) However, there is no information or findings in the record
22 that support this requirement. To the contrary, the lack of scientifically evaluated and valid
23 information with respect to crop nitrogen uptake makes it impossible for producers to actually
24 calculate a ratio for their farms/ranches.

25 Third, as testified to by Professor John Letey, it is not possible to quantify the load
26 discharged to surface water and groundwater. (March 17, 2011 Transcript, pp. 170:18-171:3
27 [“DR. LETEY: . . . the main thing to understand, because very often we are hearing nitrate load
28 and concentration being presented synonymously. They are not. The nitrate load is the

1 concentration times the water flow. And what we can measure, the concentration, we cannot
2 quantitatively measure water flow. That is extremely difficult, very expensive and, therefore, we
3 cannot quantitatively measure the thing we really want to have. What we'd like to do is quantitate
4 the load, but we can't do it."].) Supporting Professor Letey's professional opinion is that of
5 Professor Marc Los Huertos. With respect to the INMP requirements, he testified as follows:

6 The nitrate management plan in the Draft Order is so vague. It's so hard to
7 interpret what it means, that the implementation of those two things alone will
8 create an avalanche of reports that the Staff are not one -- they are very qualified in
9 a lot of areas, but interpreting agronomic use of agricultural products, like
10 fertilizer, and making a reasonable assessment that the pollution load, based on the
11 reports is impossible. I cannot do it. I don't know anyone that can do it from the
12 academic standpoint, and I know, in terms of a regulatory context, you're going to
13 generate a lot of paperwork to prioritize a lot of farms, people are going to make a
14 lot of visits and they're going to say, what happened? These reports didn't tell us
15 anything. And I'm absolutely sure of that. (March 14, 2012 Transcript, pp. 214:25-
16 215:15.)

17 Fourth, it is impossible to evaluate and quantify reductions in load considering that
18 producers are unable to quantify loads in the first place.

19 Due to the speculative nature with respect to the information requested as part of the
20 INMP, it is inappropriate to then require that it be publicly-reported annually. It has no value in
21 determining potential impacts to water quality and could be misused, or misinterpreted.
22 Accordingly, the specific requirements for the INMP, and these publicly-reported elements must
23 be vacated by the State Water Board. Further, Petitioners oppose any mandate that makes INMPs
24 a public document. Such information is proprietary and not appropriate for release in the public
25 domain.

26 **c. Certification of INMPs Is Impractical and An Unnecessary Expense**

27 The Conditional Waiver further requires that the INMP be certified by a Professional Soil
28 Scientist, Professional Agronomist, or Certified Crop Advisor. (Conditional Waiver, p. 29; Tier 3
MRP, p. 17.) While many growers consult and work with such professionals, it is not necessary
for an INMP to be certified in order to be an effective management tool. Many growers have in-
depth practical experience as well as formalized training in irrigation and nutrient management
techniques and are able to develop effective INMPs without professional assistance. Also, the
requirement creates an unnecessary costly burden.

1 **d. Nitrogen Balance Ratios Are Improper Regulatory Compliance**
2 **Standards**

3 The Conditional Waiver requires Tier 3 dischargers to report progress towards achieving
4 certain nitrogen balance ratios. (Conditional Waiver, pp. 29-30.) As indicated above, the
5 nitrogen balance ratios as contained in the Conditional Waiver are improper. By mandating a
6 specific ratio, the Conditional Waiver is over-simplifying crop nutrient needs as compared to the
7 amount of nutrients (i.e., nitrogen) applied. For example, while a nitrogen balance ratio of 1.2
8 may sound appropriate, in reality it is not always possible or practical. (See Comment Letter
9 dated Jan. 3, 2011, from California Strawberry Commission to Central Coast Water Board
10 regarding Draft Order No. R3-2011-0006, Conditional Waiver of Waste Discharge Requirements
11 for Discharges From Irrigated Lands and p. 1 to Attachment 5 thereto, "Dynamics of Nitrogen
12 Availability and Uptake" ["The temporal supply of plant available N must match the temporal N
13 demand by the crop to achieve the goal of 'provide adequate, but not excessive levels of soil
14 nitrogen throughout the growing season.' Achieving this goal may not always be possible or
15 practical, but one should strive to do so to the extent possible."].) Further, for most crops in the
16 Central Coast, insufficient information exists to determine if the adopted ratios are appropriate
17 and valid.

18 Moreover, compliance with such ratios does not correlate to the actual threat to water
19 quality. The largest threat to groundwater is more closely related to intrinsic vulnerability
20 associated with physical factors versus actual agricultural operations. Basing nitrogen
21 management on a strict requirement on the amount of nitrogen applied per crop fails to take into
22 account the many factors that influence the potential for nitrogen leaching, such as soil type,
23 timing of application, method of application, etc. It is undoubtedly more important to apply
24 nitrogen at the correct time for the crop and in the correct manner than to focus a grower's efforts
25 on the total amount applied. For this reason, the development and implementation of
26 management practices that minimize nitrogen leaching would provide better management of
27 nitrogen leaching than N ratios that fail to consider a number of other factors. Accordingly, the
28 requirements for showing progress towards meeting nitrogen balance ratios are arbitrary and

1 capricious. Further, the Conditional Waiver and its record fail to include any findings or
2 supporting evidence that indicate the ratios proposed are appropriate for rotational and annual
3 crops. Many commodity organizations are currently conducting research to collect information
4 necessary for determining nutrient sufficiency needs for successful production across all varieties,
5 production systems, and locations. Without a more complete research basis for establishing such
6 requirements, they are arbitrary and unlawful.

7 **5. Monitoring and Technical Report Requirements Exceed Central Coast Water**
8 **Board's Authority**

9 Parts E and F include a number of provisions that would require monitoring and submittal
10 of technical reports for Tier 2 and Tier 3 farms/ranches. (Section 3, §§ 11-21, 27-37.) These
11 proposed provisions are inappropriate as they exceed the Central Coast Water Board's authority
12 to require such information and/or require the submission of confidential, proprietary information.
13 In general, the Central Coast Water Board's authority to require monitoring and technical reports
14 is not without constraints. Under section 13267 of the Water Code, the legal authority to require
15 such information, the Central Coast Water Board has the burden of explaining to the discharger
16 the need for the information and for identifying substantial factual evidence that supports
17 requiring the reports, i.e., demonstrates a nexus between the requested information and the
18 Central Coast Water Board's statutory authority to investigate water quality. Further, the burden,
19 including cost, of providing the information must be reasonable in light of the Central Coast
20 Water Board's stated need for the information. (Wat. Code, § 13267(b)(1).) Mere assertions that
21 such a nexus exists are insufficient to support requests pursuant to Water Code section 13267.
22 Most of the monitoring and technical report requirements in Parts E and F, as well as the specific
23 groundwater and individual surface water monitoring requirements in the MRP Orders, fail in
24 whole or part to meet the Central Coast Water Board's statutory burden. Further, many of the
25 monitoring and technical report requirements include practical constraints that make compliance
26 difficult if not impossible for many dischargers.

1 **a. Conditional Waiver and MRP Orders Improperly Require Individual**
2 **Groundwater Monitoring**

3 The Conditional Waiver and MRP Orders require all agricultural dischargers to sample
4 private groundwater wells on each farm/ranch. (Section 3, ¶ 27.) The stated purpose for
5 requiring such information is so that, “the Central Coast Water Board can evaluate groundwater
6 conditions in agricultural areas, identify areas at greatest risk for waste discharge and nitrogen
7 loading and exceedances of drinking water standards, and identify priority areas for nutrient
8 management.” (Conditional Waiver, p. 23; see Tier 1 MRP, pp. 8-9; Tier 2 MRP, pp. 8-9; Tier 3
9 MRP, pp. 8-9.) We have concerns with this requirement for several reasons. First, sampling
10 information from private domestic wells and agricultural supply wells may be useful for
11 management purposes; however, such information is not appropriate for determining compliance
12 with the Conditional Waiver or prioritizing Central Coast Water Board actions. For example,
13 levels of nitrate in such wells may be unrelated to current management activities occurring on the
14 farm/ranch. Current operations of the farm/ranch in question may be implementing all known
15 management practices that are designed to protect groundwater from nitrate leaching. Yet, nitrate
16 concentrations in the well sample might suggest otherwise. As indicated by Dr. Letey,
17 “. . . measuring that concentration is not even an index whether the farm management is good or
18 bad, for the purposes that we’re intending it, and that is, to reduce nitrate load to the groundwater.
19 Therefore, dictating multitudes of dollars that are required to measure this concentration, which
20 has really almost no meaning to what we’re trying to achieve, I consider economic folly.”

21 (March 17, 2011 Transcript, p. 170:10-17.)

22 Second, the burden of providing the information is not reasonable as compared to the need
23 for the information. As indicated by Dr. Letey, the information obtained from sampling private
24 domestic and agricultural irrigation wells will not provide the Central Coast Water Board with
25 useful information regarding farm/ranch management. (March 17, 2011 Transcript,
26 p. 170:10-17.) Because the information is meaningless, the burden associated with obtaining and
27 reporting the information is not reasonable, and the Central Coast Water Board’s requirement
28 fails to comply with the dictates of Water Code section 13267.

1 Accordingly, the State Water Board must vacate the requirements for individual
2 groundwater monitoring identified in section 3, paragraph 27 of this Petition.

3 **b. Conditional Waiver and Tier 3 MRP Improperly Require Individual**
4 **Surface Water Discharge Monitoring**

5 Under the Conditional Waiver and Tier 3 MRP, Tier 3 farms/ranches are subject to
6 individual surface water discharge monitoring requirements. (Conditional Waiver, p. 29; Tier 3
7 MRP, pp. 14-17; see section 3, §§ 16, 17, 35.) These are unnecessary requirements that exceed
8 the Central Coast Water Board's authority under Water Code section 13267. Section 13267
9 requires that the Central Coast Water Board's request for technical information be reasonable as
10 compared to the burden of compiling the information, including the cost. Further, the request for
11 such information must be supported by evidence as to why the information is necessary.

12 In this case, the Conditional Waiver and Tier 3 MRP collectively fail to identify why such
13 information is necessary from Tier 3 farms/ranches, and fail to identify evidence in the record that
14 supports such a requirement for all Tier 3 farms/ranches. In particular, as discussed in
15 section III.C.1 above, the criteria for categorizing farms/ranches into Tier 3 are arbitrary and are
16 not related to an individual farm/ranch's actual threat to surface water quality. Thus, the
17 Conditional Waiver assumes that farms/ranches meeting Tier 3 criteria are a threat to surface
18 water quality to such an extent that individual discharge monitoring is required. However, there
19 is no specific evidence that links the proposed criteria to actual water quality threats and therefore
20 there is no evidence to support the requirement for individual discharge monitoring.

21 Moreover, the burden of complying with this requirement is not reasonable in comparison
22 to the Central Coast Water Board's need for the information. The Conditional Waiver does not
23 include any specifically articulated findings that explain why such individual surface water
24 monitoring is necessary. At most, the Conditional Waiver's Attachment A includes a generic
25 finding that merely states all technical and monitoring reports contained in the Conditional
26 Waiver and MRP Orders are reasonable because those subject to the Order discharge waste from
27 irrigated lands. (Conditional Waiver, Attachment A, p. 43.) This generic finding does not
28 constitute a proper finding that bridges the analytical gap between the evidence and the Order.

1 (Topanga, supra, 11 Cal.3d at p. 515.) Nor does it provide a proper explanation as to the Central
2 Coast Water Board's need for the information. Without this, the Central Coast Water Board has
3 failed to comply with Water Code section 13267(b)(1). Further, evidence in the record indicates
4 that the individual surface water monitoring being required is useless to characterize on-farm
5 water quality.

6 DR. LOS HUERTOS: . . . The assumption is that we can use on-farm monitoring
7 to characterize water quality, and then use that to prioritize which farms to visit
8 and then, maybe, make some enforcements of the problem areas. The problem is
9 that the on-farm monitoring, four samples per year, cannot adequately describe
10 water quality on the farm. It doesn't describe water quality. It doesn't describe
11 practice effectiveness and it doesn't describe any kind of trend analysis. To do
those things, it's a very different kind of sample. A sampling that kind of -- I like
to use the student, it costs 30- or 40,000 dollars a year. You have your APs, and
you have your statistics, anthem program, et cetera, et cetera." (March 14, 2011
Transcript, p. 214:6-23.)


12 Accordingly, the requirements in the Conditional Waiver and Tier 3 MRP for individual
13 surface water monitoring are unlawful and must be vacated.

14 **IV. CONCLUSION**

15 Based on this Petition and the evidence in the record, Petitioners respectfully request that
16 the State Water Board grant the remedies as requested in section 6 of this Petition.

17 SOMACH SIMMONS & DUNN
18 A Professional Corporation

19 DATED: April 16, 2012

By: 
Theresa A. Dunham, Attorneys for Petitioners
Grower-Shipper Association of Central
California, Grower-Shipper Association of Santa
Barbara and San Luis Obispo Counties, and
Western Growers

20
21
22
23
24
25
26
27
28

PETITION FOR REVIEW

EXHIBIT A

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

ORDER NO. R3-2012-0011

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

**The California Regional Water Quality Control Board, Central Coast Region
finds that:**

1. The Central Coast Region has approximately 435,000 acres of irrigated land and approximately 3000 agricultural operations, which may be generating wastewater that falls into the category of discharges of waste from irrigated lands.
2. The Central Coast Region has more than 17,000 miles of surface waters (linear streams/rivers) and approximately 4000 square miles of groundwater basins that are, or may be, affected by discharges of waste from irrigated lands.
3. The State Water Resources Control Board (State Water Board) and Regional Water Quality Control Boards (Regional Water Boards) are the principal state agencies with primary responsibility for the coordination and control of water quality pursuant to the Porter-Cologne Water Quality Control Act (Porter-Cologne Act, codified in Water Code Division 7). The legislature, in the Porter-Cologne Act, directed the Water Board to exercise its full power and jurisdiction to protect the quality of the waters in the State from degradation, considering precipitation, topography, population, recreation, agriculture, industry, and economic development (Water Code § 13000).
4. On July 9, 2004, the Central Coast Regional Water Quality Control Board (Central Coast Water Board) adopted Resolution No. R3-2004-0117 establishing a Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands (2004 Agricultural Order). In the 2004 Agricultural Order, the Central Coast Water Board found that the discharge of waste from irrigated lands has impaired and polluted the waters of the State and of the United States within the Central Coast Region, has impaired the beneficial uses, and has caused nuisance. The 2004 Agricultural Order expired on July 9, 2009, and the Central Coast Water Board renewed it for a term of one year until July 10, 2010 (Order No. R3-2009-0050). On July 8, 2010, the Central Coast Water Board renewed the 2004 Agricultural Order again for an additional eight months until March 31, 2011 (Order No. R3-2010-0040).

The Central Coast Water Board did not have a quorum to take action to adopt a renewal of the 2004 Agricultural Order with modifications by the March 31, 2011 termination date. On March 29, 2011, the Executive Officer signed Executive Officer Order No. R3-2011-0208 to extend the 2004 Agricultural Order again for an additional six months, with a September 30, 2011 termination date. The Central Coast Water Board did not have a quorum to take action to adopt a renewal of the 2004 Agricultural Order with modifications by the September 30, 2011 termination date. On September 30, 2011, the Executive Officer issued Executive Officer Order No. R3-2011-0017 to extend the 2004 Agricultural Order again for an additional year, with a September 30, 2012 termination date. Executive Officer Order No. R3-2011-0017 also required dischargers to implement an updated Monitoring and Reporting Program No. R3-2011-0018. This *Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands*, Order No. R3-2012-0011 (Order) renews and revises the 2004 Agricultural Order as set forth herein.

5. Since the issuance of the 2004 Agricultural Order, the Central Coast Water Board has compiled additional and substantial empirical data demonstrating that water quality conditions in agricultural areas of the region continue to be severely impaired or polluted by waste discharges from irrigated agricultural operations and activities that impair beneficial uses, including drinking water, and impact aquatic habitat on or near irrigated agricultural operations. The most serious water quality degradation is caused by fertilizer and pesticide use, which results in runoff of chemicals from agricultural fields into surface waters and percolation into groundwater. Runoff and percolation include both irrigation water and stormwater. Every two years, the Water Board is required by Section 303(d) of the federal Clean Water Act to assess water quality data for California's waters to determine if they contain pollutants at levels that exceed protective water quality criteria and standards. This Order prioritizes conditions to control pollutant loading in areas where water quality impairment is documented in the 2010 Clean Water Act section 303(d) List of Impaired Waterbodies (hereafter referred to as 2010 List of Impaired Waterbodies). As new Clean Water Act section 303(d) Lists of Impaired Waterbodies are adopted, the Central Coast Water Board will consider such lists for inclusion in tiering criteria and conditions for this and subsequent Orders.
6. Nitrate pollution of drinking water supplies is a critical problem throughout the Central Coast Region. Studies indicate that fertilizer from irrigated agriculture is the largest primary source of nitrate pollution in drinking water wells and that significant loading of nitrate continues as a result of agricultural fertilizer practices¹. Researchers estimate that tens of millions of pounds of nitrate leach into groundwater in the Salinas Valley alone each year. Studies indicate that irrigated agriculture contributes approximately 78 percent of the nitrate loading to

¹ Carle, S.f., B.K. Esser, J.E. Moran, High-Resolution Simulation of Basin-Scale Nitrate Transport Considering Aquifer System Heterogeneity, *Geosphere*, June 2006, v.2, no. 4, pg. 195-209.

groundwater in agricultural areas². Hundreds of drinking water wells serving thousands of people throughout the region have nitrate levels exceeding the drinking water standard³. This presents a significant threat to human health as pollution gets substantially worse each year, and the actual numbers of polluted wells and people affected are unknown. Protecting public health and ensuring safe drinking water is among the highest priorities of this Order. This Order prioritizes conditions to control nitrate loading to groundwater and impacts to public water systems. In the case where further documentation indicates nitrate impacts to small water systems and/or private domestic wells, the Central Coast Water Board will consider proximity to impacted small water systems and private domestic wells for inclusion in tiering criteria.

7. Agricultural use rates of pesticides in the Central Coast Region and associated toxicity are among the highest in the State⁴. Agriculture-related toxicity studies conducted on the Central Coast since 1999 indicate that toxicity resulting from agricultural discharges of pesticides has severely impacted aquatic life in Central Coast streams^{5,6,7}. Some agricultural drains have shown toxicity nearly every time the drains are sampled. Twenty-two sites in the region, 13 of which are located in the lower Salinas/Tembladero watershed area, and the remainder in the lower Santa Maria area, have been toxic in 95% (215) of the 227 samples evaluated. This Order prioritizes conditions to address pesticides that are known sources of toxicity and sources of a number of impairments on the 2010 List of Impaired Waterbodies, specifically chlorpyrifos and diazinon. In the case where further documentation indicates that additional pesticides are a primary source of toxicity and impairments in the Central Coast region, the Central Coast Water Board will consider such pesticides for inclusion in tiering criteria.
8. Existing and potential water quality impairment from agricultural waste discharges takes on added significance and urgency, given the impacts on public health, limited sources of drinking water supplies and proximity of the region's agricultural lands to critical habitat for species of concern.

² Monterey County Flood Control and Water Conservation District, "Report of the Ad Hoc Salinas Valley Nitrate Advisory Committee." Zidar, Snow, and Mills. November 1990.

³ California Department of Public Health Data obtained using GeoTracker GAMA (Groundwater Ambient Monitoring and Assessment) online database, <http://geotracker.waterboards.ca.gov/gama/>.

⁴ Starner, K., J. White, F. Spurlock and K. Kelley. Pyrethroid Insecticides in California Surface Waters and Bed Sediments: Concentrations and Estimated Toxicities. California Department of Pesticide Regulation. 2006.

⁵ Anderson, B.S., J.W. Hunt, B.M. Phillips, P.A. Nicely, V. De Vlaming, V. Connor, N. Richard, R.S. Tjeerdema. Integrated assessment of the impacts of agricultural drainwater in the Salinas River (California, USA). *Environmental Pollution* 124, 523 - 532. 2003.

⁶ Anderson B.S., B.M. Phillips, J.W. Hunt, V. Connor, N. Richard, R.S. Tjeerdema. "Identifying primary stressors impacting macroinvertebrates in the Salinas River (California, USA): Relative effects of pesticides and suspended particles" *Environmental Pollution* 141(3):402-408. 2006a.

⁷ Anderson, B.S., B.M. Phillips, J.W. Hunt, N. Richard, V. Connor, K.R. Worcester, M.S. Adams, R.S. Tjeerdema. Evidence of pesticide impacts in the Santa Maria River Watershed (California, USA). *Environmental Toxicology and Chemistry*, 25(3):1160 - 1170. 2006b.

9. This Order regulates discharges of waste⁸ from irrigated lands by requiring individuals subject to this Order to comply with the terms and conditions set forth herein to ensure that such discharges do not cause or contribute to the exceedance of any Regional, State, or Federal numeric or narrative water quality standard (hereafter referred to as exceedance of water quality standards) in waters of the State and of the United States.
10. This Order requires compliance with water quality standards. Dischargers must implement, and where appropriate update or improve, management practices, which may include local or regional control or treatment practices and changes in farming practices to effectively control discharges, meet water quality standards and achieve compliance with this Order. Consistent with the Water Board's Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program (NPS Policy, 2004), dischargers comply by implementing and improving management practices and complying with the other conditions, including monitoring and reporting requirements. This Order requires the discharger to address impacts to water quality by evaluating the effectiveness of management practices (e.g., waste discharge treatment and control measures), and taking action to improve management practices to reduce discharges. If the discharger fails to address impacts to water quality by taking the actions required by this Order, including evaluating the effectiveness of their management practices and improving as needed, the discharger may then be subject to progressive enforcement and possible monetary liability. The Discharger has the opportunity to present their case to the Central Coast Water Board before any monetary liability may be assessed.
11. The Central Coast Water Board encourages Dischargers to coordinate the effective implementation of cooperative water quality improvement efforts, local or regional scale water quality protection and treatment strategies (such as managed aquifer recharge projects), and cooperative monitoring and reporting efforts to lower costs, maximize effectiveness, and achieve compliance with this Order. In cases where Dischargers are participating in effective local or regional treatment strategies, and individual on-farm discharges continue to cause exceedances of water quality standards in the short term, the Executive Officer will take into consideration such participation in the local or regional treatment strategy and progress made towards compliance with water quality standards in evaluating compliance with this Order. In cases where cooperative water quality improvement efforts, or local or regional treatment strategies, coordinated by a third-party group (e.g., watershed group, water quality coalition, or other similar cooperative effort) or by a group of Dischargers, necessitate alternative water quality monitoring or a longer time

⁸ This Order regulates discharge of "waste" as defined in Water Code section 13050 and "pollutants" as defined in the Clean Water Act. For simplicity, the term "waste" or "wastes" is used throughout. The term "waste" is very broad and includes "pollutants" as defined in the Clean Water Act.

schedule to achieve compliance than required by this Order, Dischargers may submit an alternative water quality monitoring and reporting plan or time schedule for approval by the Executive Officer. Groups of Dischargers and/or third party groups (e.g., a watershed group or water quality coalition) may submit to the Executive Officer for approval alternative water quality monitoring and reporting programs. An alternative monitoring and reporting program must include collection of data that will provide indicators of water quality improvement or pollution load reduction, and aggregate monitoring and reporting must be on a scale sufficient to track progress in small sub-basins and be sufficiently representative of conditions. Aggregate monitoring may apply to surface and groundwater. The Executive Officer will evaluate the alternative monitoring and reporting programs on a case-by-case basis considering the potential effectiveness of the aggregate or alternative monitoring (e.g., request to conduct aggregate monitoring for a certain timeframe to give new practices or treatment time to maximize effectiveness, and other factors such as whether the farms are currently significantly contributing to impaired surface water or ground water with drinking water wells, or whether farms are in compliance with other provisions such as enrollment, or submittal of annual compliance information). Dischargers who participate in an alternative monitoring and reporting program maintain individual responsibility to comply with this Order's conditions.

Dischargers may continue to implement alternative treatment or monitoring programs approved by the Executive Officer as long as they demonstrate continuous improvement and sufficient progress towards water quality improvement based upon measurable indicators of pollutant load reduction. Dischargers may seek review of Executive Officer decisions by the Water Board.

12. The Central Coast Water Board encourages Dischargers to coordinate the implementation of management practices with other Dischargers discharging to common tile drains, including efforts to develop regional salt and nutrient management plans. The Executive Officer may require additional monitoring and reporting for discharges to tile drains as necessary to evaluate compliance with this Order.
13. The Central Coast Water Board encourages Dischargers to participate in regional or local groundwater monitoring efforts conducted as part of existing or anticipated groundwater monitoring programs, including efforts related to regional and local salt and nutrient management plans, integrated regional water management (IRWM) plans, or the State Water Board's Groundwater Ambient Monitoring and Assessment (GAMA) Program.
14. Dischargers have the option of complying with surface receiving water quality monitoring conditions identified in MRP Order No. R3-2012-0011, either individually or through a cooperative monitoring program. The Central Coast Water Board encourages Dischargers to participate in a cooperative monitoring program to

comply with surface receiving water quality monitoring conditions. In the development of any cooperative monitoring program fee schedule, the Central Coast Water Board encourages Dischargers to scale the assessment of fees based on relative level of waste discharge and threat to water quality.

15. The Central Coast Water Board will evaluate various types of information to determine compliance with this Order such as, a) management practice implementation and effectiveness, b) treatment or control measures, c) individual discharge monitoring results, d) receiving water monitoring results, and e) related reporting.
16. Many owners and operators of irrigated lands within the Central Coast Region have taken actions to protect water quality. In compliance with the 2004 Agricultural Order, most owners and operators enrolled in the 2004 Agricultural Order, implemented the Cooperative Monitoring Program (CMP), participated in farm water quality education, developed farm water quality management plans and implemented management practices as required in the 2004 Agricultural Order. The 2004 Agricultural Order did not include conditions that allowed for determining individual compliance with water quality standards or the level of effectiveness of actions taken to protect water quality, such as individual discharge monitoring or evaluation of water quality improvements. This Order includes new or revised conditions to allow for such evaluations.
17. Water Code section 13260(a) requires that any person discharging waste or proposing to discharge waste that could affect the quality of the waters of the State, other than into a community sewer system, shall file with the appropriate Regional Board a report of waste discharge (ROWD) containing such information and data as may be required by the Central Coast Water Board, unless the Central Coast Water Board waives such requirement.
18. Water Code section 13263 requires the Central Coast Water Board to prescribe waste discharge requirements (WDRs), or waive WDRs, for the discharge. The WDRs must implement relevant water quality control plans and the Water Code.
19. Water Code section 13269(a) provides that the Central Coast Water Board may waive the requirement to obtain WDRs for a specific discharge or specific type of discharge, if the Central Coast Water Board determines that the waiver is consistent with any applicable water quality control plan and such waiver is in the public interest, provided that any such waiver of WDRs is conditional, includes monitoring conditions designed to support the development and implementation of the waiver program, including, but not limited to verifying the adequacy and effectiveness of the waiver's conditions, unless waived, does not exceed five years in duration, and may be terminated at any time by the Central Coast Water Board.

20. As authorized by Water Code section 13269, this Order conditionally waives the requirement to obtain WDRs for Dischargers who comply with the terms of this Order. See Attachment A to this Order for additional findings related to legal and regulatory considerations, and rationale for this Order.
21. Pursuant to Water Code section 13267, the Executive Officer may require Dischargers to locate (inventory) and conduct monitoring of private domestic wells in or near agricultural areas with high nitrate in groundwater and submit technical reports evaluating the monitoring results. In addition, in compliance with Water Code section 13304, the Central Coast Water Board may require Dischargers to provide alternative water supplies or replacement water service, including wellhead treatment, to affected public water suppliers or private domestic well owners.

SCOPE OF ORDER NO. R3-2012-0011

Irrigated Lands and Agricultural Discharges Regulated Under this Order

22. This Order regulates (1) discharges of waste from irrigated lands, including, but not limited to, land planted to row, vineyard, field and tree crops where water is applied for producing commercial crops; (2) discharges of waste from commercial nurseries, nursery stock production, and greenhouse operations with soil floors that do not have point-source type discharges and are not currently operating under individual WDRs; and (3) discharges of waste from lands that are planted to commercial crops that are not yet marketable, such as vineyards and tree crops.
23. Discharges from irrigated lands regulated by this Order include discharges of waste to surface water and groundwater, such as irrigation return flows, tailwater, drainage water, subsurface drainage generated by irrigating crop land or by installing and operating drainage systems to lower the water table below irrigated lands (tile drains), stormwater runoff flowing from irrigated lands, stormwater runoff conveyed in channels or canals resulting from the discharge from irrigated lands, runoff resulting from frost control, and/or operational spills. These discharges can contain wastes that could affect the quality of waters of the State and impair beneficial uses.

Dischargers Regulated Under this Order

24. This Order regulates both landowners and operators of irrigated lands on or from which there are discharges of waste that could affect the quality of any surface water or groundwater (Dischargers). Dischargers are responsible for complying with the conditions of this Order. The Central Coast Water Board will hold both the landowner and the operator liable for noncompliance with this Order.

25. The Central Coast Water Board recognizes that due to different types of operations and/or locations, discharges of waste from irrigated lands may have the potential for different levels of impacts on waters of the state or of the United States. This Order establishes three tiers of regulation to take into account the variation, including different regulatory conditions for the three tiers.
26. Dischargers who have not enrolled to comply with a previous order must submit to the Central Coast Water Board a completed electronic Notice of Intent (NOI) to comply with the conditions of this Order to comply with the Water Code.
27. Dischargers who have submitted a completed electronic NOI to the Central Coast Water Board to comply with a previous order must update their NOI to reflect current operation and farm/ranch information.
28. Landowners and operators of irrigated lands who obtain a pesticide use permit from a local County Agricultural Commissioner and that have a discharge of waste that could affect surface water or groundwater, must submit to the Central Coast Water Board, a completed electronic NOI to comply with the conditions of this Order to comply with the Water Code.
29. The NOI serves as a report of waste discharge (ROWD) for the purposes of this Order.
30. The Central Coast Water Board recognizes that certain limited resource farmers (as defined by the U.S. Dept. of Agriculture) may have difficulty achieving compliance with this Order. The Central Coast Water Board will prioritize assistance for these farmers, including but not limited to technical assistance, grant opportunities, and necessary flexibility to achieve compliance with this Order (e.g., adjusted monitoring, reporting, or time schedules).

Agricultural Discharges Not Covered Under this Order and Who Must Apply for Individual Waste Discharge Requirements

31. This Order does not waive WDRs for commercial nurseries, nursery stock production and greenhouse operations that have point-source type discharges, and fully contained greenhouse operations (those that have no groundwater discharge due to impervious floors). These operations must eliminate all such discharges of wastes or submit a ROWD to apply for individual WDRs as set forth in Water Code section 13260.

PUBLIC PARTICIPATION PROCESS

32. The Central Coast Water Board notified interested persons that the Central Coast Water Board will consider the adoption of this Order, which conditionally waives individual WDRs and establishes conditions for the control of discharges of waste from irrigated lands to waters of the State, and provided several opportunities for public input.
33. In December 2008, the Central Coast Water Board invited members of the public to participate in development of this Order and provide recommendations to Central Coast Water Board staff. In particular, the Central Coast Water Board requested the assistance of an agricultural advisory panel in developing appropriate milestones, timetables, and verification monitoring programs to resolve water quality problems and achieve compliance with the Basin Plan. Additionally, in early 2009, the Central Coast Water Board notified all water purveyors, water districts and municipalities that staff was developing recommendations for this Order.
34. In December 2009, the Central Coast Water Board encouraged any interested person who wanted to present alternative recommendations to this Order to provide those recommendations in writing by April 1, 2010.
35. On February 1, 2010, the Central Coast Water Board publicly released a preliminary report and preliminary draft order for the regulation of discharges from irrigated lands and accepted comments on the preliminary draft order through June 4, 2010.
36. The Central Coast Water Board held two public workshops (May 12, 2010, and July 8, 2010) to discuss the preliminary draft order, public comments, and alternative recommendations.
37. The Central Coast Water Board released a Draft Agricultural Order and staff report on November 19, 2010, for public review and comment, and held an additional public workshop on February 3, 2011. The Central Coast Water Board released further revised versions of the Draft Agricultural Order in March, July, and August 2011 and held an additional public workshop on February 1, 2012.
38. Between November 2009 and February 2012, Central Coast Water Board staff attended more than 60 meetings and conferences to describe the process for developing the Draft Agricultural Order, discuss options, and hear public input regarding the Draft Agricultural Order. These events included numerous stakeholders representing the agricultural industry and its technical assistance providers, environmental and environmental justice organizations, local and state government agencies and other members of the public.

39. Interested persons were notified that the Central Coast Water Board will consider adoption of an Order, which conditionally waives WDRs for discharges of waste from irrigated lands, as described in this Order, and were provided an opportunity for a public hearing and an opportunity to submit written comments.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

40. For purposes of adoption of this Order, the Central Coast Water Board is the lead agency pursuant to the California Environmental Quality Act (CEQA) (Pub. Res. Code §§ 21100 et seq.).

41. In 2004, the Central Coast Water Board adopted the 2004 Agricultural Order and a Negative Declaration prepared in compliance with CEQA. CEQA Guidelines state that no subsequent environmental impact report (SEIR) shall be prepared when an EIR has been certified or negative declaration adopted for a project unless the lead agency determines based on substantial evidence in light of the whole record, one or more of the following:

(1) if substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified effects; or,

(2) if substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental impacts or a substantial increase in the severity of previously identified significant effects; or

(3) if new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, becomes available.

(Cal. Code Regs., tit. 14, § 15162(a).)

This regulation applies if there is a modification of a previous project. In this case, the Central Coast Water Board is proposing to renew the 2004 Agricultural Order, which is the previous project, with clarifications and new conditions. To assist in determining whether an SEIR would be necessary, the Central Coast Water Board staff held a CEQA scoping meeting on August 16, 2010, to receive input from interested persons and public agencies on potentially significant environmental effects of the proposed project. Staff also accepted written comments regarding

scoping up until August 27, 2010, in order to allow for comments from those who were unable to attend the meeting and/or for those who wished to submit additional comments. Members of the public and representatives of public agencies provided comments regarding their views on significant environmental effects associated with the adoption of a renewed Agricultural Order. As described in Findings 30 - 37 and prior to the scoping meeting in August 2010, significant public participation activities had occurred.

In preparing the Draft SEIR, Central Coast Water Board staff reviewed the 2004 Negative Declaration, including the Initial Study (Environmental Checklist), considered the comments received during the public participation process with respect to renewal of the 2004 Agricultural Order, including evidence in the record, written and oral comments, proposed alternatives, and information provided at and following the August 16, 2010 scoping meeting, and comments received on the Draft SEIR. Review of this information did not result in identification of any new environmental effects that had not already been evaluated in the 2004 Negative Declaration. Staff identified two areas included on the Environmental Checklist where there was a potential for an increase in the severity of environmental effects previously identified. These areas are (1) the potential for more severe impacts on agricultural resources due to the potential for an increase in the use of vegetated buffer strips and economic impacts due to new requirements that could take some land out of direct agricultural use and (2) the potential for more severe impacts on biological resources due to the potential for a reduction in water flows in surface waters.

The Central Coast Water Board issued a Notice of Availability on October 25, 2010, and provided the public with 45 days to submit written comments on the Draft SEIR. The Water Board received 12 written comment letters. Responses to the comments are in Section 7 of the Final SEIR. In response to comments, the Central Coast Water Board staff revised the Draft SEIR and prepared a draft Final SEIR for the Central Coast Water Board's certification. The 2004 Negative Declaration and the Final SEIR constitute the environmental analysis under CEQA for this Order.

42. With respect to Agricultural Resources, the Final SEIR concludes that adoption of the proposed alternative could result in some economic or social changes but that there was insufficient evidence to conclude that the economic changes would result in adverse physical changes to the environment. Commenters speculated that the economic impacts would be so large as to result in large scale end to agriculture and that land would be sold for other uses that would result in impacts on the environment. No significant information was provided to justify that concern. As described in Section 2.4 of this Final SEIR, the draft 2012 Agricultural Order would impose additional conditions on approximately 100 to 300 of the estimated 3000 owners or operators currently enrolled in the 2004 Agricultural Order. CEQA states that economic or social effects of a project shall not be treated as significant effects on the environment. (Pub.

Res. Code § 21083.) The Final SEIR concludes that due to some new conditions, particularly the requirement that some dischargers may be required to implement vegetated buffer strips, could result in loss of land for agricultural production since the buffer strips would generally not produce crops and some land could be converted to other uses. This impact was found to be less than significant and that mitigation could reduce impacts further. The Central Coast Water Board may not generally specify the manner of compliance and therefore, dischargers may choose among many ways to comply with the requirement to control discharges of waste to waters of the state. Even if all dischargers who could be subject to the condition to use vegetated buffers or some other method to control discharges in the draft 2012 Agricultural Order (Tier 3 dischargers) chose to use vegetated buffers or converted to other uses, the total acreage is quite small compared to the total amount of acreage used for farming and was, therefore, found to be less than significant. In addition, since the land would be used as a vegetated buffer to comply with the Order, this would result in beneficial impacts on the environment, not adverse impacts.

With respect to Biological Resources, the Final SEIR concludes that wide scale water conservation could result in lower flows into surface water resulting in impacts on aquatic life. The Central Coast Water Board may not specify the manner of compliance so it has insufficient information to evaluate the extent to which dischargers would choose to use water conservation to comply and to evaluate potential physical changes to the environment that could result. Reduction in toxic runoff may offset impacts due to the reduced flows that could occur. In addition, reduction in water use could result in increased groundwater levels that would also result in more clean water to surface water.

Based on this information, the Final SEIR concludes that the environmental effects associated with the draft 2012 Agricultural Order may be significant with respect to biological resources. However, given the uncertainty associated with evaluating the available information, it is possible that the effects may turn out to be less than significant. In Resolution R3-2012-0012, the Central Coast Water Board has made findings consistent with the CEQA Guidelines (Cal. Code Regs., tit. 14, § 15091) and a statement of overriding considerations (Cal. Code Regs., tit. 14, § 15093) with respect to biological resources.

ADDITIONAL FINDINGS

43. Attachment A to this Order, incorporated herein, includes additional findings that further describe a) the Water Board's legal and regulatory authority, b) the rationale for this Order, c) a description of the environmental and agricultural resources in the Central Coast Region, and d) impacts to water quality from agricultural discharges. Attachment A also identifies applicable plans and policies adopted by the State Water Board and the Central Coast Water Board that contain regulatory condition

that apply to the discharge of waste from irrigated lands. Attachment A also includes definitions of terms for purposes of this Order.

IT IS HEREBY ORDERED that:

1. Pursuant to Water Code sections 13260, 13263, 13267, and 13269, Dischargers must comply with the terms and conditions of this Order to meet the provisions contained in Water Code Division 7 and regulations and plans and policies adopted there under.
2. This Order shall not create a vested right to discharge, and all discharges of waste are a privilege, not a right, as provided for in Water Code section 13263(g).
3. Dischargers must not discharge any waste not specifically regulated by this Order except in compliance with the Water Code.
4. Pursuant to Water Code section 13269, the Central Coast Water Board waives the requirement that Dischargers obtain WDRs pursuant to Water Code section 13263(a) for discharges of waste from irrigated lands, if the Discharger enrolls in and complies with this Order, including Attachments and Monitoring and Reporting Program (MRP) Order No. R3-2012-0011.
5. Pursuant to Water Code section 13269, this action waiving the issuance of WDRs for certain specific types of discharges: 1) is conditional; 2) may be terminated by the Central Coast Water Board at any time; 3) may be superseded if the State Water Board or Central Coast Water Board adopts specific WDRs or general WDRs for this type of discharge or any individual discharger; 4) does not permit any illegal activity; 5) does not preclude the need for permits which may be required by other local or governmental agencies; 6) does not preclude the Central Coast Water Board from requiring WDRs for any individual discharger or from administering enforcement remedies (including civil liability) pursuant to the Water Code; and 7) includes conditions for the performance of individual, group, and watershed-based monitoring in the form of monitoring requirements designed to support the development and implementation of the waiver program, including, but not limited to, verifying the adequacy and effectiveness of the waiver's conditions.
6. Dischargers or groups of Dischargers seeking regulatory requirements tailored to their specific operation, farm/ranch, geographic area, or commodity may submit an ROWD to obtain individual or general orders for a specific discharge or type of discharge (e.g., commodity-specific general order). This Order remains applicable until such individual or general orders are adopted by the Central Coast Water Board.

7. The Executive Officer may propose, and the Water Board may adopt, individual WDRs for any Discharger at any time.
8. The Central Coast Water Board or the Executive Officer may, at any time, terminate applicability of this Order with respect to an individual Discharger upon written notice to the Discharger.
9. Dischargers are defined in this Order as both the landowner and operator of irrigated cropland, and both must comply with this Order.
10. Dischargers may comply with this Order by participating in third-party groups (e.g., watershed group, or water quality coalition, or other similar cooperative effort) approved by the Executive Officer or Central Coast Water Board. In this case, the third-party group will assist individual growers in achieving compliance with this Order, including implementing water quality improvement projects and required monitoring and reporting programs as described in MRP Order No. R3-2012-0011-01, MRP Order No. R3-2012-0011-02, and MRP Order No. R3-2012-0011-03, or alternative monitoring and reporting programs as provided in Condition 11 below. Consistent with the Water Board's Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program (NPS Policy, 2004), the ineffectiveness of a third-party group through which a Discharger participates in nonpoint source control efforts cannot be used as an excuse for lack of individual discharger compliance. Individual Dischargers continue to be responsible for complying with this Order.
11. Dischargers may form third party groups to develop and implement alternative water quality management practices (i.e., group projects) or cooperative monitoring and reporting programs to comply with this Order. At the discretion of the Executive Officer, Dischargers that are a participant in a third party group that implements Executive Officer-approved water quality improvement projects or Executive Officer-approved alternative monitoring and reporting programs may be moved to a lower Tier (e.g., Tier 3 to Tier 2, Tier 2 to Tier 1) and/or provided alternative project-specific timelines, and milestones.

To be subject to Tier changes or alternative timelines, Projects will be evaluated for, among other elements:

- Project Description. Description must include identification of participants, methods, and time schedule for implementation.
- Purpose. Proposal must state desired outcomes or goals of the project (e.g., pollutants to be addressed, amount of pollution load to be reduced, water quality improvement expected).
- Scale. Solutions must be scaled to address impairment.

- Chance of Success. Projects must demonstrate a reasonable chance of eliminating toxicity within the permit term (five years) or reducing discharge of nutrients to surface and groundwater.
- Long term solutions and contingencies. Proposals must address what new actions will be taken if the project does not meet goals and how the project will be sustained through time.
- Accountability. Proposals must set milestones that indicate progress towards goals stated as above in "purpose."
- Monitoring and reporting. Description of monitoring and measuring methods, and information to be provided to the Water Board. Monitoring points must be representative but may not always be at the edge-of-farm so long as monitoring results demonstrate water quality improvement and the efficacy of a project. In addition, monitoring must 1) characterize and be representative of discharge to receiving water, 2) demonstrate project effectiveness, 3) and verify progress towards water quality improvement and pollutant load reduction,

Project proposals will be evaluated by a Technical Advisory Committee (TAC) comprised of: Two researchers or academics skilled in agricultural practices and/or water quality, one farm advisor (e.g., from Natural Resources Conservation Service or local Resource Conservation Districts), one grower representative, one environmental representative, one environmental justice or environmental health representative, and one Regional Board staff. The TAC must have a minimum of five members to evaluate project proposals and make recommendations to the Executive Officer. The Executive Officer has discretion to approve any project after receiving project evaluation results and recommendations from the committee. If the Executive Officer denies approval, the third party group may seek review by the Regional Board. As stated in the NPS Policy, management practice implementation is not a substitute for compliance with water quality requirements. If the project is not effective in achieving water quality standards, additional management practices by individual Dischargers or the third party group will be necessary.

12. Dischargers who are subject to this Order shall implement management practices, as necessary, to improve and protect water quality and to achieve compliance with applicable water quality standards.

Part A. Tiers

13. Dischargers are classified into a tier based upon criteria that define the risk to water quality and the level of waste discharge. The Central Coast Water Board may update the criteria, as necessary.
14. Dischargers must determine the tier that applies to the individual farm(s)/ranch(es) at their operation or lands when they enroll or update their Notice of Intent (NOI), via electronic submittal. See Part D. Submittal of Technical Reports.
15. **Tier 1** – Applies to all Dischargers whose individual farm/ranch meets all of the criteria described in **(1a)**, **(1b)**, and **(1c)**, or whose individual farm/ranch is certified in a sustainable agriculture program identified in **(1d)** that requires and verifies effective implementation of management practices that protect water quality:
 - 1a. Discharger does not use chlorpyrifos or diazinon at the farm/ranch, which are documented to cause toxicity in surface waters in the Central Coast Region;
 - 1b. Farm/ranch is located more than 1000 feet from a surface waterbody listed for toxicity, pesticides, nutrients, turbidity or sediment on the 2010 List of Impaired Waterbodies⁹ (Table 1);
 - 1c. If the Discharger grows crop types with high potential to discharge nitrogen to groundwater (as defined in Attachment A) at the farm/ranch, and the farm/ranch total irrigated acreage is *less than* 50 acres, and is *not* within 1000 feet of a well that is part of a public water system (as defined by the California Health and Safety Code, section 116275) that exceeds the maximum contaminant level (MCL) for nitrate, nitrite, or nitrate + nitrite¹⁰;
 - 1d. Sustainability in Practice (SIP, certified by the Central Coast Vineyard Team) or other certified programs approved by the Executive Officer.

⁹ The 2010 List of Impaired Waterbodies is available on the Water Board's Impaired Water Bodies website at http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2010.shtml.

¹⁰ California Department of Health Services (CDPH) has determined that public water system well location records are confidential and exempt from disclosure to the public. Until such time that public water system well location records become available to the public, the Central Coast Water Board will identify Dischargers who are within 1000 feet of a public water system well that exceeds the maximum contaminant level (MCL) for nitrate, nitrite, or nitrate + nitrite. Dischargers should evaluate their tier for the purposes of this Order based on all information available. In the case where a Discharger should be placed into a different tier based on proximity to a public water system well, the Central Coast Water Board will provide appropriate notice to the Discharger. Approximate locations for public water system wells are available on the Water Board's GeoTracker GAMA website at <http://geotracker.waterboards.ca.gov/gama/>.

16. **Tier 2** – Applies to all Dischargers whose individual farm/ranch does not meet the Tier 1 or Tier 3 criteria. In general, a Tier 2 Discharger's farm/ranch meets at least one of the characteristics described in **(2a), (2b), or (2c)**:

2a. Discharger applies chlorpyrifos or diazinon at the farm/ranch, which are documented to cause toxicity in surface waters in the Central Coast Region;

2b. Farm/ranch is located within 1000 feet of a surface waterbody listed for toxicity, pesticides, nutrients, turbidity or sediment on the 2010 List of Impaired Waterbodies⁹ (see Table 1);

2c. Discharger grows crop types with high potential to discharge nitrogen to groundwater (as defined in Attachment A) at the farm/ranch, and the farm/ranch total irrigated acreage is greater or equal to 50 acres and *less than* 500 acres, or the farm/ranch is *within* 1000 feet of a well that is part of a public water system (as defined by the California Health and Safety Code, section 116275) that exceeds the maximum contaminant level (MCL) for nitrate, nitrite, or nitrate + nitrite¹⁰;

17. **Tier 3** – Applies to all Dischargers whose individual farm/ranch meets one of the following sets of criteria **(3a) or (3b)**:

3a. Discharger grows crop types with high potential to discharge nitrogen to groundwater (as defined in Attachment A) at the farm/ranch, and farm/ranch total irrigated acreage is *greater than or equal to* 500 acres;

3b. Discharger applies chlorpyrifos or diazinon at the farm/ranch, and the farm/ranch discharges irrigation or stormwater runoff to a waterbody listed for toxicity or pesticides on the 2010 List of Impaired Waterbodies⁹ (Table 1);

18. Dischargers may submit a request to the Executive Officer to approve transfer to a lower tier. The Discharger must provide information to demonstrate a lower level of waste discharge and a lower threat to water quality, including site-specific operational and water quality information to characterize the waste discharge and resulting effect on water quality. Dischargers remain in the tier determined by the criteria above and must meet all conditions for that tier until the Executive Officer approves the request to transfer to a lower tier. At a minimum, information provided by Dischargers requesting transfer to a lower tier must include the following:

a. Farm/ranch maps(s) identifying discharge points and any water quality sampling locations;

- b. Schematic showing the flow of irrigation and stormwater runoff, including where it leaves the farm/ranch and where the discharge enters receiving water;
 - c. Description of the volume of discharges and when the discharge is present;
 - d. Description of type of chemicals applied (e.g., pesticide and fertilizer use);
 - e. Description of estimated pollutant loading to groundwater;
 - f. Description and results of any individual discharge water quality sampling information available (e.g., irrigation runoff and stormwater sampling, lysimeter sampling);
19. The Executive Officer may elevate Tier 1 or Tier 2 Dischargers to a higher tier if the Discharger poses a higher threat to water quality based on information submitted as part of the NOI, MRP, or information observed upon inspection of a ranch/farm, or any other appropriate evidence that indicates the ranch/farm meets the criteria for a higher tier.
20. The Executive Officer may require Dischargers to enroll irrigated land with similar characteristics (e.g., same landowner or operator), and proximal, adjacent, or contiguous location, as a single operation or farm/ranch.
21. Unless otherwise specified, the conditions of this Order apply to all Dischargers, including Tier 1, Tier 2, and Tier 3.

Part B. General Conditions and Provisions for All Dischargers - Tier 1, Tier 2, and Tier 3

Water Quality Standards-

22. Dischargers must comply with applicable water quality standards, as defined in Attachment A, protect the beneficial uses of waters of the State and prevent nuisance as defined in Water Code section 13050.
23. Dischargers must comply with applicable provisions of the Central Coast Region Water Quality Control Plan (Basin Plan) and all other applicable water quality control plans as identified in Attachment A.
24. Dischargers must comply with applicable Total Maximum Daily Loads (TMDLs), including any plan of implementation for the TMDL, commencing with the effective date or other date for compliance stated in the TMDL. A list of TMDLs adopted by the Central Coast Water Board is available on the Central Coast Water Board website at:
http://www.waterboards.ca.gov/centralcoast/water_issues/programs/tmdl/index.shtml.

25. Dischargers shall not discharge any waste not specifically regulated by the Order described herein, unless the Discharger complies with Water Code section 13260(a) by submitting a ROWD and the Central Coast Water Board either issues WDRs pursuant to Water Code section 13263 or an individual waiver pursuant to Water Code section 13269, or the conditions specified in Water Code section 13264(a) must be met by the Discharger. Waste specifically qualifying for conditional discharge under this Waiver includes earthen materials, including soil, silt, sand clay, rock; inorganic materials (such as metals, salts boron, selenium, potassium, nitrogen, etc.); organic materials; and pesticides that may enter or threaten to enter into waters of the state. Examples of wastes not qualifying for conditional discharge under this Order include hazardous waste and human waste.
26. Dischargers shall not discharge any waste at a location or in a manner different from that described in the NOI.
27. Dischargers shall not discharge chemicals such as fertilizers, fumigants or pesticides down a groundwater well casing.
28. Dischargers shall not discharge chemicals used to control wildlife (such as bait traps or poison) directly into surface waters, or place the chemicals in a location where they may be discharged to surface waters.
29. Dischargers shall not discharge agricultural rubbish, refuse, irrigation tubing or tape, or other solid wastes into surface waters, or place such materials where they may contact or may eventually be discharged to surface waters.
30. This Order does not authorize persons to discharge pollutants from point sources to waters of the United States, including wetlands, where the Discharger is required to obtain an NPDES permit under Clean Water Act section 402 (NPDES), or a dredge and fill permit under Clean Water Act section 404 (dredge and fill), except as authorized by an NPDES permit or section 404 permit. An area is considered a wetland, subject to Clean Water Act section 404, if it meets the United States Army Corps of Engineers' definition as described in the Code of Federal Regulations and associated wetland delineation procedures, or relevant Water Board definitions.

Waste Discharge Control-

31. **By October 1, 2012**, Dischargers that apply fertilizers, pesticides, fumigants or other chemicals through an irrigation system must have functional and properly maintained back flow prevention devices installed at the well or pump to prevent pollution of groundwater or surface water, consistent with any applicable DPR requirements or local ordinances. Back flow prevention devices used to protect

water quality must be those approved by USEPA, DPR, CDPH, or the local public health or water agency.

32. **By October 1, 2015**, Dischargers must properly destroy all abandoned groundwater wells, exploration holes or test holes, as defined by Department of Water Resources (DWR) Bulletin 74-81 and revised in 1988, in such a manner that they will not produce water or act as a conduit for mixing or otherwise transfer groundwater or waste constituents between permeable zones or aquifers. Proper well abandonment must be consistent with any applicable DWR requirements or local ordinances.
33. Dischargers who utilize containment structures (such as retention ponds or reservoirs) to achieve treatment or control of the discharge of wastes must manage, construct, or maintain such containment structures to avoid percolation of waste to groundwater that causes or contributes to exceedances of water quality standards, and to minimize surface water overflows that have the potential to impair water quality.
34. Dischargers must implement proper handling, storage, disposal and management of pesticides, fertilizer, and other chemicals to prevent or control the discharge of waste to waters of the State that causes or contributes to exceedances of water quality standards.
35. Upon request, Dischargers must submit information regarding compliance with any Department of Pesticide Regulation (DPR) adopted or approved surface water or groundwater protection requirements.
36. Dischargers must implement water quality protective management practices (e.g., source control or treatment) to prevent erosion, reduce stormwater runoff quantity and velocity, and hold fine particles in place.
37. Dischargers must minimize the presence of bare soil vulnerable to erosion and soil runoff to surface waters and implement erosion control, sediment, and stormwater management practices in non-cropped areas, such as unpaved roads and other heavy use areas.
38. Dischargers must comply with any applicable stormwater permit.
39. Dischargers must a) maintain existing, naturally occurring, riparian vegetative cover (such as trees, shrubs, and grasses) in aquatic habitat areas as necessary to minimize the discharge of waste; and b) maintain riparian areas for effective streambank stabilization and erosion control, stream shading and temperature control, sediment and chemical filtration, aquatic life support, and wildlife support to minimize the discharge of waste;

40. In the case where disturbance of aquatic habitat is necessary for the purposes of water quality improvement, restoration activities, or other permitted activities, Dischargers must implement appropriate and practicable measures to avoid, minimize, and mitigate erosion and discharges of waste, including impacts to aquatic habitat.
41. Upon request, where required by California Fish and Game Code, Dischargers must submit proof of an approved Streambed Alteration Agreement from the California Department of Fish and Game (CDFG) for any work conducted within the bed, bank or channel of a lake or stream, including riparian areas, that has the potential to result in erosion and discharges of waste to waters of the State.
42. Upon request, where required by California Forest Practice Rules, Dischargers must submit proof of California Department of Forestry and Fire Protection authorization, and enrollment in the Central Coast Water Board's General Conditional Waiver of WDRs – Timber Harvest Activities in the Central Coast Region, for any commercial harvesting of timber that has the potential to result in erosion and discharges of waste to waters of the State.
43. Upon request, where required by Clean Water Act Section 404, Dischargers must submit proof of a dredge and fill permit from the United States Army Corps of Engineers (USACOE) for any work that has the potential to discharge wastes considered "fill," such as sediment, to wetlands.
44. **By October 1, 2012**, Dischargers must develop a farm water quality management plan (Farm Plan), or update the Farm Plan as necessary, and implement it to achieve compliance with this Order. Farm Plans must be kept current, kept on the farm, and a current copy must be made available to Central Coast Water Board staff, upon request. At a minimum, Farm Plans must include:
 - a. Copy of this Order and a copy of the Notice of Intent (NOI) submitted to the Central Coast Water Board for reference by operating personnel and inspection by Central Coast Water Board staff;
 - b. Date the Farm Plan was last updated;
 - c. Farm/ranch maps(s) identifying irrigation and stormwater runoff discharge locations where irrigation and stormwater runoff leaves or may leave the farm/ranch and where the discharge enters or may enter receiving water;
 - d. Description of the typical volume of discharges and when the discharge is typically present;
 - e. Description of type of chemicals applied (e.g., pesticide and fertilizer use);
 - f. Description and time schedule for any farm water quality management practices, treatment and/or control measures implemented to comply with this Order. This includes, but is not limited to, management practices

related to irrigation efficiency and management, pesticide management, nutrient management, salinity management, sediment and erosion control (including stormwater management), and aquatic habitat protection to achieve compliance with this Order. In addition, Farm Plans must describe tile drain discharges and the management measures Dischargers have implemented or will implement to minimize impacts to water quality;

- g. Description and results of methods used to verify practice effectiveness and compliance with this Order (e.g., water quality sampling, discharge characterization, reductions in pollutant loading);

45. Dischargers must obtain appropriate farm water quality education and technical assistance necessary to achieve compliance with this Order. Education should focus on meeting water quality standards by identifying on-farm water quality problems, implementing pollution prevention strategies and implementing practices designed to protect water quality and resolve water quality problems to achieve compliance with this Order.

Other Provisions and Conditions-

46. Pursuant to Water Code section 13267(c), the Central Coast Water Board staff or its authorized representatives may investigate the property of persons subject to this Order to ascertain whether the purposes of the Porter-Cologne Act are being met and whether the Discharger is complying with the conditions of this Order. The inspection shall be made with the consent of the owner or possessor of the facilities, or if consent is withheld, with a duly issued warrant pursuant to the procedure set forth in Title 13 Code of Civil Procedure Part 3 (commencing with Section 1822.50). However, in the event of an emergency affecting the public health or safety, an inspection may be performed without consent or the issuance of a warrant.
47. This Order does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code Sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. Sections 1531 to 1544). If a "take" will result from any act authorized under this Order, the Dischargers must obtain authorization for an incidental take prior to taking action. Dischargers must be responsible for meeting all requirements of the applicable Endangered Species Act for the discharge authorized by this Order.
48. Dischargers must pay a fee to the State Water Resources Control Board in compliance with the fee schedule contained in Title 23 California Code of Regulations.

49. Dischargers must pay any relevant monitoring fees (e.g., Cooperative Monitoring Program) necessary to comply with monitoring and reporting conditions of this Order or comply with monitoring and reporting requirements individually.

Part C. Monitoring Conditions for All Dischargers- Tier 1, Tier 2, and Tier 3

50. Dischargers must comply with MRP Order No. R3-2012-0011, as ordered by the Executive Officer or alternative monitoring and reporting programs approved by Executive Officer as set forth in Finding 11 and Condition 11.

Monitoring and reporting conditions are different for each tier, based on level of waste discharge and affect on water quality. Attached to this Order are three specific MRPs, one for each tier:

- a. Tier 1 Dischargers must comply with monitoring and reporting conditions specified in MRP Order No. R3-2012-0011-01;
 - b. Tier 2 Dischargers must comply with monitoring and reporting conditions specified in MRP Order No. R3-2012-0011-02;
 - c. Tier 3 Dischargers must comply with monitoring and reporting conditions specified in MRP Order No. R3-2012-0011-03;
51. Tier 1, Tier 2, and Tier 3 Dischargers must conduct groundwater monitoring and reporting in compliance with MRP Order No. R3-2012-0011-01, MRP Order No. R3-2012-0011-02, and MRP Order No. 2012-0011-03, or alternative monitoring and reporting programs approved by Executive Officer as set forth in Finding 11 and Condition 11, so that the Central Coast Water Board can evaluate groundwater conditions in agricultural areas, identify areas at greatest risk for waste discharge and nitrogen loading and exceedance of drinking water standards, and identify priority areas for nutrient management.
52. Tier 1, Tier 2, and Tier 3 Dischargers must conduct surface receiving water quality monitoring and reporting in compliance with MRP Order No. R3-2012-0011-01, MRP Order No. R3-2012-0011-02, and MRP Order No. 2012-0011-03, either individually or through a cooperative monitoring program, or alternative monitoring and reporting programs approved by Executive Officer as set forth in Finding 11 and Condition 11.
53. For Dischargers who choose to participate in a cooperative monitoring program, failure to pay cooperative monitoring program fees voids a selection or notification of the option to participate in a cooperative monitoring and hence requires individual monitoring report submittal per MRP Order No. R3-2012-0011, MRP Order No. R3-2012-0011-02, and MRP Order No. 2012-0011-03.

Part D. Submittal of Technical Reports for All Dischargers- Tier 1, Tier 2, Tier 3

Notice of Intent (NOI) to Enroll under the Order for All Dischargers in Tier 1, Tier 2 and Tier 3

54. Submittal of the electronic NOI is required pursuant to Water Code section 13260. Submittal of all other technical reports pursuant to this Order is required pursuant to Water Code section 13267. Failure to submit technical reports or the attachments in accordance with schedules established by this Order or MRP, or failure to submit a complete technical report (i.e., of sufficient technical quality to be acceptable to the Executive Officer), may subject the Discharger to enforcement action pursuant to Water Code sections 13261, 13268, or 13350. Dischargers must submit technical reports in the format specified by the Executive Officer.
55. Dischargers seeking authorization to discharge under this Order must submit a completed electronic NOI form to the Central Coast Water Board. Dischargers already enrolled in the 2004 Agricultural Order and who have submitted their NOI electronically are not required to submit a new NOI. Upon submittal of an accurate and complete electronic NOI, the Discharger is enrolled under the Order, unless otherwise informed by the Executive Officer.
- a. In the case where an operator may be operating for a period of less than 12 months, the landowner must submit the electronic NOI.
 - b. **Within 60 days** of the adoption of this Order, any Discharger who did not enroll in the 2004 Agricultural Order must submit an electronic NOI, unless otherwise directed by the Executive Officer.
 - c. **Prior to any discharge or commencement of activities that may cause a discharge**, including land preparation prior to crop production, any Discharger proposing to control or own a new operation or farm/ranch that has the potential to discharge waste that could directly or indirectly reach waters of the State and affect the quality of any surface water or groundwater must submit an electronic NOI.
 - d. Dischargers must submit any updates to the electronic NOI by **October 1, 2012 and annually thereafter by October 1**, to reflect changes to operation or ranch/farm information.
 - e. **Within 60 days**, in the event of a change in control or ownership of an operation, farm/ranch, or land presently owned or controlled by the

Discharger, the Discharger must notify the succeeding owner and operator of the existence of this Order by letter, and forward a copy of the letter to the Executive Officer.

- f. **Within 60 days** of acquiring control or ownership of an operation or farm/ranch, any Discharger acquiring control or ownership of an existing operation or farm/ranch must submit an electronic NOI.

56. Dischargers must submit all the information required in the electronic NOI form including, but not limited to, the following information for the operation and individual farm/ranch:

- a. Identification of each property covered by enrollment,
- b. Tier applicable to each farm/ranch,
- c. Landowner(s),
- d. Operator(s),
- e. Contact information,
- f. Option selected to comply with surface receiving water quality monitoring conditions (cooperative monitoring or individual),
- g. Option selected to comply with groundwater monitoring conditions (cooperative monitoring or individual),
- h. Location of operation, including specific farm(s)/ranch(es),
- i. Farm/ranch map with discharge locations and groundwater wells identified,
- j. Total and irrigated acreage,
- k. Crop type,
- l. Irrigation type,
- m. Discharge type,
- n. Chemical use,
- o. Presence and location of any perennial, intermittent, or ephemeral streams or riparian or wetland area habitat.

57. Dischargers must submit a statement of understanding of the conditions of the Order and MRP signed by the Discharger (landowner or operator) with the electronic NOI form. If the operator signs and submits the electronic NOI, the operator must provide a copy of the completed NOI form to the landowner(s).

58. Dischargers must identify in the electronic NOI if the farm/ranch is a Tier 1, Tier 2, or Tier 3 and provide complete and accurate information in the NOI that allows the Central Coast Water Board to confirm the appropriate tier. For Dischargers who do not provide adequate information for the Water Board to confirm or determine the appropriate tier, the Executive Officer will place the farm/ranch in the appropriate tier based upon information submitted in the Notice of Intent or further communication with the Discharger.

59. Coverage under this Order is not transferable to any person except after submittal of an updated electronic NOI and approval by the Executive Officer.
60. For Dischargers who do not enroll in the Order in a timely manner as specified in this Order, the Executive Officer may require submittal of an ROWD, and the Discharger may be subject to WDRs.

Notice of Termination (NOT) for All Dischargers

61. **Immediately**, if a Discharger wishes to terminate coverage under the Order for the operation of an individual farm/ranch, the Discharger must submit a completed Notice of Termination (NOT). Termination from coverage is the date specified in the NOT, unless specified otherwise. All discharges, as defined in Attachment A, must cease before the date of termination, and any discharges on or after the date of termination shall be considered in violation of the Order, unless covered by other waivers of WDRs, general WDRs, or individual WDRs cover the discharge.

Monitoring and General Technical Reports for All Dischargers

62. Dischargers must submit monitoring reports in compliance with MRP Order No. R3-2012-0011, or alternative monitoring and reporting programs approved by Executive Officer as set forth in Finding 11 and Condition 11, electronically in a format specified by the Executive Officer.
63. Any laboratory data submitted to the Central Coast Water Board by Dischargers must be submitted by, or under the direction of, a State registered professional engineer, registered geologist, State certified laboratory or other similarly qualified professional. Surface water quality data must be submitted electronically, in a format that is compatible with the Central Coast Ambient Monitoring Program (CCAMP), the State's Surface Water Assessment Program (SWAMP) or as directed by the Executive Officer. Groundwater quality data must be submitted in a format compatible with the electronic deliverable format (EDF) used by the State Water Board's Geotracker data management system, or as directed by the Executive Officer.
64. Dischargers must submit technical reports that the Executive Officer may require to determine compliance with this Order as authorized by Water Code section 13267, electronically in a format specified by the Executive Officer.
65. If the Discharger asserts that all or a portion of a report submitted pursuant to this Order is subject to an exemption from public disclosure (e.g., trade secrets or secret processes), the Discharger must provide an explanation of how those portions of the reports are exempt from public disclosure. Also, the Discharger must clearly indicate on the cover of the report (typically an electronic submittal)

that the Discharger asserts that all or a portion of the report is exempt from public disclosure, submit a complete report with those portions that are asserted to be exempt in redacted form, submit separately (in a separate electronic file) unredacted pages (to be maintained separately by staff). The Central Coast Water Board staff will determine whether any such report or portion of a report qualifies for an exemption from public disclosure. If the Central Coast Water Board staff disagrees with the asserted exemption from public disclosure, the Central Coast Water Board staff will notify the Discharger prior to making such report or portions of such report available for public inspection. In the interest of public health and safety, the Central Coast Water Board will not make available for public inspection, the precise location of any groundwater well monitored in compliance with this Order. Consistent with the reporting of groundwater wells on GeoTracker, groundwater well location and data will only be referenced within a one-half mile radius of the actual well location.

66. Dischargers or a representative authorized by the Discharger must sign technical reports submitted to comply with the Order. Any person signing a report submitted as required by this Order must make the following certification:

"In compliance with Water Code section 13267, I certify under penalty of perjury that this document and all attachments were prepared by me, or under my direction or supervision, following a system designed to ensure that qualified personnel properly gather and evaluate the information submitted. To the best of my knowledge and belief, this document and all attachments are true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

Part E. Additional Conditions that Apply to Tier 2 and Tier 3 Dischargers

Annual Compliance Reporting for Tier 2 and Tier 3 Dischargers

67. By **October 1, 2012, and updated by October 1 annually thereafter**, Tier 2 and Tier 3 Dischargers must submit an Annual Compliance Form electronically, in a format specified by the Executive Officer that includes all the information requested, per MRP Order No. R3-2012-0011-02 and MRP Order No. R3-2012-0011-03, respectively. The purpose of the electronic Annual Compliance Form is to provide up-to-date information to the Central Coast Water Board to assist in the evaluation of affect on water quality from agricultural waste discharges and evaluate progress towards compliance with this Order, including implementation of management practices, treatment or control measures, or changes in farming practices.

68. **By October 1, 2012**, Tier 2 and Tier 3 Dischargers must determine nitrate loading risk factor(s) in accordance with MRP Order No. R3-2012-0011-02 and MRP Order No. R3-2012-0011-03 and report the nitrate loading risk factors and overall Nitrate Loading Risk level calculated for each ranch/farm or nitrate loading risk unit in the Annual Compliance Form, electronically (or in a format specified by the Executive Officer).

Photo Monitoring for Tier 2 and Tier 3 Dischargers with farms/ranches *adjacent to or containing* a waterbody identified on the 2010 List of Impaired Waterbodies as impaired for temperature, turbidity, or sediment

69. **By October 1, 2012**, and every four years thereafter, Tier 2 and Tier 3 Dischargers with farms/ranches adjacent to or containing a waterbody identified on the 2010 List of Impaired Waterbodies as impaired for temperature, turbidity, or sediment (identified in Table 1) must conduct photo monitoring per MRP Order No. R3-2012-0011-02 and MRP Order No. R3-2012-0011-03, respectively. Photo monitoring must document the condition of perennial, intermittent, or ephemeral streams and riparian and wetland area habitat, and demonstrate compliance with Basin Plan erosion and sedimentation requirements (see Part F. 80 of this Order), including the presence of bare soil vulnerable to erosion and relevant management practices and/or treatment and control measures implemented to address impairments. Photo documentation must be submitted electronically, in a format specified by the Executive Officer.

Total Nitrogen Reporting for Tier 2 and Tier 3 Dischargers with farms/ranches with High Nitrate Loading Risk

70. **By October 1, 2014 and by October 1 annually thereafter**, Tier 2 and Tier 3 Dischargers with a farm/ranch with High Nitrate Loading Risk must record and report total nitrogen applied in the Annual Compliance Form, electronically in a format specified by the Executive Officer, per MRP Order No. R3-2012-0011-02 and MRP Order No. R3-2012-0011-03, respectively.
71. As an alternative to reporting total nitrogen applied in the electronic Annual Compliance Form, Tier 2 and Tier 3 Dischargers with a farm/ranch with High Nitrate Loading Risk may propose an individual discharge groundwater monitoring and reporting program (GMRP) plan for approval by the Executive Officer. The GMRP plan must evaluate waste discharge to groundwater from each ranch/farm or nitrate loading risk unit with a High Nitrate Loading Risk.

Part F. Additional Conditions that Apply to Tier 3 Dischargers

72. **By October 1, 2013**, Tier 3 Dischargers must initiate individual surface water discharge monitoring per MRP Order No. R3-2012-0011-03 or alternative monitoring and reporting programs approved by Executive Officer as set forth in Finding 11 and Condition 11.
73. **By March 15, 2014, October 1, 2014** and annually thereafter by October 1, Tier 3 Dischargers must submit individual surface water discharge monitoring data and reports per MRP Order No. R3-2012-0011-03, electronically, in a format specified by the Executive Officer, or alternative monitoring and reporting programs approved by Executive Officer as set forth in Finding 11 and Condition 11 .

Irrigation and Nutrient Management Plan for Tier 3 Dischargers with farms/ranches with High Nitrate Loading Risk

74. **By October 1, 2013**, Tier 3 Dischargers with High Nitrate Loading Risk farms/ranches must determine the typical crop nitrogen uptake for each crop type produced and report the basis for the determination (e.g., developed by commodity or industry group, published agronomic literature, research trials, site specific analysis of dry biomass of crop for the nitrogen concentration), per MRP Order No. R3-2012-0011-03.
75. Tier 3 Dischargers with High Nitrate Loading Risk farms/ranches must develop and initiate implementation of an Irrigation and Nutrient Management Plan (INMP) certified by a Professional Soil Scientist, Professional Agronomist, or Crop Advisor certified by the American Society of Agronomy, or similarly qualified professional, per MRP Order No. R3-2012-0011-03.
76. As an alternative to the development and implementation of an INMP, Tier 3 Dischargers with High Nitrate Loading Risk farms/ranches may propose an individual discharge groundwater monitoring and reporting program (GMRP) plan for approval by the Executive Officer. The GMRP plan must evaluate waste discharge to groundwater from each ranch/farm or nitrate loading risk unit and assess if the waste discharge is of sufficient quality that it will not cause or contribute to exceedances of any nitrate water quality standards in groundwater.
77. **By October 1, 2015 and annually thereafter**, Tier 3 Dischargers with High Nitrate Loading Risk farms/ranches must report specific INMP elements in the Annual Compliance Form per MRP Order No. R3-2012-0011-03, electronically in a format specified by the Executive Officer.
78. **By October 1, 2015**, Tier 3 Dischargers with High Nitrate Loading Risk farms/ranches must report progress towards the following Nitrogen Balance ratio

milestones or implement an alternative to demonstrate an equivalent nitrogen load reduction. The Nitrogen Balance ratio refers to the total number of nitrogen units applied to the crop (considering all sources of nitrogen) relative to the typical nitrogen uptake value of the crop (crop need to grow and produce, amount removed at harvest plus the amount remaining in the system as biomass).

- a. Dischargers producing crops in annual rotation (such as a cool season vegetable in a triple cropping system) must report progress towards a Nitrogen Balance ratio target equal to one (1). A target of one (1) allows a Discharger to apply 100% of the amount of nitrogen required by the crop to grow and produce yield for every crop in the rotation. (Nitrogen applied includes any product, form or concentration, including but not limited to, organic and inorganic fertilizers, slow release products, compost, compost teas, manure, extracts, nitrogen present in the soil and nitrate in irrigation water.)
- b. Dischargers producing annual crops occupying the ground for the entire year (e.g., strawberries or raspberries) must report progress towards a Nitrogen Balance ratio target equal to 1.2. A target of 1.2 allows a Discharger to apply 120% of the amount of nitrogen required by the crop to grow and produce a yield.
- c. Beyond three years, Dischargers must demonstrate improved irrigation and nutrient management efficiency, improved Nitrogen Balance ratios, and reduced nitrate loading to groundwater. In the long term, the Nitrogen Balance ratio should compare the total amount of nitrogen applied to the crop against the total nitrogen removed at harvest, rather than the typical nitrogen crop uptake, to accurately calculate the nitrogen remaining and available to the crop or that could load to groundwater.

79. **By October 1, 2016**, Tier 3 Dischargers with High Nitrate Loading Risk farms/ranches must verify the overall effectiveness of the INMP per MRP Order No. R3-2012-0011-03. Dischargers must identify the methods used to verify effectiveness and include the results as a report with the Annual Compliance Form, submitted electronically in a format specified by the Executive Officer.

Water Quality Buffer Plan for Tier 3 Dischargers with farms/ranches adjacent to or containing a waterbody identified on the 2010 List of Impaired Waterbodies as impaired for temperature, turbidity, or sediment

80. **By October 1, 2016**, Tier 3 Dischargers with farms/ranches adjacent to or containing a waterbody identified on the 2010 List of Impaired Waterbodies as impaired for temperature, turbidity, or sediment (see Table 1) must develop a Water Quality Buffer Plan per MRP Order No. R3-2012-0011-03 that protects the

listed waterbody and its associated perennial and intermittent tributaries, including adjacent wetlands as defined by the Clean Water Act. Dischargers must submit the Water Quality Buffer Plan as a report with the Annual Compliance Form, submitted electronically in a format specified by the Executive Officer. The purpose of the Water Quality Buffer Plan is to control discharges of waste that cause or contribute to exceedances of water quality standards in waters of the State or United States in compliance with this Order and the following Basin Plan requirement:

- a. Basin Plan (Chapter 5, p. V-13, Section V.G.4 – Erosion and Sedimentation, *“A filter strip of appropriate width, and consisting of undisturbed soil and riparian vegetation or its equivalent, shall be maintained, wherever possible, between significant land disturbance activities and watercourses, lakes, bays, estuaries, marshes, and other water bodies. For construction activities, minimum width of the filter strip shall be thirty feet, wherever possible. ..”*
- b. As an alternative to the development and implementation of a Water Quality Buffer Plan, Tier 3 Dischargers may submit evidence to the Executive Officer to demonstrate that any discharge of waste is sufficiently treated or controlled such that it is of sufficient quality that it will not cause or contribute to exceedances of water quality standards in waters of the State or of the United States.

81. Tier 3 Dischargers with farms/ranches adjacent to or containing a waterbody identified on the 2010 List of Impaired Waterbodies as impaired for temperature, turbidity, or sediment must implement the Water Quality Buffer Plan immediately upon submittal, unless the plan requests a time extension that is approved by the Executive Officer. If the Executive Officer determines the Water Quality Buffer Plan is not in compliance with this Order, the Executive Officer will notify the Discharger and the Discharger must make necessary modifications accordingly.

Part G. TIME SCHEDULE

82. Time schedules for compliance with conditions are identified in Conditions 84 – 87, and described in Table 2 (all Dischargers) and Table 3 (Tier 2 and Tier 3 Dischargers). Milestones are identified in Table 4. Dischargers must comply with Order Conditions by dates specified in Tables 2 and 3 in accordance with the MRP. The Water Board will consider the following information in determining the extent to which the Discharger is effectively controlling individual waste discharges and compliance with this Order:

- a) compliance with the time schedules;
- b) effectiveness of management practice implementation;

- c) effectiveness of treatment or control measures (including cooperative water quality improvement efforts, and local and regional treatment strategies);
- d) results of individual discharge monitoring (Tier 3);
- e) results of surface receiving water monitoring downstream of the point where the individual discharge enters the receiving water body;
- f) other information obtained by Water Board staff during inspections at operations or farms/ranches, or submitted in response to Executive Officer orders;

83. The Executive Officer may require additional monitoring and reporting as authorized by Water Code section 13267 in cases where Dischargers fail to demonstrate adequate progress towards compliance as indicated by milestones and compliance with other Conditions of the Order.
84. **By October 1, 2014**, Tier 3 Dischargers must effectively control individual waste discharges of pesticides and toxic substances to waters of the State and of the United States.
85. **By October 1, 2015**, Tier 3 Dischargers must effectively control individual waste discharges of sediment and turbidity to surface waters of the State or of the United States.
86. **By October 1, 2016**, Tier 3 Dischargers must effectively control individual waste discharges of nutrients to surface waters of the State or of the United States.
87. **By October 1, 2016**, Tier 3 Dischargers must effectively control individual waste discharges of nitrate to groundwater.
88. This Order becomes effective on March 15, 2012 and expires on March 14, 2017, unless rescinded or renewed by the Central Coast Water Board.

I, Roger W. Briggs, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order and Attachments adopted by the California Regional Water Quality Control Board, Central Coast Region, on March 15, 2012.



Roger W. Briggs
Executive Officer

Table 1. 2010 Clean Water Act Section 303(d) List of Impaired Waterbodies Impaired for Toxicity, Pesticides, Nutrients, Temperature, Turbidity, or Sediment

Waterbody Name	Impairment(s) ¹
Alisal Creek (Monterey Co.) ³	Toxicity, Nutrients
Aptos Creek ²	Sediment
Arana Gulch ³	Pesticides
Arroyo Paredon ³	Toxicity, Pesticides, Nutrients
Beach Road Ditch ²	Nutrients, Turbidity
Bean Creek ²	Sediment
Bear Creek (Santa Cruz Co.) ²	Sediment
Bell Creek (Santa Barbara Co.) ³	Toxicity, Nutrients
Blanco Drain ^{2,3}	Pesticides, Nutrients, Turbidity
Blosser Channel	Toxicity, Nutrients
Boulder Creek ²	Sediment
Bradley Canyon Creek ^{2,3}	Toxicity, Nutrients, Turbidity
Bradley Channel ³	Toxicity, Pesticides, Nutrients
Branciforte Creek ^{2,3}	Pesticides, Sediment
Carbonera Creek ²	Nutrients, Sediment
Carnadero Creek	Nutrients, Turbidity
Carneros Creek (Monterey Co.) ²	Nutrients, Turbidity
Carpinteria Creek ³	Pesticides
Carpinteria Marsh (El Estero Marsh)	Nutrients
Casmalia Canyon Creek ²	Sediment
Chorro Creek ²	Nutrients, Sediment
Chualar Creek ^{2,3}	Toxicity, Pesticides, Nutrients, Turbidity, Temperature
Corralitos Creek ²	Turbidity
Elkhorn Slough ^{2,3}	Pesticides, Sediment
Esperanza Creek	Nutrients
Espinosa Lake ³	Pesticides
Espinosa Slough ^{2,3}	Toxicity, Pesticides, Nutrients, Turbidity
Fall Creek ²	Sediment
Franklin Creek (Santa Barbara Co.) ³	Pesticides, Nutrients
Furlong Creek ^{2,3}	Pesticides, Nutrients, Turbidity
Gabilan Creek ^{2,3}	Toxicity, Nutrients, Turbidity
Glen Annie Canyon ³	Toxicity, Nutrients

ORDER NO. R3-2012-0011
 CONDITIONAL WAIVER OF
 WASTE DISCHARGE REQUIREMENTS
 FOR DISCHARGES FROM IRRIGATED LANDS

Greene Valley Creek (Santa Barbara Co.) ^{2,3}	Toxicity, Pesticides, Nutrients, Turbidity, Temperature
Kings Creek ²	Sediment
Little Oso Flaco Creek ³	Toxicity, Nutrients
Llagas Creek (below Chesbro Reservoir) ^{2,3}	Pesticides, Nutrients, Sediment, Turbidity
Lompico Creek ²	Nutrients, Sediment
Los Berros Creek	Nutrients
Los Carneros Creek	Nutrients
Los Osos Creek ²	Nutrients, Sediment
Love Creek ²	Sediment
Main Street Canal ^{2,3}	Toxicity, Pesticides, Nutrients, Turbidity
McGowan Ditch	Nutrients
Merrit Ditch ^{2,3}	Toxicity, Nutrients, Turbidity
Millers Canal ^{2,3}	Pesticides, Turbidity, Temperature
Mission Creek (Santa Barbara Co.) ³	Toxicity
Monterey Harbor ³	Toxicity
Moro Cojo Slough ^{2,3}	Pesticides, Nutrients, Sediment
Morro Bay ²	Sediment
Moss Landing Harbor ^{2,3}	Toxicity, Pesticides, Sediment
Mountain Charlie Gulch ²	Sediment
Natividad Creek ^{2,3}	Toxicity, Nutrients, Turbidity, Temperature
Newell Creek (Upper) ²	Sediment
Nipomo Creek ³	Toxicity, Nutrients
North Main Street Channel	Nutrients
Old Salinas River Estuary ³	Pesticides, Nutrients
Old Salinas River ^{2,3}	Toxicity, Pesticides, Nutrients, Turbidity
Orcutt Creek ^{2,3}	Toxicity, Pesticides, Nutrients, Turbidity, Temperature
Oso Flaco Creek ³	Toxicity, Nutrients
Oso Flaco Lake ³	Pesticides, Nutrients
Pacheco Creek ²	Turbidity
Pacific Ocean (Point Ano Nuevo to Soquel Point) ³	Pesticides
Pajaro River ^{2,3}	Pesticides, Nutrients, Sediment, Turbidity
Prefumo Creek ²	Nutrients, Turbidity
Quail Creek ^{2,3}	Toxicity, Pesticides, Nutrients, Turbidity, Temperature
Rider Creek ²	Sediment
Rincon Creek ^{2,3}	Toxicity, Turbidity
Rodeo Creek Gulch ²	Turbidity

ORDER NO. R3-2012-0011
 CONDITIONAL WAIVER OF
 WASTE DISCHARGE REQUIREMENTS
 FOR DISCHARGES FROM IRRIGATED LANDS

Salinas Reclamation Canal ^{2,3}	Toxicity, Pesticides, Nutrients, Turbidity
Salinas River (lower, estuary to near Gonzales Rd crossing, watersheds 30910 and 30920) ^{2,3}	Toxicity, Pesticides, Nutrients, Turbidity
Salinas River (middle, near Gonzales Rd crossing to confluence with Nacimiento River) ^{2,3}	Toxicity, Pesticides, Turbidity, Temperature
Salinas River Lagoon (North) ³	Pesticides, Nutrients
Salinas River Refuge Lagoon (South) ²	Turbidity
Salsipuedes Creek (Santa Cruz Co.) ²	Turbidity
San Antonio Creek (below Rancho del las Flores Bridge at Hwy 135) ³	Pesticides, Nutrients
San Benito River ^{2,3}	Toxicity, Sediment
San Juan Creek (San Benito Co.) ^{2,3}	Toxicity, Nutrients, Turbidity
San Lorenzo River ^{2,3}	Pesticides, Nutrients, Sediment
San Luis Obispo Creek (below Osos St.) ³	Pesticides, Nutrients
San Simeon Creek	Nutrients
San Vicente Creek (Santa Cruz Co.) ²	Sediment
Santa Maria River ^{2,3}	Toxicity, Pesticides, Nutrients, Turbidity
Santa Rita Creek (Monterey Co.) ²	Nutrients, Turbidity
Santa Ynez River (below city of Lompoc to Ocean) ²	Nutrients, Sediment, Temperature
Santa Ynez River (Cachuma Lake to below city of Lompoc)	Sediment, Temperature
Schwan Lake	Nutrients
Shingle Mill Creek ²	Nutrients, Sediment
Shuman Canyon Creek ²	Sediment
Soda Lake	Nutrients
Soquel Creek ²	Turbidity
Soquel Lagoon ²	Sediment
Tembladero Slough ^{2,3}	Toxicity, Pesticides, Nutrients, Turbidity
Tequisquita Slough ²	Turbidity
Uvas Creek (below Uvas Reservoir) ²	Turbidity
Valencia Creek ²	Sediment
Warden Creek	Nutrients
Watsonville Creek	Nutrients
Watsonville Slough ^{2,3}	Pesticides, Turbidity
Zayante Creek ^{2,3}	Pesticides, Sediment

¹Dischargers with farms/ranches located within 1000 feet of a surface waterbody listed for toxicity, pesticides, nutrients, turbidity or sediment on the 2010 List of Impaired Waterbodies are included as Tier 2 or Tier 3;

²Tier 2 and Tier 3 Dischargers with farms/ranches adjacent to or containing a waterbody identified on the 2010 List of Impaired Waterbodies as impaired for temperature, turbidity, or sediment must conduct photo monitoring, and Tier 3 Dischargers must also implement a Water Quality Buffer Plan.

ORDER NO. R3-2012-0011
 CONDITIONAL WAIVER OF
 WASTE DISCHARGE REQUIREMENTS
 FOR DISCHARGES FROM IRRIGATED LANDS

³Dischargers who apply chemicals known to cause toxicity to surface water to a farm/ranch that discharges to a waterbody on the 2010 303(d) List of Impaired Waterbodies for toxicity or pesticides must meet conditions in this Order for Tier 3.

Table 2. Time Schedule for Compliance with Conditions for All Dischargers (Tier 1, Tier 2, and Tier 3)

CONDITIONS	COMPLIANCE DATE ¹
Submit Notice of Intent (NOI)	Within 60 days of adoption of Order or Within 60 days acquiring ownership/ control, and prior to any discharge or commencement of activities that may cause discharge.
Submit Update to NOI	Within 60 days, upon adoption of Order and upon change of control or ownership
Submit Notice of Termination	Immediately, when applicable
Submit Monitoring Reports per MRP	Per date in MRP
Implement, and update as necessary, management practices to achieve compliance with this Order.	Ongoing
Protect existing aquatic habitat to prevent discharge of waste	Immediately
Submit surface receiving water quality monitoring annual report	Within one year, and annually thereafter by January 1
Develop/update and implement Farm Plan	October 1, 2012
Install and maintain adequate backflow prevention devices.	October 1, 2012
Submit groundwater monitoring results and information	October 1, 2013
Properly destroy abandoned groundwater wells.	October 1, 2015

Table 3. Additional Time Schedule for Compliance with Conditions Tier 2 and Tier 3 Dischargers

CONDITIONS	COMPLIANCE DATE
<i>Tier 2 and Tier 3:</i>	
Submit electronic Annual Compliance Form	October 1, 2012, and updated annually thereafter by October 1.
Submit photo documentation of riparian or wetland area habitat (if farm/ranch contains or is adjacent to a waterbody impaired for temperature, turbidity, or sediment)	October 1, 2012, and every four years thereafter by October 1.
Calculate Nitrate Loading Risk level and report in electronic Annual Compliance Form	October 1, 2012, and annually thereafter by October 1.
Submit total nitrogen applied in electronic Annual Compliance Form (if discharge has High Nitrate Loading Risk)	October 1, 2014, and annually thereafter by October 1.
<i>Only Tier 3:</i>	
Initiate individual surface water discharge monitoring	October 1, 2013
Determine Crop Nitrogen Uptake (if discharge has High Nitrate Loading Risk)	October 1, 2013
Submit individual surface water discharge monitoring data	March 15, 2014, October 1, 2014 and annually thereafter by October 1
Submit INMP elements in electronic Annual Compliance Form (if discharge has High Nitrate Loading Risk), including Nitrogen Balance Ratio	October 1, 2015, and annually thereafter by October 1
Submit progress towards Nitrogen Balance Ratio target equal to one (1) for crops in annual rotation (e.g., cool season vegetables) or alternative, (if discharge has High Nitrate Loading Risk)	October 1, 2015
Submit progress towards Nitrogen Balance Ratio target equal to 1.2 for annual crops occupying the ground for the entire year (e.g., strawberries or raspberries) or alternative, (if discharge has High Nitrate Loading Risk)	
Submit Water Quality Buffer Plan or alternative (if farm/ranch contains or is adjacent to a waterbody impaired for temperature, turbidity, or sediment)	October 1, 2016
Submit INMP Effectiveness Report (if discharge has High Nitrate Loading Risk)	October 1, 2016

Table 4. Time Schedule for Milestones

MILESTONES ¹	DATE
<i>Tier 1, Tier 2 and Tier 3:</i>	
<p>Measurable progress towards water quality standards in waters of the State or of the United States¹, or</p> <p>Water quality standards met in waters of the State or of the United States.</p>	<p>Ongoing</p> <p>October 1, 2016</p>
<i>Only Tier 3:</i>	
<p><u>Pesticide and Toxic Substances Waste Discharges to Surface Water</u></p> <p>- One of two individual surface water discharge monitoring samples is not toxic</p> <p>- Two of two individual surface water discharge monitoring samples are not toxic</p>	<p>October 1, 2014</p> <p>October 1, 2015</p>
<p><u>Sediment and Turbidity Waste Discharges to Surface Water</u></p> <p>- Four individual surface water discharge monitoring samples are collected and analyzed for turbidity.</p> <p>- 75% reduction in turbidity or sediment load in individual surface water discharge relative to October 1, 2012 load (or meet water quality standards for turbidity or sediment in individual surface water discharge)</p>	<p>October 1, 2014</p> <p>October 1, 2015</p>
<p><u>Nutrient Waste Discharges to Surface Water</u></p> <p>- Four individual surface water discharge monitoring samples are collected and analyzed</p> <p>- 50% load reduction in nutrients in individual surface water discharge relative to October 1, 2012 load (or meet water quality standards for nutrients in individual discharge)</p>	<p>October 1, 2014</p> <p>October 1, 2015</p>

ORDER NO. R3-2012-0011
 CONDITIONAL WAIVER OF
 WASTE DISCHARGE REQUIREMENTS
 FOR DISCHARGES FROM IRRIGATED LANDS

<p>- 75% load reduction in nutrients in individual surface water discharge relative to October 1, 2012 load (or meet water quality standards for nutrients in individual surface water discharge)</p>	<p>October 1, 2016</p>
<p><u>Nitrate Waste Discharges to Groundwater</u> - Achieve annual reduction in nitrogen loading to groundwater based on Irrigation and Nutrient Management Plan effectiveness and load evaluation</p>	<p>October 1, 2016 and annually thereafter</p>
<p>- Achieve Nitrogen Balance Ratio equal to one (1) for crops in annual rotation (e.g., cool season vegetables) or alternative, (if discharge has High Nitrate Loading Risk)</p>	<p>October 1, 2015</p>
<p>- Achieve Nitrogen Balance Ratio equal to 1.2 for annual crops occupying the ground for the entire year (e.g., strawberries or raspberries) or alternative, (if discharge has High Nitrate Loading Risk)</p>	

Indicators of progress towards milestones includes, but is not limited to data and information related to a) management practice implementation and effectiveness, b) treatment or control measures, c) individual discharge monitoring results, d) receiving water monitoring results, and e) related reporting.

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

**ORDER No. R3-2012-0011
ATTACHMENT A**

**ADDITIONAL FINDINGS, APPLICABLE WATER QUALITY CONTROL PLANS AND
DEFINITIONS
FOR
CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS
FOR
DISCHARGES FROM IRRIGATED LANDS**

Order No. R3-2012-0011 (Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands) requires Dischargers to comply with applicable state plans and policies and applicable state and federal water quality standards and to prevent nuisance. Water quality standards are set forth in state and federal plans, policies, and regulations. The California Regional Water Quality Control Board Central Coast Region's (Central Coast Water Board) Water Quality Control Plan contains specific water quality objectives, beneficial uses, and implementation plans that are applicable to discharges of waste and/or waterbodies that receive discharges of waste from irrigated lands. The State Water Resources Control Board (State Water Board) has adopted plans and policies that may be applicable to discharges of waste and/or surface waterbodies or groundwater that receive discharges of waste from irrigated lands. The United States Environmental Protection Agency (USEPA) has adopted the *National Toxics Rule* and the *California Toxics Rule*, which constitute water quality criteria that apply to waters of the United States.

The specific waste constituents required to be monitored and the applicable water quality standards that protect identified beneficial uses for the receiving water are set forth in Monitoring and Reporting Program (MRP) Order No. R3-2012-0011-01, MRP Order No. R3-2012-0011-02, and MRP Order No. R3-2012-0011-03.

This Attachment A lists additional findings (Part A), relevant plans, policies, regulations (Part B), and definitions of terms (Part C) used in Order No. R3-2012-0011.

PART A. ADDITIONAL FINDINGS

The California Regional Water Quality Control Board, Central Coast Region additionally finds that:

1. The Central Coast Water Board is the principal state agency in the Central Coast Region with primary responsibility for the coordination and control of water quality. (Cal. Wat. Code § 13001, Legislative Intent) The purpose of this Order is to focus on the highest water quality priorities and maximize water quality protection to ensure the long-term reliability and availability of water resources of sufficient supply and quality for all present and future beneficial uses, including drinking water and aquatic life. Given the magnitude and severity of water quality impairment and impacts to beneficial uses caused by irrigated agriculture and the significant cost to the public, the Central Coast Water Board finds that it is reasonable and necessary to require specific actions to protect water quality.
2. The Central Coast Water Board recognizes that Dischargers may not achieve immediate compliance with all requirements. Thus, this Order provides reasonable schedules for Dischargers to reach full compliance over many years by implementing management practices and monitoring and reporting programs that demonstrate and verify measurable progress annually. This Order includes specific dates to achieve compliance with this Order and milestones that will reduce pollutant loading or impacts to surface water and groundwater in the short term (e.g., a few years) and achieve water quality standards in surface water and groundwater in the longer term (e.g., decades); some compliance dates extend beyond the term of this Order. The focus of this Order is non-tile drain discharges, although Tier 3 tile drain discharges on individual farms/ranches must be monitored. Dischargers with tile drains must also describe management practices used or proposed to be used to attain water quality standards or minimize exceedances in receiving waters while making progress to attain water quality standards. The Executive Officer will evaluate any proposed longer timeframes to address tile-drain discharges.
3. According to California Water Code Section 13263(g), the discharge of waste to waters of the State is a privilege, not a right. It is the responsibility of dischargers of waste from irrigated lands to comply with the Water Code by seeking waste discharge requirements (WDRs) or by complying with a waiver of WDRs. This Order waiving the requirement to obtain WDRs provides a mechanism for dischargers of waste from irrigated lands to meet their responsibility to comply with the Water Code and to prevent degradation of waters of the State, prevent nuisance, and to protect the beneficial uses. Dischargers are responsible for the quality of surface waters and ground waters that have received discharges of waste from their irrigated lands.

AGRICULTURAL AND WATER RESOURCES IN THE CENTRAL COAST REGION

4. In the Central Coast Region, nearly all agricultural, municipal, industrial, and domestic water supply comes from groundwater. Groundwater supplies approximately 90 percent of the drinking water on the Central Coast. Currently, more than 700 municipal public supply wells in the Central Coast Region provide drinking water to the public. In addition, based on 1990 census data, there are more than 40,000 permitted private wells in the Region, most providing domestic drinking water to rural households and communities from shallow sources. The number of private domestic wells has likely significantly increased in the past 20 years due to population growth.
5. In the Salinas, Pajaro, and Santa Maria groundwater basins, agriculture accounts for approximately 80 to 90 percent of groundwater pumping (MCWRA, 2007; PVWMA, 2002; Luhdorff and Scalmanini Consulting Engineers. April 2009).
6. The Central Coast Region supports some of the most significant biodiversity of any temperate region in the world and is home to the last remaining population of the California sea otter, three sub-species of threatened or endangered steelhead (*Oncorhynchus mykiss*) and one sub-species of endangered coho salmon (*Oncorhynchus kisutch*). The endangered marsh sandwort (*Arenaria paludicola*), Gambel's watercress (*Nasturtium rorippa gambelii*), California least tern (*Sterna antillarum browni*), and threatened red-legged frog (*Rana aurora*) are present in the region.
7. Several watersheds drain into Monterey Bay National Marine Sanctuary, one of the largest marine sanctuaries in the world. Elkhorn Slough is one of the largest remaining tidal wetlands in the United States and one of the National Oceanic and Atmospheric Administration (NOAA) designated National Estuarine Research Reserves. The southern portion includes the Morro Bay National Estuary and its extensive salt marsh habitat.
8. The two endangered plants, marsh sandwort and Gambel's watercress, are critically imperiled and their survival depends upon the health of the Oso Flaco watershed. The last remaining known population of marsh sandwort and one of the last two remaining known populations of Gambel's watercress occur in Oso Flaco Lake (United States Department of the Interior Fish and Wildlife Service, 2007).
9. The Central Coast of California is one of the most productive and profitable agricultural regions in the nation, reflecting a gross production value of more than six billion dollars in 2008 and contributing to more than 14 percent of California's agricultural economy. The region produces many high value specialty crops including lettuce, strawberries, raspberries, artichokes, asparagus, broccoli, carrots, cauliflower, celery, fresh herbs, mushrooms, onions, peas, spinach, wine

grapes, tree fruit and nuts. An adequate water supply of sufficient quality is critical to supporting the agricultural industry on the Central Coast.

LEGAL AND REGULATORY CONSIDERATIONS

10. This Attachment A to Order No. R3-2012-0011 identifies applicable plans and policies adopted by the State Water Board and the Central Coast Water Board that contain regulatory requirements that apply to the discharge of waste from irrigated lands. This Attachment A also provides definitions of terms for purposes of this Order.
11. The Water Code grants authority to the State Water Board with respect to State water rights and water quality regulations and policy, and establishes nine Regional Water Boards with authority to regulate discharges of waste that could affect the quality of waters of the State and to adopt water quality regulations and policy.
12. As further described in the Order, discharges from irrigated lands affect the quality of the waters of the State depending on the quantity of the waste discharge, quantity of the waste, the quality of the waste, the extent of treatment, soil characteristics, distance to surface water, depth to groundwater, crop type, implementation of management practices and other site-specific factors. Discharges from irrigated lands have impaired and will continue to impair the quality of the waters of the State within the Central Coast Region if such discharges are not controlled.
13. Water Code Section 13267(b)(1) authorizes the Central Coast Water Board to require dischargers to submit technical reports necessary to evaluate Discharger compliance with the terms and conditions of this Order and to assure protection of waters of the State. The Order, this Attachment A, and the records of the Water Board provide the evidence demonstrating that discharges of waste from irrigated lands have degraded and/or polluted the waters of the state. Persons subject to this Order discharge waste from irrigated lands that impacts the quality of the waters of the state. Therefore it is reasonable to require such persons to prepare and submit technical reports.
14. Water Code Section 13269 provides that the Central Coast Water Board may waive the requirement in Water Code section 13260(a) to obtain WDRs. Water Code section 13269 further provides that any such waiver of WDRs shall be conditional, must include monitoring requirements unless waived, may not exceed five years in duration, and may be terminated at any time by the Central Coast Water Board or Executive Officer.

15. Water Code Section 13269(a)(4)(A) authorizes the Central Coast Water Board to include as a condition of a conditional waiver the payment of an annual fee established by the State Water Board. California Code of Regulations, Title 23, Division 3, Chapter 9, Article 1, Section 2200.3 sets forth the applicable fees. The Order requires each Discharger to pay an annual fee to the State Water Board in compliance with the fee schedule.
16. The Water Quality Control Plan for the Central Coast Basin (Basin Plan) designates beneficial uses, establishes water quality objectives, contains programs of implementation needed to achieve water quality objectives, and references the plans and policies adopted by the State Water Board. The water quality objectives are required to protect the beneficial uses of waters of the State identified in this Attachment A.
17. The Order is consistent with the Basin Plan because it requires Dischargers to comply with applicable water quality standards, as defined in this Attachment A, and requires terms and conditions, including implementation of management practices. The Order also requires monitoring and reporting as defined in MRP Order No. R3-2012-0011-01, MRP Order No. R3-2012-0011-02, and MRP Order No. R3-2012-0011-03 to determine the effects of discharges of waste from irrigated lands on water quality, verify the adequacy and effectiveness of this Order's terms and conditions, and to evaluate individual Discharger's compliance with this Order.
18. Water Code Section 13246 requires boards, in carrying out activities that affect water quality to comply with State Water Board policy for water quality control. This Order requires compliance with applicable State Water Board policies for water quality control.
19. This Order is consistent with the requirements of the *Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program* (NPS Policy) adopted by the State Water Board in May 2004. The NPS Policy requires, among other key elements, that an NPS control implementation program's ultimate purpose shall be explicitly stated and that the implementation program must, at a minimum, address NPS pollution in a manner that achieves and maintains water quality objectives and beneficial uses, including any applicable anti-degradation requirements. The NPS Policy improves the State's ability to effectively manage NPS pollution and conform to the requirements of the Federal Clean Water Act and the Federal Coastal Zone Act Reauthorization Amendments of 1990. The NPS Policy provides a bridge between the State Water Board's January 2000 *NPS Program Plan* and its 2010 *Water Quality Enforcement Policy*. The NPS Policy's five key elements are:

- a. Key Element #1 - Addresses NPS pollution in a manner that achieves and maintains water quality objectives and beneficial uses
 - b. Key Element #2 - Includes an implementation program with descriptions of the Management Practices (MPs) and other program elements and the process to be used to ensure and verify proper MP implementation
 - c. Key Element #3 - Includes a specific time schedule and corresponding quantifiable milestones designed to measure progress toward reaching the specified requirements
 - d. Key Element #4 - Contains monitoring and reporting requirements that allow the Water Board, dischargers, and the public to determine that the program is achieving its stated purpose(s) and/or whether additional or different MPs or other actions are required
 - e. Key Element #5 - Clearly discusses the potential consequences for failure to achieve the NPS control implementation program's stated purposes
20. Consistent with the NPS Policy, management practice implementation assessment may, in some cases, be used to measure nonpoint source control progress. However, management practice implementation never may be a substitute for meeting water quality requirements.
21. This Order is consistent with provisions of State Water Resources Control Board Resolution No. 68-16, "Statement of Policy with Respect to Maintaining High Quality of Waters in California." Regional boards, in regulating the discharge of waste, must maintain high quality waters of the State until it is demonstrated that any change in quality will be consistent with maximum benefit to the people of the State, will not unreasonably affect beneficial uses, and will not result in water quality less than that described in the Regional Board's policies. The Order will result in improved water quality throughout the region. Dischargers must comply with all applicable provisions of the Basin Plan, including water quality objectives, and implement best management practices to prevent pollution or nuisance and to maintain the highest water quality consistent with the maximum benefit to the people of the State. The conditions of this waiver will protect high quality waters and restore waters that have already experienced some degradation.
22. This Order is consistent with State Water Board Resolution 68-16. This Order requires Dischargers to 1) comply with the terms and conditions of the Order and meet applicable water quality standards in the waters of the State; 2) develop and implement management practices, treatment or control measures, or change farming practices, when discharges are causing or contributing to exceedances of applicable water quality standards; 3) conduct activities in a manner to prevent nuisance; and 4) conduct activities required by MRP Order No. R3-2012-0011-01, MRP Order No. R3-2012-0011-02, and MRP Order No. R3-2012-0011-03, and revisions thereto.

RATIONALE FOR THIS ORDER

23. On April 15, 1983, the Central Coast Water Board approved a policy waiving WDRs for 26 categories of discharges, including irrigation return flows and non-NPDES stormwater runoff. Pursuant to Water Code Section 13269, these waivers terminated on January 1, 2003.
24. On July 9, 2004, the Central Coast Water Board adopted Resolution No. R3-2004-0117 establishing the 2004 Agricultural Order.
25. Dischargers enrolled in the 2004 Agricultural Order established the Cooperative Monitoring Program (CMP) in compliance with monitoring requirements. The CMP collected and analyzed data for 15 to 20 parameters from 50 sites in multiple watersheds and identified severe surface water quality impairments resulting from agricultural land uses and discharges. CMP did not attempt to identify the individual farm operations that are causing the surface water quality impairments. The lack of discharge monitoring and reporting, the lack of verification of on-farm water quality improvements, and the lack of public transparency regarding on-farm discharges, are critical limitations of the 2004 Agricultural Order, especially given the scale and severity of the surface water and groundwater impacts and the resulting costs to society. The Order addresses these limitations.
26. The Central Coast Water Board extended the 2004 Agricultural Order multiple times. The 2004 Agricultural Order expires on September 30, 2012.
27. The Central Coast Water Board reviewed all available data, including information collected in compliance with the 2004 Agricultural Order, and determined that discharges of waste from irrigated lands continue to result in degradation and pollution of surface water and groundwater, and impairment of beneficial uses, including drinking water and aquatic habitat, and determined that additional conditions are necessary to ensure protection of water quality and to measure the effectiveness of implementation of the Order.
28. It is appropriate to adopt a waiver of WDRs for this category of discharges because, as a group, the discharges have the same or similar waste from the same or similar operations and use the same or similar treatment methods and management practices (e.g., source control, reduced agricultural surface runoff, reduced chemical use, holding times, cover crops, etc.).
29. It is appropriate to regulate discharges of waste from irrigated lands under a conditional waiver rather than individual WDRs in order to simplify and streamline the regulatory process. Water Board staff estimate that there are more than 3000 individual owners and/or operators of irrigated lands who discharge waste from

irrigated lands; therefore, it is not an efficient use of resources to adopt individual WDRs for all Dischargers within a reasonable time.

30. This Order is in the public interest because:

- a. The Order was adopted in compliance with Water Code Sections 13260, 13263, and 13269 and other applicable law;
- b. The Order requires compliance with water quality standards;
- c. The Order includes conditions that are intended to eliminate, reduce and prevent pollution and nuisance and protect the beneficial uses of the waters of the State;
- d. The Order contains more specific and more stringent conditions for protection of water quality compared to the 2004 Agricultural Order;
- e. The Order contains conditions that are similar to the conditions of municipal stormwater NPDES permits, including evaluation and implementation of management practices to meet applicable water quality standards and a more specific MRP;
- f. The Order focuses on the highest priority water quality issues and most severely impaired waters;
- g. The Order provides for an efficient and effective use of Central Coast Water Board resources, given the magnitude of the discharges and number of persons who discharge waste from irrigated lands;
- h. The Order provides reasonable flexibility for the Dischargers who seek coverage under this Order by providing them with a reasonable time schedule and options for complying with the Water Code.

31. This Order waives the requirement for Dischargers to obtain WDRs for discharges of waste from irrigated lands if the Dischargers are in compliance with the Order. This Order is conditional, may be terminated at any time, does not permit any illegal activity, does not preclude the need for permits that may be required by other State or local government agencies, and does not preclude the Central Coast Water Board from administering enforcement remedies (including civil liability) pursuant to the Water Code.

32. The Central Coast Water Board may consider issuing individual WDRs to some Dischargers because of their actual or potential contribution to water quality impairments, history of violations, or other factors.

IMPACTS TO WATER QUALITY FROM AGRICULTURAL DISCHARGES

Impacts to Groundwater – Drinking Water and Human Health

33. Nitrate pollution of drinking water supplies is a critical problem throughout the Central Coast Region. Studies indicate that fertilizer from irrigated agriculture is

the primary source of nitrate pollution of drinking water wells and that significant loading of nitrate continues as a result of agricultural fertilizer practices (Carle, S.F., et al., June 2006).

34. Groundwater pollution from nitrate severely impacts public drinking water supplies in the Central Coast Region. A Department of Water Resources (DWR, 2003) survey of groundwater quality data collected between 1994 and 2000 from 711 public supply wells in the Central Coast Region found that 17 percent of the wells (121 wells) detected a constituent at concentrations above one or more California Department of Public Health (CDPH) drinking water standards or primary maximum contaminant levels (MCLs). Nitrate caused the most frequent MCL exceedances (45 mg/L nitrate as nitrate or 10 mg/L nitrate as nitrogen), with approximately 9 percent of the wells (64 wells) exceeding the drinking water standard for nitrate. According to data reported by the State Water Resources Control Board's Groundwater Ambient Monitoring and Assessment Program (GAMA) GeoTracker website (<http://www.waterboards.ca.gov/gama/>), recent impacts to public supply wells are greatest in portions of the Salinas Valley (up to 20 percent of wells exceeding MCLs) and Santa Maria (approximately 17 percent) groundwater basins. In the Gilroy-Hollister Groundwater Basin, 12.5 percent of the public supply wells exceed MCLs (data obtained using the GeoTracker DPH Public Supply Well Search Tool for nitrate for wells located in the Gilroy-Hollister groundwater basin. The well data includes Department of Public Health data for well sampling information ranging from 2006 until 2009). CDPH identified over half of the drinking water supply wells as vulnerable to discharges from agricultural-related activities in that basin. This information is readily tracked and evaluated because data are collected on a regular frequency, made publicly available, and public drinking water supplies are regulated by CDPH as required by California law.
35. Groundwater pollution from nitrate severely impacts shallow domestic wells in the Central Coast Region resulting in unsafe drinking water in rural communities. Domestic wells (wells supplying one to several households) are typically drilled in relatively shallow groundwater, and as a result exhibit higher nitrate concentrations than deeper public supply wells. Water quality monitoring of domestic wells is not generally required and water quality information is not readily available; however, based on the available data, the number of domestic wells that exceed the nitrate drinking water standard is likely in the range of hundreds or thousands. Private domestic well water quality is not regulated and rural residents are likely drinking water from these impaired sources without treatment and without knowing the quality of their drinking water.
36. In the northern Salinas Valley, 25 percent of 352 wells sampled (88 wells) had concentrations above the nitrate drinking water standard. In other portions of the Salinas Valley, up to approximately 50 percent of the wells surveyed had

concentrations above the nitrate drinking water standard, with average concentrations nearly double the drinking water standard and the highest concentration of nitrate approximately nine times the drinking water standard (Monterey County Water Resources Agency [MCWRA], 1995). Nitrate exceedances in the Gilroy-Hollister and Pajaro groundwater basins reflect similar severe impairment, as reported by local water agencies/districts for those basins (SCVWD, 2001; SWRCB, 2005; San Benito County Water District, 2007; Kennedy/Jenks Consultants, 2008).

37. Local county and water district reports indicate that in the Pajaro River watershed, the highest recent nitrate concentration (over 650 mg/L nitrate, more than 14 times the drinking water standard) occurred in shallow wells in the eastern San Juan subbasin under intense agricultural production. High values of nitrate concentration in groundwater (greater than 500 mg/L nitrate) have also been reported in the Llagas subbasin and the lower Pajaro coastal aquifer.
38. The costs of groundwater pollution and impacts to beneficial uses caused by irrigated agriculture are transferred to the public. Public drinking water systems expend millions of dollars in treatment and replacement costs and private well owners must invest in expensive treatment options or find new sources. Rural communities, those least able to buy alternative water sources, have few options to replace the contaminated water in their homes. This Order addresses groundwater pollution to ensure protection of beneficial uses and public health.
39. Excessive concentrations of nitrate or nitrite in drinking water are hazardous to human health, especially for infants and pregnant women. The United States Environmental Protection Agency (USEPA) established a nitrate drinking water standard of 45 mg/L nitrate as nitrate (10 mg/L nitrate as nitrogen). While acute health effects from excessive nitrate levels in drinking water are primarily limited to infants (methemoglobinemia or "blue baby syndrome"), research evidence suggests there may be adverse health effects (i.e., increased risk of non-Hodgkin's, diabetes, Parkinson's disease, alzheimers, endocrine disruption, cancer of the organs) among adults as a result of long-term consumption exposure to nitrate (Sohn, E., 2009; Pelley, J., 2003; Weyer, P., et. al., 2001, Ward, M.H., et. al., 1996).
40. Nitrogen compounds are known to cause cancer. University of Iowa research found that up to 20 percent of ingested nitrate is transformed in the body to nitrite, which can then undergo transformation in the stomach, colon, and bladder to form N-nitroso compounds that are known to cause cancer in a variety of organs in more than 40 animal species, including primates (Weyer, P., et. al., 2001).
41. In many cases, whole communities that rely on groundwater for drinking water are threatened due to nitrate pollution, including the community of San Jerardo and

other rural communities in the Salinas Valley. Local agencies and consumers have reported impacts to human health resulting from nitrate contaminated groundwater likely due to agricultural land uses, and spent significant financial resources to ensure proper drinking water treatment and reliable sources of safe drinking water for the long-term (CCRWQCB, 2009).

42. Current strategies for addressing nitrate in groundwater to achieve levels protective of human health typically include avoidance (abandoning impacted wells or re-drilling to a deeper zone), groundwater treatment to remove nitrate (i.e., dilution using blending, ion exchange, reverse osmosis, biological denitrification, and distillation), or developing additional water supplies (i.e., percolation ponds, surface water pipelines, reservoirs) to dilute nitrate-impacted sources (Lewandowski, A.M., May 2008; Washington State Department of Health, 2005).
43. The costs to treat and clean up existing nitrate pollution to achieve levels that are protective of human health are very expensive to water users (e.g., farmers, municipalities, domestic well users). Research indicates that the cost to remove nitrate from groundwater can range from hundreds of thousands to millions of dollars annually for individual municipal or domestic wells (Burge and Halden, 1999; Lewandowski, May 2008). Wellhead treatment on a region-wide scale is estimated to cost billions of dollars. Similarly, the cost to actively clean up nitrate in groundwater on a region wide scale would also cost billions of dollars, and would be logistically difficult. If the nitrate loading due to agricultural activities is not significantly reduced, these costs are likely to increase significantly.
44. Many public water supply systems are required to provide well-head treatment or blending of drinking water sources, at significant cost, to treat nitrate before delivery to the drinking water consumer due to elevated concentrations of nitrate in groundwater. The community of San Jerardo (rural housing cooperative of primarily low-income farmworker families with approximately 250 residents) initially installed well-head treatment to treat groundwater contaminated with nitrate and other chemicals at significant cost, with on-going monthly treatment costs of approximately \$17,000. Monterey County public health officials determined that the community of San Jerardo requires a new drinking water well to ensure safe drinking water quality protective of public health at an approximate cost of more than \$4 million. The City of Morro Bay uses drinking water supplies from Morro and Chorro groundwater basins. Study results indicate that agricultural activities in these areas, predominantly over-application of fertilizer, have impacted drinking water supplies resulting in nitrate concentrations more than four times the drinking water standard (Cleath and Associates, 2007). The City of Morro Bay must blend or provide well-head treatment to keep nitrate concentrations at levels safe for drinking water at significant cost (City of Morro Bay, 2006). The City of Santa Maria public supply wells are also impacted by nitrate (in some areas nearly twice

the drinking water standard) and must also blend sources to provide safe drinking water (City of Santa Maria, 2008).

Impacts to Groundwater – Nitrate and Salts

45. Groundwater pollution due to salts is also one of the most significant and critical problems in the Central Coast Region. Agricultural activities are a significant cause of salt pollution (Monterey County Flood Control and Water Conservation District, 1990). Salt increases in irrigated agricultural coastal basins are primarily due to the following:
 - a. Seawater intrusion within the coastal basins (e.g., Salinas and Pajaro groundwater basins) caused primarily by excessive agricultural pumping (MCWRA, 2007).
 - b. Agricultural pumping/recycling of groundwater that concentrates salts in the aquifers.
 - c. Agricultural leaching of salts from the root zone.
 - d. The importation of salts into the basin from agricultural soil amendments and domestic/municipal wastewater discharges.
46. Based on the high proportion of groundwater extractions, agricultural pumping of groundwater contributes to saltwater intrusion into the Salinas and Pajaro groundwater basins, which is causing increasing portions of the groundwater basins to be unusable for agriculture and municipal supply (MCWRA, 2008 and Pajaro Valley Water Resource Agency, 2002).
47. Agricultural activities contribute significant loading of nitrates into groundwater from the following sources (Monterey County Flood Control and Water Conservation District, 1988):
 - a. Intensive fertilizer applications on permeable soils.
 - b. Liquid fertilizer hookups on well pump discharge lines lacking backflow prevention devices.
 - c. Groundwater wells that are screened through multiple aquifers, thereby acting as conduits for pollution transport into deeper groundwater.
 - d. Spills and/or uncontrolled wash water or runoff from fertilizer handling and storage operations.
48. Agricultural waste discharges contribute to pollution of groundwater basins most vulnerable to waste migration, including major portions of the Santa Maria, Salinas, and Gilroy-Hollister groundwater basins. However, any groundwater basin, including those that are confined (pressured), are susceptible to downward waste migration through improperly constructed, operated (e.g., fertigation or chemigation without backflow prevention), or abandoned wells. Additionally, land with

permeable soils and shallow groundwater are susceptible to downward waste migration. Such areas of groundwater vulnerability often overlap with important recharge areas that serve to replenish drinking water supplies.

49. Agricultural discharges of fertilizer are the main source of nitrate pollution to shallow groundwater based on nitrate loading studies conducted in the Llagas subbasin and the lower Salinas groundwater basin (Carle, S.F., et al., June 2006). In 2007, the California Department of Food and Agriculture (CDFA) reported that approximately 56 million pounds of nitrogen were purchased as fertilizer in Monterey County. A 1990 Monterey County study of nitrate sources leaching to soil and potentially groundwater in Santa Cruz and Monterey Counties indicated that irrigated agriculture contributes approximately 78 percent of the nitrate loading to groundwater in these areas (Monterey County Flood Control and Water Conservation District, November 1990).
50. A groundwater study in the Llagas subbasin indicates that nitrate pollution in groundwater is elevated in the shallow aquifer because it is highly vulnerable due to high recharge rates and rapid transport, and that the dominant source of nitrate is synthetic fertilizers. Groundwater age data in relation to nitrate concentration indicate that the rate of nitrate loading to the shallow aquifer is not yet decreasing in the areas sampled. In areas east of Gilroy, groundwater nitrate concentrations more than double the drinking water standard correspond to younger groundwater ages (less than seven years old and in some cases less than two years old), indicating that the nitrate pollution is due to recent nitrate loading and not legacy farming practices (Moran et al., 2005).
51. The University of California Center for Water Resources (WRC) developed the Nitrate Groundwater Pollution Hazard Index (Nitrate Hazard Index) in 1995. The Nitrate Hazard Index identifies agricultural fields with the highest vulnerability for nitrate pollution to groundwater, based on soil, crop, and irrigation practices. Based on the Nitrate Hazard Index, the following crop types present the greatest risk for nitrate loading to groundwater: Beet, Broccoli, Cabbage, Cauliflower, Celery, Chinese Cabbage (Napa), Collard, Endive, Kale, Leek, Lettuce, Mustard, Onion, Spinach, Strawberry, Pepper, and Parsley.

Impacts to Groundwater – Pesticides

52. The Department of Pesticide Regulation (DPR) has identified two Groundwater Protection Areas that are vulnerable to pesticide contamination in San Luis Obispo County (south of Arroyo Grande, west of Nipomo Mesa, and north of the Santa Maria River) and Monterey County (Salinas area).
53. Based on a 2007 DPR report, pesticide detections in groundwater are rare in the Central Coast region. Of 313 groundwater wells sampled in the Central Coast

region, six wells (1.9%) had pesticide detections in less than two samples (considered unverified detections).

54. A review of DPR data collected from 1984 – 2009 indicates that the three pesticides/pesticide degradates with the highest detection frequency in groundwater were chlorthal-dimethyl and degradates (total), TPA (2,3,5,6-tetrachloroterephthalic acid) and carbon disulfide. Compounds reported by DPR above a preliminary health goal (PHG) or drinking water standard include (by county): ethylene dibromide (2002), atrazine (1993), and dinoseb (1987) Monterey; heptachlor (1989), ethylene dibromide (1989) Santa Barbara; benzene (various dates 1994-2007), 1,2,4-trichlorobenzene (1991) Santa Cruz; ethylene dibromide (1994, 2008, 2009) San Luis Obispo; and 1,1,2,2-tetrachloroethane (1998) Santa Clara.
55. Results from pesticide analyses conducted as part of the Groundwater Ambient Monitoring and Assessment Program (GAMA) studies in the Central Coast region (Kulongoski, 2007; Mathany 2010) indicate a significant presence of pesticides in groundwater. GAMA achieved ultra-low detection levels of between 0.004 and 0.12 micrograms per liter (generally less than .01 micrograms per liter). Out of 54 wells sampled in groundwater basins in the south coast range study unit (bounded by the Santa Lucia and San Luis Ranges, and San Raphael Mountains to the north and east, and the Santa Ynez mountains to the south), 28 percent of the wells had 11 pesticides or pesticide degradates detected in groundwater samples, with the three most abundant detections being deethylatrazine (18.5 percent), atrazine (9.3 percent), and simazine (5.6 percent). Twenty-eight percent of 97 wells sampled in the Monterey Bay and Salinas Valley Basins had pesticide detections, including 18 percent for simazine, 11 percent for deethylatrazine, and 5 percent for atrazine. None of the pesticides detected as part of the GAMA program exceeded any drinking water standard or health-based threshold value.

Impacts to Surface Water

56. The 2010 Clean Water Act Section 303(d) List of Impaired Waterbodies for the Central Coast Region (2010 List of Impaired Waterbodies) identified surface water impairments for approximately 700 waterbodies related to a variety of pollutants (e.g. salts, nutrients, pesticides/toxicity, and sediment/turbidity). Sixty percent of the surface water listings identified agriculture as one of the potential sources of water quality impairment.
57. The impact from agricultural discharges on surface water quality is or has been monitored by various monitoring programs, including:
 - a. The Central Coast Water Board's Ambient Monitoring Program: Over the past 10 years, the Central Coast Ambient Monitoring Program (CCAMP) has

collected and analyzed water quality data to address 25 conventional water quality parameters from 185 sites across the Central Coast Region to assess surface water quality. To support analysis of conventional water quality data CCAMP has collected bioassessment data from 100 of the 185 sites, water toxicity data from 134 of the 185 sites, and sediment toxicity from 57 of the 185 sites. CCAMP data show widespread toxicity and pollution in agricultural areas.

- b. Cooperative Monitoring Program (CMP): Over the last five years, the CMP has focused on assessing agricultural water quality for the 2004 Agricultural Order, and collected and analyzed data for 15 to 20 parameters from 50 sites in multiple watersheds. CMP data show widespread toxicity and pollution in agricultural areas.

58. Data from CCAMP and CMP indicate that surface waterbodies are severely impacted in the lower Salinas and Santa Maria watersheds due to the intensive agricultural activity in these areas, and water quality in these areas are the most severely impaired in the Central Coast Region.

Impacts to Surface Water – Nutrients

59. Nitrate pollution in surface water is widespread in the Central Coast Region, with 46 waterbodies listed as impaired for this pollutant on the 2010 List of Impaired Waterbodies List. Seventy percent of these nitrate listings occur in the three major agricultural watersheds: Salinas area (16 waterbodies), Pajaro River (5 waterbodies) and Santa Maria River (12 waterbodies). Other significant nitrate listings fall in small drainages in areas of intensive agriculture or greenhouse activity along the south coast, including Arroyo Paredon, Franklin Creek, Bell Creek, Los Carneros and Glen Annie creeks (CCRWQCB, 2009a)
60. The California Department of Public Health (CDPH) drinking water standard is 10 mg/L nitrate as N. The drinking water standard is not intended to protect aquatic life and Water Board staff estimates that 1 mg/L nitrate is necessary to protect aquatic life beneficial uses from biostimulation based on an evaluation of CCAMP data (CCRWQCB, 2009b). Water Board staff used this criteria to evaluate surface water quality impairment to aquatic life beneficial uses in the 2010 Impaired Waterbodies List.
61. In a broadly scaled analysis of land uses, nitrate pollution is associated with row crop agriculture. In addition, discharge from even a single agricultural operation can result in adjacent creek concentrations exceeding the drinking water standard and the much lower limits necessary to protect aquatic life. Many heavily urbanized creeks show only slight impacts from nitrate, with most urban impact associated with wastewater discharges. (CCAMP, 2010a).

62. Agricultural discharges result in significant nitrate pollution in the major agricultural areas of the Central Coast Region (CCAMP, 2010a). More than sixty percent of all sites from CCAMP and CMP combined datasets have average nitrate concentrations that exceed the drinking water standard and limits necessary to protect aquatic life (CCAMP, 2010b). Ten percent of all sites have average nitrate concentrations that exceed the drinking water standard by five-fold or more. Some of the most seriously polluted waterbodies include the following:
- a. Tembladero Slough system (including Old Salinas River, Alisal Creek, Alisal Slough, Espinosa Slough, Gabilan Creek and Natividad Creek),
 - b. Pajaro River (including Llagas Creek, San Juan Creek, and Furlong Creek),
 - c. Lower Salinas River (including Quail Creek, Chualar Creek and Blanco Drain),
 - d. Lower Santa Maria River (including Orcutt-Soloman Creek, Green Valley Creek, and Bradley Channel),
 - e. Oso Flaco watershed (including Oso Flaco Lake, Oso Flaco Creek, and Little Oso Flaco Creek).
63. Dry season flows decreased over the last five years in some agricultural areas that have large amounts of tailwater runoff. Detailed flow analysis by the CMP showed that 18 of 27 sites in the lower Salinas and Santa Maria watersheds had statistically significant decreases in dry season flow over the first five years of the program. Some sites that show increasing concentrations of nitrate have coincident declining trends in flow, possibly due to reductions in tailwater (CCWQP, 2009a). CCAMP monitoring has detected declining flows at other sites elsewhere in the Region through the end of 2009 (CCAMP, 2010a), likely because of drought.
64. Some statistically significant changes in nitrate concentration are evident in CCAMP and CMP data. Several drainages are improving in water quality in the Santa Barbara area (such as Bell Creek, which supports agricultural activities) and on Pacheco Creek in the Pajaro watershed. However, in some of the most polluted waters (Old Salinas River, Orcutt Creek, Santa Maria River mouth), nitrate concentrations are getting worse (CCAMP, 2010a). In the lower Salinas and Santa Maria watersheds, flow volumes are declining at some sites (CCWQP, 2009a; CCAMP, 2010a).
65. Nitrate concentrations in Oso Flaco Lake exceed the levels that support aquatic life beneficial uses, threatening remaining populations of two endangered plants, marsh sandwort and Gambel's watercress. In 25 water samples taken from Oso Flaco Lake in 2000-2001 and 2007, levels of nitrate/nitrite (as N) averaged 30.5 mg/L with a minimum of 22.0 mg/L and a maximum of 37.1 mg/L (CCAMP, 2010a). Biostimulation in Oso Flaco Lake has caused the rapid and extreme growth of

common wetland species, which are now crowding out sensitive species that have not become similarly vigorous (United States Department of the Interior Fish and Wildlife Service, 2010).

66. Agricultural discharges result in un-ionized ammonia concentrations at levels that are toxic to salmonids at some sites in areas dominated by agricultural activity (USEPA, 1999). The waterbodies where these sites are located are on the 2010 List of Impaired Waterbodies due to un-ionized ammonia, particularly in the lower Salinas and Santa Maria river areas (CCRWQCB, 2009).

Impacts to Surface Water – Toxicity and Pesticides

67. The Basin Plan general objective for toxicity states the following: “All waters shall be maintained free of toxic substances in concentrations which are toxic to, or which produce detrimental physiological responses in human, plant, animal or aquatic life.” The Basin Plan general objective for pesticides states the following: “No individual pesticide or combination of pesticides shall reach concentrations that adversely affect beneficial uses. There shall be no increase in pesticide concentrations found in bottom sediments or aquatic life.”
68. Based on CCAMP, CMP, and other monitoring data, multiple pesticides and herbicides have been detected in Central Coast surface waterbodies (identified below). The Basin Plan general objective for pesticides states that no individual pesticide or combination of pesticides shall reach concentrations that adversely affect beneficial uses, and no increase in pesticide concentrations shall be found in bottom sediments or aquatic life. Many currently applied pesticides have not been tested for, and staff is only recently aware of data showing several relatively new fungicides (azoxystrobin, pyraclostrobin and boscalid) in fish tissue and sediment of lagoons in the Central Coast Region.¹ This is a violation of the Basin Plan general objective for pesticides. Additional monitoring for individual pesticides is needed to identify changes in pesticide loading and to identify concentrations of toxic and/or bioaccumulating substances not previously identified.

2,4-D	esfenvalerate	oryzalin
Alachlor	ethalfuralin	oxadiazon
Aldicarb	ethoprop	oxamyl
Atrazine	fenamiphos	oxyfluorfen

¹ “Watershed-scale Evaluation of Agricultural BMP Effectiveness in Protecting Critical Coastal Habitats: Final Report on the Status of Three Central California Estuaries” (Anderson et al, 2010).
<http://www.ccamp.org/ccamp/documents/EstuariesFinalReport022311.pdf>.

ATTACHMENT A.
 ORDER NO. R3-2012-0011
 CONDITIONAL WAIVER OF
 WASTE DISCHARGE REQUIREMENTS
 FOR DISCHARGES FROM IRRIGATED LANDS

azinphos-methyl	fenoxycarb	paraquat dichloride
Azoxystrobin	fenpropathrin	pendimethalin
Benefin	fipronil	permethrin
bentazon, sodium salt	glyphosate	phorate
Bifenthrin	hexazinone	phosmet
Boscalid	hydramethylnon	prodiamine
Bromacil	imidacloprid	prometon
bromoxynil octanoate	lambda cyhalothrin	prometryn
butylate	linuron	propanil
Carbaryl	malathion	propargite
Carbofuran	MCPA	propiconazole
Chlorpyrifos	MCPA, dimethylamine salt	propoxur
chlorthal-dimethyl	metalaxyl	propyzamide
cycloate	methidathion	Pyriproxyfen
Cyfluthrin	methiocarb	pyraclostrobin
Cypermethrin	methomyl	S.S.S-tributyl phosphorotrithioate
DDVP	methyl isothiocyanate	siduron
Deltamethrin	methyl parathion	simazine
Diazinon	metolachlor	tebuthiuron
Dicamba	metribuzin	terbuthylazine
Dicofol	molinate	tetrachlorvinphos
Dimethoate	naled	thiobencarb
Disulfoton	napropamide	triallate
Diuron	norflurazon	triclopyr
Endosulfan		trifluralin
EPTC		

69. Multiple studies, including some using Toxicity Identification Evaluations (TIEs), have shown that organophosphate pesticides and pyrethroid pesticides in Central Coast waters are likely causing toxicity to fish and invertebrate test organisms (CCAMP, 2010a, CCWQP, 2008a; CCWQP, 2009; CCWQP, 2010a; CCWQP, 2010d (in draft); Hunt et al., 2003, Anderson, et al. 2003; Anderson et al., 2006b. This is a violation of the Basin Plan general objective for toxicity.
70. Agricultural use rates of pesticides in the Central Coast Region and associated toxicity is among the highest in the State. In a statewide study of four agricultural areas conducted by the Department of Pesticide Regulation (DPR), the Salinas study area had the highest percent of surface water sites with pyrethroid pesticides detected (85 percent), the highest percent of sites that exceeded levels expected

to be toxic and lethal to aquatic life (42 percent), and the highest rate (by three-fold) of active ingredients applied (113 lbs/acre) (Starner, et al. 2006).

71. Agriculture-related toxicity studies conducted on the Central Coast since 1999 indicated that toxicity resulting from agricultural waste discharges of pesticides has caused declining aquatic insect and macroinvertebrate populations in Central Coast streams (Anderson et al., 2003; Anderson et al., 2006a; Anderson et al., 2006b; Anderson et al., 2010). This is a violation of the Basin Plan general objective for toxicity.
72. The breakdown products of organophosphate pesticides are more toxic to amphibians than are the products themselves (Sparling and Fellers, 2007).
73. The lower Salinas and Santa Maria areas have more overall water column invertebrate toxicity than other parts of the Central Coast Region, with much of the toxicity explained by elevated diazinon and chlorpyrifos concentrations (CCAMP, 2010a, CCWQP, 2008a; CCWQP, 2009; Hunt et al., 2003, Anderson, et al. 2003; Anderson et al., 2006a). Some agricultural drains have shown toxicity nearly every time the drains are sampled (CCAMP, 2010a).
74. Fish and sand crabs from the Salinas, Pajaro, and Santa Maria estuaries had detectable levels of currently applied fungicides, herbicides, and legacy pesticides like DDT based on a recently completed study of these central coast lagoons Anderson et al. (2010). Multiple samples from the Santa Maria Estuary, the most impacted of the three estuaries, also contained chlorpyrifos, diazinon, and malathion (organophosphate pesticides) and bifenthrin and cyfluthrin (pyrethroid pesticides). Department of Public Health human consumption guideline levels for these pesticides in fish tissue are not available. This is the first study in this Region documenting these currently applied pesticides in fish tissue. The Basin Plan requires that "there shall be no increase in pesticide concentrations found in bottom sediments or **aquatic life** (emphasis added)".
75. The National Oceanic Atmospheric Administration National Marine Fisheries Service (NMFS) issued a Biological Opinion that concluded that US EPA's registration of pesticides containing chlorpyrifos, diazinon, and malathion is likely to jeopardize the continued existence of 27 endangered and threatened Pacific salmonids and is likely to destroy or adversely modify designated critical habitat for 25 threatened and endangered salmonids because of adverse effects on salmonid prey and water quality in freshwater rearing, spawning, migration, and foraging areas (NMFS, 2008)
76. Three court-ordered injunctions impose limitations on pesticide use (including chlorpyrifos, diazinon, and malathion) within certain proximity of waterbodies to protect endangered species (DPR, 2010).

77. Creek bottom sediments are most consistently toxic in the lower Salinas and Santa Maria watersheds, areas dominated by intensive agricultural activity. Seventy percent of sites sampled for sediment in the Central Coast region have been toxic at least once (although sites selected for sediment toxicity sampling typically represent higher risk areas) (CCAMP, 2010a).
78. A CMP follow-up study on sediment toxicity (CCWQP, 2010d, in draft) showed pyrethroid pesticides to be the most prevalent and severe source of toxicity to sediments. Santa Maria area sites averaged 7.5 toxic units (TUs) from pyrethroid pesticides and 1.3 TUs from chlorpyrifos. One TU is sufficient to kill 50% of the test organisms in a toxicity test). All Santa Maria area sites were toxic to test organisms. Second highest pesticide levels were found in Salinas tributaries and the Salinas Reclamation canal, averaging 5.4 TUs pyrethroids and 0.8 TUs chlorpyrifos. Organochlorine pesticides were present, but not at levels sufficient to cause toxicity.
79. Peer-reviewed research has also shown pyrethroid pesticides are a major source of sediment toxicity in agricultural areas of the Central Coast Region (Ng et al., 2008; Anderson et al., 2006a, Phillips et al., 2006; Starner et al., 2006).
80. Agricultural sources of metals are particulate emissions, irrigation water, pesticides, biosolids, animal manure, and fertilizer applied directly to the soil (Chang et al, 2004). Metals, including arsenic, boron, cadmium, copper, lead, nickel, and zinc are common active ingredients in many pesticides (Fishel, 2008; Nesheim, 2002; Holmgren, 1998; Reigert and Roberts, 1999). Metals can be present in subsurface drainage discharge and may be associated with sediment in tailwater discharge. Some phosphate fertilizers contain cadmium, which can lead to an increase in the concentration of cadmium in soil. Past studies have found soils containing high concentrations of cadmium and lead in major vegetable production areas of the Salinas Valley (Chang et al, 2004; Page et al, 1987; USEPA, 1978; Jelinek and Braude, 1978).
81. The Basin Plan contains the following general objective for Phenols, 0.1 mg/L or 100 µg/L. Phenols are components or breakdown products of a number of pesticide formulations, including 2,4 D, MCPA, carbaryl, propoxur, carbofuran, and fenthion (Crespin, et al., 2001, Agrawal, et al., 1999). Phenolic compounds can cause odor and taste problems in fish tissue, some are directly toxic to aquatic life, and some are gaining increasing notice as endocrine disruptors (e.g., bisphenol A and nonylphenol). The original water quality standards were developed in response to concerns about odor and taste and direct toxicity.
82. One phenolic compound of known concern in Central Coast waters is nonylphenol. Agricultural sources of nonylphenol and the related nonylphenol

ethoxylates include pesticide products as "inert" ingredients and as adjuvants added by the pesticide user. Adjuvant ingredients are not reported in California's Pesticide Use Database. Adjuvants enhance a chemical's effect. Nonylphenol and related compounds are used as surfactants to make the pesticide product more potent and effective (Cserhati, 1995). Nonylphenol and its ethoxylates are acutely toxic to a wide variety of animals, including aquatic invertebrates and fish. In some cases, the nonylphenol is more toxic to aquatic species than the pesticide itself (National Research Council of Canada, 1982). Concern exists about these adverse effects of nonylphenol and its ethoxylates increases because these compounds also bioaccumulate in algae, mussels, shrimp, fish, and birds (Ahel et al, 1993; Ekelund (1990).

83. The San Luis Obispo Science and Ecosystem Alliance (SLOSEA) at California Polytechnic State University has found nonylphenol in elevated concentrations in fish tissue and has linked the occurrence to gonadal abnormalities and liver damage in fish in Morro Bay and other Central Coast locations. The Basin Plan standard of 100 µg/L for phenols is relatively protective for direct toxicity of nonylphenol to rainbow trout, which have an LC50 (lethal concentration impacting 50% of test organisms) of 194 µg/L. However, this limit is not protective for endocrine disruption purposes, which for rainbow trout is estimated at an EC50 (estrogenic concentration impacting 50% of test organisms) of 14.14 µg/L (Lech, 1996). Regardless of the limitations of the Basin Plan standard, it is important to assess this chemical in areas that are heavily influenced by agricultural activity.

Impacts to Surface Water – Turbidity and Temperature

84. Turbidity is a cloudy condition in water due to suspended silt or organic matter. Waters that exceed 25 nephelometric turbidity units (NTUs) can reduce feeding ability in trout (Sigler et al., 1984). Elevated turbidity during the dry season is an important measure of discharge across bare soil, and thus can serve as an indicator of systems with heavy irrigation runoff to surface waters.
85. The Basin Plan requires that "Waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses" (CCRWQCB, 1994).
86. Most CCAMP sites outside of agricultural areas have a median turbidity level less than 5 NTUs (CCAMP, 2010a). Many sampling sites that include significant agricultural discharge have turbidity levels that exceed 100 NTUs as a median value (CCAMP, 2010a).
87. Agricultural discharges cause and contribute to sustained turbidity throughout the dry season at many sampling sites dominated by agricultural activities. Resulting turbidity greatly exceeds levels that impact the ability of salmonids to feed. Many

of these sites are located in the lower Santa Maria and Salinas-Tembladero watersheds. The CMP detected some increasing trends in turbidity on the main stem of the Salinas River (CCRWQCB, 2009a; CCAMP, 2010a; CCWQP, 2009a).

88. Agricultural discharges and vegetation removal along riparian areas cause and contribute to water temperatures that exceed levels that are necessary to support salmonids at some sites in areas dominated by agricultural activity. Several of these sites are in major river corridors that provide rearing and/or migration habitat for salmonids. A good example of this is Orcutt Creek (CCAMP, 2010a), where upstream shaded areas are cooler than downstream exposed areas, in spite of lower upstream flows. Tailwater discharge and removal of riparian vegetation in downstream areas cause temperatures to rise above levels safe for trout. Several locations impacted by temperature are in major river corridors that provide rearing and/or migration habitat for salmonids. These include the Salinas, Santa Maria, and Santa Ynez rivers (CCAMP, 2010a).
89. Biological sampling shows that benthic biota are impaired in the lower Salinas and Santa Maria watersheds, and also shows that several measures of habitat quality, such as in-stream substrate and canopy cover, are poor compared to the upper watersheds and to other high quality streams in the Central Coast Region (CCWQP, 2009b; CCWQP, 2009c; CCWQP, 2009d; CCWQP, 2009e; CCAMP, 2010b)
90. Agricultural land use practices, such as removal of vegetation and stream channelization, and discharges from agricultural fields, can cause the deposition of fine sediment and sand over stream bottom substrate (Waters, 1995). This problem is especially prevalent in areas dominated by agricultural activity (lower Salinas and Santa Maria rivers) (CCWQP, 2009b; CCWQP, 2009c; CCWQP, 2009d; CCWQP, 2009e; CCAMP, 2010b). This deposition of fine sediment and sand in streams causes major degradation of aquatic life beneficial uses by eliminating pools and by clogging gravel where fish eggs, larvae, and benthic invertebrates that serve as a food source typically live (CCAMP, 2010b; Waters, 1995). Effective erosion control and sediment control management practices include but are not limited to cover crops, filter strips, and furrow alignment to reduce runoff quantity and velocity, hold fine particles in place, and increase filtration to minimize the impacts to water quality (USEPA, 1991).
91. Orchards, vineyards, and row crops have the greatest erosion rates in irrigated agriculture, especially those that are managed with bare soil between tree or vine rows (ANR, 2006). A vegetative filter strip offers one way to control erosion rates and discharge of sediment rather than letting it be carried off site in drainage water. A vegetative filter strip is an area of vegetation that is planted intentionally to help remove sediment and other pollutants from runoff water (Dillaha et al., 1989) Vegetative filter strips intercept surface water runoff and trap as much as 75 to 100

percent of the water's sediment. They capture nutrients in runoff, both through plant uptake through adsorption to soil particles. They promote degradation and transformation of pollutants into less-toxic forms, and they remove over 60% of certain pathogens from the runoff. (ANR, 2006).

Impacts to the Marine Environment

92. The marine environment in the Central Coast Region is impacted by runoff from irrigated agriculture and other sources. Legacy pesticides have impacted the marine environment and are still found in sediment and tissue at levels of concern today (CCLEAN, 2007; Miller et al., 2007; Dugan, 2005, BPTCP, 1998). Currently applied pesticides are persistent in the aquatic environment, but initial testing has not found them in offshore areas of Monterey Bay (CCAMP, 2010b).
93. Two Marine Protected Areas (MPAs), Elkhorn Slough and Moro Cojo Slough, are heavily impacted by agricultural chemicals and activities in the vicinity. The Elkhorn Slough and Moro Cojo Slough MPAs are at very high to extremely high risk for additional degradation of beneficial uses. Other MPAs that are relatively near shore in agricultural areas are at medium risk for degradation of beneficial uses; these include the South Santa Ynez River MPA, and the two Monterey Bay MPAs. Other MPAs that are not near agricultural areas are at medium to low risk from agricultural discharges (CCAMP, 2010b).
94. Nitrate loading from the Pajaro and Salinas Rivers to Monterey Bay has been found to be a potential driver of plankton blooms during certain times of year. Research shows a clear onshore to offshore gradient in nitrate load influence from rivers, and also shows overall increasing trends in loading from rivers, whereas nitrate loading from upwelling shows no trends (Lane, 2009; Lane et al., in review). Using infrared remote sensing, Monterey Bay Aquarium Research Institute researchers have documented bloom initiation immediately following "first flush" events just offshore Moss Landing and Pajaro River discharges, that then evolved into very large red tides that killed many sea birds (Ryan, 2009; Jessup et al., 2009). These bloom initiation events were documented in 2007 and 2008.

Impacts to Aquatic Habitat and Riparian and Wetland Areas

95. Riparian and wetland areas play an important role in protecting several of the beneficial uses designated in the Basin Plan. Agricultural activities have degraded, and threaten to degrade, these beneficial uses related to aquatic habitat, which include, but are not limited to:
 - a. Ground Water Recharge;
 - b. Fresh Water Replenishment;
 - c. Warm Fresh Water Habitat;

ATTACHMENT A.
ORDER NO. R3-2012-0011
CONDITIONAL WAIVER OF
WASTE DISCHARGE REQUIREMENTS
FOR DISCHARGES FROM IRRIGATED LANDS

-63-

- d. Cold Fresh Water Habitat;
 - e. Inland Saline Water Habitat;
 - f. Estuarine Habitat;
 - g. Marine Habitat;
 - h. Wildlife Habitat;
 - i. Preservation of Biological Habitats of Special Significance;
 - j. Rare, Threatened or Endangered Species;
 - k. Migration of Aquatic Organisms;
 - l. Spawning, Reproduction and/or Early Development;
 - m. Areas of Special Biological Significance;
96. The Basin Plan contains requirements to protect aquatic habitat, including, but not limited to, Chapter 2, Section II Water Quality Objectives to Protect Beneficial Uses, and Chapter 5, Page V-13, V.G. Erosion and Sedimentation: A filter strip of appropriate width, and consisting of undisturbed soil and riparian vegetation or its equivalent, shall be maintained, wherever possible, between significant land disturbance activities and watercourses, lakes, bays, estuaries, marshes, and other water bodies. For construction activities, minimum width of the filter strip shall be thirty feet, wherever possible.
97. Riparian and wetland areas play an important role in achieving several water quality objectives established to protect specific beneficial uses. These include, but are not limited to, those water quality objectives related to natural receiving water temperature, dissolved oxygen, suspended sediment load, settleable material concentrations, chemical constituents, and turbidity.
98. The 2004 Agricultural Order required protection of beneficial uses including aquatic and wildlife habitat. This Order includes that requirement to achieve protection of aquatic life beneficial uses and to address water quality degradation that has occurred, in part, as a result of encroachment by agricultural land uses on riparian and wetland areas.
99. In particular, seasonal and daily water temperatures are strongly influenced by the amount of solar radiation reaching the stream surface, which is influenced by riparian vegetation (Naiman, 1992; Pierce's Disease/Riparian Habitat Workgroup (PDRHW), 2000.). Removal of vegetative canopy along surface waters threatens maintenance of temperature water quality objectives, which in turn negatively affects dissolved oxygen related water quality objectives, which in turn negatively affects the food web (PDRHW, 2000).
100. Riparian and wetland areas function to retain and recycle nutrients (National Research Council (NRC), 2002; Fisher and Acreman, 2004), thereby reducing nutrient loading directly to surface water or groundwater. Riparian and wetland areas trap and filter sediment and other wastes contained in agricultural runoff

(NRC, 2002; Flosi et al., 1998; PDRHW, 2000; Palone and Todd, 1998), and reduce turbidity (USEPA, 2009). Riparian and wetland areas temper physical hydrologic functions, protecting aquatic habitat by dissipating stream energy and temporarily allowing the storage of floodwaters (Palone and Todd, 1998), and by maintaining surface water flow during dry periods (California Department of Water Resources, 2003). Riparian and wetland areas regulate water temperature and dissolved oxygen, which must be maintained within healthy ranges to protect aquatic life (PDRHW, 2000). In the absence of human alteration, riparian areas stabilize banks and supply woody debris (NRC 2002), having a positive influence on channel complexity and in-stream habitat features for fish and other aquatic organisms (California Department of Fish and Game 2003).

101. Riparian areas are critical to the quality of in-stream habitat. Riparian vegetation provides woody debris, shade, food, nutrients and habitat important for fish, amphibians and aquatic insects (California Department of Fish and Game 2003). Riparian areas help to sustain broadly based food webs that help support a diverse assemblage of wildlife (NRC, 2002). More than 225 species of birds, mammals, reptiles, and amphibians depend on California's riparian habitats (Riparian Habitat Joint Venture, 2004).
102. Riparian vegetation provides important temperature regulation for instream resources. In shaded corridors of the Central Coast region, temperatures typically stay under 20 degrees Celsius or 68 degrees F (within optimum temperature ranges for salmonids), but can rapidly increase above 20 degrees Celsius when vegetation is removed. Orcutt Creek in the lower Santa Maria watershed is an example where upstream shaded areas remain cooler than downstream exposed areas, in spite of lower upstream flows (CCAMP, 2010a).
103. Land management and conservation agencies describe three vegetated zones within a riparian buffer that can provide water quality protection (NRCS, 2006; Welsch, 1991, Tjaden and Weber). These zones are described below:
 - a. Zone 1 – The goal for this zone is to control temperature and turbidity discharges by establishing a mix of trees and shrubs that provide shade and streambank stability. A mix of native woody species that vary from large tree species as they mature to understory trees and shrubs will provide canopy cover and shading next to the water.
 - b. Zone 2 – The goal for this zone is to establish a mix of trees and shrubs that will absorb and treat waterborne nutrients and other pollutants and allow water to infiltrate into the soil.
 - c. Zone 3 – The goal for this zone is to act as a transitional zone between cropland and zones 1 and 2, serving to slow flows, disperse flows out into more diffuse, sheet flow, and promote sediment deposition. The use of stiff multi-stemmed grasses and forbs are preferred and will help disperse concentrated flows.

104. CCAMP and CMP bioassessment data show that streams in areas of heavy agricultural use are typically in poor condition with respect to benthic community health and that habitat in these areas is often poorly shaded, lacking woody vegetation, and heavily dominated by fine sediment. Heavily sedimented stream bottoms can result from the immediate discharge of sediment from nearby fields, the loss of stable, vegetated stream bank habitat, the channelization of streams and consequent loss of floodplain, and from upstream sources.
105. Up to approximately 43 percent of the federally threatened and endangered species rely directly or indirectly on wetlands for their survival (United States Environmental Protection Agency, 2008). Of all the states, California has the greatest number of at-risk animal species (15) and, by far, the greatest number of at-risk plant species (104) occurring within isolated wetlands (Comer et al., 2005).
106. California has lost an estimated 91 percent of its historic wetland acreage, the highest loss rate of any state. Similarly, California has lost between 85 and 98 percent of its historic riparian areas (State Water Resources Control Board, 2008). Landowners and operators of agricultural operations historically removed riparian and wetland areas to plant cultivated crops (Braatne et al., 1996; Riparian Habitat Joint Venture, 2004).
107. The California Wetlands Conservation Policy (Executive Order W-59-93), also known as "the No Net Loss Policy," adopted by Governor Wilson in 1993, established the State's intent to develop and adopt a policy framework and strategy to protect California's unique wetland ecosystems. One of the goals of this policy is to ensure no overall net loss and achieve a long-term net gain in the quantity, quality, and permanence of wetlands acreage and values in California in a manner that fosters creativity, stewardship and respect for private property.
108. Real and/or perceived incompatible demands between food safety and environmental protection are a major issue in the Central Coast Region. Technical Assistance Providers have reported that growers have removed vegetated management practices intended to protect water quality (in some cases, after receiving substantial public funds to install vegetated management practices).
109. According to a spring 2007 survey by the Resource Conservation District of Monterey County (RCDMC), 19 percent of 181 respondents said that their buyers or auditors had suggested they remove non-crop vegetation from their ranches to prevent pollution from pathogens such as the O157:H7 bacteria. In response to pressures by auditors and/or buyers, approximately 15 percent of all growers surveyed indicated that they had removed or discontinued use of previously adopted management practices used for water quality protection. Grassed waterways, filter or buffer strips, and trees or shrubs were among the management

practices removed (RCDMC, 2007). According to a follow-up spring 2009 survey by RCDMC, growers are being told by their auditors and/or buyers that wetland or riparian plants are a risk to food safety (RCDMC, 2009). To assist in the co-management of water quality protection and food safety, the RCDMC has developed a handbook of agricultural conservation practices, photos, and descriptions with food safety considerations (RCDMC, 2009).

110. The Food Safety Modernization Act (FSMA) was signed into law on January 4, 2011 giving the U.S Food and Drug Administration (FDA) a mandate to pursue a farm to table system that is based on science and addresses food safety hazards. The law requires FDA to apply sound science to any requirements that might impact wildlife and wildlife habitat on and near farms, and take into consideration conservation and environmental practice standards and policies.
111. Riparian vegetation and vegetated buffer zones are critically important to prevent the transport of sediment and bacteria, which may include the downstream transport of O157:H7 bacteria. Tate et al. (2006) tested vegetated buffers on cattle grazing lands and found that they are a very effective way to reduce inputs of waterborne E. coli into surface waters. Data indicates that the major source of O157:H7 bacteria are cattle, not wildlife (RCDMC, 2006). In many agricultural areas of the Central Coast Region, cattle operations are located upstream of irrigated agricultural fields. Therefore, the removal of riparian and wetland vegetation and their buffer zones increases the transport of pathogens such as O157:H7 and the risk of food contamination. The removal of riparian and wetland vegetation for food safety purposes is not warranted, is not supported by the literature, and may increase the risk of food contamination.
112. Agriculture near surface waterbodies can lead to removal or reduction of riparian vegetation and the impairment of its ecological functions (ANR, 2007). Once riparian vegetation is removed, it no longer serves to shade water, provide food for aquatic organisms, maintain stream banks, provide a source of large woody debris, or slow or filter runoff to streams. The result is degraded water quality and fish habitat (ANR, 2007). For these reasons, maintenance of riparian vegetation is a critical element of any type of land use (ANR, 2007).
113. Buffer strips are areas of vegetation left beside a stream or lake to protect against land use impacts (ANR, 2007). Whether or not harvesting is permitted within the buffer strip, well-designed and managed buffers can contribute significantly to the maintenance of aquatic and riparian habitat and the control of pollution. Riparian buffer strips protect aquatic and riparian plants and animals from upland sources of pollution by trapping or filtering sediments, nutrients, and chemicals from forestry, agricultural and residential activities. (ANR, 2007).

114. Vegetated riparian areas provide greater environmental value than unvegetated floodplains or cropped fields. Riparian forests provide as much as 40 times the water storage of a cropped field and 15 times that of grass turf (Palone and Todd, 1998). Agricultural floodplains are approximately 80 to 150 percent more erodible than riparian forest floodplains (Micheli et al., 2004) and riparian forest floodplains serve a valuable function by trapping sediment from agricultural fields (National Resource Council, 2002; Flosi and others, 1998; PDRHW 2000; Palone and Todd 1998).
115. Riparian and wetland areas are an effective tool in improving agricultural land management. Wide riparian areas act as buffers to debris that may wash onto fields during floods, thereby offsetting damage to agricultural fields and improving water quality (Flosi et al., 1998; PDRHW, 2000).
116. Exotic plant species exclude native riparian and wetland vegetation by out-competing native species for habitat. Additionally, exotic plants do not support the same diversity of wildlife native to riparian forests, often use large amounts of water, and can exist as monocultural stands of grass. Grass habitat is very different from the complex habitat structure provided by a diversity of riparian trees and shrubs, and results in habitat changes that affect the aquatic based food web (California Department of Fish and Game, 2003).

MANAGEMENT PRACTICE IMPLEMENTATION

117. Commercial agriculture is an intensive use of land. Relatively sophisticated agronomic and engineering approaches are available and necessary to minimize the discharge of waste from irrigated lands, including sediment, nutrients, and pesticides that impact water quality and beneficial uses of waters of the State. Traditionally, conservation practices available to Dischargers were developed for irrigation efficiency or for erosion control, and not necessarily for water quality protection. To achieve water quality protection and improvement, Dischargers are responsible for selecting and effectively implementing management strategies to resolve priority water quality problems associated with the specific operation and receiving water, utilize proper management practice design and maintenance, and implement effectiveness monitoring.
118. The Central Coast Water Board recognizes efforts to maximize water quality improvement using innovative and effective local or regional treatment strategies and it is the Central Coast Water Board's intent to provide flexibility in the implementation of this Order to encourage discharger participation in such efforts. The Central Coast Water Board will evaluate proposed local or regional treatment strategies based upon the anticipated effectiveness, time schedule for implementation, and proposed verification monitoring and reporting to measure progress towards water quality improvement and compliance with this Order.

119. The Central Coast Water Board recognizes efforts to improve recharge conditions and restore groundwater recharge function that have been lost due to urbanization and agricultural development. Managed aquifer recharge (MAR) has been successfully applied in areas of the Central Coast region, improving both water supply and water quality in the basin (Racz et al., in review). Water applied to percolation basins for MAR projects often have a high quality relative to that in underlying aquifers in many locations, despite exceedances of water quality standards. Recharging this water into the ground is important for improving and maintaining water quality in critical aquifers. In addition, considerable improvement in water quality can be achieved during percolation of surface water because of beneficial microbial and filtering processes that occur (Schmidt et al., in review). The Central Coast Water Board encourages MAR efforts, which will result in improving both water supply and water quality.
120. Dischargers are responsible for implementing management measures to achieve water quality improvement, including practices and projects at the scale of a single farm, or cooperatively among multiple farms in a watershed or sub watershed.
121. The Farm Plan is an effective tool to identify the management practices that have been or will be implemented to protect and improve water quality in compliance with this Order. Elements of the Farm Plan include irrigation management, pesticide management, nutrient management, salinity management, sediment and erosion control, and aquatic habitat protection. Farm Plans also contain a schedule for implementation of practices and an evaluation of progress in achieving water quality improvement. The development and implementation of Farm Plans was a requirement of the 2004 Agricultural Order. This Order renews the requirement to prepare the Farm Plan, and adds new conditions requiring each Discharger to verify the effective implementation of management practices focused on resolving water quality issues and for a subset of Dischargers considered a higher threat to water quality to conduct individual discharge monitoring to verify the effective implementation of management practices.
122. Dischargers can significantly reduce the potential impact from agricultural discharges by the effective implementation of management practices identified in Farm Plans focused on priority water quality issues related to the specific operation and watershed.
123. Individual on-farm water quality monitoring is critical to adaptively manage and effectively implement practices to protect water quality. The data and reporting will inform the Discharger, the Water Board, and the public regarding compliance with this Order, and increases the potential success in adapting management practices to address priority water quality issues. Dischargers participating in on-farm water quality monitoring have reported, in some cases, significant reduction or

elimination of their discharge of waste through effective and adaptive management practice implementation.

124. Agricultural discharges, especially surface irrigation runoff, have the potential to transport sediments and associated waste constituents that exceed water quality standards. Minimizing irrigation runoff is an effective way to minimize and/or eliminate agricultural discharges of waste to waters of the State.
125. Agricultural water quality research identifies the importance of minimizing the amount of water runoff coming from farms. Irrigation runoff occurs when the application rate of the irrigation system exceeds the infiltration rate of the soil due to numerous factors, including poor irrigation efficiency. The percent of applied water lost to runoff may start off low, and increase towards the end of longer irrigations, or with frequent irrigation where soil is saturated. Fields with soils susceptible to low infiltration rates may lose 5 percent to 30 percent or more of their applied water to runoff.
126. Applying fertilizer, soil amendments, or agricultural products directly through an irrigation system (fertigation) increases nitrate levels in irrigation water. Runoff from fertigations is likely to be extremely high in nitrate concentrations. Agricultural research conducted in the Pajaro Valley and Salinas Valley watersheds has identified nitrate values in agricultural tailwater and drainage ditches exceeding 100 mg/L nitrate as N in some cases (more than ten times the drinking water standard, and likely more than 100 times the level necessary to protect aquatic life) (Anderson, 2003).
127. Agricultural studies document the common over-application of fertilizers, and fertilizer and animal manure are the most dominant and widespread nitrate sources to groundwater (Harter, 2009; Kitchen, 2008; Lawrence Livermore National Lab GAMA Studies Llagas subbasin, 2005). Effective irrigation and nutrient management practices to reduce the concentration of nutrients in irrigation runoff, deep percolation, and stormwater include but are not limited to, irrigation efficiency to reduce runoff and deep percolation, nutrient budgeting to optimize fertilizer application and eliminate excessive nutrient applications, and techniques to trap nutrients between crop growing seasons and during intense periods of rainfall.
128. Agricultural studies and practices demonstrate that minimizing the production of polluted tailwater through irrigation efficiency and nutrient management practices and keeping runoff from leaving the farm is cost effective (Meals, 1994). Improving irrigation water application according to real time soil moisture data has resulted in some of the lowest concentrations of nutrients in percolating waters, confirming that irrigation efficiency is a key factor in reducing leaching of nutrients (United Water Conservation District, 2007).

129. Nitrate in water leaving subsurface drain ("tile") systems often exceeds drinking water standards and contributes to low-oxygen in marine environments. Denitrification, including the use of wood-chip bioreactor treatment systems, is an effective method of removing nitrate from soil water before it enters subsurface drains (Jaynes, et al., 2006; Starrett, 2009).
130. Agricultural land uses can disrupt the natural vegetation-soil cycles and biota diversity, keeping the soil surface unprotected and vulnerable to erosive forces (wind and rain), which increases the amount of sediments dispersed and transported from agricultural lands into surface water (USEPA, 2003).
131. Agricultural mechanization and tillage of soil and land for bed preparation, crop maintenance and pest control, can destroy the soil structure and degrade the land, which increases the amount of sediment and associated waste constituents discharged into surface water (Fawcett, 2005).
132. Managing uncropped areas, minimizing and protecting bare soil and heavy use areas and unpaved road from concentrated flows of water, and implementing practices to detain or filter sediment and runoff before it leaves agricultural operations are effective ways to reduce soil erosion and capture sediment before it enters waterways, where it can cause water quality impairments downstream (ANR Publications 8124 and 8071).
133. Stormwater runoff from irrigated lands often results in significant erosion and the discharge of sediment, nutrients, and pesticides. Effective erosion control and sediment control management practices include but are not limited to cover crops, filter strips, and furrow alignment to reduce runoff quantity and velocity, hold fine particles in place, and increase filtration to minimize the impacts to water quality (USEPA, 1991). Crops grown using impervious plastic can be particularly problematic as they often result in significantly increased irrigation runoff volumes and velocities in agricultural furrows and ditches that may drain to waters of the State.
134. Education and technical assistance is an important tool in advancing the implementation of new effective management practices that protect and enhance water quality.
135. There are many technical resources available to the agricultural industry to assist farmers in pollution prevention and addressing water quality problems associated with irrigated agriculture. The United States Department of Agriculture - Natural Resources Conservation Service (NRCS), Resource Conservation Districts (RCD), and University of California Cooperative Extension (UCCE) provide non-regulatory technical services and research to promote conservation and address natural resource problems. There are also many non-profit agricultural and commodity-

specific organizations and initiatives that promote sustainable agriculture, and provide education and technical support. Private consulting companies and individual professionals working in the field of environmental and engineering sciences, investigations, site remediation and corrective actions, treatment system design, sampling, and reporting are available to assist the agricultural industry in water quality improvement and achieving compliance with this Order.

136. The State and Regional Water Boards have made over \$600 Million of public grant funds available to address agricultural water quality issues from approximately 2000 – 2011. These funds came from Bond Propositions 13, 40, 50, and 84, and addressed a myriad of water quality projects, watershed protection, and nonpoint source pollution control throughout California. In addition, the State Water Board, in coordination with USEPA, also allocates approximately \$4.5 Million per year in 319(h) program funding to address nonpoint source pollution. The amount of Water Board public grant funds recently awarded in the Central Coast Region for agricultural related projects is more than \$55 Million.

AGRICULTURAL REGULATORY PROGRAM IMPLEMENTATION

137. The Central Coast Water Board is maximizing regulatory effectiveness by identifying and prioritizing actions that address the most significant agricultural water quality problems in the Central Coast Region, including nitrate in groundwater from discharge related to excess fertilizer application, the discharge of waste in agricultural tailwater, surface water toxicity resulting from pesticides, surface water nutrients from fertilizer, increasing salinity, sediment discharge, and degradation of aquatic habitat.
138. The Central Coast Water Board is addressing priority agricultural water quality issues, on a watershed basis in coordination with other Water Board programs and efforts, focused in the most intensive agricultural areas of the region including the Salinas, Pajaro, and Santa Maria watersheds. In addition, Central Coast Water Board staff will assess and track progress towards specific measures of water quality improvement, and adapt to the feedback the tracking provides.
139. The Central Coast Water Board will evaluate compliance of individual Dischargers with the terms and conditions of this Order based on enrollment information, threat of water quality impairment, content of technical reports (including Annual Compliance Document, Farm Plan, Irrigation and Nutrient Management Plan, and Water Quality Buffer Plan), prioritized inspections, and water quality monitoring data. Failure to comply with enrollment requirements may result in enforcement action for individual landowners and operators. In addition to the determination of noncompliance and water quality impairment, the Central Coast Water Board will enforce the conditions of this Order in a manner similar to enforcement of WDRs

and consistent with the State Water Board's Enforcement Policy, focusing on the highest priority water quality issues and most severely impaired waters.

140. The Central Coast Water Board will consider the history of compliance and violations and progress made toward compliance and water quality improvement demonstrated by individual Dischargers when determining potential enforcement actions. In some cases, the Central Coast Water Board may terminate coverage under this Order and require the Discharger to submit a ROWD and comply with the Water Code pursuant to individual WDRs.

PART B. RELEVANT PLANS, POLICIES, AND REGULATIONS

Water Quality Control Plan

The *Water Quality Control Plan for the Central Coast Region* (Basin Plan) was adopted by the Central Coast Water Board in 1975 and is periodically revised. Tables 1A and 1B include a summary of Narrative and Numeric Water Quality Objectives. The Basin Plan is available by contacting the Central Coast Water Board at (805) 549-3147 or by visiting the Central Coast Water Board's website at: http://www.waterboards.ca.gov/centralcoast/publications_forms/publications/basin_plan/

Other Relevant Plans, Policies, and Regulations

- State Water Resources Control Board, Resolution No. 68-16, *Statement of Policy with Respect to Maintaining High Quality of Waters in California*, October 1968.
- State Water Resources Control Board, *Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Waters and Enclosed Bays and Estuaries of California*, June 1972.
- State Water Resources Control Board, Resolution No. 74-43, *Water Quality Control Policy for the Enclosed Bays and Estuaries of California*, May 1974.
- State Water Resources Control Board, Resolution No. 88-63, *Sources of Drinking Water Policy*, May 1988. Amended February 1, 2006.
- State Water Resources Control Board, *Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program*, May 2004.
- State Water Resources Control Board, Resolution No. 2004-0063, *Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List*, December 13, 2004.

ATTACHMENT A.
ORDER NO. R3-2012-0011
CONDITIONAL WAIVER OF
WASTE DISCHARGE REQUIREMENTS
FOR DISCHARGES FROM IRRIGATED LANDS

-73-

State Water Resources Control Board, *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP)*, February 2005

“State Water Resources Control Board, Resolution No. 2008-0070, *Water Quality Control Plan for Enclosed Bays and Estuaries - Part 1 Sediment Quality*, August 25, 2009.

State Water Resources Control Board, *Water Quality Control Plan for Ocean Waters of California (CA Ocean Plan)*, September 2009.

State Water Resources Control Board, Resolution No. 2009-0011, *Recycled Water Policy*, May 20, 2010.

State Water Resources Control Board, *Water Quality Enforcement Policy*, May 20, 2010.

US EPA, *National Toxics Rule*, 40 CFR 131.36, 57 FR 60848, December 1992.

US EPA, *California Toxics Rule*, 40 CFR 131.38, 65 FR 31682, May 2000.

Table 1A. Narrative and Numeric Water Quality Objectives for Surface Water.

<p align="center">SURFACE WATER QUALITY OBJECTIVE <i>(Source of WQO-Page in Basin Plan)</i> (Objectives are numeric unless labeled "narrative")</p>	<p align="center">BENEFICIAL USE</p>
<p>TOXICITY</p>	
<p>Toxicity <i>(BPGO, III-4)</i></p> <p><i>Narrative Objective:</i> All waters shall be maintained free of toxic substances in concentrations which are toxic to, or which produce detrimental physiological responses in, human, plant, animal, or aquatic life.</p> <p><i>Indicators of Narrative Objective:</i> Chemical concentrations in excess of toxic levels for aquatic life including but not limited to the following: Chlorpyrifos 0.025 ug/L Diazinon 0.14 ug/L</p> <p><i>(Source: Sipmann and Finlayson 2000)</i></p>	<p>All Surface Waters</p>
<p>TOXICANTS</p>	
<p>Nutrients</p>	
<p>Ammonia, Total (N) <i>(BPSO, Table 3.3)</i></p> <p>>30 mg/L NH₄-N</p>	<p>AGR</p>
<p>Ammonia, Un-ionized <i>(BPGO, III-4)</i></p> <p>0.025 mg/L NH₃ as N</p>	<p>All Surface Waters</p>
<p>Nitrate <i>(a. BPSO, Table 3-2 b. BPSO, Table 3-3)</i></p> <p>a. 10 mg/L NO₃-N b. >30 mg/L NO₃-N</p>	<p>a. MUN b. AGR</p>
<p>Organics</p>	
<p>Chemical Constituents <i>(BPSO, III-5 and Table 3-2)</i></p> <p>Waters shall not contain concentrations of chemical constituents in excess of the limits specified in California Code of Regulations, Title 22, Article 4, Chapter 15,</p>	<p>MUN</p>

ATTACHMENT A.
 ORDER NO. R3-2012-0011
 CONDITIONAL WAIVER OF
 WASTE DISCHARGE REQUIREMENTS
 FOR DISCHARGES FROM IRRIGATED LANDS

<p align="center">SURFACE WATER QUALITY OBJECTIVE <i>(Source of WQO-Page in Basin Plan)</i> (Objectives are numeric unless labeled "narrative")</p>	<p align="center">BENEFICIAL USE</p>
<p>Section 64435, Tables 2 and 3 as listed in Table 3-2.</p>	
<p>Chemical Constituents <i>(BPSO, III-5 and Table 3-3)</i></p> <p>Waters shall not contain concentrations of chemical constituents in amounts which adversely affect the agricultural beneficial use. Interpretation of adverse effect shall be as derived from the University of California Agricultural Extension Service guidelines provided in Table 3-3.</p> <p>In addition, waters used for irrigation and livestock watering shall not exceed concentrations for those chemicals listed in Table 3-4</p>	<p>AGR</p>
<p>Chemical Constituents <i>(BPSO, III-10, Table 3-5, Table 3-6)</i></p> <p>Waters shall not contain concentrations of chemical constituents known to be deleterious to fish or wildlife in excess of the limits listed in Table 3-5 or Table 3-6.</p>	<p>COLD, WARM, MAR</p>
<p>Oil and Grease <i>(BPGO, III-3)</i></p> <p><i>Narrative Objective:</i> Waters shall not contain oils, greases, waxes, or other similar materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or that otherwise adversely affect beneficial uses.</p>	<p>All Surface Waters</p>
<p>Organic Chemicals <i>(BPSO, III-5 and Table 3-1)</i></p> <p>All inland surface waters, enclosed bays, and estuaries shall not contain concentrations of organic chemicals in excess of the limiting concentrations set forth in California Code of Regulations, Title 22, Chapter 15, Article 5.5, Section 64444.5, Table 5 and listed in Table 3-1.</p>	<p>MUN</p>
<p>Other Organics <i>(BPGO, III-3)</i></p> <p>Phenol <i>(BPSO, III-5)</i></p> <p>Waters shall not contain organic substances in concentrations greater than the following:</p>	<p>All Surface Waters</p>

ATTACHMENT A.
 ORDER NO. R3-2012-0011
 CONDITIONAL WAIVER OF
 WASTE DISCHARGE REQUIREMENTS
 FOR DISCHARGES FROM IRRIGATED LANDS

<p align="center">SURFACE WATER QUALITY OBJECTIVE <i>(Source of WQO-Page in Basin Plan)</i> (Objectives are numeric unless labeled "narrative")</p>	<p align="center">BENEFICIAL USE</p>
Methylene Blue Activated Substances < 0.2 mg/L Phenols < 0.1 mg/L Phenol (MUN) ≤ 1.0 µg/L PCBs < 0.3 µg/L Phthalate Esters < 0.002 µg/L	
<p>Metals</p>	
<p>Chromium <i>(BOSP, III-12)</i></p> <p>≤ 0.01 mg/L</p>	<p>SHELL</p>
<p>Cadmium <i>(BPGO, III-11)</i></p> <p>≤ 0.03 mg/L in hard water or ≤ 0.004 mg/L in soft water (Hard water is defined as water exceeding 100 mg/L CaCO₃).</p>	<p>COLD, WARM</p>
<p>Chromium <i>(BPGO, III-11)</i></p> <p>≤ 0.05 mg/L</p>	<p>COLD, WARM</p>
<p>Copper <i>(BPGO, III-11)</i></p> <p>≤ 0.03 mg/L in hard water or ≤ 0.01 mg/L in soft water (Hard water is defined as water exceeding 100 mg/L CaCO₃).</p>	<p>COLD, WARM</p>
<p>Lead <i>(BPGO, III-11)</i></p> <p>≤ 0.03 mg/L</p>	<p>COLD, WARM</p>
<p>Mercury <i>(BPGO, III-11)</i></p> <p>≤ 0.0002 mg/L</p>	<p>COLD, WARM</p>
<p>Nickel <i>(BPGO, III-11)</i></p> <p>≤ 0.4 mg/L in hard water or</p>	<p>COLD, WARM</p>

ATTACHMENT A.
 ORDER NO. R3-2012-0011
 CONDITIONAL WAIVER OF
 WASTE DISCHARGE REQUIREMENTS
 FOR DISCHARGES FROM IRRIGATED LANDS

<p align="center">SURFACE WATER QUALITY OBJECTIVE <i>(Source of WQO-Page in Basin Plan)</i> (Objectives are numeric unless labeled "narrative")</p>	<p align="center">BENEFICIAL USE</p>
<p>≤0.1 mg/L in soft water (Hard water is defined as water exceeding 100 mg/L CaCO₃).</p>	
<p>Zinc <i>(BPGO, III-11)</i></p> <p>≤ 0.2 mg/L in hard water or ≤0.004 mg/L in soft water (Hard water is defined as water exceeding 100 mg/L CaCO₃).</p>	<p align="center">COLD, WARM</p>
<p align="center">CONVENTIONALS</p>	
<p>Biostimulatory Substances <i>(BPGO, III-3)</i></p> <p><i>Narrative Objective:</i> Waters shall not contain biostimulatory substances in concentrations that promote aquatic growths to the extent that such growths cause nuisance or adversely affect beneficial uses.</p> <p><i>Indicators of Narrative Objective:</i> Indicators of biostimulation include chlorophyll-a, dissolved oxygen, phosphorous, and nitrate.</p> <p><i>(Source: Central Coast Water Board. April 2009. Central Coast Ambient Monitoring Program Technical Paper: Interpreting Narrative Objectives for Biostimulatory Substances Using the Technical Approach for Developing California Nutrient Numeric Endpoints)</i></p>	<p align="center">All Surface Waters</p>
<p>Boron <i>(BPSO, III-13)</i></p> <p>Waterbody specific. Median values, shown in Table 3-7 for surface waters. Sub-Basins Objectives range from 0.2 – 0.5 mg/L.</p>	<p align="center">Specific Surface Waters</p>
<p>Chloride <i>(BPSO, III-13)</i></p> <p>Waterbody specific. Median values, shown in Table 3-7 for surface waters. Sub-Basins Objectives range from 150-1400 mg/L.</p>	<p align="center">Specific Surface Waters</p>
<p>Color <i>(BPGO, III-3)</i></p> <p>Waters shall be free of coloration that causes nuisance or adversely affects beneficial uses. Coloration attributable to materials of waste origin shall not be greater than 15 units or 10 percent above natural background color, whichever is</p>	<p align="center">All Surface Waters</p>

ATTACHMENT A.
 ORDER NO. R3-2012-0011
 CONDITIONAL WAIVER OF
 WASTE DISCHARGE REQUIREMENTS
 FOR DISCHARGES FROM IRRIGATED LANDS

<p align="center">SURFACE WATER QUALITY OBJECTIVE (Source of WQO-Page in Basin Plan) (Objectives are numeric unless labeled "narrative")</p>	<p align="center">BENEFICIAL USE</p>
greater.	
<p>Conductivity (BPSO, III-8, Table 3-3) >3.0 mmho/cm</p>	AGR
<p>Dissolved Oxygen (DO) (BPGO, III-2) Mean annual DO \geq 7.0 mg/L Minimum DO \geq 5.0 mg/L</p>	All Ocean Waters
<p>Dissolved Oxygen (BPGO, III-4) For waters not mentioned by a specific beneficial use: DO \geq 5.0 mg/L DO Median values \geq 85 percent saturation</p>	All Surface Waters
<p>Dissolved Oxygen (BPSO, III-10) DO \geq 7.0 mg/L</p>	COLD, SPWN
<p>Dissolved Oxygen (BPSO, III-10) DO \geq 5.0 mg/L</p>	WARM
<p>Floating Material (BPGO, III-3) <i>Narrative Objective:</i> Waters shall not contain floating material, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses.</p>	All Surface Waters
<p>pH (BPSO, III-10) The pH value shall not be depressed below 7.0 nor above 8.5. Changes in normal ambient pH levels shall not exceed 0.5 in fresh waters.</p>	COLD, WARM,
<p>pH (BPSO, III-10)</p>	MAR

ATTACHMENT A.
 ORDER NO. R3-2012-0011
 CONDITIONAL WAIVER OF
 WASTE DISCHARGE REQUIREMENTS
 FOR DISCHARGES FROM IRRIGATED LANDS

<p align="center">SURFACE WATER QUALITY OBJECTIVE <i>(Source of WQO-Page in Basin Plan)</i> (Objectives are numeric unless labeled "narrative")</p>	<p align="center">BENEFICIAL USE</p>
<p>The pH value shall not be depressed below 7.0 or raised above 8.5². Changes in normal ambient pH levels shall not exceed 0.2 units.</p>	
<p>pH <i>(BPSO, III-5)</i></p> <p>The pH value shall not be depressed below 6.5 nor above 8.3.</p>	<p>MUN, REC-1, REC-2, AGR</p>
<p>Settleable Material <i>(BPGO, III-3)</i></p> <p><i>Narrative Objective:</i> Waters shall not contain settleable material in concentrations that result in deposition of material that causes nuisance or adversely affects beneficial uses.</p>	<p>All Surface Waters</p>
<p>Sediment <i>(BPGO, III-3)</i></p> <p><i>Narrative Criteria:</i> The suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.</p>	<p>All Surface Waters</p>
<p>Sodium <i>(BPSO, III-13)</i></p> <p>Waterbody specific. Median values, shown in Table 3-7 for surface waters. Sub-Basins Objectives range from 20-250 mg/L.</p>	
<p>Sulfate <i>(BPSO, III-13)</i></p> <p>Waterbody specific. Median values, shown in Table 3-7 for surface waters. Sub-Basins Objectives range from 10-700 mg/L.</p>	
<p>Suspended Material <i>(BPGO, III-3)</i></p> <p><i>Narrative Criteria:</i> Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.</p>	<p>All Surface Waters</p>
<p>Taste and Odor <i>(BPGO, III-3)</i></p>	<p>All Surface Waters</p>

ATTACHMENT A.
 ORDER NO. R3-2012-0011
 CONDITIONAL WAIVER OF
 WASTE DISCHARGE REQUIREMENTS
 FOR DISCHARGES FROM IRRIGATED LANDS

<p align="center">SURFACE WATER QUALITY OBJECTIVE <i>(Source of WQO-Page in Basin Plan)</i> (Objectives are numeric unless labeled "narrative")</p>	<p align="center">BENEFICIAL USE</p>
<p><i>Narrative Criteria:</i> Waters shall not contain taste or odor-producing substances in concentrations that impart undesirable tastes or odors to fish flesh or other edible products of aquatic origin, that cause nuisance, or that adversely affect beneficial uses.</p>	
<p>Temperature <i>(BPGO, III-3)</i></p> <p><i>Narrative Criteria:</i> Natural receiving water temperature of intrastate waters shall not be altered unless it can be demonstrated to the satisfaction of the Regional Board that such alteration in temperature does not adversely affect beneficial uses.</p>	<p align="center">All Surface Waters</p>
<p>Temperature <i>(BPGO, III-4)</i></p> <p><i>Narrative Objective:</i> Natural receiving water temperature of intrastate waters shall not be altered unless it can be demonstrated to the satisfaction of the Regional Board that such alteration in temperature does not adversely affect beneficial uses.</p> <p><i>a) Indicators of Narrative Objective for COLD Habitat:</i></p> <p>Coho December - April 48-54 °F 7-DAM³ 56-58 °F 1-DAM</p> <p>May – November 57-63 °F 7-DAM 68-70 °F 1-DAM</p> <p>Steelhead December - April 55-57 °F 7-DAM 56-58 °F 1-DAM</p> <p>May – November 56-63 °F 7-DAM 70-73 °F 1-DAM</p> <p><i>(Source: Hicks 2000)</i></p> <p><i>b) Indicators of Narrative Objective for WARM Habitat:</i></p> <p>Stickleback Upper optimal limit = 75 °F (This temperature is also the low end of the upper</p>	<p align="center">All Surface Waters</p> <p align="center">a) COLD</p> <p align="center">b) WARM</p>

ATTACHMENT A.
 ORDER NO. R3-2012-0011
 CONDITIONAL WAIVER OF
 WASTE DISCHARGE REQUIREMENTS
 FOR DISCHARGES FROM IRRIGATED LANDS

<p align="center">SURFACE WATER QUALITY OBJECTIVE <i>(Source of WQO-Page in Basin Plan)</i> (Objectives are numeric unless labeled "narrative")</p>	<p align="center">BENEFICIAL USE</p>
<p>lethal limit for steelhead) <i>(Source: Moyle 1976)</i></p> <p>Note: 7-DAM refers to the rolling arithmetic average of seven consecutive daily maximum temperatures. 1-DAM refers to the highest daily maximum temperature.</p>	
<p>Temperature <i>(BPSO, III-10)</i></p> <p>At no time or place shall the temperature be increased by more than 5°F above natural receiving water temperature.</p>	<p>COLD, WARM</p>
<p>Total Dissolved Solids (TDS) <i>(BPSO, III-13)</i></p> <p>Waterbody specific. Median values, shown in Table 3-7 for surface waters. Sub-Basins Objectives range from 10-250 mg/L.</p>	
<p>Turbidity <i>(BPGO, III-3)</i></p> <p><i>Narrative Objective:</i> Waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses.</p> <p><i>Indicators of Narrative Objective:</i> Turbidity greater than 25 NTU's causes reduction in juvenile salmonid growth due to interference with their ability to find food.</p> <p><i>(Source: Central Coast Water Board. April 2009. Clean Water Act Sections 305(b) and 303(d) Integrated Report for the Central Coast Region; Sigler et al. 1984. Effects of chronic turbidity on density and growth of steelheads and coho salmon. Transactions of the American Fisheries Society 113:142-150)</i></p>	<p>All Surface Waters</p>
<p>PATHOGEN INDICATORS</p>	
<p>Fecal Coliform <i>(BOSP, III-5)</i></p> <p>Log mean 200 MPN/100mL. Max 400 MPN/100mL.</p>	<p>REC-1</p>
<p>Fecal Coliform <i>(BOSP, III-10)</i></p>	<p>REC-2</p>

ATTACHMENT A.
 ORDER NO. R3-2012-0011
 CONDITIONAL WAIVER OF
 WASTE DISCHARGE REQUIREMENTS
 FOR DISCHARGES FROM IRRIGATED LANDS

SURFACE WATER QUALITY OBJECTIVE <i>(Source of WQO-Page in Basin Plan)</i> (Objectives are numeric unless labeled "narrative")	BENEFICIAL USE
Log mean 2000 MPN/100mL. Max 4000 MPN/100mL.	
<i>E. coli</i> <i>(USEPA)</i> Max 235 MPN/100 mL	REC-1
Total Coliform <i>(BOSP, III-12)</i> Median \leq 70/100 MPN/100mL Max 230 MPN/100 mL	SHELL

Table 1B. Narrative and Numeric Water Quality Objectives for Groundwater.

GROUNDWATER QUALITY OBJECTIVE <i>(Source of WQO-Page in BP)</i> (Objectives are numeric unless labeled "narrative")	BENEFICIAL USE
TOXICANTS	
Chemical Constituents <i>(BPSO, III-14)</i> Groundwaters shall not contain concentrations of chemical constituents in excess of federal or state drinking water standards.	MUN
Chemical Constituents <i>(BPSO, III-14 and Tables 3-3 and 3-4)</i> Groundwaters shall not contain concentrations of chemical constituents in amounts that adversely affect such beneficial use. Interpretation of adverse effect shall be as derived from the University of California Agricultural Extension Service guidelines provided in Table 3-3. In addition, water used for irrigation and livestock watering shall not exceed the concentrations for those chemicals listed in Table 3-4.	AGR
Total Nitrogen <i>(BPSO, III-15 and Table 3-8)</i> Groundwater Basin Objectives for Median values range from	Specific Groundwater Basins

ATTACHMENT A.
 ORDER NO. R3-2012-0011
 CONDITIONAL WAIVER OF
 WASTE DISCHARGE REQUIREMENTS
 FOR DISCHARGES FROM IRRIGATED LANDS

GROUNDWATER QUALITY OBJECTIVE <i>(Source of WQO-Page in BP)</i> (Objectives are numeric unless labeled "narrative")	BENEFICIAL USE
1-10 mg/L as N.	
CONVENTIONALS	
Total Dissolved Solids (TDS) <i>(BPSO, III-15)</i> Groundwater Basin Objectives for median values range from 100-1500 mg/L TDS.	Specific Groundwater Basins
Chloride (Cl) <i>(BPSO, III-15)</i> Groundwater Basin Objectives for median values range from 20-430 mg/L Cl.	Specific Groundwater Basins
Sulfate (SO₄) <i>(BPSO, III-15)</i> Groundwater Basin Objectives for median values range from 10-1025 mg/L SO ₄ .	Specific Groundwater Basins
Boron (B) <i>(BPSO, III-15)</i> Groundwater Basin Objectives for median values range from 0.1-2.8 mg/L B.	Specific Groundwater Basins
Sodium (Na) <i>(BPSO, III-15)</i> Groundwater Basin Objectives for median values range from 10-730 mg/L.	Specific Groundwater Basins

Acronyms:

- BP = Basin Plan or Water Quality Control Plan for the Central Coast Region
- BPGO = Basin Plan General Objective
- BPSO = Basin Plan Specific Objective related to a designated beneficial use
- TMDL = Specific Objective related to an adopted Total Maximum Daily Load
- WDR = Waste Discharge Requirements
- SB = State Board established guideline
- USEPA = US Environmental Protection Agency
- CCAMP = Central Coast Ambient Monitoring Program
- SWAMP = Surface Water Ambient Monitoring Program

ATTACHMENT A.
ORDER NO. R3-2012-0011
CONDITIONAL WAIVER OF
WASTE DISCHARGE REQUIREMENTS
FOR DISCHARGES FROM IRRIGATED LANDS

-84-

MCL = Maximum Contaminant Level, California drinking water standards set forth in California Code of Regulations, Title 22.

NTU = Nephelometric Turbidity Unit

mg/L = milligram/Liter

MPN = Most Probable Number

PART C. DEFINITIONS

The following definitions apply to Order No. R3-2012-0011 and MRP Order No. R3-2012-0011-01, MRP Order No. R3-2012-0011-02, and MRP Order No. R3-2012-0011-03 as related to discharges of waste from irrigated lands. The terms are arranged in alphabetical order. All other terms not explicitly defined for the purposes of this Order and Monitoring and Reporting Program shall have the same definitions as prescribed by California Water Code Division 7 or are explained within the Order or the MRP documents.

1. Anti-degradation. The State Water Board established a policy to maintain high quality waters of the State - Resolution 68-16 "*Statement of Policy with Respect to Maintaining High Quality Waters in California*." Resolution 68-16 requires existing high quality water to be maintained until it has been demonstrated that any change will be consistent with maximum benefit to the people of the State, will not unreasonably affect present and anticipated beneficial use of water, and will not result in water quality less than that prescribed in the policies. Regional Water Boards are required to ensure compliance with Resolution 68-16. The Central Coast Water Board must require discharges to be subject to *best practicable treatment or control* of the discharge necessary to avoid pollution or nuisance and to maintain the highest water quality consistent with maximum benefit to the people of the State. Resolution 68-16 has been approved by the USEPA to be consistent with the federal anti-degradation policy.
2. Aquatic Habitat. The physical, chemical, and biological components and functions of streams and lakes, including riparian areas and wetlands and their buffer zones.
3. Aquifer. A geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs. (see also uppermost aquifer).
4. Back flow Prevention. Back flow prevention devices are installed at the well or pump to prevent contamination of groundwater or surface water when fertilizers, pesticides, fumigants, or other chemicals are applied through an irrigation system. Back flow prevention devices used to comply with this Order must be those approved by USEPA, DPR, CDPH, or the local public health or water agency.

5. Basin Plan. The Basin Plan is the Central Coast's Region Water Quality Control Plan. The Basin Plan describes how the quality of the surface and groundwater in the Central Coast Region should be managed to provide the highest water quality reasonably possible. The Basin Plan includes beneficial uses, water quality objectives, and a program of implementation.
6. Beneficial Uses. The Basin Plan establishes the beneficial uses to be protected in the Central Coast Region. Beneficial uses for surface water and groundwater are divided into twenty-four standard categories identified below. The following beneficial uses have been identified in waterbodies within the Region:
 - agricultural supply (AGR)
 - aquaculture (AQUA)
 - areas of special biological significance (ASBS)
 - cold freshwater habitat (COLD)
 - commercial and sportfishing (COMM)
 - estuarine habitat (EST)
 - freshwater replenishment (FRESH)
 - groundwater recharge (GWR)
 - hydropower generation (POW)
 - industrial process supply (PRO)
 - industrial service supply (IND)
 - inland saline water habitat (SAL)
 - marine habitat (MAR)
 - municipal and domestic supply (MUN)
 - migration of aquatic organisms (MIGR)
 - navigation (NAV)
 - non-contact recreation (REC2)
 - preservation of biological habitats of special significance (BIOL)
 - rare, threatened or endangered species (RARE)
 - shellfish harvesting (SHELL)
 - spawning, reproduction, and development (SPWN)
 - warm freshwater habitat (WARM)
 - water contact recreation (REC1)
 - wildlife habitat (WILD)
7. Chemigation. The application of pesticides, fertilizers, fumigants or other chemicals through an irrigation system.
8. Commercial. Irrigated lands producing commercial crops are those operations that have one or more of the following characteristics:
 - a. The landowner or operator holds a current Operator Identification Number/Permit Number for pesticide use reporting;
 - b. The crop is sold, including but not limited to (1) an industry cooperative, (2) harvest crew/company, or (3) a direct marketing location, such as Certified Farmers Markets;
 - c. The federal Department of Treasury Internal Revenue Service form 1040 Schedule F Profit or Loss from Farming is used to file federal taxes.
9. Concentration. The relative amount of a substance mixed with another substance. An example is 5 parts per million (ppm) of nitrogen in water or 5 mg/L.

10. Crop Types with High Potential to Discharge Nitrogen to Groundwater. Based on the Groundwater Pollution Nitrate Hazard Index developed by the University of California Division of Agriculture and Natural Resources (UCANR), the following crop types present the greatest risk for nitrogen loading to groundwater: beet, broccoli, cabbage, cauliflower, celery, Chinese cabbage (napa), collard, endive, kale, leek, lettuce (leaf and head), mustard, onion (dry and green), spinach, strawberry, pepper (fruiting), and parsley.
11. Discharge. A release of a waste to waters of the State, either directly to surface waters or through percolation to groundwater. Wastes from irrigated agriculture include but are not limited to earthen materials (soil, silt, sand, clay, and rock), inorganic materials (metals, plastics, salts, boron, selenium, potassium, nitrogen, phosphorus, etc.) and organic materials such as pesticides.
12. Discharger. The owner and operator of irrigated lands that discharge or have the potential to discharge waste that could directly or indirectly reach waters of the State and affect the quality of any surface water or groundwater. See also Responsible Party.
13. Discharges of Waste from Irrigated Lands. Surface water and groundwater discharges, such as irrigation return flows, tailwater, drainage water, subsurface drainage generated by irrigating crop land or by installing and operating drainage systems to lower the water table below irrigated lands (tile drains), stormwater runoff flowing from irrigated lands, stormwater runoff conveyed in channels or canals resulting from the discharge from irrigated lands, runoff resulting from frost control, and/or operational spills containing waste.
14. Ephemeral Stream. A channel that holds water during and immediately after rain events.
15. Erosion. The wearing away of land surface by wind or water, intensified by land-clearing practices related to farming, residential or industrial development, road building, or logging.
16. Erosion and Sediment Control Practices. Practices used to prevent and reduce the amount of soil and sediment entering surface water in order to protect or improve water quality.
17. Environmental Justice. Providing equal and fair access to a healthy environment for communities of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies; and proactive efforts to take into account existing

environmental injustices and to protect from new or additional environmental hazards and inequitable environmental burdens;

18. Exceedance. A reading using a field instrument or a detection by a California State-certified analytical laboratory where the detected result is above an applicable water quality standard for the parameter or constituent. For toxicity tests, an exceedance is a result that is statistically lower than the control sample test result.
19. Farm or Ranch. For the purposes of this Order, a tract of land where commercial crops are produced or normally would have been produced. Individual farms/ranches typically have a similar farm/ranch manager, operator or landowner(s) and are categorized by farm size, primary output(s), and/or geographic location.
20. Farm Water Quality Management Plan (Farm Plan). The Farm Plan is a document that contains, at a minimum, identification of management practices that are being or will be implemented to protect and improve water quality by addressing irrigation management, pesticide management, nutrient management, salinity management, sediment and erosion control, and aquatic habitat protection. Farm Plans also contain a schedule for the effective implementation of management practices and verification monitoring to determine compliance with the requirements of this Order (schedules, milestones, effluent limits, etc.). Consistent with the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands adopted by the Board in July 2004 (Order No. R3-2004-0117), this Order requires Dischargers to develop and implement a Farm Plan focused on the priority water quality issues associated with a specific operation and the priority water quality issues associated with a specific watershed or subwatershed.
21. Fertigation. The application of fertilizers through an irrigation system.
22. Freshwater Habitat. Uses of water that support cold or warm water ecosystems including, but not limited to, preservation or enhancement of aquatic habitats, vegetation, fish, or wildlife, including invertebrates.
23. Groundwater. The supply of water found beneath the earth's surface, usually in aquifers, which supply wells and springs.
24. Groundwater Protection Practices. Management practices designed to reduce or eliminate transport of nitrogen, pesticides, and other waste constituents into groundwater.
25. Integrated Pest Management Program (IPM). A pest management strategy that focuses on long-term prevention or suppression of pest problems through a

combination of techniques such as encouraging biological control, use of resistant varieties, or adoption of alternative cultivating, pruning, or fertilizing practices or modification of habitat to make it incompatible with pest development. Pesticides are used only when careful field monitoring indicates they are needed according to pre-established guidelines or treatment thresholds.

26. Intermittent Stream. A stream that holds water during wet portions of the year.
27. Irrigated Lands. For the purpose of this Order, irrigated lands include lands where water is applied for the purpose of producing commercial crops and include, but are not limited to, land planted to row, vineyard, field and tree crops as well as commercial nurseries, nursery stock production and greenhouse operations with soil floors, that do not have point-source type discharges, and are not currently operating under individual Waste Discharge Requirements (WDRs). Lands that are planted to commercial crops that are not yet marketable, such as vineyards and tree crops, must also obtain coverage under this Order.
28. Irrigation. Applying water to land areas to supply the water and nutrient needs of plants.
29. Irrigation Management Practices. Management practices designed to improve irrigation efficiency and reduce the amount of irrigation return flow or tailwater, and associated degradation or pollution of surface and groundwater caused by discharges of waste associated with irrigated lands.
30. Irrigation Runoff or Return Flow. Surface and subsurface water that leaves the field following application of irrigation water. See also, Tailwater.
31. Irrigation System Distribution Uniformity. Irrigation System Distribution Uniformity is a measure of how uniformly irrigation water is applied to the cropping area, expressed as a percentage. A nonuniform distribution can deprive portions of the crop of sufficient irrigation water, and can result in the excessive irrigation leading to water-logging, plant injury, salinization, irrigation runoff and transport of chemicals to surface water and groundwater.
32. Landowner. An individual or entity who has legal ownership of a parcel(s) of land. For the purposes of this Order, the landowner is responsible for ensuring compliance with this Order and for any discharge of waste occurring on or from the property.
33. Limited Resource Farmer. A Limited Resource Farmer is defined by the U.S. Dept. of Agriculture (USDA) as:

- a. A person with direct or indirect gross farm sales not more than the current indexed value (determined by USDA) in each of the previous 2 years, and
- b. A person who has a total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous 2 years.

The USDA's Limited Resource Farmer "Self Determination Tool" is available at:
<http://www.lrftool.sc.egov.usda.gov/DeterminationTool.aspx?fyYear=2012>

34. Load. The concentration or mass of a substance discharged over a given amount of time, for example 10 mg/day or 5 Kg/day, respectively.
35. Monitoring. Sampling and analysis of receiving water quality conditions, discharge water quality, aquatic habitat conditions, effectiveness of management practices, and other factors that may affect water quality conditions to determine compliance with this Order or other regulatory requirements. Monitoring includes but is not limited to: surface water or groundwater sampling, on-farm water quality monitoring undertaken in connection with agricultural activities, monitoring to identify short and long-term trends in in-stream water quality or discharges from sites, inspections of operations, management practice implementation and effectiveness monitoring, maintenance of on-site records and management practice reporting.
36. Nitrate Hazard Index. In 1995, the University of California Center for Water Resources (WRC) developed the Nitrate Groundwater Pollution Hazard Index (Nitrate Hazard Index) (Wu, 2005). The purpose of the Nitrate Hazard Index is to identify agricultural fields with the highest vulnerability for nitrate pollution to groundwater, based on soil, crop, and irrigation practices. The hazard index number can range from 1 through 80 with the hazard increasing with increasing hazard index number. The WRC states that an index number greater than 20 indicates greater risk for nitrate pollution to groundwater and should receive careful attention.

[http://ucanr.org/sites/wrc/Programs/Water Quality/Nitrate Groundwater Pollution Hazard Index/](http://ucanr.org/sites/wrc/Programs/Water%20Quality/Nitrate%20Groundwater%20Pollution%20Hazard%20Index/)
37. Nitrate Loading Risk Factor. A measure of the relative risk of loading nitrate to groundwater based on the following criteria a) Nitrate Hazard Index Rating by Crop Type, b) Irrigation System Type, and c) Irrigation Water Nitrate Concentration.
38. Non-point Source Pollution (NPS). Diffuse pollution sources that are generally not subject to NPDES permitting. The wastes are generally carried off the land by runoff. Common non-point sources are activities associated with agriculture, timber harvest, certain mining, dams, and saltwater intrusion.

39. Non-Point Source Management Measures. To combat NPS pollution, the State Water Board NPS Program adopted management measures as goals for the reduction of polluted runoff generated from five major categories, including agriculture. Management measures address the following components for agriculture: Erosion and sediment control; facility wastewater and runoff from confined animal facilities; nutrient management; pesticide management; irrigation water management; grazing management, and groundwater protection.
40. Non-Point Source Management Practices. Methods or practices selected by entities managing land and water to achieve the most effective, practical means of preventing or reducing pollution from diffuse sources, such as wastes carried off the landscape via urban runoff, excessive hill, slope or streambed and bank erosion, etc. Management Practices include, but are not limited to, structural and nonstructural controls and operation and maintenance procedures. Management Practices can be applied before, during, and after pollution-causing activities to prevent, reduce, or eliminate the introduction of wastes into receiving waters.
41. Nutrient. Any substance assimilated by living things that promotes growth.
42. Nutrient Management Practices. Management practices designed to reduce the nutrient loss from agricultural lands, which occur through edge-of-field runoff or leaching from the root zone.
43. Operator. Person responsible for or otherwise directing farming operations in decisions that may result in a discharge of waste to surface water or groundwater, including, but not limited to, a farm/ranch manager, lessee or sub-lessee. The operator is responsible for ensuring compliance with this Order and for any discharge of waste occurring on or from the operation.
44. Operation. A distinct farming business, generally characterized by the form of business organization, such as a sole proprietorship, partnership, corporation, and/or cooperative. A farming operation may be associated with one to many individual farms/ranches.
45. Operational Spill. Irrigation water that is diverted from a source such as an irrigation well or river, but is discharged without being delivered to or used on an individual field.
46. Perennial Stream. A stream that holds water throughout the year.
47. Pesticide Management Practices. Management practices designed to reduce or eliminate pesticide runoff into surface water and groundwater.

48. Point Source. Any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which wastes are or may be discharged.
49. Pollutant. The man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water, including dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.
50. Public Water System. A system for the provision of water for human consumption through pipes or other constructed conveyances that has 15 or more service connections or regularly serves at least 25 individuals daily at least 60 days out of the year. A public water system includes the following: (1) Any collection, treatment, storage, and distribution facilities under control of the operator of the system which are used primarily in connection with the system; (2) Any collection or pretreatment storage facilities not under, the control of the operator that are used primarily in connection, with the system; (3) Any water system that treats water on behalf of one or more public water systems for the purpose of rendering it safe for human consumption.
51. Quality of the Water. The "chemical, physical, biological, bacteriological, radiological, and other properties and characteristics of water which affect its use" as defined in the California Water Code Sec. 13050(g).
52. Receiving Waters. Surface waters or groundwater that receive or have the potential to receive discharges of waste from irrigated lands.
53. Requirements of Applicable Water Quality Control Plans. Water quality objectives, prohibitions, Total Maximum Daily Load (TMDL) Implementation Plans, or other requirements contained in the Basin Plan, as adopted by the Central Coast Water Board and approved according to applicable law.
54. Responsible Party. The owner and operator of irrigated lands that discharge or have the potential to discharge waste that could directly or indirectly reach waters of the State and affect the quality of any surface water or groundwater. See also Discharger.
55. Riparian Area. Vegetation affected by the surface water or groundwater of adjacent perennial or intermittent streams, lakes or other waterbodies. Vegetation species are distinctly different from adjacent areas or are similar to adjacent areas

- but exhibit more vigorous or robust growth forms indicative of increased soil moisture. Riparian areas may also include floodplains. Floodplains are critical areas for retaining floodwaters, allowing for sediment deposition and the natural movement of riparian areas, as well as space for colonization of new riparian and wetland vegetation necessary due to natural meandering. (Dall et. al. 1997, p.3)
56. Source of Drinking Water. Any water designated as municipal or domestic supply (MUN) in a Regional Water Board Basin Plan and/or as defined in SWRCB Resolution No. 88-63.
 57. Stormwater. Stormwater runoff, snow melt runoff, and surface runoff and drainage, as defined in 40 CFR 122.26(b)(13).
 58. Subsurface Drainage. Water generated by installing drainage systems to lower the water table below irrigated lands. The drainage can be generated by subsurface drainage systems, deep open drainage ditches or drainage wells.
 59. Surface Runoff. Precipitation, snow melt, or irrigation water in excess of what can infiltrate the soil surface and be stored in small surface depressions; a major transporter of non-point source wastes in rivers, streams, and lakes.
 60. Tailwater. Runoff of irrigation water from the lower end of an irrigated field. See also, Irrigation Runoff or Return Flow.
 61. Tile Drains. Subsurface drainage which removes excess water from the soil profile, usually through a network of perforated tile tubes installed 2 to 4 feet below the soil surface. This lowers the water table to the depth of the tile over the course of several days. Drain tiles allow excess water to leave the field. Once the water table has been lowered to the elevation of the tiles, no more water flows through the tiles. The Central Coast Water Board anticipates evaluating longer timeframes necessary to address tile-drain discharges, for inclusion in a subsequent Agricultural Order.
 62. Total Maximum Daily Load (TMDL). The condition of an impaired surface waterbody (on the List of Impaired Waterbodies) that limits the amount of pollution that can enter the waterbody without adversely affecting its beneficial uses, usually expressed as a concentration (e.g., mg/L) or mass (e.g., kg); TMDLs are proportionally allocated among dischargers to the impaired surface waterbody.
 63. Total Nitrogen Applied. Total nitrogen applied includes nitrogen in any product, form or concentration) including, but not limited to, organic and inorganic fertilizers, slow release products, compost, compost teas, manure, extracts, nitrogen present in the soil, and nitrate in irrigation water; Reported in units of nitrogen per crop, per acre for each farm/ranch or nitrate loading risk unit;

64. Uppermost Aquifer. The geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer.
65. Waste. "Includes sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for purposes of, disposal" as defined in the California Water Code Sec. 13050(d). "Waste" includes irrigation return flows and drainage water from agricultural operations containing materials not present prior to use. Waste from irrigated agriculture includes *earthen materials* (such as soil, silt, sand, clay, rock), *inorganic materials* (such as metals, salts, boron, selenium, potassium, nitrogen, phosphorus), and *organic materials* such as pesticides.
66. Water Quality Buffer. A water quality protection zone surrounding perennial or intermittent channels, including adjacent wetlands (as defined by the Clean Water Act), with riparian vegetation and/or riparian functions that support beneficial uses and protect water quality.
67. Water Quality Control. The "regulation of any activity or factor which may affect the quality of the waters of the State and includes the prevention and correction of water pollution and nuisance" as defined in the California Water Code Sec. 13050(i).
68. Water Quality Criteria. Levels of water quality required under Sec. 303(c) of the Clean Water Act that are expected to render a body of water suitable for its designated uses. Criteria are based on specific levels of pollutants that would make the water harmful if used for drinking, swimming, farming, fish production, or industrial processes. The *California Toxics Rule* adopted by USEPA in April 2000, sets numeric Water Quality Criteria for non-ocean waters of California for a number of pollutants. See also, Water Quality Objectives.
69. Water Quality Objectives. "Limits or levels of water quality constituents or characteristics which are established for the reasonable protection of beneficial uses of water or the prevention of nuisance within a specified area," as defined in Sec. 13050(h) of the California Water Code. Water Quality Objectives may be either numerical or narrative and serve as Water Quality Criteria for purposes of Section 303 of the Clean Water Act. Specific Water Quality Objectives relevant to this Order are identified in this Appendix A in Tables 1A and 1B.
70. Water Quality Standard. Provisions of State or Federal law that consist of the beneficial designated uses or uses of a waterbody, the numeric and narrative

water quality criteria that are necessary to protect the use or uses of that particular waterbody, and an anti-degradation statement. Water quality standards includes water quality objectives in the Central Coast Water Board's Basin Plan, water quality criteria in the California Toxics Rule and National Toxics Rule adopted by USEPA, and/or water quality objectives in other applicable State Water Board plans and policies. For groundwater with the beneficial use of municipal or domestic water supply, the applicable drinking water standards are those established by the United States Environmental Protection Agency (USEPA) or California Department of Public Health (CDPH), whichever is more stringent. Under Sec. 303 of the Clean Water Act, each State is required to adopt water quality standards.

71. Waters of the State. "Any surface water or groundwater, including saline waters, within the boundaries of the State" as defined in the California Water Code Sec. 13050(e), including all waters within the boundaries of the State, whether private or public, in natural or artificial channels, and waters in an irrigation system.
72. Wetland. Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas (40 CFR 230.3(t)).
73. Wildlife Habitat. Uses of water that support terrestrial or wetland ecosystems including, but not limited to, preservation and enhancement of terrestrial habitats or wetlands, vegetation, wildlife (e.g., mammals, birds, reptiles, amphibians, invertebrates), or wildlife water and food sources.

PETITION FOR REVIEW

EXHIBIT B

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

**MONITORING AND REPORTING PROGRAM
ORDER NO. R3-2012-0011-01**

TIER 1

**DISCHARGERS ENROLLED UNDER
THE CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS FOR
DISCHARGES FROM IRRIGATED LANDS**

This Monitoring and Reporting Program Order No. R3-2012-0011-01 (MRP) is issued pursuant to California Water Code (Water Code) section 13267 and 13269, which authorize the California Regional Water Quality Control Board, Central Coast Region (hereafter Central Coast Water Board) to require preparation and submittal of technical and monitoring reports. Water Code section 13269 requires a waiver of waste discharge requirements to include as a condition, the performance of monitoring and the public availability of monitoring results. The Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands Order No. R3-2012-0011 (Order) includes criteria and requirements for three tiers. This MRP sets forth monitoring and reporting requirements for **Tier 1 Dischargers** enrolled under the Order. A summary of the requirements is shown below.

SUMMARY OF MONITORING AND REPORTING REQUIREMENTS FOR TIER 1:

- Part 1: Surface Receiving Water Monitoring and Reporting (*cooperative or individual*);
Part 2: Groundwater Monitoring and Reporting;

Pursuant to Water Code section 13269(a)(2), monitoring requirements must be designed to support the development and implementation of the waiver program, including, but not limited to, verifying the adequacy and effectiveness of the waiver's conditions. The monitoring and reports required by this MRP are to evaluate effects of discharges of waste from irrigated agricultural operations and individual farms/ranches on waters of the state and to determine compliance with the Order.

MONITORING AND REPORTING BASED ON TIERS

The Order and MRP includes criteria and requirements for three tiers, based upon those characteristics of individual farms/ranches at the operation that present the highest level of waste discharge or greatest risk to water quality. Dischargers must meet conditions of the Order and MRP for the appropriate tier that applies to their land and/or the individual farm/ranch. Within a tier, Dischargers comply with requirements

based on the specific level of discharge and threat to water quality from individual farms/ranches. The lowest tier, Tier 1, applies to dischargers who discharge the lowest level of waste (amount or concentration) or pose the lowest potential to cause or contribute to an exceedance of water quality standards in waters of the State or of the United States. The highest tier, Tier 3, applies to dischargers who discharge the highest level of waste or pose the greatest potential to cause or contribute to an exceedance of water quality standards in waters of the State or of the United States. Tier 2 applies to dischargers whose discharge has a moderate threat to water quality. Water quality is defined in terms of Regional, State, or Federal numeric or narrative water quality standards. Per the Order, Dischargers may submit a request to the Executive Officer to approve transfer to a lower tier.

PART 1. SURFACE RECEIVING WATER MONITORING AND REPORTING REQUIREMENTS

Monitoring and reporting requirements for surface receiving water identified in Part 1.A. and Part 1.B. apply to Tier 1 Dischargers. Surface receiving water refers to water flowing in creeks and other surface waters of the State. Surface receiving water monitoring may be conducted through a **cooperative monitoring program**, or Dischargers may choose to conduct surface receiving water monitoring and reporting individually. Key monitoring and reporting requirements for surface receiving water are shown in Tables 1 and 2. Time schedules are shown in Table 4.

A. Surface Receiving Water Quality Monitoring

1. Dischargers must elect a surface receiving water monitoring option (cooperative monitoring program or individual receiving water monitoring) to comply with surface receiving water quality monitoring requirements, and identify the option selected on the Notice of Intent (NOI).
2. Dischargers are encouraged to choose participation in a cooperative monitoring program (e.g., the existing Cooperative Monitoring Program or a similar program) to comply with receiving water quality monitoring requirements. Dischargers not participating in a cooperative monitoring program must conduct surface receiving water quality monitoring individually that achieves the same purpose.
3. Dischargers (individually or as part of a cooperative monitoring program) must conduct surface receiving water quality monitoring to a) assess the impacts of waste discharges from irrigated lands to receiving water, b) assess the status of receiving water quality and beneficial use protection in impaired waterbodies dominated by irrigated agricultural activity, c) evaluate status, short term patterns and long term trends (five to ten years or more) in receiving water quality, d) evaluate water quality impacts resulting from agricultural discharges (including but not limited to tile drain

discharges), e) evaluate stormwater quality, f) evaluate condition of existing perennial, intermittent, or ephemeral streams or riparian or wetland area habitat, including degradation resulting from erosion or agricultural discharges of waste, and g) assist in the identification of specific sources of water quality problems.

Surface Receiving Water Quality Sampling and Analysis Plan

4. **Within three months** of adoption of the Order, Dischargers (individually or as part of a cooperative monitoring program) must submit a surface receiving water quality Sampling and Analysis Plan and Quality Assurance Project Plan (QAPP). Dischargers (or a third party cooperative monitoring program) must develop the Sampling and Analysis Plan to describe how the proposed monitoring will achieve the objectives of the MRP and evaluate compliance with the Order. The Sampling and Analysis Plan may propose alternative monitoring site locations, adjusted monitoring parameters, and other changes as necessary to assess the impacts of waste discharges from irrigated lands to receiving water. The Executive Officer must approve the Sampling and Analysis Plan and QAPP.
5. The Sampling and Analysis Plan must include the following minimum required components:
 - a. Monitoring strategy to achieve objectives of the Order and MRP;
 - b. Map of monitoring sites with GIS coordinates;
 - c. Identification of known water quality impairments and impaired waterbodies per the 2010 Clean Water Act 303(d) List of Impaired Waterbodies (List of Impaired Waterbodies);
 - d. Identification of beneficial uses and applicable water quality standards;
 - e. Identification of applicable Total Maximum Daily Loads;
 - f. Monitoring parameters;
 - g. Monitoring schedule, including description and frequencies of monitoring events;
 - h. Description of data analysis methods;
6. The QAPP must include receiving water and site-specific information, project organization and responsibilities, and quality assurance components of the MRP. The QAPP must also include the laboratory and field requirements to be used for analyses and data evaluation. The QAPP must contain adequate detail for project and Water Board staff to identify and assess the technical and quality objectives, measurement and data acquisition methods, and limitations of the data generated under the surface receiving water quality monitoring. All sampling and laboratory methodologies and QAPP content must be consistent with U.S. EPA

methods, State Water Board's Surface Water Ambient Monitoring Program (SWAMP) protocols and the Central Coast Water Board's Central Coast Ambient Monitoring Program (CCAMP). Following U.S. EPA guidelines¹ and SWAMP templates², the receiving water quality monitoring QAPP must include the following minimum required components:

- a. Project Management. This component addresses basic project management, including the project history and objectives, roles and responsibilities of the participants, and other aspects.
 - b. Data Generation and Acquisition. This component addresses all aspects of project design and implementation. Implementation of these elements ensures that appropriate methods for sampling, measurement and analysis, data collection or generation, data handling, and quality control activities are employed and are properly documented. Quality control requirements are applicable to all the constituents sampled as part of the MRP, as described in the appropriate method.
 - c. Assessment and Oversight. This component addresses the activities for assessing the effectiveness of the implementation of the project and associated QA and QC activities. The purpose of the assessment is to provide project oversight that will ensure that the QA Project Plan is implemented as prescribed.
 - d. Data Validation and Usability. This component addresses the quality assurance activities that occur after the data collection, laboratory analysis and data generation phase of the project is completed. Implementation of these elements ensures that the data conform to the specified criteria, thus achieving the MRP objectives.
7. The Central Coast Water Board may conduct an audit of contracted laboratories at any time in order to evaluate compliance with the QAPP.
 8. The Sampling and Analysis Plan and QAPP, and any proposed revisions are subject to approval by the Executive Officer. The Executive Officer may also revise the Sampling and Analysis Plan, including adding, removing, or changing monitoring site locations, changing monitoring

¹ USEPA. 2001 (2006) USEPA Requirements for Quality Assurance Project Plans (QA/R-5) Office of Environmental Information, Washington, D.C. USEPA QA/R-5

² http://waterboards.ca.gov/water_issues/programs/swamp/tools.shtml#qa

parameters, and other changes as necessary to assess the impacts of waste discharges from irrigated lands to receiving water.

Surface Receiving Water Quality Monitoring Sites

9. The Sampling and Analysis Plan must, at a minimum, include monitoring sites to evaluate waterbodies identified in Table 1, unless otherwise approved by the Executive Officer. The Sampling and Analysis Plan must include sites to evaluate receiving water quality impacts most directly resulting from areas of agricultural discharge (including areas receiving tile drain discharges). Site selection must take into consideration the existence of any long term monitoring sites included in related monitoring programs (e.g. CCAMP and the existing CMP). Sites may be added or modified, subject to prior approval by the Executive Officer, to better assess the pollutant loading from individual sources or the impacts to receiving waters caused by individual dischargers. Any modifications must consider sampling consistency for purposes of trend evaluation.

Surface Receiving Water Quality Monitoring Parameters

10. The Sampling and Analysis Plan must, at a minimum, include the following types of monitoring and evaluation parameters listed below and identified in Table 2:
 - a. Flow Monitoring;
 - b. Water Quality (physical parameters, metals, nutrients, pesticides);
 - c. Toxicity (water and sediment);
 - d. Assessment of Benthic Invertebrates;
11. All analyses must be conducted at a laboratory certified for such analyses by the State Department of Public Health (CDPH) or at laboratories approved by the Executive Officer. Unless otherwise noted, all sampling, sample preservation, and analyses must be performed in accordance with the latest edition of *Test Methods for Evaluating Solid Waste*, SW-846, U.S. EPA, and analyzed as specified herein by the above analytical methods and reporting limits indicated. Certified laboratories can be found at the web link: <http://www.cdph.ca.gov/certlic/labs/Documents/ELAPLablist.xls>
12. Water quality and flow monitoring is used to assess the sources, concentrations, and loads of waste discharges from individual farms/ranches and groups of Dischargers to surface waters, to evaluate impacts to water quality and beneficial uses, and to evaluate the short term patterns and long term trends in receiving water quality. Monitoring

data must be compared to existing numeric and narrative water quality objectives.

13. Toxicity testing is to evaluate water quality relative to the narrative toxicity objective. Water column toxicity analyses must be conducted on 100% (undiluted) sample. At sites where persistent unresolved toxicity is found, the Executive Officer may require concurrent toxicity and chemical analyses and a Toxicity Identification Evaluation (TIE) to identify the individual discharges causing of the toxicity.

Surface Receiving Water Quality Monitoring Frequency and Schedule

14. The Sampling and Analysis Plan must include a schedule for sampling. Timing, duration, and frequency of monitoring must be based on the land use, complexity, hydrology, and size of the waterbody. Table 2 includes minimum monitoring frequency and parameter lists. Agricultural parameters that are less common may be monitored less frequently. Modifications to the receiving water quality monitoring parameters, frequency, and schedule may be submitted for Executive Officer consideration and approval. At a minimum, the Sampling and Analysis Plan schedule must consist of monthly monitoring of common agricultural parameters in major agricultural areas, including two major storm events during the wet season (October 1 – April 30).
15. Storm event monitoring must be conducted within 18 hours of storm events, preferably including the first flush run-off event that results in significant increase in stream flow. For purposes of this MRP, a storm event is defined as precipitation producing onsite runoff (surface water flow) capable of creating significant ponding, erosion or other water quality problem. A significant storm event will generally result in greater than 1-inch of rain within a 24-hour period.
16. **Within six months** of adoption of the Order, Dischargers (individually or as part of a cooperative monitoring program) must initiate receiving water quality monitoring per the Sampling and Analysis Plan and QAPP approved by the Executive Officer.

B. Surface Receiving Water Quality Reporting

Surface Receiving Water Quality Data Submittal

1. **Within nine months** of adoption of this Order and quarterly thereafter (by January 1, April 1, July 1, and October 1), Dischargers (individually or as part of a cooperative monitoring program) must submit water quality

monitoring data to the Central Coast Water Board electronically, in a format specified by the Executive Officer and compatible with SWAMP/CCAMP electronic submittal guidelines.

Surface Receiving Water Quality Monitoring Annual Report

2. **Within one year** of adoption of this Order and annually thereafter by January 1, Dischargers (individually or as part of a cooperative monitoring program) must submit an Annual Report electronically, in a format specified by the Executive Officer, including the following minimum elements:
 - a. Signed Transmittal Letter;
 - b. Title Page;
 - c. Table of Contents;
 - d. Executive Summary;
 - e. Summary of Exceedance Reports submitted during the reporting period;
 - f. Monitoring objectives and design;
 - g. Monitoring site descriptions and rainfall records for the time period covered;
 - h. Location of monitoring sites and map(s);
 - i. Tabulated results of all analyses arranged in tabular form so that the required information is readily discernible;
 - j. Summary of water quality data for any sites monitored as part of related monitoring programs, and used to evaluate receiving water as described in the Sampling and Analysis Plan.
 - k. Discussion of data to clearly illustrate compliance with the Order and water quality standards;
 - l. Discussion of short term patterns and long term trends in receiving water quality and beneficial use protection;
 - m. Evaluation of pesticide and toxicity analyses results, and recommendation of candidate sites for Toxicity Identification Evaluations (TIEs);
 - n. Identification of the location of any agricultural discharges observed discharging directly to surface receiving water;
 - o. Electronic data submitted in a SWAMP/CCAMP comparable format;
 - p. Sampling and analytical methods used;
 - q. Copy of chain-of-custody forms;
 - r. Field data sheets, signed laboratory reports, laboratory raw data;
 - s. Associated laboratory and field quality control samples results;
 - t. Summary of Quality Assurance Evaluation results;
 - u. Specify the method used to obtain flow at each monitoring site during each monitoring event;
 - v. Electronic or hard copies of photos obtained from all monitoring sites, clearly labeled with site ID and date;
 - w. Conclusions;

PART 2. GROUNDWATER MONITORING AND REPORTING REQUIREMENTS

Monitoring and reporting requirements for groundwater identified in Part 2.A. and Part 2.B. apply to Tier 1 Dischargers. Key monitoring and reporting requirements for groundwater are shown in Table 3. Time schedules are shown in Table 4.

A. Individual Groundwater Monitoring

1. **Within one year** of adoption of the Order, Dischargers must sample private domestic drinking water and agricultural groundwater wells on their farm/ranch to evaluate groundwater conditions in agricultural areas, identify areas at greatest risk for nitrogen loading and exceedance of drinking water standards, and identify priority areas for follow up actions.
2. Dischargers must sample at least one groundwater well for each farm/ranch on their operation. For farms/ranches with multiple groundwater wells, Dischargers must sample the primary irrigation well and all wells that are used or may be used for drinking water purposes. Groundwater monitoring parameters must include depth to groundwater (required if well construction provides for groundwater depth measurement) and well screen interval depths (if available), general chemical parameters, and general cations and anions listed in Table 3.
3. Dischargers must conduct two rounds of monitoring groundwater wells over a period of one year, one sample collected during spring (March/April) and one collected during fall (September/October). The first round of monitoring must be completed by October 2012. These two rounds of monitoring must be repeated every 5 years. As an alternative to groundwater monitoring requirements, where existing groundwater data is available, Dischargers may submit the following for Executive Officer approval:
 - a. Existing groundwater quality data for individual farms/ranches that meet the following criteria: 1) at least one groundwater well for an individual farm/ranch, 2) a minimum of two samples collected for each well within the last five years, and 3) samples analyzed for nitrate using U.S. EPA approved analytical methods.
 - b. Reference or citation of local groundwater quality monitoring study that includes data collected within the last 5 years and documents that local groundwater quality in the uppermost aquifer does not exceed drinking water standards.
4. Groundwater samples must be collected by a qualified third-party (e.g., consultant, technician, person conducting cooperative monitoring) using proper sampling methods, chain-of-custody, and quality assurance/quality control protocols. Groundwater samples must be collected at or near the well head before the pressure tank and prior to any well head treatment. In

cases where this is not possible, the water sample must be collected from a sampling point as close to the pressure tank as possible, or from a cold-water spigot located before any filters or water treatment systems.

5. Laboratory analyses for groundwater samples must be conducted by a State certified laboratory according to U.S. EPA approved methods; unless otherwise noted, all monitoring, sample preservation, and analyses must be performed in accordance with the latest edition of *Test Methods for Evaluating Solid Waste*, SW-846, United States Environmental Protection Agency, and analyzed as specified herein by the above analytical methods and reporting limits indicated. Certified laboratories can be found at the web link : <http://www.cdph.ca.gov/certlic/labs/Documents/ELAPLablist.xls>

6. In lieu of conducting individual groundwater monitoring, Dischargers may participate in a cooperative groundwater monitoring effort to help minimize costs and to develop an effective groundwater monitoring program. Qualifying cooperative groundwater monitoring and reporting programs may include, but are not limited to, regional or subregional groundwater programs developed for other purposes as long as the proposed cooperative groundwater monitoring program meets the Central Coast Water Board's general purpose of characterizing groundwater quality and ensuring the protection of drinking water sources. Proposals for cooperative groundwater monitoring efforts, including the use of other regional or subregional groundwater monitoring programs, must be approved by the Executive Officer. At a minimum, the cooperative groundwater monitoring effort must include sufficient monitoring to adequately characterize the groundwater aquifer(s) in the local area of the participating Dischargers, characterize the groundwater quality of the uppermost aquifer, and identify and evaluate groundwater used for domestic drinking water purposes. Cooperative groundwater monitoring efforts must comply with the requirements for sampling protocols and laboratory analytical methods identified in this MRP, including parameters listed in Table 3, or propose a functional equivalent that meets the same objectives and purposes as individual groundwater monitoring. The cooperative groundwater monitoring program must report results consistent with individual groundwater reporting defined in part 2.B, or report results in a manner that is consistent with that approved by the Executive Officer in his or her approval of the cooperative groundwater monitoring proposal. Dischargers electing to participate in a cooperative groundwater monitoring effort must convey this election to the Central Coast Water Board within 90 days of adoption of this Order, and the individual groundwater monitoring requirements shall not apply as long as a cooperative groundwater monitoring proposal for that Discharger's area is submitted within one (1) year of adoption of this Order. If no cooperative groundwater monitoring proposal for that Discharger's area is submitted within one (1) year, then the

individual groundwater monitoring provisions shall apply and the Discharger shall have one (1) year to comply with the provisions identified in Part 2.

B. Individual Groundwater Reporting

1. **By October 1, 2013**, Dischargers must submit groundwater monitoring results and information, electronically, in a format specified by the Executive Officer. Dischargers must include the following information:
 - a. Signed transmittal letter;
 - b. Number of groundwater wells present at each farm/ranch;
 - c. Identification of any groundwater wells abandoned or destroyed (including method destroyed) in compliance with the Order;
 - d. Owner-assigned well identification;
 - e. State identification number, if available;
 - f. Well location (latitude and longitude);
 - g. Water-use category (e.g., domestic drinking water, agricultural);
 - h. Identification of primary irrigation well;
 - i. Well construction information (e.g., total depth, screened intervals, depth to water), as available;
 - j. Use for fertigation or chemigation;
 - k. Presence and type of back flow prevention devices;
 - l. Photo-documentation of well condition and back flow prevention device;
 - m. Identification of wells sampled to comply with the Order and MRP;
 - n. Laboratory data must be compatible with the Water Board's Groundwater Ambient Monitoring and Assessment (GAMA) Program, and GeoTracker electronic deliverable format (EDF).

PART 3. GENERAL MONITORING AND REPORTING REQUIREMENTS

A. Submittal of Technical Reports

1. Dischargers must submit reports in a format specified by the Executive Officer. A transmittal letter must accompany each report, containing the following penalty of perjury statement signed by the Discharger or the Discharger's authorized agent:

"In compliance with Water Code §13267, I certify under penalty of perjury that this document and all attachments were prepared by me, or under my direction or supervision following a system designed to assure that qualified personnel properly gather and evaluate the information submitted. To the best of my knowledge and belief, this document and all attachments are

true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment”.

2. If the Discharger asserts that all or a portion of a report submitted pursuant to this Order is subject to an exemption from public disclosure (e.g. trade secrets or secret processes), the Discharger must provide an explanation of how those portions of the reports are exempt from public disclosure. The Discharger must clearly indicate on the cover of the report (typically an electronic submittal) that the Discharger asserts that all or a portion of the report is exempt from public disclosure, submit a complete report with those portions that are asserted to be exempt in redacted form, submit separately (in a separate electronic file) unredacted pages (to be maintained separately by staff). The Central Coast Water Board staff will determine whether any such report or portion of a report qualifies for an exemption from public disclosure. If the Central Coast Water Board staff disagrees with the asserted exemption from public disclosure, the Central Coast Water Board staff will notify the Discharger prior to making such report or portions of such report available for public inspection. In the interest of public health and safety, the Central Coast Water Board will not make available for public inspection, the precise location of any groundwater well monitored in compliance with this Order. Consistent with the reporting of groundwater wells on GeoTracker, groundwater well location and data will only be referenced within a one-half mile radius of the actual well location.

B. Enforcement and Violations

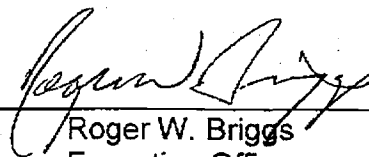
1. Monitoring reports are required pursuant to Section 13267 of the California Water Code. Pursuant to Section 13268 of the Water Code, a violation of a request made pursuant to Section 13267 may subject you to civil liability assessment of up to \$1000 per day.

C. Executive Officer Authority

1. The Executive Officer may revise this MRP as necessary, and Dischargers must comply with the MRP as revised by the Executive Officer. Specifically, the Executive Officer may increase monitoring and reporting requirements where monitoring results, pesticide use patterns, or other indicators suggest that the increase is warranted due to an increased threat to water quality. Additionally, the Executive Officer can reduce monitoring and reporting requirements, including adjusting time schedules, where growers are coordinating efforts at watershed or subwatershed scales or where regional treatment facilities are implemented, or other indicators suggest that the reduction is warranted due to a reduced threat to water quality.

MRP NO. R3-2012-0011-01 (TIER 1)
CONDITIONAL WAIVER OF
WASTE DISCHARGE REQUIREMENTS
FOR DISCHARGES FROM IRRIGATED LANDS

-12-



Roger W. Briggs
Executive Officer

March 15, 2012

Date

MRP NO. R3-2012-0011-01 (TIER 1)
 CONDITIONAL WAIVER OF
 WASTE DISCHARGE REQUIREMENTS
 FOR DISCHARGES FROM IRRIGATED LANDS

Table 1. Major Waterbodies in Agricultural Areas¹

Hydrologic SubArea	Waterbody Name	Hydrologic SubArea	Waterbody Name
30510	Pajaro River	30920	Quail Creek
30510	Salsipuedes Creek	30920	Salinas Reclamation Canal
30510	Watsonville Slough	31022	Chorro Creek
30510	Watsonville Creek ²	31023	Los Osos Creek
30510	Beach Road Ditch ²	31023	Warden Creek
30530	Carnadero Creek	31024	San Luis Obispo Creek
30530	Furlong Creek ²	31024	Prefumo Creek
30530	Llagas Creek	31031	Arroyo Grande Creek
30530	Miller's Canal	31031	Los Berros Creek
30530	San Juan Creek	31210	Bradley Canyon Creek
30530	Tesquisquita Slough	31210	Bradley Channel
30600	Moro Cojo Slough	31210	Green Valley Creek
30910	Alisal Slough	31210	Main Street Canal
30910	Blanco Drain	31210	Orcutt Solomon Creek
30910	Old Salinas River	31210	Oso Flaco Creek
30910	Salinas River (below Gonzales Rd.)	31210	Little Oso Flaco Creek
30920	Salinas River (above Gonzales Rd. and below Nacimiento R.)	31210	Santa Maria River
30910	Santa Rita Creek ²	31310	San Antonio Creek ²
30910	Tembladero Slough	31410	Santa Ynez River
30920	Alisal Creek	31531	Bell Creek
30920	Chualar Creek	31531	Glenn Annie Creek
30920	Espinosa Slough	31531	Los Carneros Creek ²
30920	Gabilan Creek	31534	Arroyo Paredon Creek
30920	Natividad Creek	31534	Franklin Creek

¹ At a minimum, sites must be included for these waterbodies in agricultural areas, unless otherwise approved by the Executive Officer. Sites may be proposed for addition or modification to better assess the impacts of waste discharges from irrigated lands to surface water. Dischargers choosing to comply with surface receiving water quality monitoring, individually (not part of a cooperative monitoring program) must only monitor sites for waterbodies receiving the discharge.

² These creeks are included because they are newly listed waterbodies on the 2010 303(d) list of Impaired Waters that are associated with areas of agricultural discharge.

Table 2. Surface Receiving Water Quality Monitoring Parameters

Parameters and Tests	RL ⁵	Monitoring Frequency ¹
Photo Monitoring		
Upstream and downstream photographs at monitoring location		With every monitoring event
WATER COLUMN SAMPLING		
Physical Parameters and General Chemistry		
Flow (field measure) (CFS) following SWAMP field SOP ⁹	.25	Monthly, including 2 stormwater events
pH (field measure)	0.1	"
Electrical Conductivity (field measure) (uS/cm)	2.5	"
Dissolved Oxygen (field measure) (mg/L)	0.1	"
Temperature (field measure) (°C)	0.1	"
Turbidity (NTU)	0.5	"
Total Dissolved Solids (mg/L)	10	"
Total Suspended Solids (mg/L)	0.5	"
Nutrients		
Total Nitrogen (mg/L)	0.5	Monthly, including 2 stormwater events
Nitrate + Nitrite (as N) (mg/L)	0.1	"
Total Ammonia (mg/L)	0.1	"
Unionized Ammonia (calculated value, mg/L)		"
Total Phosphorus (as P) (mg/L)	-	"
Soluble Orthophosphate (mg/L)	0.01	"
Water column chlorophyll a (mg/L)	0.002	"
Algae cover, Floating Mats, % coverage	-	"
Algae cover, Attached, % coverage	-	"
Water Column Toxicity Test		
Algae - <i>Selenastrum capricornutum</i> , 4 day	-	Twice in dry season, twice in wet season
Water Flea - <i>Ceriodaphnia</i> (7-day chronic)	-	"
Fathead Minnow - <i>Pimephales promelas</i> (7-day chronic)	-	"
Toxicity Identification Evaluation (TIE)	-	As directed by Executive Officer
Pesticides² (ug/L)		
Carbamates		
Aldicarb	0.05	4 times, concurrent with water toxicity monitoring, in second year of Order term
Carbaryl	0.05	"

MRP NO. R3-2012-0011-01 (TIER 1)
 CONDITIONAL WAIVER OF
 WASTE DISCHARGE REQUIREMENTS
 FOR DISCHARGES FROM IRRIGATED LANDS

Parameters and Tests	RL ³	Monitoring Frequency ¹
Carbofuran	0.05	"
Methiocarb	0.05	"
Methomyl	0.05	"
Oxamyl	0.05	"
Organophosphate Pesticides		
Azinphos-methyl	0.02	"
Chlorpyrifos	0.005	"
Diazinon	0.005	"
Dichlorvos	0.01	"
Dimethoate	0.01	"
Dimeton-s	0.005	"
Disulfoton (Disyton)	0.005	"
Malathion	0.005	"
Methamidophos	0.02	"
Methidathion	0.02	"
Parathion-methyl	0.02	"
Phorate	0.01	"
Phosmet	0.02	"
Herbicides		
Atrazine	0.05	"
Cyanazine	0.20	"
Diuron	0.05	"
Glyphosate	2.0	"
Linuron	0.1	"
Paraquat dichloride	4	"
Simazine	0.05	"
Trifluralin	0.05	"
Metals (ug/L)		
Arsenic (total) ^{5,7}	0.3	4 times, concurrent with water toxicity monitoring, in second year of Order term
Boron (total) ^{6,7}	10	"
Cadmium (total & dissolved) ^{4,5,7}	0.01	"
Copper (total and dissolved) ^{4,7}	0.01	"
Lead (total and dissolved) ^{4,7}	0.01	"
Nickel (total and dissolved) ^{4,7}	0.02	"
Molybdenum (total) ⁷	1	"
Selenium (total) ⁷	0.30	"
Zinc (total and dissolved) ^{4,5,7}	0.10	"
Other (ug/L)		
Total Phenolic Compounds ⁸	10	4 times, concurrent with water toxicity monitoring, in second year of Order term
Hardness (mg/L as CaCO3)	1	"
Total Organic Carbon (ug/L)	0.6	"

MRP NO. R3-2012-0011-01 (TIER 1)
 CONDITIONAL WAIVER OF
 WASTE DISCHARGE REQUIREMENTS
 FOR DISCHARGES FROM IRRIGATED LANDS

Parameters and Tests	RL ³	Monitoring Frequency ¹
SEDIMENT SAMPLING		
Sediment Toxicity - Hyalella azteca 10-day		Annually
Benthic Invertebrate and associated Physical Habitat Assessment	SWAMP SOP	Once during the second year of Order concurrent with sediment toxicity sampling
Pyrethroid Pesticides in Sediment (ug/kg)		
Gamma-cyhalothrin	2	Once during second year of Order, concurrent with sediment toxicity sampling
Lambda-cyhalothrin	2	"
Bifenthrin	2	"
Beta-cyfluthrin	2	"
Cyfluthrin	2	"
Esfenvalerate	2	"
Permethrin	2	"
Cypermethrin	2	"
Danitol	2	"
Fenvalerate	2	"
Fluvalinate	2	"
Organochlorine Pesticides in Sediment		
DCPA	10	"
Dicofol	2	"
Other Monitoring in Sediment		
Chlorpyrifos (ug/kg)	2	"
Total Organic Carbon	0.01%	"
Sulfide		"
Sediment Grain Size Analysis	1%	"

¹Monitoring is ongoing through all five years of the Order, unless otherwise specified. Monitoring frequency may be used as a guide for developing alternative Sampling and Analysis Plan.

²Pesticide list may be modified based on specific pesticide use in Central Coast Region. Analytes on this list must be reported, at a minimum.

³Reporting Limit, taken from SWAMP where applicable.

⁴Holmgren, Meyer, Cheney and Daniels. 1993. Cadmium, Lead, Zinc, Copper and Nickel in Agricultural Soils of the United States. J. of Environ. Quality 22:335-348.

⁵Sax and Lewis, ed. 1987. Hawley's Condensed Chemical Dictionary. 11th ed. New York: Van Nostrand Reinhold Co., 1987. Zinc arsenate is an insecticide.

⁶<http://www.coastalagro.com/products/labels/9%25BORON.pdf>; Boron is applied directly or as a component of fertilizers as a plant nutrient.

⁷Madramootoo, Johnston, Willardson, eds. 1997. Management of Agricultural Drainage Water Quality. International Commission on Irrigation and Drainage. U.N. FAO. SBN 92-6-104058.3.

⁸<http://cat.inist.fr/?aModele=afficheN&cpsid=14074525>; Phenols are breakdown products of herbicides and pesticides. Phenols can be directly toxic and cause endocrine disruption.

⁹See SWAMP field measures SOP, p. 17

mg/L – milligrams per liter; ug/L – micrograms per liter; ug/kg – micrograms per kilogram;

NTU – Nephelometric Turbidity Units; CFS – cubic feet per second;

Table 3. Groundwater Sampling Parameters

Parameter	RL	Analytical Method ⁴	Units
Depth to Groundwater ¹	-	Field Measurement	feet/bgs
pH	0.1	Field or Laboratory Measurement EPA General Methods	pH Units
Specific Conductance	2.5		µS/cm
Total Dissolved Solids	10		
Total Alkalinity as CaCO ₃		EPA Method 310.1 or 310.2	mg/L
Calcium	0.05	General Cations ² EPA 200.7, 200.8, 200.9	
Magnesium	0.02		
Sodium	0.1		
Potassium	0.1		
Sulfate (SO ₄)	1.0		
Chloride	0.1	General Anions EPA Method 300 or EPA Method 353.2	
Nitrate + Nitrite (as N) ³ or Nitrate as NO ₃	0.1		

¹Necessary to identify relevant water bearing zone; Required when well construction allows for groundwater depth measurement. ²General chemistry parameters (major cations and anions) represent geochemistry of water bearing zone and assist in evaluating quality assurance/quality control of groundwater monitoring and laboratory analysis.

³The MRP allows analysis of "nitrate plus nitrite" to represent nitrate concentrations. The "nitrate plus nitrite" analysis allows for extended laboratory holding times and relieves the Discharger of meeting the short holding time required for nitrate. Dischargers may also analyze for Nitrate as NO₃.

⁴Dischargers may use alternative analytical methods approved by EPA.

bgs – below ground surface; RL – Reporting Limit; µS/cm – micro siemens per centimeter

Table 4. Tier 1 - Time Schedule for Key Monitoring and Reporting Requirements

REQUIREMENT	TIME SCHEDULE ¹
Submit Quality Assurance Project Plan and Sampling And Analysis Plan for Surface Receiving Water Quality Monitoring (<i>individually or through cooperative monitoring program</i>)	Within three months
Initiate surface receiving water quality monitoring (<i>individually or through cooperative monitoring program</i>)	Within six months
Submit surface receiving water quality monitoring data (<i>individually or through cooperative monitoring program</i>)	Within nine months, quarterly thereafter (January 1, April 1, July 1, and October 1)
Submit surface receiving water quality Annual Monitoring Report (<i>individually or through cooperative monitoring program</i>)	Within one year, annually thereafter by January 1
Initiate monitoring of groundwater wells	Within one year
Submit groundwater monitoring results	October 1, 2013

¹Dates are relative to adoption of this Order, unless otherwise specified.

PETITION FOR REVIEW

EXHIBIT C

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

**MONITORING AND REPORTING PROGRAM
ORDER NO. R3-2012-0011-02**

TIER 2

**DISCHARGERS ENROLLED UNDER
THE CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS FOR
DISCHARGES FROM IRRIGATED LANDS**

This Monitoring and Reporting Program Order No. R3-2012-0011-02 (MRP) is issued pursuant to California Water Code (Water Code) section 13267 and 13269, which authorize the California Regional Water Quality Control Board, Central Coast Region (hereafter Central Coast Water Board) to require preparation and submittal of technical and monitoring reports. Water Code section 13269 requires a waiver of waste discharge requirements to include as a condition, the performance of monitoring and the public availability of monitoring results. The Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands Order No. R3-2012-0011 (Order) includes criteria and requirements for three tiers. This MRP sets forth monitoring and reporting requirements for **Tier 2 Dischargers** enrolled under the Order. A summary of the requirements is shown below.

SUMMARY OF MONITORING AND REPORTING REQUIREMENTS FOR TIER 2:

- Part 1: Surface Receiving Water Monitoring and Reporting (*cooperative or individual*);
- Part 2: Groundwater Monitoring and Reporting;
Nitrate Loading Risk Factor Determination and Total Nitrogen Reporting
(*required for subset of Tier 2 Dischargers if farm/ranch has high nitrate loading risk to groundwater*);
- Part 3: Annual Compliance Form;
- Part 4: Photo Monitoring
(*required for subset of Tier 2 Dischargers if farm/ranch contains or is adjacent to a waterbody impaired for temperature, turbidity or sediment*);

Pursuant to Water Code section 13269(a)(2), monitoring requirements must be designed to support the development and implementation of the waiver program, including, but not limited to, verifying the adequacy and effectiveness of the waiver's conditions. The monitoring and reports required by this MRP are to evaluate effects of discharges of waste from irrigated agricultural operations and individual farms/ranches on waters of the state and to determine compliance with the Order.

MONITORING AND REPORTING BASED ON TIERS

The Order and MRP includes criteria and requirements for three tiers, based upon those characteristics of the individual farms/ranches at the operation that present the highest level of waste discharge or greatest risk to water quality. Dischargers must meet conditions of the Order and MRP for the appropriate tier that applies to their land and/or the individual farm/ranch. Within a tier, Dischargers comply with requirements based on the specific level of discharge and threat to water quality from individual farms/ranches. The lowest tier, Tier 1, applies to dischargers who discharge the lowest level of waste (amount or concentration) or pose the lowest potential to cause or contribute to an exceedance of water quality standards in waters of the State or of the United States. The highest tier, Tier 3, applies to dischargers who discharge the highest level of waste or pose the greatest potential to cause or contribute to an exceedance of water quality standards in waters of the State or of the United States. Tier 2 applies to dischargers whose discharge has a moderate threat to water quality. Water quality is defined in terms of Regional, State, or Federal numeric or narrative water quality standards. Per the Order, Dischargers may submit a request to the Executive Officer to approve transfer to a lower tier.

PART 1. SURFACE RECEIVING WATER MONITORING AND REPORTING REQUIREMENTS

Monitoring and reporting requirements for surface receiving water identified in Part 1.A. and Part 1.B. apply to Tier 2 Dischargers. Surface receiving water refers to water flowing in creeks and other surface waters of the State. Surface receiving water monitoring may be conducted through a **cooperative monitoring program**, or Dischargers may choose to conduct surface receiving water monitoring and reporting individually. Key monitoring and reporting requirements for surface receiving water are shown in Tables 1 and 2. Time schedules are shown in Table 5.

A. Surface Receiving Water Quality Monitoring

1. Dischargers must elect a surface receiving water monitoring option (cooperative monitoring program or individual receiving water monitoring) to comply with surface receiving water quality monitoring requirements, and identify the option selected on the Notice of Intent (NOI).
2. Dischargers are encouraged to choose participation in a cooperative monitoring program (e.g. the existing Cooperative Monitoring Program or a similar program) to comply with receiving water quality monitoring requirements. Dischargers not participating in a cooperative monitoring program must conduct surface receiving water quality monitoring individually that achieves the same purpose.

3. Dischargers (individually or as part of a cooperative monitoring program) must conduct surface receiving water quality monitoring to a) assess the impacts of waste discharges from irrigated lands to receiving water, b) assess the status of receiving water quality and beneficial use protection in impaired waterbodies dominated by irrigated agricultural activity, c) evaluate status, short term patterns and long term trends (five to ten years or more) in receiving water quality, d) evaluate water quality impacts resulting from agricultural discharges (including but not limited to tile drain discharges), e) evaluate stormwater quality, f) evaluate condition of existing perennial, intermittent, or ephemeral streams or riparian or wetland area habitat, including degradation resulting from erosion or agricultural discharges of waste, and g) assist in the identification of specific sources of water quality problems.

Surface Receiving Water Quality Sampling and Analysis Plan

4. **Within three months** of adoption of the Order, Dischargers (individually or as part of a cooperative monitoring program) must submit a surface receiving water quality Sampling and Analysis Plan and Quality Assurance Project Plan (QAPP). Dischargers (or a third party cooperative monitoring program) must develop the Sampling and Analysis Plan to describe how the proposed monitoring will achieve the objectives of the MRP and evaluate compliance with the Order. The Sampling and Analysis Plan may propose alternative monitoring site locations, adjusted monitoring parameters, and other changes as necessary to assess the impacts of waste discharges from irrigated lands to receiving water. The Executive Officer must approve the Sampling and Analysis Plan and QAPP.
5. The Sampling and Analysis Plan must include the following minimum required components:
 - a. Monitoring strategy to achieve objectives of the Order and MRP;
 - b. Map of monitoring sites with GIS coordinates;
 - c. Identification of known water quality impairments and impaired waterbodies per the 2010 Clean Water Act 303(d) List of Impaired Waterbodies (List of Impaired Waterbodies);
 - d. Identification of beneficial uses and applicable water quality standards;
 - e. Identification of applicable Total Maximum Daily Loads;
 - f. Monitoring parameters;
 - g. Monitoring schedule, including description and frequencies of monitoring events;
 - h. Description of data analysis methods;

6. The QAPP must include receiving water and site-specific information, project organization and responsibilities, and quality assurance components of the MRP. The QAPP must also include the laboratory and field requirements to be used for analyses and data evaluation. The QAPP must contain adequate detail for project and Water Board staff to identify and assess the technical and quality objectives, measurement and data acquisition methods, and limitations of the data generated under the surface receiving water quality monitoring. All sampling and laboratory methodologies and QAPP content must be consistent with U.S. EPA methods, State Water Board's Surface Water Ambient Monitoring Program (SWAMP) protocols and the Central Coast Water Board's Central Coast Ambient Monitoring Program (CCAMP). Following U.S. EPA guidelines¹ and SWAMP templates², the receiving water quality monitoring QAPP must include the following minimum required components:
 - a. Project Management. This component addresses basic project management, including the project history and objectives, roles and responsibilities of the participants, and other aspects.
 - b. Data Generation and Acquisition. This component addresses all aspects of project design and implementation. Implementation of these elements ensures that appropriate methods for sampling, measurement and analysis, data collection or generation, data handling, and quality control activities are employed and are properly documented. Quality control requirements are applicable to all the constituents sampled as part of the MRP, as described in the appropriate method.
 - c. Assessment and Oversight. This component addresses the activities for assessing the effectiveness of the implementation of the project and associated QA and QC activities. The purpose of the assessment is to provide project oversight that will ensure that the QA Project Plan is implemented as prescribed.
 - d. Data Validation and Usability. This component addresses the quality assurance activities that occur after the data collection, laboratory analysis and data generation phase of the project is completed. Implementation of these elements ensures that the data conform to the specified criteria, thus achieving the MRP objectives.

¹ USEPA. 2001 (2006) USEPA Requirements for Quality Assurance Project Plans (QA/R-5) Office of Environmental Information, Washington, D.C. USEPA QA/R-5

² http://waterboards.ca.gov/water_issues/programs/swamp/tools.shtml#qa

7. The Central Coast Water Board may conduct an audit of contracted laboratories at any time in order to evaluate compliance with the QAPP.
8. The Sampling and Analysis Plan and QAPP, and any proposed revisions are subject to approval by the Executive Officer. The Executive Officer may also revise the Sampling and Analysis Plan, including adding, removing, or changing monitoring site locations, changing monitoring parameters, and other changes as necessary to assess the impacts of waste discharges from irrigated lands to receiving water.

Surface Receiving Water Quality Monitoring Sites

9. The Sampling and Analysis Plan must, at a minimum, include monitoring sites to evaluate waterbodies identified in Table 1, unless otherwise approved by the Executive Officer. The Sampling and Analysis Plan must include sites to evaluate receiving water quality impacts most directly resulting from areas of agricultural discharge (including areas receiving tile drain discharges). Site selection must take into consideration the existence of any long term monitoring sites included in related monitoring programs (e.g. CCAMP and the existing CMP). Sites may be added or modified, subject to prior approval by the Executive Officer, to better assess the pollutant loading from individual sources or the impacts to receiving waters caused by individual discharges. Any modifications must consider sampling consistency for purposes of trend evaluation.

Surface Receiving Water Quality Monitoring Parameters

10. The Sampling and Analysis Plan must, at a minimum, include the following types of monitoring and evaluation parameters listed below and identified in Table 2:
 - a. Flow Monitoring;
 - b. Water Quality (physical parameters, metals, nutrients, pesticides);
 - c. Toxicity (water and sediment);
 - d. Assessment of Benthic Invertebrates;
11. All analyses must be conducted at a laboratory certified for such analyses by the State Department of Public Health (CDPH) or at laboratories approved by the Executive Officer. Unless otherwise noted, all sampling, sample preservation, and analyses must be performed in accordance with the latest edition of *Test Methods for Evaluating Solid Waste*, SW-846, U.S. EPA, and analyzed as specified herein by the above analytical methods

and reporting limits indicated. Certified laboratories can be found at the web link:<http://www.cdph.ca.gov/certlic/labs/Documents/ELAPLablist.xls>

12. Water quality and flow monitoring is used to assess the sources, concentrations, and loads of waste discharges from individual farms/ranches and groups of dischargers to surface waters, to evaluate impacts to water quality and beneficial uses, and to evaluate the short term patterns and long term trends in receiving water quality. Monitoring data must be compared to existing numeric and narrative water quality objectives.
13. Toxicity testing is to evaluate water quality relative to the narrative toxicity objective. Water column toxicity analyses must be conducted on 100% (undiluted) sample. At sites where persistent unresolved toxicity is found, the Executive Officer may require concurrent toxicity and chemical analyses and a Toxicity Identification Evaluation (TIE) to identify the individual discharges causing the toxicity.

Surface Receiving Water Quality Monitoring Frequency and Schedule

14. The Sampling and Analysis Plan must include a schedule for sampling. Timing, duration, and frequency of monitoring must be based on the land use, complexity, hydrology, and size of the waterbody. Table 2 includes minimum monitoring frequency and parameter lists. Agricultural parameters that are less common may be monitored less frequently. Modifications to the receiving water quality monitoring parameters, frequency, and schedule may be submitted for Executive Officer consideration and approval. At a minimum, the Sampling and Analysis Plan schedule must consist of monthly monitoring of common agricultural parameters in major agricultural areas, including two major storm events during the wet season (October 1 – April 30).
15. Storm event monitoring must be conducted within 18 hours of storm events, preferably including the first flush run-off event that results in significant increase in stream flow. For purposes of this MRP, a storm event is defined as precipitation producing onsite runoff (surface water flow) capable of creating significant ponding, erosion or other water quality problem. A significant storm event will generally result in greater than 1-inch of rain within a 24-hour period.
16. **Within six months** of adoption of the Order, Dischargers (individually or as part of a cooperative monitoring program) must initiate receiving water quality monitoring per the Sampling and Analysis Plan and QAPP approved by the Executive Officer.

B. Surface Receiving Water Quality Reporting

Surface Receiving Water Quality Data Submittal

1. **Within nine months** of adoption of this Order and quarterly thereafter (by January 1, April 1, July 1, and October 1), Dischargers (individually or as part of a cooperative monitoring program) must submit water quality monitoring data to the Central Coast Water Board electronically, in a format specified by the Executive Officer and compatible with SWAMP/CCAMP electronic submittal guidelines.

Surface Receiving Water Quality Monitoring Annual Report

2. **Within one year** of adoption of this Order and annually thereafter by January 1, Dischargers (individually or as part of a cooperative monitoring program) must submit an Annual Report, electronically, in a format specified by the Executive Officer including the following minimum elements:
 - a. Signed Transmittal Letter;
 - b. Title Page;
 - c. Table of Contents;
 - d. Executive Summary;
 - e. Summary of Exceedance Reports submitted during the reporting period;
 - f. Monitoring objectives and design;
 - g. Monitoring site descriptions and rainfall records for the time period covered;
 - h. Location of monitoring sites and map(s);
 - i. Tabulated results of all analyses arranged in tabular form so that the required information is readily discernible;
 - j. Summary of water quality data for any sites monitored as part of related monitoring programs, and used to evaluate receiving water as described in the Sampling and Analysis Plan.
 - k. Discussion of data to clearly illustrate compliance with the Order and water quality standards;
 - l. Discussion of short term patterns and long term trends in receiving water quality and beneficial use protection;
 - m. Evaluation of pesticide and toxicity analyses results, and recommendation of candidate sites for Toxicity Identification Evaluations (TIEs);
 - n. Identification of the location of any agricultural discharges observed discharging directly to surface receiving water;
 - o. Laboratory data submitted electronically in a SWAMP/CCAMP comparable format;
 - p. Sampling and analytical methods used;

- q. Copy of chain-of-custody forms;
- r. Field data sheets, signed laboratory reports, laboratory raw data;
- s. Associated laboratory and field quality control samples results;
- t. Summary of Quality Assurance Evaluation results;
- u. Specify the method used to obtain flow at each monitoring site during each monitoring event;
- v. Electronic or hard copies of photos obtained from all monitoring sites, clearly labeled with site ID and date;
- w. Conclusions;

PART 2. GROUNDWATER MONITORING AND REPORTING REQUIREMENTS

Monitoring and reporting requirements for groundwater identified in Part 2.A., Part 2.B., and Part 2.C. apply to Tier 2 Dischargers. Key monitoring and reporting requirements for groundwater are shown in Table 3. Time schedules are shown in Table 5.

A. Individual Groundwater Sampling

1. **Within one year** of adoption of the Order, Dischargers must sample private domestic drinking water and agricultural groundwater wells on their farm/ranch to evaluate groundwater conditions in agricultural areas, identify areas at greatest risk for nitrogen loading and exceedance of drinking water standards, and identify priority areas for follow up actions.
2. Dischargers must sample at least one groundwater well for each farm/ranch on their operation. For farms/ranches with multiple groundwater wells, Dischargers must sample the primary irrigation well and all wells that are used or may be used for drinking water purposes. Groundwater monitoring parameters must include depth to groundwater (required if well construction provides for groundwater depth measurement) and well screen interval depths (if available), general chemical parameters, and general cations and anions listed in Table 3.
3. Dischargers must conduct two rounds of monitoring groundwater wells over a period of one year, one sample collected during spring (March/April) and one collected during fall (September/October). The first round of monitoring must be completed by October 2012. These two rounds of sampling must be repeated every 5 years. As an alternative to groundwater monitoring requirements, where existing groundwater data is available, Dischargers may submit the following for Executive Officer approval:
 - a. Existing groundwater quality data for individual farms/ranches that meet the following criteria: 1) at least one groundwater well for an individual farm/ranch, 2) a minimum of two samples collected for

- each well within the last five years, and 3) samples analyzed for nitrate using U.S. EPA approved analytical methods.
- b. Reference or citation of local groundwater quality monitoring study that includes data collected within the last 5 years and documents that local groundwater quality in the uppermost aquifer does not exceed drinking water standards.
4. Groundwater samples must be collected by a qualified third-party (e.g., consultant, technician, person conducting cooperative monitoring) using proper sampling methods, chain-of-custody, and quality assurance/quality control protocols. Groundwater samples must be collected at or near the well head before the pressure tank and prior to any well head treatment. In cases where this is not possible, the water sample must be collected from a sampling point as close to the pressure tank as possible, or from a cold-water spigot located before any filters or water treatment systems.
 5. Laboratory analyses for groundwater samples must be conducted by a State certified laboratory according to U.S. EPA approved methods; unless otherwise noted, all monitoring, sample preservation, and analyses must be performed in accordance with the latest edition of *Test Methods for Evaluating Solid Waste*, SW-846, United States Environmental Protection Agency, and analyzed as specified herein by the above analytical methods and reporting limits indicated. Certified laboratories can be found at the web link below:
<http://www.cdph.ca.gov/certlic/labs/Documents/ELAPLablist.xls>
 6. In lieu of conducting individual groundwater monitoring, Dischargers may participate in a cooperative groundwater monitoring effort to help minimize costs and to develop an effective groundwater monitoring program. Qualifying cooperative groundwater monitoring and reporting programs may include, but are not limited to, regional or subregional groundwater programs developed for other purposes as long as the proposed cooperative groundwater monitoring program meets the Central Coast Water Board's general purpose of characterizing groundwater quality and ensuring the protection of drinking water sources. Proposals for cooperative groundwater monitoring efforts, including the use of other regional or subregional groundwater monitoring programs must be approved by the Executive Officer. At a minimum, the cooperative groundwater monitoring effort must include sufficient monitoring to adequately characterize the groundwater aquifer(s) in the local area of the participating Dischargers, characterize the groundwater quality of the uppermost aquifer, and identify and evaluate groundwater used for domestic drinking water purposes. Cooperative groundwater monitoring efforts must comply with the requirements for sampling protocols and laboratory analytical methods identified in this MRP, including parameters

listed in Table 3, or propose a functional equivalent that meets the same objectives and purposes as individual groundwater monitoring. The cooperative groundwater monitoring program must report results consistent with individual groundwater reporting defined in part 2.B, or report results in a manner that is consistent with that approved by the Executive Officer in his or her approval of the cooperative groundwater monitoring proposal. Dischargers electing to participate in a cooperative groundwater monitoring effort must convey this election to the Central Coast Water Board within 90 days of adoption of this Order, and the individual groundwater monitoring requirements shall not apply as long as a cooperative groundwater monitoring proposal for that Discharger's area is submitted within one (1) year of adoption of this Order. If no cooperative groundwater monitoring proposal for that Discharger's area is submitted within one (1) year, then the individual groundwater monitoring provisions shall apply and the Discharger shall have one (1) year to comply with the provisions identified in Part 2.

B. Individual Groundwater Reporting

- 1. By October 1, 2013,** Dischargers must submit groundwater sampling results and information, electronically, in a format specified by the Executive Officer. Dischargers must include the following information:
 - a. Signed transmittal letter;
 - b. Number of groundwater wells present at each farm/ranch;
 - c. Identification of any groundwater wells abandoned or destroyed (including method destroyed) in compliance with the Order;
 - d. Owner-assigned well identification;
 - e. State identification number, if available;
 - f. Well location (latitude and longitude);
 - g. Water-use category (e.g., domestic drinking water, agricultural);
 - h. Identification of primary irrigation well;
 - i. Well construction information (e.g., total depth, screened intervals, depth to water), as available;
 - j. Use for fertigation or chemigation;
 - k. Presence and type of back flow prevention devices;
 - l. Photo-documentation of well condition and back flow prevention device;
 - m. Identification of wells sampled to comply with the Order and MRP;
 - n. Laboratory data must be compatible with the Water Board's Groundwater Ambient Monitoring and Assessment (GAMA) Program, and GeoTracker electronic deliverable format (EDF).

C. Nitrate Loading Risk Factor Determination and Total Nitrogen Reporting

1. Tier 2 Dischargers must calculate the nitrate loading risk factor for each ranch/farm included in their operations. The nitrate loading risk factor is a measure of the relative risk of loading nitrate to groundwater. Tier 2 Dischargers must determine the nitrate loading risk factor for each ranch/farm, based on the highest risk activity existing at each ranch/farm. For example, if a Discharger uses both sprinkler and drip irrigation on the same crop, they must use the irrigation type "sprinkler" in the nitrate loading risk calculation. To calculate nitrate loading risk, Tier 2 Dischargers must use the criteria and methodology described in Table 4 of this MRP, or use the Nitrate Groundwater Pollution Hazard Index developed by University of California Division of Agriculture and Natural Resources (UCANR).
2. Tier 2 Dischargers may choose to subdivide the ranch/farm into "nitrate loading risk units," based on the variability of ranch/farm conditions for the purposes of complying with this Order. A nitrate loading risk unit is a subdivided unit of the ranch/farm with different farming conditions (irrigation system type, crop type, nitrate concentration in the irrigation water, etc.). The nitrate loading risk unit may be the total ranch, a number of blocks, or an individual block. If a Discharger chooses to subdivide the ranch/farm into individual nitrate loading risk units, the Discharger must maintain individual record keeping, and conduct monitoring and reporting for each nitrate loading risk unit.
3. Tier 2 Dischargers who choose to evaluate nitrate loading risk using the Table 4 criteria and methodology must calculate the ranch/farm or nitrate loading risk unit's nitrate loading risk level (low, moderate, or high), as described in Table 4. Dischargers must report Nitrate Loading Risk factors and level in the electronic Annual Compliance Form.
 - a. LOW - Nitrate loading risk is less than 10;
 - b. MODERATE – Nitrate loading risk is between 10 and 15;
 - c. HIGH – Nitrate loading risk is more than 15;
4. Tier 2 Dischargers who choose to evaluate nitrate loading risk using the Nitrate Groundwater Pollution Hazard Index must characterize the soil type for the individual farm(s), including any variability in soil type, and utilize the index tool at the Internet link below. Soil types may vary across individual fields, and this variability must be accounted for when using the Nitrate Groundwater Pollution Hazard Index. If the soil type is unknown or if the soil type is not included in the UCANR Nitrate Groundwater Pollution Hazard Index tool, Dischargers must use the Table 4 criteria and methodology described above. Dischargers must provide documentation of input to the index for crop type, soil type, irrigation type, and deep rip. A

resulting Nitrate Groundwater Pollution Hazard Index number greater than or equal to 20 indicates a High Nitrate Loading Risk.

http://ucanr.org/sites/wrc/Programs/Water_Quality/Nitrate_Groundwater_Pollution_Hazard_Index/"

5. Tier 2 Dischargers with individual farms/ranches or nitrate loading risk units that have a HIGH nitrate loading risk must report total nitrogen applied per crop, per acre, per year to each farm/ranch or nitrate loading risk unit in the electronic Annual Compliance Form. Total nitrogen must be reported in units of nitrogen, for any product, form or concentration including, but not limited to, organic and inorganic fertilizers, slow release products, compost, compost teas, manure, extracts, nitrogen present in the soil, and nitrate in irrigation water;
 - a. As an alternative to reporting total nitrogen, Tier 2 Dischargers with high nitrate loading risk may propose an individual discharge groundwater monitoring and reporting program (GMRP) plan for approval by the Executive Officer. The GMRP plan must evaluate waste discharge to groundwater from each ranch/farm or nitrate loading risk unit and assess if the waste discharge is of sufficient quality that it will not cause or contribute to exceedances of any nitrate water quality standards in groundwater.

PART 3. ANNUAL COMPLIANCE FORM

Tier 2 Dischargers must submit annual compliance information, electronically, in a format specified by the Executive Officer. The purpose of the electronic Annual Compliance Form is to provide information to the Central Coast Water Board to assist in the evaluation of threat to water quality from individual agricultural discharges of waste and measure progress towards water quality improvement and verify compliance with the Order and MRP. Time schedules are shown in Table 5.

A. Annual Compliance Form

1. **By October 1, 2012 and updated annually thereafter by October 1**, Tier 2 Dischargers must submit an Annual Compliance Form electronically, in a format specified by the Executive Officer. The electronic Annual Compliance Form includes, but is not limited to the following minimum requirements³:
 - a. Signed transmittal letter;

³ Items reported in the Annual Compliance Document are due by October 1, 2012 and annually thereafter, unless otherwise specified.

- b. Verification that any change in general operation or farm/ranch information (e.g., crop type, irrigation type, discharge type) is reported on update to Notice of Intent (NOI);
- c. Verification of compliance with monitoring requirements, including any cooperative monitoring fees;
- d. Verification of completed Farm Plan and date of last update;
- e. Information regarding type and characteristics of discharge (e.g., number of discharge points, estimated flow/volume, number of tailwater days);
- f. Identification of any direct agricultural discharges to a stream, lake, estuary, bay, or ocean;
- g. Identification of specific farm water quality management practices completed, in progress, and planned to address water quality impacts caused by discharges of waste including irrigation management, pesticide management, nutrient management, salinity management, stormwater management, and sediment and erosion control to achieve compliance with this Order;
- h. Nitrate concentration of irrigation water;
- i. Identification of the application of any fertilizers, pesticides, fumigants or other chemicals through an irrigation system (e.g. fertigation or chemigation) and proof of proper backflow prevention devices;
- j. Description of method and location of chemical applications relative to surface water;
- k. Nitrate Loading Risk factors in Table 4 or Nitrate Groundwater Pollution Hazard Index input and Nitrate Loading Risk level;
- l. Proof of approved California Department of Fish and Game (CDFG) Streambed Alteration Agreement, as required by CDFG for any work proposed within the bed, bank or channel of a lake or stream, including riparian areas, that has the potential to result in erosion and discharges of waste to waters of the State;

Tier 2 Dischargers with farms/ranches that contain or are adjacent to a waterbody impaired for temperature, turbidity or sediment:

- m. Photo monitoring to document condition of streams, riparian, and wetland area habitat and the presence of bare soil within the riparian habitat area that is vulnerable to erosion;

Tier 2 Dischargers with farms/ranches that have High Nitrate Loading Risk:

- n. Total nitrogen applied per acre to each farm/ranch or nitrate loading risk unit (in units of nitrogen, in any product, form or concentration) including, but not limited to, organic and inorganic fertilizers, slow release products, compost, compost teas,

manure, extracts, nitrogen present in the soil, and nitrate in irrigation water⁴;

PART 4. PHOTO MONITORING AND REPORTING REQUIREMENTS

Photo monitoring and reporting requirements identified in Part 4.A. apply to Tier 2 Dischargers that have farms/ranches that contain or are adjacent to a waterbody identified on the List of Impaired Waterbodies as impaired for temperature, turbidity or sediment (see Order Table 1). Time schedules are shown in Table 5.

A. Photo Monitoring and Reporting

1. **By October 1, 2012**, Tier 2 Dischargers that have farms/ranches that contain or are adjacent to a waterbody *impaired for temperature, turbidity or sediment* must conduct photo monitoring to do the following:
 - a. Document the existing condition of perennial, intermittent or ephemeral streams (wet or dry), riparian or wetland area habitat; Photo monitoring of existing conditions must be repeated every four years and submitted with the electronic Annual Compliance Form.
2. Tier 2 Dischargers must conduct photo monitoring consistent with protocol established by the Executive Officer. Dischargers must include date of photo, photo location and point of reference in the photo. Photos must be accompanied by explanations and descriptions of the management practices demonstrated in the photos to meet the Basin Plan requirements specified below and must include estimated widths of riparian areas from top of bank.

Basin Plan (Chapter 5, p. V-13, Section V.G.4 – Erosion and Sedimentation, *“A filter strip of appropriate width, and consisting of undisturbed soil and riparian vegetation or its equivalent, must be maintained, wherever possible, between significant land disturbance activities and watercourses, lakes, bays, estuaries, marshes, and other water bodies. For construction activities, minimum width of the filter strip must be thirty feet, wherever possible....”*

⁴ Due by October 1, 2014 and annually thereafter by October 1.

PART 5. GENERAL MONITORING AND REPORTING REQUIREMENTS

A. Submittal of Technical Reports

1. Dischargers must submit reports in a format specified by the Executive Officer. A transmittal letter must accompany each report, containing the following penalty of perjury statement signed by the Discharger or the Discharger's authorized agent:

"In compliance with Water Code §13267, I certify under penalty of perjury that this document and all attachments were prepared by me, or under my direction or supervision following a system designed to assure that qualified personnel properly gather and evaluate the information submitted. To the best of my knowledge and belief, this document and all attachments are true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment"

2. If the Discharger asserts that all or a portion of a report submitted pursuant to this Order is subject to an exemption from public disclosure (e.g. trade secrets or secret processes), the Discharger must provide an explanation of how those portions of the reports are exempt from public disclosure. The Discharger must clearly indicate on the cover of the report (typically an electronic submittal) that the Discharger asserts that all or a portion of the report is exempt from public disclosure, submit a complete report with those portions that are asserted to be exempt in redacted form, submit separately (in a separate electronic file) unredacted pages (to be maintained separately by staff). The Central Coast Water Board staff will determine whether any such report or portion of a report qualifies for an exemption from public disclosure. If the Central Coast Water Board staff disagrees with the asserted exemption from public disclosure, the Central Coast Water Board staff will notify the Discharger prior to making such report or portions of such report available for public inspection. In the interest of public health and safety, the Central Coast Water Board will not make available for public inspection, the precise location of any groundwater well monitored in compliance with this Order. Consistent with the reporting of groundwater wells on GeoTracker, groundwater well location and data will only be referenced within a one-half mile radius of the actual well location.

B. Enforcement and Violations

1. Monitoring reports are required pursuant to Section 13267 of the California Water Code. Pursuant to Section 13268 of the Water Code, a violation of a request made pursuant to Section 13267 may subject you to civil liability assessment of up to \$1000 per day.

C. Executive Officer Authority

1. The Executive Officer may revise this MRP as necessary, and Dischargers must comply with the MRP as revised by the Executive Officer. Specifically, the Executive Officer may increase monitoring and reporting requirements where monitoring results, pesticide use patterns, or other indicators suggest that the increase is warranted due to an increased threat to water quality. Additionally, the Executive Officer can reduce monitoring and reporting requirements, including adjusting time schedules, where growers are coordinating efforts at watershed or subwatershed scales or where regional treatment facilities are implemented, or other indicators suggest that the reduction is warranted due to a reduced threat to water quality.



Roger W. Briggs
Executive Officer

March 15, 2012

Date

Table 1. Major Waterbodies in Agricultural Areas¹

Hydrologic SubArea	Waterbody Name	Hydrologic SubArea	Waterbody Name
30510	Pajaro River	30920	Quail Creek
30510	Salsipuedes Creek	30920	Salinas Reclamation Canal
30510	Watsonville Slough	31022	Chorro Creek
30510	Watsonville Creek ²	31023	Los Osos Creek
30510	Beach Road Ditch ²	31023	Warden Creek
30530	Carnadero Creek	31024	San Luis Obispo Creek
30530	Furlong Creek ²	31024	Prefumo Creek
30530	Llagas Creek	31031	Arroyo Grande Creek
30530	Miller's Canal	31031	Los Berros Creek
30530	San Juan Creek	31210	Bradley Canyon Creek
30530	Tesquisquita Slough	31210	Bradley Channel
30600	Moro Cojo Slough	31210	Green Valley Creek
30910	Alisal Slough	31210	Main Street Canal
30910	Blanco Drain	31210	Orcutt Solomon Creek
30910	Old Salinas River	31210	Oso Flaco Creek
30910	Salinas River (below Gonzales Rd.)	31210	Little Oso Flaco Creek
30920	Salinas River above Gonzales Rd. and below Nacimiento R.)	31210	Santa Maria River
30910	Santa Rita Creek ²	31310	San Antonio Creek ²
30910	Tembladero Slough	31410	Santa Ynez River
30920	Alisal Creek	31531	Bell Creek
30920	Chualar Creek	31531	Glenn Annie Creek
30920	Espinosa Slough	31531	Los Carneros Creek ²
30920	Gabilan Creek	31534	Arroyo Paredon Creek
30920	Natividad Creek	31534	Franklin Creek

¹ At a minimum, sites must be included for these waterbodies in agricultural areas, unless otherwise approved by the Executive Officer. Sites may be proposed for addition or modification to better assess the impacts of waste discharges from irrigated lands to surface water. Dischargers choosing to comply with surface receiving water quality monitoring, individually (not part of a cooperative monitoring program) must only monitor sites for waterbodies receiving the discharge.

² These creeks are included because they are newly listed waterbodies on the 2010 303(d) list of Impaired Waters that are associated with areas of agricultural discharge.

Table 2. Surface Receiving Water Quality Monitoring Parameters

Parameters and Tests	RL ³	Monitoring Frequency ¹
Photo Monitoring		
Upstream and downstream photographs at monitoring location		With every monitoring event
WATER COLUMN SAMPLING		
Physical Parameters and General Chemistry		
Flow (field measure) (CFS) following SWAMP field SOP ⁹	.25	Monthly, including 2 stormwater events
pH (field measure)	0.1	"
Electrical Conductivity (field measure) (uS/cm)	2.5	"
Dissolved Oxygen (field measure) (mg/L)	0.1	"
Temperature (field measure) (°C)	0.1	"
Turbidity (NTU)	0.5	"
Total Dissolved Solids (mg/L)	10	"
Total Suspended Solids (mg/L)	0.5	"
Nutrients		
Total Nitrogen (mg/L)	0.5	Monthly, including 2 stormwater events
Nitrate + Nitrite (as N) (mg/L)	0.1	"
Total Ammonia (mg/L)	0.1	"
Unionized Ammonia (calculated value, mg/L)		"
Total Phosphorus (as P) (mg/L)	-	"
Soluble Orthophosphate (mg/L)	0.01	"
Water column chlorophyll a (mg/L)	0.002	"
Algae cover, Floating Mats, % coverage	-	"
Algae cover, Attached, % coverage	-	"
Water Column Toxicity Test		
Algae - <i>Selenastrum capricornutum</i> , 4 day	-	Twice in dry season, twice in wet season
Water Flea - <i>Ceriodaphnia</i> (7-day chronic)	-	"
Fathead Minnow - <i>Pimephales promelas</i> (7-day chronic)	-	"
Toxicity Identification Evaluation (TIE)	-	As directed by Executive Officer
Pesticides² (ug/L)		
Carbamates		
Aldicarb	0.05	4 times, concurrent with water toxicity monitoring, in second year of Order term

MRP NO. R3-2012-0011-02 (TIER 2)
 CONDITIONAL WAIVER OF
 WASTE DISCHARGE REQUIREMENTS
 FOR DISCHARGES FROM IRRIGATED LANDS

Parameters and Tests	RL ³	Monitoring Frequency ¹
Carbaryl	0.05	"
Carbofuran	0.05	"
Methiocarb	0.05	"
Methomyl	0.05	"
Oxamyl	0.05	"
Organophosphate Pesticides		
Azinphos-methyl	0.02	"
Chlorpyrifos	0.005	"
Diazinon	0.005	"
Dichlorvos	0.01	"
Dimethoate	0.01	"
Dimeton-s	0.005	"
Disulfoton (Disyton)	0.005	"
Malathion	0.005	"
Methamidophos	0.02	"
Methidathion	0.02	"
Parathion-methyl	0.02	"
Phorate	0.01	"
Phosmet	0.02	"
Herbicides		
Atrazine	0.05	"
Cyanazine	0.20	"
Diuron	0.05	"
Glyphosate	2.0	"
Linuron	0.1	"
Paraquat dichloride	4	"
Simazine	0.05	"
Trifluralin	0.05	"
Metals (ug/L)		
Arsenic (total) ^{5,7}	0.3	4 times, concurrent with water toxicity monitoring, in second year of Order term
Boron (total) ^{6,7}	10	"
Cadmium (total & dissolved) ^{4,5,7}	0.01	"
Copper (total and dissolved) ^{4,7}	0.01	"
Lead (total and dissolved) ^{4,7}	0.01	"
Nickel (total and dissolved) ^{4,7}	0.02	"
Molybdenum (total) ⁷	1	"
Selenium (total) ⁷	0.30	"
Zinc (total and dissolved) ^{4,5,7}	0.10	"
Other (ug/L)		
Total Phenolic Compounds ⁸	10	4 times, concurrent with water toxicity monitoring, in second year of Order term
Hardness (mg/L as CaCO ₃)	1	"
Total Organic Carbon (ug/L)	0.6	"

Parameters and Tests	RL ³	Monitoring Frequency ¹
SEDIMENT SAMPLING		
Sediment Toxicity - Hyalella azteca 10-day		Annually
Benthic Invertebrate and associated Physical Habitat Assessment	SWAMP SOP	Once during the second year of Order concurrent with sediment toxicity sampling
Pyrethroid Pesticides in Sediment (ug/kg)		
Gamma-cyhalothrin	2	Once during second year of Order, concurrent with sediment toxicity sampling
Lambda-cyhalothrin	2	"
Bifenthrin	2	"
Beta-cyfluthrin	2	"
Cyfluthrin	2	"
Esfenvalerate	2	"
Permethrin	2	"
Cypermethrin	2	"
Danitol	2	"
Fenvalerate	2	"
Fluvalinate	2	"
Organochlorine Pesticides in Sediment		
DCPA	10	"
Dicofol	2	"
Other Monitoring in Sediment		
Chlorpyrifos (ug/kg)	2	"
Total Organic Carbon	0.01%	"
Sulfide		"
Sediment Grain Size Analysis	1%	"

¹Monitoring is ongoing through all five years of the Order, unless otherwise specified. Monitoring frequency may be used as a guide for developing alternative Sampling and Analysis Plan.

²Pesticide list may be modified based on specific pesticide use in Central Coast Region. Analytes on this list must be reported, at a minimum.

³Reporting Limit, taken from SWAMP where applicable.

⁴Holmgren, Meyer, Cheney and Daniels. 1993. Cadmium, Lead, Zinc, Copper and Nickel in Agricultural Soils of the United States. J. of Environ. Quality 22:335-348.

⁵Sax and Lewis, ed. 1987. Hawley's Condensed Chemical Dictionary. 11th ed. New York: Van Nostrand Reinhold Co., 1987. Zinc arsenate is an insecticide.

⁶<http://www.coastalagro.com/products/labels/9%25BORON.pdf>; Boron is applied directly or as a component of fertilizers as a plant nutrient.

⁷Madramootoo, Johnston, Willardson, eds. 1997. Management of Agricultural Drainage Water Quality. International Commission on Irrigation and Drainage. U.N. FAO. SBN 92-6-104058.3.

⁸<http://cat.inist.fr/?aModele=afficheN&cpsid=14074525>; Phenols are breakdown products of herbicides and pesticides. Phenols can be directly toxic and cause endocrine disruption.

⁹See SWAMP field measures SOP, p. 17

mg/L – milligrams per liter; ug/L – micrograms per liter; ug/kg – micrograms per kilogram;

NTU – Nephelometric Turbidity Units; CFS – cubic feet per second;

Table 3. Groundwater Monitoring Parameters

Parameter	RL	Analytical Method ⁴	Units
Depth to Groundwater ¹	-	Field Measurement	feet/bgs
pH	0.1	Field or Laboratory Measurement EPA General Methods	pH Units
Specific Conductance	2.5		µS/cm
Total Dissolved Solids	10		mg/L
Total Alkalinity as CaCO ₃	1	EPA Method 310.1 or 310.2	
Calcium	0.05	General Cations ² EPA 200.7, 200.8, 200.9	
Magnesium	0.02		
Sodium	0.1		
Potassium	0.1		
Sulfate (SO ₄)	1.0	General Anions EPA Method 300 or EPA Method 353.2	
Chloride	0.1		
Nitrate + Nitrite (as N) ³ or Nitrate as NO ₃	0.1		

¹Necessary to identify relevant water bearing zone; Required when well construction allows for groundwater depth measurement. ²General chemistry parameters (major cations and anions) represent geochemistry of water bearing zone and assist in evaluating quality assurance/quality control of groundwater sampling and laboratory analysis. ³The MRP allows analysis of "nitrate plus nitrite" to represent nitrate concentrations. The "nitrate plus nitrite" analysis allows for extended laboratory holding times and relieves the Discharger of meeting the short holding time required for nitrate. Dischargers may also analyze for Nitrate as NO₃. ⁴Dischargers may use alternative analytical methods approved by EPA.
 bgs – below ground surface; RL – Reporting Limit; µS/cm – micro siemens per centimeter

Table 4. Nitrate Loading Risk Factor Criteria and Risk Level Calculation

<p>A. Crop Type Nitrate Hazard Index Rating</p> <p>1 - Bean, Grapes, Olive.</p> <p>2 - Apple, Avocado, Barley, Blackberry, Blueberry, Carrot, Chicory, Citrus, Lemon Oat, Orange, Peach, Pear, Pistachio, Raspberry, Walnut, Wheat.</p> <p>3 - Artichoke, Bean, Brussel Sprout, Corn, Cucumber, Daikon, Peas, Radish, Squash, Summer, Tomato, Turnip, Squash, Rutabaga, Pumpkin, Potato.</p> <p>4 – Beet, Broccoli, Cabbage, Cauliflower, Celery, Chinese Cabbage (Napa), Collard, Endive, Kale, Leek, Lettuce, Mustard, Onion, Parsley, Pepper, Spinach, Strawberry.</p> <p>(Based on UC Riverside Nitrate Hazard Index)</p>
<p>B. Irrigation System Type Rating</p> <p>1 - Micro-irrigation year round (drip and micro-sprinklers) and no pre-irrigation;</p> <p>2 - Sprinklers used for pre-irrigation only and then micro-irrigation;</p> <p>3 - Sprinklers used for germination or at any time during growing season;</p> <p>4 - Surface irrigation systems (furrow or flood) at any, and/or in combination with any other irrigation system type;</p>

(Based on UC Riverside Nitrate Hazard Index, Adapted for the Central Coast Region)

C. Irrigation Water Nitrate Concentration Rating

- 1 - Nitrate concentration 0 to 45 mg/liter Nitrate NO₃
- 2 - Nitrate concentration 46 to 60 mg/liter Nitrate NO₃
- 3 - Nitrate concentration 61 to 100 mg/liter Nitrate NO₃
- 4 - Nitrate concentration > 100 mg/l Nitrate NO₃

D. Nitrate Loading Risk Level Calculation = A x B x C

- LOW - Nitrate loading risk is less than 10;
- MODERATE - Nitrate loading risk is between 10 and 15;
- HIGH - Nitrate loading risk is more than 15;

Note: Dischargers must determine the nitrate loading risk factor for each ranch/farm, based on the criteria associated with the highest risk activity existing at each ranch/farm. For example, the ranch/farm is assigned the highest risk factor, based on the single highest risk crop in the rotation, on one block under furrow irrigation, or on one well with high nitrate concentration. As an alternative to the nitrate loading risk level calculation described in Table 4, Dischargers may use the Groundwater Pollution Nitrate Hazard Index developed by UCANR, where a resulting Nitrate Hazard Index score equal or greater or equal to 20 indicates a HIGH nitrate loading risk to groundwater.

Table 5. Tier 2 - Time Schedule for Key Monitoring and Reporting Requirements

REQUIREMENT	TIME SCHEDULE ¹
Submit Quality Assurance Project Plan and Sampling And Analysis Plan for Surface Receiving Water Quality Monitoring (individually or through cooperative monitoring program)	Within three months
Initiate surface receiving water quality monitoring (individually or through cooperative monitoring program)	Within six months
Submit surface receiving water quality monitoring data (individually or through cooperative monitoring program)	Within nine months, quarterly thereafter (January 1, April 1, July 1, and October 1)
Submit surface receiving water quality Annual Monitoring Report (individually or through cooperative monitoring program)	Within one year, annually thereafter by January 1
Initiate monitoring of groundwater wells	Within one year
Tier 2 Dischargers with farms/ranches that contain or are adjacent to a waterbody impaired for temperature, turbidity or sediment: Conduct photo monitoring of riparian or wetland area habitat	October 1, 2012, and every four years thereafter by October 1
Submit electronic Annual Compliance Form	October 1, 2012, and updated annually thereafter by October 1
Submit groundwater monitoring results	October 1, 2013
Tier 2 Dischargers with farms/ranches that have High Nitrate Loading Risk: Report total nitrogen applied per acre to each	October 1, 2014, and annually thereafter by October 1.

MRP NO. R3-2012-0011-02 (TIER 2)
CONDITIONAL WAIVER OF
WASTE DISCHARGE REQUIREMENTS
FOR DISCHARGES FROM IRRIGATED LANDS

farm/ranch or nitrate loading risk unit, in electronic Annual Compliance Form	
--	--

¹ Dates are relative to adoption of this Order or enrollment date for Dischargers enrolled after the adoption of this Order, unless otherwise specified.

PETITION FOR REVIEW

EXHIBIT D

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

**MONITORING AND REPORTING PROGRAM
ORDER No. R3-2012-0011-03**

TIER 3

**DISCHARGERS ENROLLED UNDER
THE CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS FOR
DISCHARGES FROM IRRIGATED LANDS**

This Monitoring and Reporting Program Order No. R3-2012-0011-03 (MRP) is issued pursuant to California Water Code (Water Code) section 13267 and 13269, which authorize the California Regional Water Quality Control Board, Central Coast Region (hereafter Central Coast Water Board) to require preparation and submittal of technical and monitoring reports. Water Code section 13269 requires a waiver of waste discharge requirements to include as a condition, the performance of monitoring and the public availability of monitoring results. The Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands Order No. R3-2012-0011 (Order) includes criteria and requirements for three tiers. This MRP sets forth monitoring and reporting requirements for **Tier 3 Dischargers** enrolled under the Order. A summary of the requirements is shown below.

SUMMARY OF MONITORING AND REPORTING REQUIREMENTS FOR TIER 3:

- Part 1: Surface Receiving Water Monitoring and Reporting (*cooperative or individual*);
- Part 2: Groundwater Monitoring and Reporting;
Nitrate Loading Risk Factor Determination and Total Nitrogen Reporting
(*required for subset of Tier 3 Dischargers if farm/ranch has high nitrate loading risk to groundwater*);
- Part 3: Annual Compliance Form;
- Part 4: Photo Monitoring (*required for subset of Tier 3 Dischargers if farm/ranch contains or is adjacent to a waterbody impaired for temperature, turbidity or sediment*);
- Part 5: Individual Surface Water Discharge Monitoring and Reporting;
- Part 6: Irrigation and Nutrient Management Plan (*required for subset of Tier 3 Dischargers if farm/ranch has High Nitrate Loading Risk*);
- Part 7: Water Quality Buffer Plan (*required for subset of Tier 3 Dischargers if farm/ranch contains or is adjacent to a waterbody impaired for temperature, turbidity or sediment*);

Pursuant to Water Code section 13269(a)(2), monitoring requirements must be designed to support the development and implementation of the waiver program, including, but not limited to, verifying the adequacy and effectiveness of the waiver's conditions. The monitoring and reports required by this MRP are to evaluate effects of

discharges of waste from irrigated agricultural operations and individual farms/ranches on waters of the state and to determine compliance with the Order.

MONITORING AND REPORTING BASED ON TIERS

The Order and MRP includes criteria and requirements for three tiers, based upon those characteristics of the individual farms/ranches at the operation that present the highest level of waste discharge or greatest risk to water quality. Dischargers must meet conditions of the Order and MRP for the appropriate tier that applies to their land and/or the individual farm/ranch. Within a tier, Dischargers comply with requirements based on the specific level of discharge and threat to water quality from individual farms/ranches. The lowest tier, Tier 1, applies to dischargers who discharge the lowest level of waste (amount or concentration) or pose the lowest potential to cause or contribute to an exceedance of water quality standards in waters of the State or of the United States. The highest tier, Tier 3, applies to dischargers who discharge the highest level of waste or pose the greatest potential to cause or contribute to an exceedance of water quality standards in waters of the State or of the United States. Tier 2 applies to dischargers whose discharge has a moderate threat to water quality. Water quality is defined in terms of Regional, State, or Federal numeric or narrative water quality standards. Per the Order, Dischargers may submit a request to the Executive Officer to approve transfer to a lower tier.

PART 1. SURFACE RECEIVING WATER MONITORING AND REPORTING REQUIREMENTS

Monitoring and reporting requirements for surface receiving water identified in Part 1.A. and Part 1.B. apply to Tier 3 Dischargers. Surface receiving water refers to water flowing in creeks and other surface waters of the State. Surface receiving water monitoring may be conducted through a **cooperative monitoring program**, or Dischargers may choose to conduct surface receiving water monitoring and reporting individually. Key monitoring and reporting requirements for surface receiving water are shown in Tables 1 and 2. Time schedules are shown in Table 6.

A. Surface Receiving Water Quality Monitoring

1. Dischargers must elect a surface receiving water monitoring option (cooperative monitoring program or individual receiving water monitoring) to comply with surface receiving water quality monitoring requirements, and identify the option selected on the Notice of Intent (NOI).
2. Dischargers are encouraged to choose participation in a cooperative monitoring program (e.g., the existing Cooperative Monitoring Program or a similar program) to comply with receiving water quality monitoring

requirements. Dischargers not participating in a cooperative monitoring program must conduct surface receiving water quality monitoring individually that achieves the same purpose.

3. Dischargers (individually or as part of a cooperative monitoring program) must conduct surface receiving water quality monitoring to a) assess the impacts of their waste discharges from irrigated lands to receiving water, b) assess the status of receiving water quality and beneficial use protection in impaired waterbodies dominated by irrigated agricultural activity, c) evaluate status, short term patterns and long term trends (five to ten years or more) in receiving water quality, d) evaluate water quality impacts resulting from agricultural discharges (including but not limited to tile drain discharges), e) evaluate stormwater quality, f) evaluate condition of existing perennial, intermittent, or ephemeral streams or riparian or wetland area habitat, including degradation resulting from erosion or agricultural discharges of waste, and g) assist in the identification of specific sources of water quality problems.

Surface Receiving Water Quality Sampling and Analysis Plan

4. **Within three months** of adoption of the Order, Dischargers (individually or as part of a cooperative monitoring program) must submit a surface receiving water quality Sampling and Analysis Plan and Quality Assurance Project Plan (QAPP). Dischargers (or a third party cooperative monitoring program) must develop the Sampling and Analysis Plan to describe how the proposed monitoring will achieve the objectives of the MRP and evaluate compliance with the Order. The Sampling and Analysis Plan may propose alternative monitoring site locations, adjusted monitoring parameters, and other changes as necessary to assess the impacts of waste discharges from irrigated lands to receiving water. The Executive Officer must approve the Sampling and Analysis Plan and QAPP.
5. The Sampling and Analysis Plan must include the following minimum required components:
 - a. Monitoring strategy to achieve objectives of the Order and MRP;
 - b. Map of monitoring sites with GIS coordinates;
 - c. Identification of known water quality impairments and impaired waterbodies per the 2010 Clean Water Act 303(d) List of Impaired Waterbodies (List of Impaired Waterbodies);
 - d. Identification of beneficial uses and applicable water quality standards;
 - e. Identification of applicable Total Maximum Daily Loads;
 - f. Monitoring parameters;

- g. Monitoring schedule, including description and frequencies of monitoring events;
 - h. Description of data analysis methods;
6. The QAPP must include receiving water and site-specific information, project organization and responsibilities, and quality assurance components of the MRP. The QAPP must also include the laboratory and field requirements to be used for analyses and data evaluation. The QAPP must contain adequate detail for project and Water Board staff to identify and assess the technical and quality objectives, measurement and data acquisition methods, and limitations of the data generated under the surface receiving water quality monitoring. All sampling and laboratory methodologies and QAPP content must be consistent with U.S. EPA methods, State Water Board's Surface Water Ambient Monitoring Program (SWAMP) protocols and the Central Coast Water Board's Central Coast Ambient Monitoring Program (CCAMP). Following U.S. EPA guidelines¹ and SWAMP templates², the receiving water quality monitoring QAPP must include the following minimum required components:
- a. Project Management. This component addresses basic project management, including the project history and objectives, roles and responsibilities of the participants, and other aspects.
 - b. Data Generation and Acquisition. This component addresses all aspects of project design and implementation. Implementation of these elements ensures that appropriate methods for sampling, measurement and analysis, data collection or generation, data handling, and quality control activities are employed and are properly documented. Quality control requirements are applicable to all the constituents sampled as part of the MRP, as described in the appropriate method.
 - c. Assessment and Oversight. This component addresses the activities for assessing the effectiveness of the implementation of the project and associated QA and QC activities. The purpose of the assessment is to provide project oversight that will ensure that the QA Project Plan is implemented as prescribed.
 - d. Data Validation and Usability. This component addresses the quality assurance activities that occur after the data collection,

¹ USEPA. 2001 (2006) USEPA Requirements for Quality Assurance Project Plans (QA/R-5) Office of Environmental Information, Washington, D.C. USEPA QA/R-5

² http://waterboards.ca.gov/water_issues/programs/swamp/tools.shtml#qa

laboratory analysis and data generation phase of the project is completed. Implementation of these elements ensures that the data conform to the specified criteria, thus achieving the MRP objectives.

7. The Central Coast Water Board may conduct an audit of contracted laboratories at any time in order to evaluate compliance with the QAPP.
8. The Sampling and Analysis Plan and QAPP, and any proposed revisions are subject to approval by the Executive Officer. The Executive Officer may also revise the Sampling and Analysis Plan, including adding, removing, or changing monitoring site locations, changing monitoring parameters, and other changes as necessary to assess the impacts of waste discharges from irrigated lands to receiving water.

Surface Receiving Water Quality Monitoring Sites

9. The Sampling and Analysis Plan must, at a minimum, include monitoring sites to evaluate waterbodies identified in Table 1, unless otherwise approved by the Executive Officer. The Sampling and Analysis Plan must include sites to evaluate receiving water quality impacts most directly resulting from areas of agricultural discharge (including areas receiving tile drain discharges). Site selection must take into consideration the existence of any long term monitoring sites included in related monitoring programs (e.g. CCAMP and the existing CMP). Sites may be added or modified, subject to prior approval by the Executive Officer, to better assess the pollutant loading from individual sources or the impacts to receiving waters caused by individual discharges. Any modifications must consider sampling consistency for purposes of trend evaluation.

Surface Receiving Water Quality Monitoring Parameters

10. The Sampling and Analysis Plan must, at a minimum, include the following types of monitoring and evaluation parameters listed below and identified in Table 2:
 - a. Flow Monitoring;
 - b. Water Quality (physical parameters, metals, nutrients, pesticides);
 - c. Toxicity (water and sediment);
 - d. Assessment of Benthic Invertebrates;
11. All analyses must be conducted at a laboratory certified for such analyses by the State Department of Public Health (CDPH) or at laboratories approved by the Executive Officer. Unless otherwise noted, all sampling,

sample preservation, and analyses must be performed in accordance with the latest edition of *Test Methods for Evaluating Solid Waste*, SW-846, U.S. EPA, and analyzed as specified herein by the above analytical methods and reporting limits indicated. Certified laboratories can be found at the web link: <http://www.cdph.ca.gov/certlic/labs/Documents/ELAPLablist.xls>

12. Water quality and flow monitoring is used to assess the sources, concentrations, and loads of waste discharges from individual farms/ranches and groups of Dischargers to surface waters, to evaluate impacts to water quality and beneficial uses, and to evaluate the short term patterns and long term trends in receiving water quality. Monitoring data must be compared to existing numeric and narrative water quality objectives.
13. Toxicity testing is to evaluate water quality relative to the narrative toxicity objective. Water column toxicity analyses must be conducted on 100% (undiluted) sample. At sites where persistent unresolved toxicity is found, the Executive Officer may require concurrent toxicity and chemical analyses and a Toxicity Identification Evaluation (TIE) to identify the individual discharges causing the toxicity.

Surface Receiving Water Quality Monitoring Frequency and Schedule

14. The Sampling and Analysis Plan must include a schedule for sampling. Timing, duration, and frequency of monitoring must be based on the land use, complexity, hydrology, and size of the waterbody. Table 2 includes minimum monitoring frequency and parameter lists. Agricultural parameters that are less common may be monitored less frequently. Modifications to the receiving water quality monitoring parameters, frequency, and schedule may be submitted for Executive Officer consideration and approval. At a minimum, the Sampling and Analysis Plan schedule must consist of monthly monitoring of common agricultural parameters in major agricultural areas, including two major storm events during the wet season (October 1 – April 30).
15. Storm event monitoring must be conducted within 18 hours of storm events, preferably including the first flush run-off event that results in significant increase in stream flow. For purposes of this MRP, a storm event is defined as precipitation producing onsite runoff (surface water flow) capable of creating significant ponding, erosion or other water quality problem. A significant storm event will generally result in greater than 1-inch of rain within a 24-hour period.
16. **Within six months** of adoption of the Order, Dischargers (individually or as part of a cooperative monitoring program) must initiate receiving water

quality monitoring per the Sampling and Analysis Plan and QAPP approved by the Executive Officer.

B. Surface Receiving Water Quality Reporting

Surface Receiving Water Quality Data Submittal

1. **Within nine months** of adoption of this Order and quarterly thereafter (by January 1, April 1, July 1, and October 1), Dischargers (individually or as part of a cooperative monitoring program) must submit water quality monitoring data to the Central Coast Water Board electronically, in a format specified by the Executive Officer and compatible with SWAMP/CCAMP electronic submittal guidelines.

Surface Receiving Water Quality Monitoring Annual Report

2. **Within one year** of adoption of this Order and annually thereafter by January 1, Dischargers (individually or as part of a cooperative monitoring program) must submit an Annual Report, electronically, in a format specified by the Executive Officer including the following minimum elements:
 - a. Signed Transmittal Letter;
 - b. Title Page;
 - c. Table of Contents;
 - d. Executive Summary;
 - e. Summary of Exceedance Reports submitted during the reporting period;
 - f. Monitoring objectives and design;
 - g. Monitoring site descriptions and rainfall records for the time period covered;
 - h. Location of monitoring sites and map(s);
 - i. Tabulated results of all analyses arranged in tabular form so that the required information is readily discernible;
 - j. Summary of water quality data for any sites monitored as part of related monitoring programs, and used to evaluate receiving water as described in the Sampling and Analysis Plan.
 - k. Discussion of data to clearly illustrate compliance with the Order and water quality standards;
 - l. Discussion of short term patterns and long term trends in receiving water quality and beneficial use protection;
 - m. Evaluation of pesticide and toxicity analyses results, and recommendation of candidate sites for Toxicity Identification Evaluations (TIEs);
 - n. Identification of the location of any agricultural discharges observed discharging directly to surface receiving water;

- o. Laboratory data submitted electronically in a SWAMP/CCAMP comparable format;
- p. Sampling and analytical methods used;
- q. Copy of chain-of-custody forms;
- r. Field data sheets, signed laboratory reports, laboratory raw data;
- s. Associated laboratory and field quality control samples results;
- t. Summary of Quality Assurance Evaluation results;
- u. Specify the method used to obtain flow at each monitoring site during each monitoring event;
- v. Electronic or hard copies of photos obtained from all monitoring sites, clearly labeled with site ID and date;
- w. Conclusions;

PART 2. GROUNDWATER MONITORING AND REPORTING REQUIREMENTS

Monitoring and reporting requirements for groundwater identified in Part 2.A., Part 2.B., and Part 2.C. apply to Tier 3 Dischargers. Key monitoring and reporting requirements for groundwater are shown in Table 3. Time schedules are shown in Table 6.

A. Individual Groundwater Monitoring

1. **Within one year** of adoption of the Order, Dischargers must sample private domestic drinking water and agricultural groundwater wells on their farm/ranch to evaluate groundwater conditions in agricultural areas, identify areas at greatest risk for nitrogen loading and exceedance of drinking water standards, and identify priority areas for follow up actions.
2. Dischargers must sample at least one groundwater well for each farm/ranch on their operation. For farms/ranches with multiple groundwater wells, Dischargers must sample the primary irrigation well and all wells that are used or may be used for drinking water purposes. Groundwater monitoring parameters must include depth to groundwater (required if well construction provides for groundwater depth measurement) and well screen interval depths (if available), general chemical parameters, and general cations and anions listed in Table 3.
3. Tier 3 Dischargers must initially conduct two rounds of monitoring of groundwater wells during the first year, one sample collected during spring (March/April) and one collected during fall (September/October), and once annually thereafter. The first round of monitoring must be completed by October 2012. The annual monitoring must be conducted during the quarter when nitrate concentration was at its maximum, based on quarterly groundwater monitoring.

4. Groundwater samples must be collected by a qualified third-party (e.g., consultant, technician, person conducting cooperative monitoring) using proper sampling methods, chain-of-custody, and quality assurance/quality control protocols. Groundwater samples must be collected at or near the well head before the pressure tank and prior to any well head treatment. In cases where this is not possible, the water sample must be collected from a sampling point as close to the pressure tank as possible, or from a cold-water spigot located before any filters or water treatment systems.
5. Laboratory analyses for groundwater samples must be conducted by a State certified laboratory according to U.S. EPA approved methods; unless otherwise noted, all monitoring, sample preservation, and analyses must be performed in accordance with the latest edition of *Test Methods for Evaluating Solid Waste*, SW-846, United States Environmental Protection Agency, and analyzed as specified herein by the above analytical methods and reporting limits indicated. Certified laboratories can be found at the web link below:
<http://www.cdph.ca.gov/certlic/labs/Documents/ELAPLablist.xls>
6. In lieu of conducting individual groundwater monitoring, Dischargers may participate in a cooperative groundwater monitoring effort to help minimize costs and to develop an effective groundwater monitoring program. Qualifying cooperative groundwater monitoring and reporting programs may include, but are not limited to, regional or subregional groundwater programs developed for other purposes as long as the proposed cooperative groundwater monitoring program meets the Central Coast Water Board's general purpose of characterizing groundwater quality and ensuring the protection of drinking water sources. Proposals for cooperative groundwater monitoring efforts, including the use of other regional or subregional groundwater monitoring programs, must be approved by the Executive Officer. At a minimum, the cooperative groundwater monitoring effort must include sufficient monitoring to adequately characterize the groundwater aquifer(s) in the local area of the participating Dischargers, characterize the groundwater quality of the uppermost aquifer, and identify and evaluate groundwater used for domestic drinking water purposes. Cooperative groundwater monitoring efforts must comply with the requirements for sampling protocols and laboratory analytical methods identified in this MRP, including parameters listed in Table 3, or propose a functional equivalent that meets the same objectives and purposes as individual groundwater monitoring. The cooperative groundwater monitoring program must report results consistent with individual groundwater reporting defined in Part 2.B., or report results in a manner that is consistent with that approved by the Executive Officer in his or her approval of the cooperative groundwater monitoring proposal.

Dischargers electing to participate in a cooperative groundwater monitoring effort must convey this election to the Central Coast Water Board within 90 days of adoption of this Order, and the individual groundwater monitoring requirements shall not apply as long as a cooperative groundwater monitoring proposal for that Discharger's area is submitted within one (1) year of adoption of this Order. If no cooperative groundwater monitoring proposal for that Discharger's area is submitted within one (1) year, then the individual groundwater monitoring provisions shall apply and the Discharger shall have one (1) year to comply with the provisions identified in Part 2.

B. Individual Groundwater Reporting

- 1. By October 1, 2013 and annually thereafter by October 1,** Tier 3 Dischargers must submit groundwater monitoring results and information, electronically, in a format specified by the Executive Officer. Dischargers must include the following information:
 - a. Signed transmittal letter;
 - b. Number of groundwater wells present at each farm/ranch;
 - c. Identification of any groundwater wells abandoned or destroyed (including method destroyed) in compliance with the Order;
 - d. Owner-assigned well identification;
 - e. State identification number, if available;
 - f. Well location (latitude and longitude);
 - g. Water-use category (e.g., domestic drinking water, agricultural);
 - h. Identification of primary irrigation well;
 - i. Well construction information (e.g., total depth, screened intervals, depth to water), as available;
 - j. Use for fertigation or chemigation;
 - k. Presence and type of back flow prevention devices;
 - l. Photo-documentation of well condition and back flow prevention device;
 - m. Identification of wells sampled to comply with the Order and MRP;
 - n. Laboratory data must be compatible with the Water Board's Groundwater Ambient Monitoring and Assessment (GAMA) Program, and GeoTracker electronic deliverable format (EDF).

C. Nitrate Loading Risk Factor Determination and Total Nitrogen Reporting

1. Tier 3 Dischargers must calculate the nitrate loading risk factor for each ranch/farm included in their operations. The nitrate loading risk factor is a measure of the relative risk of loading nitrate to groundwater. Tier 3 Dischargers must determine the nitrate loading risk factor for each ranch/farm, based on the highest risk activity existing at each ranch/farm.

For example, if a Discharger uses both sprinkler and drip irrigation on the same crop, they must use the irrigation type "sprinkler" in the nitrate loading risk calculation. To calculate nitrate loading risk, Tier 3 Dischargers must use the criteria and methodology described in Table 4 of this MRP, or use the Nitrate Groundwater Pollution Hazard Index developed by University of California Division of Agriculture and Natural Resources (UCANR).

2. Tier 3 Dischargers may choose to subdivide the ranch/farm into "nitrate loading risk units," based on the variability of ranch/farm conditions for the purposes of complying with this Order. A nitrate loading risk unit is a subdivided unit of the ranch/farm with different farming conditions (irrigation system type, crop type, nitrate concentration in the irrigation water, etc.). The nitrate loading risk unit may be the total ranch, a number of blocks, or an individual block. If a Discharger chooses to subdivide the ranch/farm into individual nitrate loading risk units, the Discharger must maintain individual record keeping, and conduct monitoring and reporting for each nitrate loading risk unit.
3. Tier 3 Dischargers who choose to evaluate nitrate loading risk using the Table 4 criteria and methodology must calculate the ranch/farm or nitrate loading risk unit's nitrate loading risk level (low, moderate, or high), as described in Table 4. Dischargers must report Nitrate Loading Risk factors and level in the electronic Annual Compliance Form.
 - a. LOW - Nitrate loading risk is less than 10;
 - b. MODERATE – Nitrate loading risk is between 10 and 15;
 - c. HIGH – Nitrate loading risk is more than 15;
4. Tier 3 Dischargers who choose to evaluate nitrate loading risk using the Nitrate Groundwater Pollution Hazard Index must characterize the soil type for the individual farm(s), including any variability in soil type, and utilize the index tool at the Internet link below. Soil types may vary across individual fields, and this variability must be accounted for when using the Nitrate Groundwater Pollution Hazard Index. If the soil type is unknown or if the soil type is not included in the UCANR Nitrate Groundwater Pollution Hazard Index tool, Dischargers must use the Table 4 criteria and methodology described above. Dischargers must provide documentation of input to the index for crop type, soil type, irrigation type, and deep rip. A resulting Nitrate Groundwater Pollution Hazard Index number greater than or equal to 20 indicates a High Nitrate Loading Risk.

<http://ucanr.org/sites/wrc/Programs/Water Quality/Nitrate Groundwater Pollution Hazard Index/>

5. Tier 3 Dischargers with individual farms/ranches or nitrate loading risk units that have a HIGH nitrate loading risk must report total nitrogen applied per

crop, per acre, per year to each farm/ranch or nitrate loading risk unit in the electronic Annual Compliance Form. Total nitrogen must be reported in units of nitrogen, for any product, form or concentration including, but not limited to, organic and inorganic fertilizers, slow release products, compost, compost teas, manure, extracts, nitrogen present in the soil, and nitrate in irrigation water;

- a. As an alternative to reporting total nitrogen, Tier 3 Dischargers with high nitrate loading risk may propose an individual discharge groundwater monitoring and reporting program (GMRP) plan for approval by the Executive Officer. The GMRP plan must evaluate waste discharge to groundwater from each ranch/farm or nitrate loading risk unit and assess if the waste discharge is of sufficient quality that it will not cause or contribute to exceedances of any nitrate water quality standards in groundwater.

PART 3. ANNUAL COMPLIANCE FORM

Tier 3 Dischargers must submit annual compliance information, electronically, in a format specified by the Executive Officer. The purpose of the electronic Annual Compliance Form is to provide information to the Central Coast Water Board to assist in the evaluation of threat to water quality from individual agricultural discharges of waste and measure progress towards water quality improvement and verify compliance with the Order and MRP. Time schedules are shown in Table 6.

A. Annual Compliance Form

1. **By October 1, 2012 and updated annually thereafter by October 1**, Tier 3 Dischargers must submit an Annual Compliance Form electronically, in a format specified by the Executive Officer. The electronic Annual Compliance Form includes, but is not limited to the following minimum requirements³:
 - a. Signed transmittal letter;
 - b. Verification that any change in general operation or farm/ranch information (e.g., crop type, irrigation type, discharge type) is reported on update to Notice of Intent (NOI);
 - c. Verification of compliance with monitoring requirements, including any cooperative monitoring fees;
 - d. Verification of completed Farm Plan and date of last update;
 - e. Information regarding type and characteristics of discharge (e.g., number of discharge points, estimated flow/volume, number of tailwater days);

³ Items reported in the Annual Compliance Form are due by October 1, 2012 and annually thereafter, unless otherwise specified.

- f. Identification of any direct agricultural discharges to a stream, lake, estuary, bay, or ocean;
- g. Identification of specific farm water quality management practices completed, in progress, and planned to address water quality impacts caused by discharges of waste including irrigation management, pesticide management, nutrient management, salinity management, stormwater management, and sediment and erosion control to achieve compliance with this Order;
- h. Nitrate concentration of irrigation water;
- i. Identification of the application of any fertilizers, pesticides, fumigants or other chemicals through an irrigation system (e.g. fertigation or chemigation) and proof of proper backflow prevention devices;
- j. Description of method and location of chemical applications relative to surface water;
- k. Nitrate Loading Risk factors in Table 4 or Nitrate Groundwater Pollution Hazard Index input and Nitrate Loading Risk level;
- l. Proof of approved California Department of Fish and Game (CDFG) Streambed Alteration Agreement, as required by CDFG for any work proposed within the bed, bank or channel of a lake or stream, including riparian areas, that has the potential to result in erosion and discharges of waste to waters of the State;

Tier 3 Dischargers with farms/ranches that contain or are adjacent to a waterbody impaired for temperature, turbidity or sediment:

- m. Photo monitoring to document condition of streams, riparian, and wetland area habitat and the presence of bare soil within the riparian habitat area that is vulnerable to erosion;
- n. Water Quality Buffer Plan or alternative⁴;

Tier 3 Dischargers with farms/ranches that have High Nitrate Loading Risk:

- o. Total nitrogen applied per acre to each farm/ranch or nitrate loading risk unit (in units of nitrogen, in any product, form or concentration) including, but not limited to, organic and inorganic fertilizers, slow release products, compost, compost teas, manure, extracts, nitrogen present in the soil, and nitrate in irrigation water⁵;
- p. Specific elements of the INMP (e.g., Proof of certification, Crop Nitrogen Uptake Values, Nitrogen Balance Ratio, Estimate of

⁴ Due by October 1, 2016

⁵ Due by October 1, 2014 and annually thereafter by October 1.

- Nitrate Loading to Groundwater, Estimate of Reduction in Nitrate Loading to Groundwater)⁶;
q. INMP Effectiveness Report⁷

PART 4. PHOTO MONITORING AND REPORTING REQUIREMENTS

Photo monitoring and reporting requirements identified in Part 4.A. apply to Tier 3 Dischargers that have farms/ranches that contain or are adjacent to a waterbody identified on the List of Impaired Waterbodies as impaired for temperature, turbidity or sediment (see Order Table 1). Time schedules are shown in Table 6.

A. Photo Monitoring and Reporting

1. **By October 1, 2012**, Tier 3 Dischargers that have farms/ranches that contain or are adjacent to a waterbody *impaired for temperature, turbidity or sediment* must conduct photo monitoring to do the following:
 - a. Document the existing condition of perennial, intermittent or ephemeral streams (wet or dry), riparian or wetland area habitat; Photo monitoring of existing conditions must be repeated every four years and submitted with the electronic Annual Compliance Form.
2. Tier 3 Dischargers must conduct photo monitoring consistent with protocol established by the Executive Officer. Dischargers must include date of photo, photo location and point of reference in the photo. Photos must be accompanied by explanations and descriptions of the management practices demonstrated in the photos to meet the Basin Plan requirements specified in Part 7.A. and must include estimated widths of riparian areas from top of bank.

PART 5. INDIVIDUAL SURFACE WATER DISCHARGE MONITORING AND REPORTING REQUIREMENTS

Monitoring and reporting requirements for individual surface water discharge identified in Part 5.A. and Part 5.B. apply to all Tier 3 Dischargers. Key monitoring and reporting requirements for individual surface water discharge are shown in Tables 5A and 5B. Time schedules are shown in Table 6.

A. Individual Surface Water Discharge Monitoring

⁶ Due by October 1, 2015

⁷ Due by October 1, 2016

2. Tier 3 Dischargers must conduct individual surface water discharge monitoring to a) evaluate the quality of individual waste discharges, including concentration and load of waste (in kilograms per day) for appropriate parameters, b) evaluate effects of waste discharge on water quality and beneficial uses, and c) evaluate progress towards compliance with water quality improvement milestones in the Order.

Individual Sampling and Analysis Plan

3. **By March 15, 2013**, Tier 3 Dischargers must submit an individual surface water discharge Sampling and Analysis Plan and QAPP to monitor individual discharges of waste from their farm/ranch, including irrigation run-off (including tailwater discharges and discharges from tile drains, tailwater ponds and other surface water containment features unless constructed with impermeable liner), and stormwater discharges. The Sampling and Analysis Plan and QAPP must be submitted to the Executive Officer.
4. The Sampling and Analysis Plan must include the following minimum required components to monitor irrigation run-off, including tailwater discharges and discharges from tile drains, tailwater ponds and other surface water containment features, and stormwater discharges:
 - a. Number and location of discharge points (identified with latitude and longitude or on a scaled map);
 - b. Number and location of monitoring points;
 - c. Description of typical irrigation runoff patterns;
 - d. Map of discharge and monitoring points;
 - e. Sample collection methods;
 - f. Monitoring parameters;
 - g. Monitoring schedule and frequency of monitoring events;
5. The QAPP must include appropriate methods for sampling, measurement and analysis, data collection or generation, data handling, quality control activities, and documentation.
6. The Sampling and Analysis Plan and QAPP, and any proposed revisions are subject to approval by the Executive Officer. The Executive Officer may require modifications to the Sampling and Analysis Plan or Tier 3 Dischargers may propose Sampling and Analysis Plan modifications for Executive Officer approval, when modifications are justified to accomplish the objectives of the MRP.

Individual Surface Water Discharge Monitoring Points

7. Tier 3 Dischargers must select monitoring points to characterize at least 80% of the estimated irrigation run-off discharge volume from each farm/ranch at the point in time the sample is taken⁸, including tailwater discharges and discharges from tile drains. Sample must be taken when irrigation activity is causing maximal run-off. Load estimates will be generated by multiplying flow volume of discharge by concentration of contaminants. Tier 3 Dischargers must include at least one monitoring point from each farm/ranch which drains areas where chlorpyrifos or diazinon are applied, and monitoring of runoff or tailwater must be conducted within one week of chemical application. If discharge is not routinely present, Discharger may characterize typical run-off patterns in the Annual Report. See Table 4a for additional details.
8. Tier 3 Dischargers must also monitor tailwater ponds and other surface water containment features. If multiple ponds are present, sampling must cover at least 80% by volume of the containment features. See Table 4b for additional details.

Individual Surface Water Discharge Monitoring Parameters, Frequency, and Schedule

9. Tier 3 Dischargers must conduct monitoring for parameters, laboratory analytical methods, frequency and schedule described in Tables 4A and 4B. Dischargers may utilize in-field water testing instruments/equipment as a substitute for laboratory analytical methods if the method is approved by U.S. EPA, meets reporting limits (RL) and practical quantitation limits (PQL) specifications in the MRP, and appropriate sampling methodology and quality assurance checks can be applied to ensure that QAPP standards are met to ensure accuracy of the test.
10. **By October 1, 2013** of the adoption of the Order, Tier 3 Dischargers must initiate individual surface water discharge monitoring per the Sampling and Analysis Plan and QAPP, unless otherwise directed by the Executive Officer.

B. Individual Surface Water Discharge Reporting

Individual Surface Water Discharge Monitoring Data Submittal

1. **By March 15, 2014, October 1, 2014, and annually thereafter by October 1,** Tier 3 Dischargers must submit individual surface water discharge monitoring data to the Central Coast Water Board electronically, in a format

⁸ The requirement to select monitoring points to characterize at least 80% of the estimated irrigation run-off is for the purposes of collecting a sample that represents a majority of the volume of irrigation run-off discharged. The MRP does not specify the number or location of monitoring points to provide maximum flexibility for growers to determine how many sites are necessary and exact locations given site-specific conditions.

specified by the Executive Officer. The electronic data submittal must include the following minimum information:

- a. Electronic laboratory data submitted;
- b. Narrative description of typical irrigation runoff patterns;
- c. Location of sampling sites and map(s);
- d. Sampling and analytical methods used;
- e. Specify the method used to obtain flow at each monitoring site during each monitoring event;
- f. Photos obtained from all monitoring sites, clearly labeled with location and date;
- g. Sample chain-of-custody forms do not need to be submitted but must be made available to Central Coast Water Board staff, upon request;

PART 6. IRRIGATION AND NUTRIENT MANAGEMENT PLAN

Monitoring and reporting requirements related to the Irrigation and Nutrient Management Plan (INMP) identified in Part 6.A., 6.B., and 6.C. apply to Tier 3 Dischargers that have farms/ranches with high nitrate loading risk. Time schedules are shown in Table 6.

A. Irrigation and Nutrient Management Plan Monitoring

1. Tier 3 Dischargers with High Nitrate Loading Risk must develop and initiate implementation of an Irrigation and Nutrient Management Plan (INMP) certified by a Professional Soil Scientist, Professional Agronomist, or Crop Advisor certified by the American Society of Agronomy, or similarly qualified professional.
2. The purpose of the INMP is to budget and manage the nutrients applied to each farm/ranch or nitrate loading risk unit considering all sources of nutrients, crop requirements, soil types, climate, and local conditions in order to minimize nitrate loading to surface water and groundwater in compliance with this Order.
3. The professional certification of the INMP must indicate that the relevant expert has reviewed all necessary documentation and testing results, evaluated nutrient balance calculations (total nitrogen applied relative to typical crop nitrogen uptake and nitrogen removed at harvest), evaluated estimated nitrate loading to groundwater, evaluated progress towards nutrient management targets, and conducted field verification to ensure accuracy of reporting.

4. Tier 3 Dischargers with High Nitrate Loading Risk must include the following elements in the INMP. The INMP is not submitted to the Central Coast Water Board, with the exception of key elements identified in Part 6B:
 - a. Proof of INMP certification;
 - b. Map locating each farm/ranch or nitrate loading risk unit;
 - c. Identification of nitrate loading risk factors or input to the Groundwater Pollution Nitrate Hazard Index and overall Nitrate Loading Risk level calculation for each ranch/farm or nitrate loading risk unit;
 - d. Identification of crop nitrogen uptake values for use in nutrient balance calculations;
 - e. Record keeping of the total nitrogen applied per crop, per acre to each farm/ranch or nitrate loading risk unit (in units of nitrogen, in any product, form or concentration) including, but not limited to, organic and inorganic fertilizers, slow release products, compost, compost teas, manure, extracts, nitrogen present in the soil, and nitrate in irrigation water;
 - f. Dischargers must take a nitrogen soil sample (e.g. laboratory analysis or nitrate quick test) or use an alternative method to evaluate nitrogen content in soil, prior to planting or seeding the field or prior to the time of pre-sidedressing. The amount of nitrogen remaining in the soil must be accounted for as a source of nitrogen when budgeting, and the soil sample or alternative method results must be maintained in the INMP.
 - g. Annual balance of nitrogen applied compared to typical crop nitrogen uptake for each ranch/farm or nitrate loading risk unit (Nitrogen Balance ratio);
 - h. Annual estimation of nitrogen loading to groundwater and surface water, including subsurface drainage (e.g., tile drains), from each ranch/farm or nitrate loading risk unit;
 - i. Identification of irrigation and nutrient management practices in progress (identify start date), completed (identify completion date), and planned (identify anticipated start date) to reduce nitrate loading to groundwater to achieve compliance with this Order.
 - j. Annual evaluation of reductions in nitrate loading to groundwater resulting from decreased fertilizer use and/or implementation of irrigation and nutrient management practices;
 - k. Description of methods Discharger will use to verify overall effectiveness of the INMP.

5. Tier 3 Dischargers must evaluate the effectiveness of the INMP. Irrigation and Nutrient Management Plan effectiveness monitoring must be conducted or supervised by a registered professional engineer, professional geologist, Certified Crop Advisor, or similarly qualified professional. Monitoring must

evaluate measured progress towards protecting, preserving, and restoring groundwater quality in the upper-most aquifer (or perched aquifer, whichever is first encountered), resulting from reductions in loading based on reduced fertilizer use and improved irrigation and nutrient management practices. Monitoring methods used may include, but are not limited to lysimeter monitoring, shallow groundwater or soil monitoring, or groundwater well monitoring. If the physical monitoring by itself cannot demonstrate progress towards compliance with the Order, the Discharger may need to supplement physical monitoring with contaminant transport and flow modeling.

B. Irrigation and Nutrient Management Plan Reporting

1. **By October 1, 2015 and annually thereafter**, Tier 3 Dischargers with High Nitrate Loading Risk must report the following INMP elements in the electronic Annual Compliance Form:
 - a. Identification of crop nitrogen uptake values for use in nutrient balance calculations;
 - b. Annual balance of nitrogen applied per crop compared to typical crop nitrogen uptake for each ranch/farm or nitrate loading risk unit (Nitrogen Balance ratio);
 - c. Annual estimation of nitrogen loading to groundwater and surface water, including subsurface drainage (e.g., tile drains), from each ranch/farm or nitrate loading risk unit;
 - d. Annual evaluation of reductions in nitrate loading to groundwater resulting from decreased fertilizer use and/or implementation of nutrient management practices;

2. **By October 1, 2016**, Tier 3 Dischargers that have farms/ranches with high nitrate loading risk to groundwater must submit an INMP Effectiveness Report to evaluate measured progress towards protecting, preserving, and restoring groundwater quality in the upper-most aquifer, including reductions in loading based on the implementation of irrigation and nutrient management practices. The INMP Effectiveness Report must be prepared by a state registered professional engineer, professional geologist, Certified Crop Advisor, or similarly qualified professional. Dischargers in the same groundwater basin or subbasin may choose to comply with this requirement as a group by submitting a single report that evaluates the overall effectiveness of the broad scale implementation of irrigation and nutrient management practices identified in individual INMPs to protect groundwater and achieve water quality standards for nitrate. Group efforts must use data from each farm/ranch (e.g., individual groundwater wells, lysimeters, and/or soil samples) to adequately represent groundwater quality and progress towards groundwater protection for all farms/ranches in the group. The

INMP Effectiveness Report must include the following elements and submitted with the electronic Annual Compliance Form:

- a. A description of the methodology used to evaluate and verify effectiveness of the INMP (e.g., lysimeter monitoring, shallow groundwater or soil monitoring, groundwater well monitoring, contaminant transport and flow modeling);
- b. An evaluation of how discharges of waste and any associated reductions in nitrate loading will decrease the concentration of nitrate in the upper-most aquifer, commensurate with water quality standards, within a reasonable and foreseeable time frame, and compared to milestones identified in the Order;
- c. Based on estimated nitrate loading reductions to the groundwater basin or subbasin, the estimated number of years to achieve water quality standards in receiving water;

PART 7. WATER QUALITY BUFFER PLAN

Monitoring and reporting requirements related to the Water Quality Buffer Plan identified in Part 7.A. and Part 7.B. apply to Tier 3 Dischargers that have farms/ranches that contain or are adjacent to waterbody identified on the List of Impaired Waterbodies as impaired for temperature, turbidity, or sediment. Time schedules are shown in Table 6.

A. Water Quality Buffer Plan;

1. **By October 1, 2016**, Tier 3 Dischargers adjacent to or containing a waterbody identified on the List of Impaired Waterbodies as impaired for temperature, turbidity or sediment must submit a Water Quality Buffer Plan to the Executive Officer that protects the listed waterbody and its associated perennial and intermittent tributaries. The purpose of the Water Quality Buffer Plan is to prevent waste discharge, comply with water quality standards (e.g., temperature, turbidity, sediment), and protect beneficial uses in compliance with this Order and the following Basin Plan requirement:

Basin Plan (Chapter 5, p. V-13, Section V.G.4 – Erosion and Sedimentation, *“A filter strip of appropriate width, and consisting of undisturbed soil and riparian vegetation or its equivalent, must be maintained, wherever possible, between significant land disturbance activities and watercourses, lakes, bays, estuaries, marshes, and other water bodies. For construction activities, minimum width of the filter strip must be thirty feet, wherever possible....”*

2. The Water Quality Buffer Plan must include the following or the functional equivalent, to address discharges of waste and associated water quality impairments:
 - a. A minimum 30 foot buffer (as measured horizontally from the top of bank on either side of the waterway, or from the high water mark of a lake and mean high tide of an estuary);
 - b. Any necessary increases in buffer width to adequately prevent the discharge of waste that may cause or contribute to any excursion above or outside the acceptable range for any Regional, State, or Federal numeric or narrative water quality standard (e.g., temperature, turbidity);
 - c. Any buffer less than 30 feet must provide equivalent water quality protection and be justified based on an analysis of site-specific conditions and be approved by the Executive Officer;
 - d. Identification of any alternatives implemented to comply with this requirement, that are functionally equivalent to described buffer;
 - e. Schedule for implementation;
 - f. Maintenance provisions to ensure water quality protection;
 - g. Annual photo monitoring to be included in the Annual Compliance Form;

PART 8. GENERAL MONITORING AND REPORTING REQUIREMENTS

A. Submittal of Technical Reports

1. Dischargers must submit reports in a format specified by the Executive Officer (reports will be submitted electronically, unless otherwise specified by the Executive Officer). A transmittal letter must accompany each report, containing the following penalty of perjury statement signed by the Discharger or the Discharger's authorized agent:

"In compliance with Water Code §13267, I certify under penalty of perjury that this document and all attachments were prepared by me, or under my direction or supervision following a system designed to assure that qualified personnel properly gather and evaluate the information submitted. To the best of my knowledge and belief, this document and all attachments are true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment".

2. If the Discharger asserts that all or a portion of a report submitted pursuant to this Order is subject to an exemption from public disclosure (e.g. trade secrets or secret processes), the Discharger must provide an explanation of how those portions of the reports are exempt from public disclosure. The

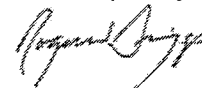
Discharger must clearly indicate on the cover of the report (typically an electronic submittal) that the Discharger asserts that all or a portion of the report is exempt from public disclosure, submit a complete report with those portions that are asserted to be exempt in redacted form, submit separately (in a separate electronic file) unredacted pages (to be maintained separately by staff). The Central Coast Water Board staff will determine whether any such report or portion of a report qualifies for an exemption from public disclosure. If the Central Coast Water Board staff disagrees with the asserted exemption from public disclosure, the Central Coast Water Board staff will notify the Discharger prior to making such report or portions of such report available for public inspection. In the interest of public health and safety, the Central Coast Water Board will not make available for public inspection, the precise location of any groundwater well monitored in compliance with this Order. Consistent with the reporting of groundwater wells on GeoTracker, groundwater well location and data will only be referenced within a one-half mile radius of the actual well location.

B. Enforcement and Violations

1. Monitoring reports are required pursuant to Section 13267 of the California Water Code. Pursuant to Section 13268 of the Water Code, a violation of a request made pursuant to Section 13267 may subject you to civil liability assessment of up to \$1000 per day.

C. Executive Officer Authority

1. The Executive Officer may revise this MRP as necessary, and Dischargers must comply with the MRP as revised by the Executive Officer. Specifically, the Executive Officer may increase monitoring and reporting requirements where monitoring results, pesticide use patterns, or other indicators suggest that the increase is warranted due to an increased threat to water quality. Additionally, the Executive Officer can reduce monitoring and reporting requirements, including adjusting time schedules, where growers are coordinating efforts at watershed or subwatershed scales or where regional treatment facilities are implemented, or other indicators suggest that the reduction is warranted due to a reduced threat to water quality.



Roger W. Briggs, Executive Officer

March 15, 2012

Date

Table 1. Major Waterbodies in Agricultural Areas¹

Hydrologic SubArea	Waterbody Name	Hydrologic SubArea	Waterbody Name
30510	Pajaro River	30920	Quail Creek
30510	Salsipuedes Creek	30920	Salinas Reclamation Canal
30510	Watsonville Slough	31022	Chorro Creek
30510	Watsonville Creek ²	31023	Los Osos Creek
30510	Beach Road Ditch ²	31023	Warden Creek
30530	Carnadero Creek	31024	San Luis Obispo Creek
30530	Furlong Creek ²	31024	Prefumo Creek
30530	Llagas Creek	31031	Arroyo Grande Creek
30530	Miller's Canal	31031	Los Berros Creek
30530	San Juan Creek	31210	Bradley Canyon Creek
30530	Tesquisquita Slough	31210	Bradley Channel
30600	Moro Cojo Slough	31210	Green Valley Creek
30910	Alisal Slough	31210	Main Street Canal
30910	Blanco Drain	31210	Orcutt Solomon Creek
30910	Old Salinas River	31210	Oso Flaco Creek
30910	Salinas River (below Gonzales Rd.)	31210	Little Oso Flaco Creek
30920	Salinas River (above Gonzales Rd. and below Nacimiento R.)	31210	Santa Maria River
30910	Santa Rita Creek ²	31310	San Antonio Creek ²
30910	Tembladero Slough	31410	Santa Ynez River
30920	Alisal Creek	31531	Bell Creek
30920	Chualar Creek	31531	Glenn Annie Creek
30920	Espinosa Slough	31531	Los Carneros Creek ²
30920	Gabilan Creek	31534	Arroyo Paredon Creek
30920	Natividad Creek	31534	Franklin Creek

¹ At a minimum, sites must be included for these waterbodies in agricultural areas, unless otherwise approved by the Executive Officer. Sites may be proposed for addition or modification to better assess the impacts of waste discharges from irrigated lands to surface water. Dischargers choosing to comply with surface receiving water quality monitoring, individually (not part of a cooperative monitoring program) must only monitor sites for waterbodies receiving the discharge.

² These creeks are included because they are newly listed waterbodies on the 2010 303(d) list of Impaired Waters that are associated with areas of agricultural discharge.

Table 2. Surface Receiving Water Quality Monitoring Parameters

Parameters and Tests	RL ³	Monitoring Frequency ¹
Photo Monitoring		
Upstream and downstream photographs at monitoring location		With every monitoring event
WATER COLUMN SAMPLING		
Physical Parameters and General Chemistry		
Flow (field measure) (CFS) following SWAMP field SOP ⁹	.25	Monthly, including 2 stormwater events
pH (field measure)	0.1	"
Electrical Conductivity (field measure) (uS/cm)	2.5	"
Dissolved Oxygen (field measure) (mg/L)	0.1	"
Temperature (field measure) (°C)	0.1	"
Turbidity (NTU)	0.5	"
Total Dissolved Solids (mg/L)	10	"
Total Suspended Solids (mg/L)	0.5	"
Nutrients		
Total Nitrogen (mg/L)	0.5	Monthly, including 2 stormwater events
Nitrate + Nitrite (as N) (mg/L)	0.1	"
Total Ammonia (mg/L)	0.1	"
Unionized Ammonia (calculated value, mg/L)		"
Total Phosphorus (as P) (mg/L)	-	"
Soluble Orthophosphate (mg/L)	0.01	"
Water column chlorophyll a (mg/L)	0.002	"
Algae cover, Floating Mats, % coverage	-	"
Algae cover, Attached, % coverage	-	"
Water Column Toxicity Test		
Algae - <i>Selenastrum capricornutum</i> , 4 day	-	Twice in dry season, twice in wet season
Water Flea - <i>Ceriodaphnia</i> (7-day chronic)	-	"
Fathead Minnow - <i>Pimephales promelas</i> (7-day chronic)	-	"
Toxicity Identification Evaluation (TIE)	-	As directed by Executive Officer
Pesticides² (ug/L)		
Carbamates		
Aldicarb	0.05	4 times, concurrent with water toxicity monitoring, in second year of Order term

MRP NO. R3-2012-0011-03 (TIER 3)
 CONDITIONAL WAIVER OF
 WASTE DISCHARGE REQUIREMENTS
 FOR DISCHARGES FROM IRRIGATED LANDS

Parameters and Tests	RL ³	Monitoring Frequency ¹
Carbaryl	0.05	"
Carbofuran	0.05	"
Methiocarb	0.05	"
Methomyl	0.05	"
Oxamyl	0.05	"
Organophosphate Pesticides		
Azinphos-methyl	0.02	"
Chlorpyrifos	0.005	"
Diazinon	0.005	"
Dichlorvos	0.01	"
Dimethoate	0.01	"
Dimeton-s	0.005	"
Disulfoton (Disyton)	0.005	"
Malathion	0.005	"
Methamidophos	0.02	"
Methidathion	0.02	"
Parathion-methyl	0.02	"
Phorate	0.01	"
Phosmet	0.02	"
Herbicides		
Atrazine	0.05	"
Cyanazine	0.20	"
Diuron	0.05	"
Glyphosate	2.0	"
Linuron	0.1	"
Paraquat dichloride	4	"
Simazine	0.05	"
Trifluralin	0.05	"
Metals (ug/L)		
Arsenic (total) ^{5,7}	0.3	4 times, concurrent with water toxicity monitoring, in second year of Order term
Boron (total) ^{6,7}	10	"
Cadmium (total & dissolved) ^{4,5,7}	0.01	"
Copper (total and dissolved) ^{4,7}	0.01	"
Lead (total and dissolved) ^{4,7}	0.01	"
Nickel (total and dissolved) ^{4,7}	0.02	"
Molybdenum (total) ⁷	1	"
Selenium (total) ⁷	0.30	"
Zinc (total and dissolved) ^{4,5,7}	0.10	"
Other (ug/L)		
Total Phenolic Compounds ⁸	10	4 times, concurrent with water toxicity monitoring, in second year of Order term
Hardness (mg/L as CaCO ₃)	1	"
Total Organic Carbon (ug/L)	0.6	"

Parameters and Tests	RL ³	Monitoring Frequency ¹
SEDIMENT SAMPLING		
Sediment Toxicity - Hyalella azteca 10-day		Annually
Benthic Invertebrate and associated Physical Habitat Assessment	SWAMP SOP	Once during the second year of Order concurrent with sediment toxicity sampling
Pyrethroid Pesticides in Sediment (ug/kg)		
Gamma-cyhalothrin	2	Once during second year of Order, concurrent with sediment toxicity sampling
Lambda-cyhalothrin	2	
Bifenthrin	2	"
Beta-cyfluthrin	2	"
Cyfluthrin	2	"
Esfenvalerate	2	"
Permethrin	2	"
Cypermethrin	2	"
Danitol	2	"
Fenvalerate	2	"
Fluvalinate	2	"
Organochlorine Pesticides in Sediment		
DCPA	10	"
Dicofol	2	"
Other Monitoring in Sediment		
Chlorpyrifos (ug/kg)	2	"
Total Organic Carbon	0.01%	"
Sulfide		"
Sediment Grain Size Analysis	1%	"

¹Monitoring is ongoing through all five years of the Order, unless otherwise specified. Monitoring frequency may be used as a guide for developing alternative Sampling and Analysis Plan.

²Pesticide list may be modified based on specific pesticide use in Central Coast Region. Analytes on this list must be reported, at a minimum.

³Reporting Limit, taken from SWAMP where applicable.

⁴Holmgren, Meyer, Cheney and Daniels. 1993. Cadmium, Lead, Zinc, Copper and Nickel in Agricultural Soils of the United States. J. of Environ. Quality 22:335-348.

⁵Sax and Lewis, ed. 1987. Hawley's Condensed Chemical Dictionary. 11th ed. New York: Van Nostrand Reinhold Co., 1987. Zinc arsenate is an insecticide.

⁶<http://www.coastalagro.com/products/labels/9%25BORON.pdf>; Boron is applied directly or as a component of fertilizers as a plant nutrient.

⁷Madramootoo, Johnston, Willardson, eds. 1997. Management of Agricultural Drainage Water Quality. International Commission on Irrigation and Drainage. U.N. FAO. SBN 92-6-104058.3.

⁸<http://cat.inist.fr/?aModele=afficheN&cpsid=14074525>; Phenols are breakdown products of herbicides and pesticides. Phenols can be directly toxic and cause endocrine disruption.

⁹See SWAMP field measures SOP, p. 17

mg/L – milligrams per liter; ug/L – micrograms per liter; ug/kg – micrograms per kilogram;
 NTU – Nephelometric Turbidity Units; CFS – cubic feet per second;

Table 3. Groundwater Monitoring Parameters

Parameter	RL	Analytical Method ⁴	Units
Depth to Groundwater ¹	-	Field Measurement	feet/bgs
pH	0.1	Field or Laboratory Measurement EPA General Methods	pH Units
Specific Conductance	2.5		µS/cm
Total Dissolved Solids	10		mg/L
Total Alkalinity as CaCO ₃	1	EPA Method 310.1 or 310.2	
Calcium	0.05	General Cations ² EPA 200.7, 200.8, 200.9	
Magnesium	0.02		
Sodium	0.1		
Potassium	0.1		
Sulfate (SO ₄)	1.0		
Chloride	0.1	General Anions EPA Method 300 or EPA Method 353.2	
Nitrate + Nitrite (as N) ³ or Nitrate as NO ₃	0.1		

¹Necessary to identify relevant water bearing zone; Required when well construction allows for groundwater depth measurement. ²General chemistry parameters (major cations and anions) represent geochemistry of water bearing zone and assist in evaluating quality assurance/quality control of groundwater monitoring and laboratory analysis.

³The MRP allows analysis of "nitrate plus nitrite" to represent nitrate concentrations. The "nitrate plus nitrite" analysis allows for extended laboratory holding times and relieves the Discharger of meeting the short holding time required for nitrate. Dischargers may also analyze for Nitrate as NO₃.

⁴Dischargers may use alternative analytical methods approved by EPA.

bgs – below ground surface; RL – Reporting Limit; µS/cm – micro siemens per centimeter

Table 4. Nitrate Loading Risk Factor Criteria and Risk Level Calculation

<p>A. Crop Type Nitrate Hazard Index Rating</p> <p>1 - Bean, Grapes, Olive.</p> <p>2 - Apple, Avocado, Barley, Blackberry, Blueberry, Carrot, Chicory, Citrus, Lemon Oat, Orange, Peach, Pear, Pistachio, Raspberry, Walnut, Wheat.</p> <p>3 - Artichoke, Bean, Brussel Sprout, Corn, Cucumber, Daikon, Peas, Radish, Squash, Summer, Tomato, Turnip, Squash, Rutabaga, Pumpkin, Potato.</p> <p>4 - Beet, Broccoli, Cabbage, Cauliflower, Celery, Chinese Cabbage (Napa), Collard, Endive, Kale, Leek, Lettuce, Mustard, Onion, Parsley, Pepper, Spinach, Strawberry.</p> <p>(Based on UC Riverside Nitrate Hazard Index)</p>
<p>B. Irrigation System Type Rating</p> <p>1 - Micro-irrigation year round (drip and micro-sprinklers) and no pre-irrigation;</p> <p>2 - Sprinklers used for pre-irrigation only and then micro-irrigation;</p> <p>3 - Sprinklers used for germination or at any time during growing season;</p> <p>4 - Surface irrigation systems (furrow or flood) at any, and/or in combination with any other irrigation system type;</p> <p>(Based on UC Riverside Nitrate Hazard Index, Adapted for the Central Coast Region)</p>

C. Irrigation Water Nitrate Concentration Rating

- 1 - Nitrate concentration 0 to 45 mg/liter Nitrate NO₃
- 2 - Nitrate concentration 46 to 60 mg/liter Nitrate NO₃
- 3 - Nitrate concentration 61 to 100 mg/liter Nitrate NO₃
- 4 - Nitrate concentration > 100 mg/l Nitrate NO₃

D. Nitrate Loading Risk Level Calculation = A x B x C

- LOW - Nitrate loading risk is less than 10;
- MODERATE - Nitrate loading risk is between 10 and 15;
- HIGH - Nitrate loading risk is more than 15;

Note: Dischargers must determine the nitrate loading risk factor for each ranch/farm, based on the criteria associated with the highest risk activity existing at each ranch/farm. For example, the ranch/farm is assigned the highest risk factor, based on the single highest risk crop in the rotation, on one block under furrow irrigation, or on one well with high nitrate concentration. As an alternative to the nitrate loading risk level calculation described in Table 4, Dischargers may use the Groundwater Pollution Nitrate Hazard Index developed by UCANR, where a resulting Nitrate Hazard Index score equal or greater or equal to 20 indicates a HIGH nitrate loading risk to groundwater.

Table 5A. Individual Discharge Monitoring for Tailwater, Tile drain, and Stormwater Discharges

Parameter	Analytical Method ¹	Maximum PQL	Units	Min Monitoring Frequency
Discharge Flow or Volume	Field Measure	---	CFS	(a) (d)
Approximate Duration of Flow	Calculation	---	hours/month	
Temperature (water)	Field Measure	0.1	° Celsius	
pH	Field Measure	0.1	pH units	
Electrical Conductivity	Field Measure	100	µS/cm	
Turbidity	SM 2130B, EPA 180.1	1	NTUs	
Nitrate + Nitrite (as N)	EPA 300.1, EPA 353.2	0.1	mg/L	
Ammonia	SM 4500 NH ₃ , EPA 350.3	0.1	mg/L	(b) (c) (d)
Chlorpyrifos ²	EPA 8141A, EPA 614	0.02	ug/L	
Diazinon ²				
Ceriodaphnia Toxicity (96-hr acute)	EPA-821-R-02-012	NA	% Survival	
Hyalella Toxicity in Water (10-day)	EPA-821-R-02-013	NA	% Survival	

¹ In-field water testing instruments/equipment as a substitute for laboratory analysis if the method is approved by EPA, meets RL/PQL specifications in the MRP, and appropriate sampling methodology and quality assurance checks can be applied to ensure that QAPP standards are met to ensure accuracy of the test.

² If chlorpyrifos or diazinon is used at the farm/ranch, otherwise does not apply. The Executive Officer may require monitoring of other pesticides based on results of downstream receiving water monitoring.

MRP NO. R3-2012-0011-03 (TIER 3)
 CONDITIONAL WAIVER OF
 WASTE DISCHARGE REQUIREMENTS
 FOR DISCHARGES FROM IRRIGATED LANDS

- (a) Two times per year during primary irrigation season for farms/ranches less than or equal to 500 acres, and four times per year during primary irrigation season for farms/ranches greater than 500 acres. Executive Officer may reduce sampling frequency based on water quality improvements.
 - (b) Once per year during primary irrigation season for farms/ranches less than or equal to 500 acres, and two times per year during primary irrigation season for farms/ranches greater than 500 acres.
 - (c) Sample must be collected within one week of chemical application, if chemical is applied on farm/ranch;
 - (d) Once per year during wet season (October – March) for farms/ranches less than or equal to 500 acres, and two times per year during wet season for farms/ranches greater than 500 acres, within 18 hours of major storm events;
- CFS – Cubic feet per second; NTU – Nephelometric turbidity unit; PQL – Practical Quantitation Limit;
 NA – Not applicable

Table 5B. Individual Discharge Monitoring for Tailwater Ponds and other Surface Containment Features

Parameter	Analytical Method ¹	Maximum PQL	Units	Minimum Monitoring Frequency
Volume of Pond	Field Measure	1	Gallons	(a) (d)
Nitrate + Nitrite (as N)	EPA 300.1, EPA 353.2	50	mg/L	

¹ In-field water testing instruments/equipment as a substitute for laboratory analysis if the method is approved by EPA, meets RL/PQL specifications in the MRP, and appropriate sampling methodology and quality assurance checks can be applied to ensure that QAPP standards are met to ensure accuracy of the test.

(a) Four times per year during primary irrigation season; Executive Officer may reduce monitoring frequency based on water quality improvements.

(d) Two times per year during wet season (October – March, within 18 hours of major storm events)

Table 6. Tier 3 - Time Schedule for Key Monitoring and Reporting Requirements

REQUIREMENT	TIME SCHEDULE ¹
Submit Quality Assurance Project Plan and Sampling And Analysis Plan for Surface Receiving Water Quality Monitoring (individually or through cooperative monitoring program)	Within three months
Initiate surface receiving water quality monitoring (individually or through cooperative monitoring program)	Within six months
Submit surface receiving water quality monitoring data (individually or through cooperative monitoring program)	Within nine months, quarterly thereafter (January 1, April 1, July 1, and October 1)
Submit surface receiving water quality Annual Monitoring Report (individually or through cooperative monitoring program)	Within one year, annually thereafter by January 1
Initiate monitoring of groundwater wells	Within one year
Submit individual surface water discharge Sampling and Analysis Plan	March 15, 2013
Initiate individual surface water discharge monitoring	October 1, 2013
Submit individual surface water discharge monitoring data	March 15, 2014, October 1, 2014 and annually thereafter by October 1
Submit electronic Annual Compliance Form	October 1, 2012, and updated annually thereafter by October 1
Submit groundwater monitoring results	October 1, 2013

MRP NO. R3-2012-0011-03 (TIER 3)
 CONDITIONAL WAIVER OF
 WASTE DISCHARGE REQUIREMENTS
 FOR DISCHARGES FROM IRRIGATED LANDS

<i>Tier 3 Dischargers with farms/ranches that contain or are adjacent to a waterbody impaired for temperature, turbidity or sediment:</i>	
Conduct photo monitoring of riparian or wetland area habitat	October 1, 2012, and every four years thereafter by October 1
Submit Water Quality Buffer Plan or alternative	October 1, 2016
<i>Tier 3 Dischargers with farms/ranches that have High Nitrate Loading Risk:</i>	
Report total nitrogen applied per acre to each farm/ranch or nitrate loading risk unit, in electronic Annual Compliance Form	October 1, 2014, and annually thereafter by October 1.
Determine Crop Nitrogen Uptake	October 1, 2013
Submit INMP elements in electronic Annual Compliance Form	October 1, 2015, and annually thereafter by October 1
Submit indication of progress towards Nitrogen Balance Ratio milestone equal to one (1) for crops in annual rotation (e.g. cool season vegetables) or alternative,	October 1, 2015
Submit indication of progress towards Nitrogen Balance Ratio milestone equal to 1.2 for annual crops occupying the ground for the entire year (e.g. strawberries or raspberries) or alternative	
Submit INMP Effectiveness Report	October 1, 2016

¹ Dates are relative to adoption of this Order, unless otherwise specified.

PETITION FOR REVIEW

EXHIBIT E

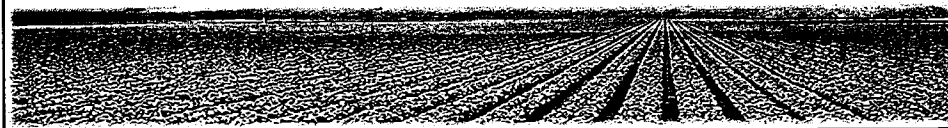
Central Coast Irrigated Lands Presentation of CFBF & Farmers for Water Quality

March 14, 2012
Hearing for Adoption of
Draft Order No. R3-2012-0011, and
Associated Orders



Farmers for Water Quality Membership

- California Strawberry Commission
- Grower-Shipper Association of Central California
- Grower-Shipper Association of Santa Barbara & San Luis Obispo Counties,
- Monterey County Farm Bureau
- San Benito County Farm Bureau
- San Luis Obispo County Farm Bureau
- Santa Clara County Farm Bureau
- Santa Cruz County Farm Bureau
- Western Growers



CFBF - Membership

- Monterey County Farm Bureau
- San Luis Obispo County Farm Bureau
- Santa Barbara County Farm Bureau
- San Mateo County Farm Bureau
- San Benito County Farm Bureau
- Santa Cruz County Farm Bureau
- Santa Clara County Farm Bureau



Outline of Presentation

- Rebuttal in Response to Staff Report Misinformation
- Recommended Changes to September 1, 2011 Draft Order & September 1, 2011 Draft MRPs
- Tier Comparisons Between Draft Order & Agricultural Alternative
- Legality of Agricultural Alternative



Rebuttal to Staff Report – “Clarifications to Address Common Misconceptions”

Misconceptions 1 & 2 – Growers are treated differently under the Waiver.

Our Response: Yes. Growers are treated differently. However, treatment is not necessarily based on threat to water quality but size of operation. Also, due to open-ended discretion in certain provisions, there is no certainty as to how many growers are in Tiers 1, 2 and 3.



Examples that Contradict Staff Report

- Paragraph 18, page 16: “Executive Officer may elevate Tier 1 or Tier 2 Dischargers to a higher tier.”
- Paragraph 19, page 16: “Executive Officer may require Dischargers to enroll irrigated land with similar characteristics..., as a single operation or farm/ranch.”
- Paragraph 58, page 24-25: “For Dischargers who do not provide adequate information for the Water Board to confirm or determine the appropriate tier, the Executive Officer will place the farm/ranch in Tier 3.”
- Definition of Operation, Attachment A, page 54: “A distinct farming business, generally characterized by the form of business organization, such as a sole proprietorship, partnership, corporation, and/or cooperative. A farming operation may be associated with one to many individual farms/ranches.”



Challenges to Staff Report – *“Clarifications to Address Common Misconceptions”*

Misconceptions 3 – Farms estimated to be affected is currently less than 3%.

Our Response: Due to open-ended discretion in certain provisions, no certainty as to how many growers will be subject to Tier 3 requirements. Number of farms does not reflect amount of acreage affected, which according to staff is 14% of the acreage.



Rebuttal to Staff Report – *“Clarifications to Address Common Misconceptions”*

Misconception 4 – Draft Order does not specify how a grower must comply.

Our Response: We disagree. Examples of prescriptive requirements are identified in next slide.



Examples that Contradict Staff Report

- Paragraph 35, page 19: “Dischargers must implement source control or treatment management practices to prevent erosion, Practices *must* infiltrate, control or treat stormwater runoff for the first half inch of rain during each storm, and further reduce the runoff for the next one inch of rain during each storm.”



Examples that Contradict Staff Report

- Paragraph 38, page 19:
“Dischargers *must* a) maintain existing, naturally occurring, riparian vegetative cover...; and b) maintain riparian areas for effective stabilization and erosion control...”



Examples that Contradict Staff Report

- Attachment 2C, page 20: “The Water Quality Buffer Plan must include the following or the functional equivalent,...:
 - a. A minimum 30 foot buffer (...);
 - b. Any necessary increases in buffer width to adequately prevent discharge of waste...;
 - c. Any buffer less than 30 feet must provide equivalent water quality protection... and be approved by the Executive Officer;...”



Rebuttal to Staff Report – “*Clarifications to Address Common Misconceptions*”

Misconception 5 – Draft Order requires growers to implement management practices to minimize waste, and does not require immediate compliance with water quality standards.

Our Response: We disagree. Draft Order contains many provisions that require immediate compliance with water quality standards even if effective management practices have yet to be developed.



Examples that Contradict Staff Report

- Paragraph 21, page 17: “Dischargers *must* comply with applicable water quality standards, as defined in Attachment A, protect the beneficial uses of waters of the State and prevent nuisance as defined in Water Code section 13050.”



Milestones in Table 4 are Not Enforceable

- “The milestones, as described in Table 4 of the Draft Agricultural Order are not in of themselves compliance conditions and are not enforceable. They are targets or goals that staff will use to evaluate effectiveness of implementation efforts and progress improving towards water quality.” July 2011 Staff Report, page 18.

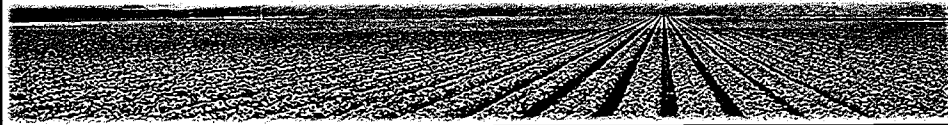


Rebuttal to Staff Report – “Clarifications to Address Common Misconceptions”

Misconception 6 – Draft Order does not require Growers to line any ponds.

Our Response: We disagree.

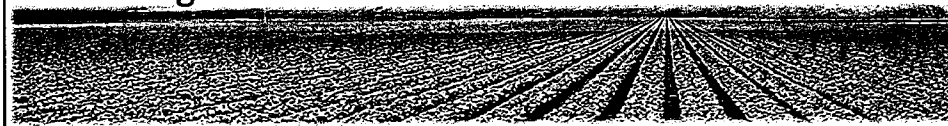
- Paragraph 32, page 19: “Dischargers who utilize containment structures (such as retention ponds...)... *must* construct and maintain such containment structures to avoid percolation of waste to groundwater”
- Paragraph 87, page 31: “By June 30, 2016, Tier 3 Dischargers *must* effectively control individual waste discharges of nitrate to groundwater.”



Rebuttal to Staff Report – “Clarifications to Address Common Misconceptions”

Misconception 7 – Draft Order does not affect the use of tile drains.

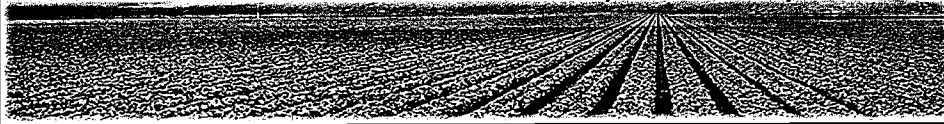
Our Response – There is contradictory information with respect to tile drains. Draft Order previously indicated (and still does) that tile drains would be addressed in a subsequent order. Now, addressed and treated the same as any other discharge, including monitoring for tier 3 growers.



Rebuttal to Staff Report – “Clarifications to Address Common Misconceptions”

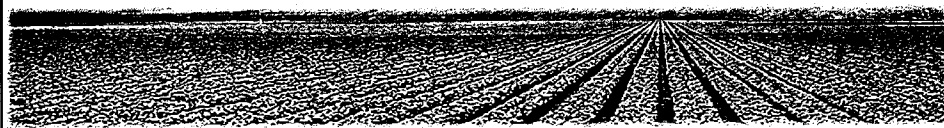
Misconception 8 – Draft Order does not require 100% crop efficiency. Goal is to make sure that growers are making progress, compared to a specific measure (e.g., nutrient balance target).

Our Response: For Tier 3 dischargers, the Draft Order clearly requires crops in annual rotations to achieve 100% crop efficiency.



Example of Contradiction

- Paragraph 78, page 29: “By October 1, 2015, Tier 3 Dischargers with High Nitrate Loading Risk farms/ranches *must meet* the following Nitrogen Balance ratio targets or implement an alternative....”
- a. Dischargers producing crops in annual rotation *must achieve* a Nitrogen Balance ratio target equal to one (1).”
- Attachment 2C, B.1.b., page 18: “By October 1, 2014 and annually thereafter, Tier 3 Dischargers... must report...Annual balance of nitrogen applied per crop compared to typical crop nitrogen uptake for each ranch/farm or nitrate loading risk unit (Nitrogen Balance ratio);”



Rebuttal to Staff Report – “Clarifications to Address Common Misconceptions”

Misconception 10 – Draft Order allows for combined monitoring proposals, or combined practices.

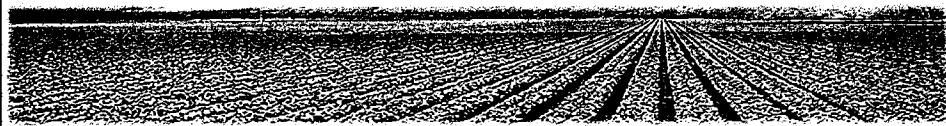
Our Response: While the Draft Order suggests that combined monitoring may be allowed, the cooperative groundwater language as proposed provides no opportunity to implement such an option. Further, to support its response to this misconception, the staff report cites a finding of the Order, not an actual provision of this Order.



Rebuttal to Staff Report – “Clarifications to Address Common Misconceptions”

Misconception 11 – The Draft Order does not require the release of proprietary information but other laws require such release.

Our Response: While we technically agree with the response, the misconception incorrectly portrays the issue. In reality, the reporting requirements to the Water Board, especially for Tier 2 and Tier 3 dischargers, makes the information a public document that may then require public release of such information.



Attachment 1B

Problem:

- Includes 140 Findings
- Findings are supposed to “bridge the analytic gap” between supporting facts and the Board’s ultimate decision
- Findings are NOT a mere recitation or summary of every study reviewed by staff

Solution:

- Do not adopt Attachment 1B



Table 1A in Attachment 1B

Problem:

- Includes *Indicators of Narrative Objective*
- These are not adopted numeric objectives
- For example: “*Indicators of biostimulation include chlorophyll-a, dissolved oxygen, phosphorous, and nitrate. Water Board staff estimates that 1 mg/L nitrate is necessary to protect aquatic life beneficial uses from biostimulation.*”



Table 1A in Attachment 1B

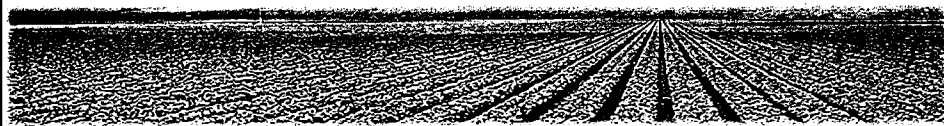
Solution:

- Delete Table
- Order already requires compliance with Basin Plan, including its adopted objectives
- Defer to State Water Board's on-going program and development of nutrient objectives with respect to appropriate nitrate levels in surface water for aquatic life



Proposed Edits to Draft Order & MRP

- Implements the third-party alternative as set forth in agricultural alternative (revised into new Part E for direct adoption into the order), with some changes to address staff concerns
- Limited revisions to certain conditions
- Limited revisions to MRP to allow for cooperative groundwater and agricultural alternative
- Includes time schedules for compliance for meeting water quality objectives



Paragraph 10, Page 13:

Dischargers may comply with certain specified provisions of this Order by participating in third-party groups (e.g., watershed group, water quality coalition, or other similar cooperative effort) approved by the Central Coast Water Board in accordance with Part E of this Order. In this case, the third-party group will assist individual growers in achieving compliance with this Order, such as ensuring that all third-party members are subject to independent audits and are implementing effective water quality management practices, including required monitoring and reporting as described in MRP Order No. R3-2011-0006-01, MRP Order No. R3-2011-0006-02, and MRP Order No. R3-2011-0006-03. Consistent with the NPS Policy, the ineffectiveness of a third-party group through which a Discharger participates in nonpoint source control efforts cannot be used as an excuse for lack of individual discharger compliance. Individual Dischargers continue to bear responsibility for complying with applicable provisions of this Order.



New paragraph 14, page 13:

The General Conditions and Provisions that apply to all Dischargers – Tier 1, Tier 2, and Tier 3 in Parts B, C, D and H of this Order must be complied with by individual Dischargers as specified. Additional Conditions and Provisions for Tier 2 and Tier 3 Dischargers are specified in Part E of this Order for those choosing to participate in a third-party group, or are specified in Part F and Part G of this Order for those that are not participating in a third-party group.



Paragraph 18, page 16:

The Executive Officer may elevate Tier 1 or Tier 2 Dischargers to a higher tier if the Discharger poses a higher threat to water quality based on information submitted as part of the NOI, MRP, or information observed upon inspection of a ranch/farm, or any other appropriate evidence that indicates the ranch/farm meets the criteria for a higher tier. In the event that the Executive Officer elevates a Tier 1 or Tier 2 Discharger to a higher tier, the Discharger shall be given the option to comply with the Additional Conditions and Provisions for Tier 2 and Tier 3 Dischargers as specified in Part E of this Order, or as specified in Parts F and G of this Order.



Paragraph 21, page 17:

~~Dischargers must comply with applicable water quality standards, as defined in Attachment A, protect the beneficial uses of waters of the State and prevent nuisance as defined in Water Code section 13050. Surface Water Limitations – Except as authorized by the time schedule provisions identified in Part H of this Order, the discharge of waste from irrigated agricultural operations shall not cause surface water to exceed applicable water quality objectives, unreasonably affect applicable beneficial uses, or cause a condition of pollution or nuisance. Applicable water quality standards can be found in the Water Quality Control Plan for the Central Coast.~~



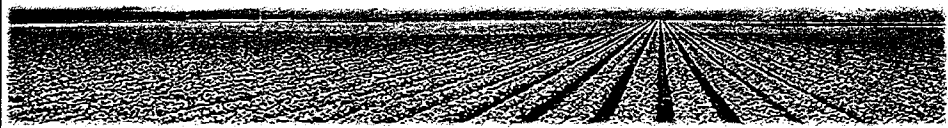
Paragraph 22, page 17:

Dischargers must comply with applicable provisions of the Central Coast Region Water Quality Control Plan (Basin Plan) and all other applicable water quality control plans as identified in Attachment A. Groundwater Limitations – Except as authorized by the time schedule provisions identified in Part H of this Order, the discharge of waste from irrigated agricultural operations shall not cause the underlying groundwater to exceed applicable water quality objectives, unreasonably affect applicable beneficial uses, or cause a condition of pollution or nuisance. Applicable water quality standards can be found in the Water Quality Control Plan for the Central Coast.



Paragraph 24, page 17:

Discharges shall not discharge any waste not specifically regulated by the Order described herein, unless the Discharger complies with Water Code section 13260(a) by submitting a ROWD and the Central Coast Water Board either issues WDRs pursuant to Water Code section 13263 or an individual waiver pursuant to Water Code section 13269, or the conditions specified in Water Code section 13264(a) must be met by the Discharger. Waste specifically qualifying for conditional discharge under this Waiver includes earthen materials, including soil, silt, sand and clay, rock: inorganic materials, (such as metals, salts boron, selenium, potassium, nitrogen, etc.); organic materials, ~~(such as organic pesticides); and, registered pesticides~~ that may enter or threaten to enter into waters of the state. Examples of wastes not qualifying for conditional discharge under this Order include hazardous waste and human waste.



Paragraph 35, page 19:

Dischargers must implement source control or treatment water quality protective management practices to prevent erosion, reduce stormwater runoff quantity and velocity, and hold fine particles in place. ~~Practices must infiltrate, control, or treat stormwater runoff for the first half inch of rain during each storm, and further reduce the runoff for the next one inch of rain during each storm.~~



Paragraph 38, page 19:

Dischargers must, to the extent feasible, a) maintain existing, naturally occurring, riparian vegetative cover (such as trees, shrubs, and grasses) in aquatic habitat areas as necessary to minimize the discharge of waste; and b) maintain riparian areas for effective streambank stabilization and erosion control, stream shading and temperature control, sediment and chemical filtration, aquatic life support, and wildlife support to minimize the discharge of waste;



Paragraph 39, page 19:

In the case where disturbance of aquatic habitat is necessary for the purposes of water quality improvement or restoration activities, Dischargers must implement appropriate and practicable measures to avoid, minimize, and mitigate erosion and discharges of waste, including impacts to aquatic habitat.



Paragraph 43, page 20:

By October 1, 2012, Dischargers must develop a farm water quality management plan (Farm Plan), or update the Farm Plan as necessary, and implement it to achieve compliance with this Order. Farm Plans must be kept current, kept on the farm, and a current copy must be made available to Central Coast Water Board staff, upon request, should Central Coast Water Board staff conduct an inspection of the farm/ranch. At a minimum, Farm Plans must include:



Paragraph 46, page 21:

Pursuant to Water Code section 13267, the Executive Officer may require Dischargers to locate (inventory) and conduct monitoring of private domestic wells in or near agricultural areas with high nitrate in groundwater and submit technical reports evaluating the monitoring results. In addition, in compliance with Water Code section 13304, the Central Coast Water Board may require Dischargers to provide alternative water supplies or replacement water service, including wellhead treatment, to affected public water suppliers or private domestic well owners.



Paragraph 50, page 22:

Dischargers must comply with MRP order No. R3-2012-0011, as ordered by the Executive Officer. Monitoring and reporting conditions are different for each tier, based on level of waste discharge and affect on water quality.

Attached to this Order are three specific MRPs, one for each tier:

- a. Tier 1 Dischargers must comply with monitoring and reporting conditions specified in MRP Order No. R3-2012-0011-01;
- b. Tier 2 Dischargers must comply with monitoring and reporting conditions specified in MRP Order No. R3-2012-00116-02, except that Tier 2 Dischargers electing to comply with Part E of this Order are not required to comply with Parts 2C, 3 and 4 of MRP Order No. R3-2012-0011-02;
- c. Tier 3 Dischargers must comply with monitoring and reporting conditions specified in MRP Order No. R3-2012-0011-03, except that Tier 3 Dischargers electing to comply with Part E of this Order are not required to comply with Parts 2C, 3, 4, 5, 6 and 7 of MRP Order No. R3-2012-0011-03;



Paragraph 52, page 22

- Tier 1, Tier 2, and Tier 3 Dischargers must conduct groundwater monitoring and reporting in compliance with MRP Order No. R3-2011-0006-01, MRP Order No. R3-2011-0006-02, and MRP Order No. 2011-0006-03, either individually or through a cooperative monitoring program, so that the Central Coast Water Board can evaluate groundwater conditions in agricultural areas, identify areas at greatest risk for waste discharge and nitrogen loading and exceedance of drinking water standards, and identify priority areas for nutrient management.



Paragraph 56, page 24:

Dischargers must submit all the information required in the electronic NOI form including, but not limited to, the following information for the operation and individual farm/ranch:

- a. Identification of each property covered by enrollment,
- b. Tier applicable to each farm/ranch,
- c. Landowner(s),
- d. Operator(s),
- e. Contact information,
- f. Option selected with respect to complying with Part E, or Parts F and G if the Discharger identifies Tier 2 or Tier 3 as being applicable.
- fg. Option selected to comply with surface receiving water quality monitoring conditions (cooperative monitoring or individual),
- h. Option selected to comply with groundwater monitoring conditions (cooperative monitoring or individual).
- gi. Location of operation, including specific farm(s)/ranch(es),
- hj. Farm/ranch map with discharge locations and groundwater wells identified,
- ik. Total and irrigated acreage,
- jl. Crop type,
- km. Irrigation type,
- ln. Discharge type,
- mo. Chemical use,
- n. Presence and location of any perennial, intermittent, or ephemeral streams or riparian or wetland area habitat.



New Part E, page 26:

Part E. Additional Conditions That Apply to Tier 2 and Tier 3 Dischargers Through Participation in Third-Party Group

(a) Within sixty (60) days of adoption of this Order, or as otherwise allowed by paragraph 18 of this Order, the Discharger shall indicate to the Central Coast Water Board their request to participate in a third-party group.

(b) Upon submittal of the request to participate in a qualifying third-party group, the requirements in Parts F and G below shall not apply to the Discharger as long as the following conditions are met:

(1) A third-party submits within six (6) months of adoption of this Order to the Executive Officer for approval an application requesting that the third-party serve as a third-party representing Dischargers. The Executive Officer will consider the following factors in determining whether to issue a Notice of Applicability (NOA) to the third-party making the request:

i. Ability of the third-party to carry out the identified third-party responsibilities and meet the requirements set forth in subsection (3);

ii. Determination that the organization will be a legally defined entity (i.e., non-profit corporation; local or State government; Joint Powers Authority) or has a binding agreement among multiple entities that clearly describes the mechanisms in place to ensure accountability to the Dischargers and the capacity to meet the third-party requirements as set forth in Part E of this Order;

iii. Determination that the necessary agreements are in place between the third-party and any subsidiary group (e.g., subwatershed group) to ensure any third-party responsibilities carried out by the subsidiary group, including the collection of fees, are carried out in a transparent manner and are accountable to the third-party;



New Part E, page 26: (cont'd)

iv. Determination that the third-party has a governance structure that includes a governing board with members of the third-party, or otherwise provides members with a mechanism to direct or influence the governance of the third-party;

v. Determination that the third-party has established a Technical Advisory Committee (TAC) that is capable of assisting the third-party in developing the content of an auditable Farm Water Quality Plan, guiding the development of metrics for an independent audit program, and overseeing practice effectiveness evaluations; and,

vi. Determination that the third-party has established a Public Advisory Committee (PAC) that is capable of providing public input and feedback to the third-party group, and that includes various public representatives (e.g., an agricultural business leader, non-agricultural business leader, environmental interest leader, affected county representative, affected city representative, and a representative of a state resource agency).

(2) If the Executive Officer fails to issue a NOA within thirty (30) days of receiving an application from the third-party group, the Executive Officer shall provide its rationale in writing to the third-party group that details why the third-party is not considered to meet the requirements specified in subsection (1) above.

(3) Within six (6) months of the Executive Officer issuing the NOA to the third-party group, a third-party submits all of the following for Executive Officer approval:

i. An auditable Farm Plan Template that can assess risk, document management practice implementation, and provide the basis for an independent audit;

ii. An Independent Audit Program Structure, which includes the ability of the third-party to ensure that all farms for participating Dischargers are subject to an independent audit within the term of the Order;



New Part E, page 26: (cont'd)

iii. A proposed nutrient management plan template for submittal to the third-party that will allow the TAC to assess individual participant nutrient management practices;

iv. A proposed process for prioritizing farms for practice effectiveness evaluation, which includes a requirement that participants conduct at least one (1) representative soil sample from each field/ranch that is submitted to the third-party and that the highest priority farms be included in the Practice Effectiveness Evaluation Program identified in subsection v below;

v. A proposed Practice Effectiveness Evaluation Program that includes all of the following: identifies farms as high priority to impair or degrade waters of the state; proposes to evaluate practices against appropriate water quality standards set forth in the Basin Plan; identifies management practices needed to meet water quality standards; and, identifies areas of research needed to develop additional management practices necessary to meet water quality standards; and,

vi. A list of enrolled growers.

(4) Within one (1) year of the submittal outlined in subsection (3), and annually thereafter, a third-party group must submit all of the following to the Central Coast Water Board:

i. A certification that at least 20% of participating farms have been subject to an independent audit that year (all farms must be audited by the end of the Order);

ii. A Summary of Independent Auditor Reports that must include the following: number of growers and farms participating in the audit, number of growers and farms that failed the audit, and summary of corrective action(s) taken by growers who failed the audit and then subsequently passed;

iii. A Risk Self-Assessment Summary that summarizes data to the Central Coast Water Board that documents the number of farms and types of risk captured by the third-party program;



New Part E, page 26: (cont'd)

iv. Farm Water Quality Plan Summaries, which would be a summary of electronically submitted farm plans in a matrix format that links risk with practices used to protect water quality;

v. A list of Dischargers who are in "good standing"; and,

vi. A list of Dischargers who are not in "good standing."

(5) Within three (3) years of the submittal outlined in subsection (3), a third-party group must submit the following to the Central Coast Water Board:

i. Practice Effectiveness Evaluation Summaries, which is a summary of grower practices necessary to reduce risk to water quality and to ensure compliance with water quality standards.

(6) The Discharger complies with applicable monitoring conditions specified in Part C of this Order, and all other applicable provisions of this Order.

(7) The Discharger provides the third-party group with all information requested by the third-party for compliance with this Order, and shall be subject to an independent audit by the third-party in accordance with the third-party's approved program.

(8) The Discharger implements water quality management practices as identified through the independent audit process and/or as necessary to improve and protect water quality and to achieve compliance with applicable water quality standards in waters of the state, recognizing any applicable time schedules for compliance with water quality standards as set forth in Part H below. Water quality management practices can be instituted on an individual basis, or installed to serve growers discharging to a single location.



New Part E, page 26: (cont'd)

c) If the Executive Officer fails to issue a NOA to a requesting third-party under subsections (b)(1) and (2) above, the third-party shall be given the opportunity to seek approval as a third-party from the Central Coast Water Board at the next reasonably available publicly noticed meeting of the Central Coast Water Board.

(d) Failure by the Discharger or the third-party group to comply with any of the above shall result in the Discharger being subject to Parts F and G of this Order



Paragraph 61, page 25:

Immediately, if a Discharger wishes to terminate coverage under the Order for the operation or an individual farm/ranch, the Discharger must submit a completed Notice of Termination (NOT). Termination from coverage is the date specified in the NOT, unless specified otherwise. All discharges, as defined in Attachment A, must cease before the date of termination, and any discharges on or after the date of termination shall be considered in violation of the Order, unless covered by other waivers of WDRs, general WDRs, or individual WDRs cover the discharge. If a Discharger wishes to withdraw from participation in the third-party group but the Discharger does not wish to terminate coverage under the Order, the Discharger must submit a letter to the Central Coast Water Board indicating the Discharger's withdrawal from the third-party group. Withdrawal from participation in the third-party group is the date specified in the letter of withdrawal, unless specified otherwise. Upon withdrawal from a third-party group, the Additional Conditions that apply to Tier 2 and Tier 3 Dischargers in Parts F and G of this Order shall become applicable to the Discharger as appropriate. If a Discharger withdraws from the third-party group because they are no longer classified as Tier 2 or Tier 3, then only the Tier 1 requirements shall apply.



New Paragraph 82, page 30:

The following time schedules apply in order to allow Dischargers time to develop and implement management practices that are designed to ensure that discharges from irrigated agriculture comply with the surface and groundwater limitations identified in paragraphs 21 and 22 of this Order. During the time provisions identified below, Dischargers shall be considered to comply with the provisions of this Order as long as they are in compliance with the other applicable provisions of this Order. Based on data and information developed by dischargers and others during the term of this Order, the Central Coast Water Board may extend these schedules if the Central Coast Water Board determines that, based on information submitted, it is not technically or economically infeasible for Dischargers to meet the compliance provisions specified below.

Discharges to Surface water (excepting discharges from tile drains to surface waters): Compliance with the Surface Water Limitations identified in paragraph 21 of this Order shall occur as soon as practicable but no later than 8 years from adoption of this Order. Compliance with the Surface Water Limitations may be demonstrated through documented implementation of management practices, assessment of water quality data, and/or surface water quality modeling.



New Paragraph 82, Page 30 cont.

Discharges to Surface water from tile drains: Compliance with the Surface Water Limitations identified in paragraph 21 of this Order for discharges from tile drains shall occur as soon as practicable but no later than 15 years from adoption of this Order. Compliance with the Surface Water Limitations for discharges from tile drains may be demonstrated through documented implementation of management practices, assessment of water quality data, and/or surface water quality modeling.

Discharges to Groundwater: Compliance with Groundwater Limitations identified in paragraph 22 of this Order shall occur as soon as practicable but no later than 15 years from adoption of this Order. Compliance with the Groundwater Limitations may be demonstrated through documented implementation of management practices (e.g., nutrient budgeting with estimated associated changes in nitrate loading), assessment of water quality data, and/or groundwater quality modeling.



Paragraph 82, pages 30-31:

Time schedules for compliance to comply with certain conditions are identified in Conditions 84—87, and described in Table 2 (all Dischargers) and Table 3 (Tier 2 and Tier 3 Dischargers electing to comply with Parts F and G of this Order). Milestones are identified in Table 4. Dischargers must comply with Order Conditions by dates specified in Tables 2 and 3 in accordance with the MRP. The Water Board will consider the following information in determining the extent to which the Discharger is effectively controlling individual waste discharges and in compliance with this Order:

- a) compliance with the time schedules;
- b) effectiveness of management practice implementation;
- c) effectiveness of treatment or control measures (including cooperative water quality improvement efforts, and local and regional treatment strategies);
- d) results of individual discharge monitoring (Tier 3, as applicable);
- e) results of surface receiving water monitoring downstream of the point where the individual discharge enters the receiving water body;
- f) other information obtained by Water Board staff during inspections at operations or farms/ranches, or submitted in response to Executive Officer orders;



Paragraph 84, page 31:

By October 1, 2014, Tier 3 Dischargers must effectively control individual waste discharges of pesticides and toxic substances to waters of the State and of the United States.



Paragraph 85, page 31:

~~By October 1, 2015, Tier 3 Dischargers must effectively control individual waste discharges of sediment and turbidity to surface waters of the State or of the United States.~~



Paragraph 86, page 31:

~~By June 30, 2016, Tier 3 Dischargers must effectively control individual waste discharges of nutrients to surface waters of the State or of the United States.~~



Paragraph 87, page 31:

By June 30, 2016, Tier 3 Dischargers must effectively control individual waste discharges of nitrate to groundwater.



Table 4, page 38:

Table 4. Time Schedule for Milestones	
MILESTONES	DATE
Tier 1, Tier 2 and Tier 3:	
Measurable progress towards water quality standards in waters of the State or of the United States ¹ , or	Ongoing
Water quality standards met in waters of the State or of the United States.	June 30, 2016
Only Tier 3 electing to comply with Parts F and G of this Order:	



Attachments 2A, 2B and 2C, page 9:


In lieu of conducting individual groundwater monitoring, Dischargers may participate in a cooperative monitoring groundwater monitoring effort to help minimize costs and to develop an effective groundwater monitoring program. Qualifying cooperative groundwater monitoring programs may include, but are not limited to, regional or subregional groundwater programs developed for other purposes as long as the proposed cooperative groundwater monitoring program meets the Central Coast Water Board's general purpose of characterizing groundwater quality. Proposals for cooperative groundwater monitoring efforts, including the use of other regional or subregional groundwater monitoring programs must be approved by the Executive Officer. At a minimum, the cooperative groundwater monitoring effort must include sufficient monitoring points to adequately represent characterize the groundwater aquifer(s) in the local area of the participating Dischargers, characterize the groundwater quality of the uppermost aquifer, and identify and evaluate groundwater used for domestic drinking water purposes. Cooperative groundwater monitoring efforts must comply with the requirements for sampling protocols and laboratory analytical methods identified in this MRP, including parameters listed in Table 3, or propose a functional equivalent that meets the same objectives and purposes as individual groundwater monitoring, and must The cooperative groundwater monitoring program must report results consistent with individual groundwater reporting defined in part 2.B, or report results in a manner that is consistent with that approved by the Executive Officer in his or her approval of the cooperative groundwater monitoring proposal. Dischargers electing to participate in a cooperative groundwater monitoring effort must convey this election to the Central Coast Water Board within 90 days of adoption of this Order, and the individual groundwater monitoring requirements shall not apply as long as a cooperative groundwater monitoring proposal for that Discharger's area is submitted within one (1) year of adoption of this Order. If no cooperative groundwater monitoring proposal for that Discharger's area is submitted within one (1) year, then the individual groundwater monitoring provisions shall apply and the Discharger shall have one (1) year to comply with the provisions identified in part 2.A.



Tier 1		Tier 2		Tier 3	
Staff Proposal	Ag Alternative	Staff Proposal	Ag Alternative	Staff Proposal	Ag Alternative
Comply with General Provisions	Same	All of Tier 1 Plus:	All of Tier 1 under Ag Alternative Plus:	All of Tier 1 & Tier 2 Plus:	All of Tier 1 and Tier 2 under Ag Alternative Provisions
Comply with water quality standards	Same, except include time schedule for compliance	Determine Nitrate Loading Risk factors	Join third party that meets specified requirements	Conduct & Report Individual surface water monitoring & Monitoring of Ponds and Containment Structures	
Develop a farm plan	Same	Report Total Nitrogen Applied per acre, Annually	Complete approved auditable Farm Plan Template	Develop & verify effectiveness INMP for farms with High Nitrate Loading Risk	
Submit a NOI	Same	Submit Annual Compliance Form	Complete approved nutrient management plan template	Meet Nitrogen Balance Ratios	




Tier 1		Tier 2		Tier 3
Comply with Surface Water Monitoring (individually or cooperatively)	Same	Conduct and Submit Photo Monitoring of habitat, if adjacent to specified waterbody	Take one representative soil sample from each farm/ranch & submit to third party	Develop Water Quality Buffer Plan if adjacent to specified waterbodies
Comply with Groundwater Monitoring (individually or cooperatively)	Same	Estimate and report widths of riparian areas	Be subject to independent audit and practice effectiveness evaluations, adjust practices based on result of audit	Maintain 30 foot buffer, or equivalent if adjacent



Time Line Comparison

Draft Order – Tier 3		Ag Alternative	
Determine Nitrate Loading Risk/Submit Annual Compliance Form/Baseline Photo Monitoring	October 1, 2012	Discharger Selects Third-Party Option	60 days from adoption (May 15, 2012)
Initiate Individual Surface Water Monitoring	October 1, 2012	Third-Party Applies to EO	6 months from adoption (September 14, 2012)
Initiate & Implement INMP	October 1, 2013	EO Approves or Denies Third Party	30 days after Application (October 14, 2012)



Time Line Comparison

Draft Order – Tier 3		Ag Alternative	
Report INMP	October 1, 2014	Third-Party submits required elements	6 months after NOA (May 14, 2013)
Meet Nitrogen Balance Ratios	October 1, 2015	First Annual Report, including first 20% of farms audited	1 year after NOA (May 14, 2014)
Water Quality Buffer Plan	October 1, 2016	PEEP Summary	3 years after NOA (May 14, 2016)



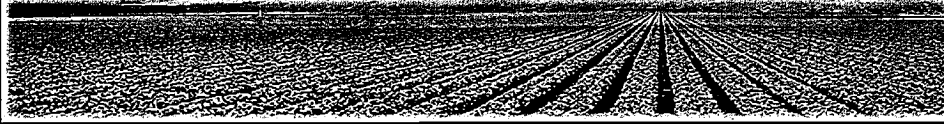
Legality of Ag's Alternative

- Staff's Allegations
 - Ag's alternative for third-party groups is inconsistent with Water Code section 13269
 - Ag's alternative provides a less stringent standard for those that join versus those that don't join a third party group
 - Ag's alternative does not require compliance with water quality standards
 - Ag's alternative does not sufficiently protect human health
 - Ag's alternative does not require reporting of info directly to Water Board
 - Ag's alternative does not include sufficient timeframes for compliance and achievement of water quality improvements



Ag Alternative is Consistent with the Law

- Waivers are for “specific discharge or type of discharge” – Water Code § 13269
- “...it is to the benefit of both the regulators and the regulated community to encourage the formation of Coalition Groups.” – State Water Board Order WQO 2004-0003
- “The RWQCB’s have broad flexibility and discretion in using their administrative tools to fashion NPS management programs, and are encouraged to be as innovative and creative as possible, and, as appropriate, to build on third-party programs.” – NPS Policy



Regional Board’s Obligation

- Regulate 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 (Water Code § 13000)



To Determine Validity of Third-Party Approach

- Compare to objective and goal of law - not Draft Order
- Is it consistent with Water Code & Basin Plan?
- Is it consistent with State NPS Policy?
- Is it consistent with State Board Orders?



Ag Alternative Provides a Different Standard – not a less stringent standard

- Requires implementation of management practices
- Requires compliance with water quality standards according to time schedules
- Requires surface and groundwater monitoring
- Requires submittal of NOI
- Requires Farm Plan
- Still subject to inspection & enforcement



Different Standard

- Must complete Auditable Farm Plan template
- Must complete Nutrient Management Plan template
- Must conduct representative soil sample
- All Subject to Independent Audit
- High Risk Subject to Practice Effectiveness Evaluation Program
- Removal from third-party for failure to comply



Ag Alternative Requires Compliance with Water Quality Standards

- New Part E, paragraph (b)(8): The Discharger shall implement water quality management practices as identified through the independent audit process and/or as necessary to improve and protect water quality and to achieve compliance with applicable water quality standards in waters of the state, recognizing any applicable time schedules for compliance....



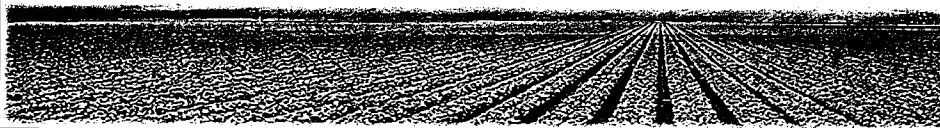
Ag Alternative Includes Requirements to Protect Sources of Drinking Water

- Participants must prepare and submit nutrient management plan for TAC to assess individual nutrient management practices
- Participants must take one representative soil sample from each farm/ranch, submit to third-party and TAC, to be used to prioritize farms for Practice Effectiveness Evaluation Program



Ag Alternative Requires Reporting

- Annual Summary of Independent Audit Results
- Annual Risk Self-Assessment Summary
- Annual Summary of Farm Water Quality Plans
- Annual list of Dischargers in good standing & those that are not
- Practice Effectiveness Evaluation Summary, which summarizes practices necessary to ensure compliance with water quality standards



Ag Alternative Timeframes are Sufficient

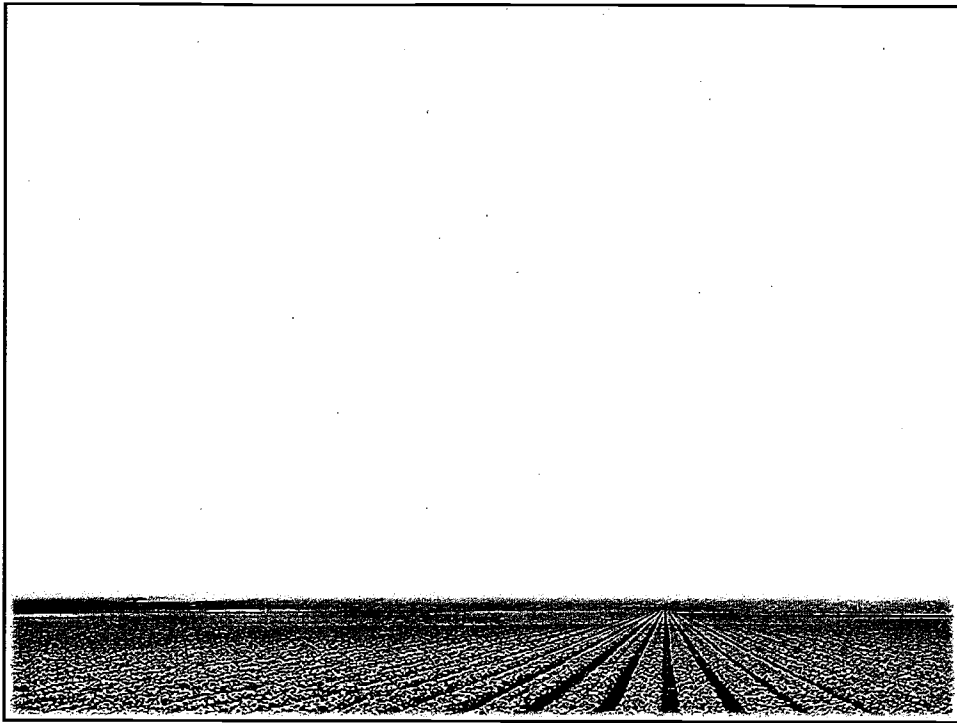
- All participating farms subject to independent audit within term of the Order
- Highest risk farms subject to audits first
- Highest risk farms subject to Practice Effectiveness Evaluation first
- Compliance with surface and ground water standards same as with others (8 years and 15 years)



Conclusion

- Options:
 - 1) Adopt Draft Order with Proposed Changes proposed above;
 - 2) Deny adoption of Draft Order and direct staff to further incorporate ag alternative as proposed; or,
 - 3) Deny adoption of Draft Order and direct staff to overhaul Draft Order in its entirety





PETITION FOR REVIEW

EXHIBIT F



Alan C. Lloyd, Ph.D.
Agency Secretary

State Water Resources Control Board

Office of Chief Counsel

1001 I Street, 22nd Floor, Sacramento, California 95814
P.O. Box 100, Sacramento, California 95812-0100
(916) 341-5161 ♦ FAX (916) 341-5199 ♦ <http://www.waterboards.ca.gov>



Arnold Schwarzenegger
Governor

TO: Water Quality Attorneys

FROM: Craig M. Wilson
Chief Counsel
OFFICE OF CHIEF COUNSEL

DATE: June 2, 2005

SUBJECT: PROCEDURAL REQUIREMENTS AND APPELLATE REVIEW OF
WAIVERS OF WASTE DISCHARGE REQUIREMENTS

ISSUES

What are the procedural requirements that Regional Water Quality Control Boards (Regional Water Board) must follow in adopting waivers of waste discharge requirements pursuant to Water Code section 13269? Under what standards do the State Water Resources Control Board (State Water Board) and courts review waivers?

CONCLUSIONS

Waivers of waste discharge requirements must now include numerous conditions and may require applications and annual fees. Such waivers will usually be subject to the procedural requirements for quasi-judicial actions and will be subject to review by courts using independent judgment. There may still be some waivers that are adopted as Basin Plan amendments, and these follow quasi-legislative procedures.

DISCUSSION

The determination of whether an administrative action is quasi-legislative or quasi-adjudicative can have implications for the type of process that must be followed, whether *ex parte* contacts are allowed, and the standard for judicial review. In prior memoranda, the Office of Chief Counsel has generally concluded that actions that affect individuals and small groups are quasi-judicial, while actions that affect large groups are usually quasi-legislative. (Memorandum from William R. Attwater to Regional Water Board members, dated August 13, 1992.) The memoranda have provided examples of quasi-judicial actions as permits, enforcement actions,

and exceptions from prohibitions, while Basin Plan amendments, guidelines, and regulations were stated to be quasi-legislative. (*Id.*, Memorandum from Craig M. Wilson to William R. Attwater, dated March 9, 1981.) In a memorandum concerning a waiver of waste discharge requirements that was adopted as a guideline, the waiver was considered quasi-legislative. (Memorandum from Craig M. Wilson to John Norton, dated January 22, 1988.)

Since these memoranda were written, there have been a number of revisions to the applicable law and the Water Boards' processes, which require reconsideration of the legal position on whether waivers are quasi-legislative or quasi-adjudicative. First, the legislature adopted the Administrative Procedure Act (APA) in 1997, which resulted in clarification of the types of proceedings that are quasi-adjudicative and the procedural requirements for such proceedings. Second, the legislature enacted Government Code section 11352 in 1992, which specifically exempted waivers (along with water quality certifications and waste discharge requirements) from the procedural requirements for adoption of regulations. Third, the Water Boards have adopted a number of regulatory actions that are more difficult to distinguish as quasi-legislative or quasi-judicial. General permits often cover discharges from entities throughout the state and engaged in a wide variety of activities. (For example, the general industrial storm water permit is a statewide permit that applies to dischargers engaged in numerous different industrial activities.) Areawide municipal storm water permits are "individual permits" that may have as many as 85 cities named as co-permittees. Despite the broad coverage of these permits, the Water Boards have treated these actions as quasi-adjudicative because they are subject to the hearing requirements in the federal regulations.¹ Finally, the recent statutory amendments to Water Code section 13269 now have resulted in waivers being a determination of individual rights, even though they may apply to a large number of dischargers, rather than a broad legislative ruling. Waivers now must include numerous conditions and monitoring requirements, and may include annual fees. (See, Wat. Code, § 13269.) At the time the earlier memos were written, waivers were only required to be conditional and not against the "public interest." These waivers were adopted as resolutions, guidance, or Basin Plan amendments, and frequently were one to two sentences in length. Waivers now have the types of detailed requirements that are traditionally found in permits, and are subject to the same enforcement options as permits.

Cases distinguishing between quasi-judicial and quasi-legislative are based on the function performed rather than the procedure followed. (*Shapell Industries v. Governing Board* (1991) 1 Cal.App.4th 218, 230-1; Witkin, California Procedure, Writs § 269.) Formulation of a general policy for governing future permit decisions, unlike the application of such rules to a peculiar set of facts in an individual case, is considered quasi-legislative. (*Pacific Legal Foundation v. California Coastal Commission* (1982) 33 Cal.3d 158.) (*Wilson v. Hidden Valley Municipal Water District* (1967) 256 Cal.App.2d 271.) Thus, when waivers were essentially broad rules or

¹ In numerous court challenges to these permits, the Water Boards have consistently claimed review is under Code of Civil Procedure section 1094.5, discussed *infra*. In recent court decisions, federal courts have imposed the same procedural requirements in general permits as apply to individual permits. (*Environmental Defense Center v. Environmental Protection Agency* (9th Cir. 2003) 344 F.3d 832.)

policies applicable to categories of discharges that met the listed conditions, the actions were considered quasi-legislative. (See, Memorandum from Craig M. Wilson to John Norton, dated January 22, 1988 (waiver adopted as a guideline is a general statement applicable to many situations).) At the time, section 13269 required no more than a finding that waiving waste discharge requirements was "in the public interest," and that waivers be conditional.

Most of the cases that discuss the difference between quasi-judicial and quasi-legislative actions have the purpose of determining the appropriate standard for judicial review of the agency action. In general, regular mandamus (Code Civ. Proc., § 1085) is available for quasi-legislative actions, while administrative mandamus (Code Civ. Proc., § 1094.5) applies to quasi-adjudicative actions. Section 1085 affords greater deference to an agency, due to the notion of separation of powers between the judicial and legislative branches of government and the regulatory expertise of quasi-legislative administrative bodies. (8 Witkin, California Procedure, Writs § 268; *Western States Petroleum Association v. Superior Court* (1995) 9 Cal.4th 559, 567.) Generally, quasi-judicial actions are subject to review under section 1094.5. (Witkin, *supra*, at § 257.)²

Previously, the courts generally equated the right to independent judgment review with a protected right of due process. In 1979, however, the California Supreme Court ruled that there was no constitutional right to review under section 1094.5 for adjudicative proceedings. (*Tex-Cal Land Management, Inc. v. Agricultural Labor Relations Board* (1979) 24 Cal.3d 335.) Now, the issue therefore turns on the statutory provisions applicable to the type of proceeding.³ For purposes of review of waivers adopted as separate resolutions under Water Code section 13269, it seems clear that judicial review is under Code of Civil Procedure section 1094.5. Such waivers are adopted under section 13269, which is part of article 4 of Chapter 4 of Division 7 of the Water Code (the Porter-Cologne Water Quality Control Act). Water Code section 13320 provides for State Water Board review of all actions (and failures to act) under Article 4 and section 13330 provides that court review of such actions is subject to Code of Civil Procedure section 1094.5 and that the appropriate standard of review for actions subject to review under section 13320 is independent judgment. Where a Regional Water Board issues a waiver as part of a Basin Plan amendment, the answer is not so clear. While the substantive waiver must presumably comply with section 13269, review of Basin Plan amendments are not subject to petition under section 13320, and instead are reviewed under Water Code section 13245 and are subject to traditional mandamus. (*Marina County Water*

² While the standard for review for general mandamus actions affords more deference to an agency's interpretation of the law than for administrative mandamus, this result is tempered by substantial deference afforded administrative mandamus pursuant to recent court rulings. (See, *Fukuda v. City of Angels* (1999) 20 Cal.4th 805; see also, *Building Industry Association of San Diego County v. State Water Resources Control Board* (2004) 124 Cal.App.4th 866 (according due deference to the State Water Board's interpretation of the Clean Water Act and Porter-Cologne).)

³ Where the statute does not clarify the type of review applicable, the issue will still be whether the administrative action is quasi-legislative or quasi-judicial. (*Western States, supra*, at 568.)

District v. State Water Resources Control Board (1984) 163 Cal.App.3d 132.)⁴ In light of the different procedural position, it must be assumed that such a waiver would be subject to traditional mandamus review.

In addition to the question of the standard of judicial review, the issue of whether the action is quasi-adjudicative or quasi-legislative is relevant to the propriety of *ex parte* communications with Board members who act on the waiver. While all *ex parte* communications should be avoided,⁵ the rules are more restrictive for quasi-adjudicative matters. In 1997, the APA was amended to include strict rules against *ex parte* communications in quasi-adjudicative proceedings. (Gov. Code, §§ 11430.10 et seq.) The only exceptions to the prohibition that are applicable to the Water Boards are communications concerning a procedural matter *that is not in controversy* (§ 14430.20) and staff advice in an adjudicative proceeding that is non-prosecutorial (§ 11430.30). The State Water Board has adopted these rules. (Cal. Code Regs., tit. 23, § 648.)

It is necessary to establish which rules apply to waiver actions, so as to ensure that these proceedings comply with all applicable requirements, including *ex parte* requirements. While waivers do have some of the attributes of regulations (similar to general permits and general waste discharge requirements), the better view is to assume that most waivers—except those adopted as Basin Plan amendments—will be quasi-adjudicative. While these waivers may apply to broad categories of dischargers, they have more attributes of adjudicative actions. The proceedings are more formal hearings, review is by a petition process established for permits and enforcement actions, and judicial review is by the statute established for quasi-adjudicative actions. The waivers as applied to individual dischargers also contain detailed and specific requirements, including monitoring requirements, and may be accompanied by fees. Substantial fines and penalties may be assessed to dischargers who violate the conditions in waivers. The most important test is the function of the action. (Witkin, California Procedure, Extraordinary Writs, § 269.) In light of the recent amendments to Water Code section 13269, the function of a waiver is as a regulatory tool, and not as a simple rule to waive waste discharge requirements. In light of the significant individual determinations that are part of a waiver procedure—including monitoring requirement, fee assessments, and reporting requirements—the better result is to consider these as quasi-adjudicative, and to apply the procedural safeguards attendant to such

⁴ The court in *Marina* interpreted an earlier version of section 13330, which more clearly applied only to the quasi-judicial actions subject to State Water Board review by a section 13320 petition. The current language in section 13330 refers more broadly to a “decision or order” issued by the State Water Board under Porter-Cologne. Nonetheless, section 13330 should be read as applying only to review of quasi-judicial actions because of its reference to “decision or order”—terms generally associated with quasi-judicial actions—and in light of the legislative history, which refers to the intent to clarify existing law. Clearly, there was no intent to overrule the holding in *Marina* that basin planning is subject to traditional mandamus (C.C.P. § 1085) review.

⁵ See memorandum from William R. Attwater, dated August 13, 1992.

Craig M. Wilson

- 5 -

June 2, 2005

actions. Finally, by applying the *ex parte* rules for quasi-judicial actions, there will be less chance of a waiver being invalidated because of improper communications.

cc: Sara Russell [via email only]
Deputy Attorney General

PETITION FOR REVIEW

EXHIBIT G



California Regional Water Quality Control Board Central Coast Region



895 Aerovista Place, Suite 101, San Luis Obispo, California 93401-7906
(805) 549-3147 • FAX (805) 543-0397

Matthew Rodriguez
Secretary for
Environmental Protection

<http://www.waterboards.ca.gov/centralcoast> Reply To: OFFICE OF CHIEF COUNSEL
1001 I Street, 22nd Floor, Sacramento, California 95814 ♦ Phone (916) 341-5161 ♦ Fax (916) 341-5199

Edmund G. Brown Jr.
Governor

Frances L. McChesney
Staff Counsel IV
(916) 341-5174
fmcchesney@waterboards.ca.gov

April 6, 2012

Kari E. Fisher, Associate Counsel
California Farm Bureau Federation
Office of General Counsel
2300 River Plaza Drive
Sacramento, CA 95833-3293

Dear Ms. Fisher:

PUBLIC RECORDS ACT REQUEST REGARDING CENTRAL COAST REGIONAL BOARD AGRICULTURAL ORDER


Roger Briggs, Executive Officer of the Central Coast Regional Water Quality Control Board (Central Coast Water Board), received your letter dated March 19, 2012, requesting documents pursuant to the Public Records Act (PRA). I responded on behalf of Mr. Briggs on March 26, 2012, explaining that there were documents responsive to your request, that I was in the process of gathering responsive documents and reviewing them for privilege and disclosure exemptions from the PRA, and that I thought I could review them in approximately two weeks. I have completed my review.

I have made copies of the documents that are responsive and not subject to exemptions from the PRA and placed them on a CD that is enclosed with this letter.

I have determined that some of the records you have requested are exempt from disclosure pursuant to one or more of the following exemptions to the Public Records Act: Attorney-Client Privilege, Deliberative Process Privilege, Attorney Work Product Privilege, and the Catch-All Balancing Test in Government Code section 6255. Those documents are not being provided. As there is no requirement in the PRA to provide a privilege log, one will not be forthcoming.

Please contact me if you would like to discuss the subject of this letter further.

Sincerely,

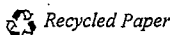

Frances L. McChesney
Staff Counsel IV

Enclosure

cc: Roger Briggs, Executive Officer, Central Coast Water Board [via email only]

California Environmental Protection Agency

PETITION FOR REVIEW, Exhibit G



Page 1 of 27

Roger Briggs Phone Notes

Mike Johnston - work collaborative, on pres. exp. [redacted]

[redacted] Not many papers found

Steve Shimek - met w/ ed. 5/30, then 6/2000

Here @ W.D. would like to meet w/ on top
papers re: S. exp. [redacted]

[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]

Shimek - cell today 7:00-7:15 7:15-7:30 7:30-7:45

[redacted]

to Steve Shimek - " 10" Request from Gordon [redacted]
then talked to Marc Rossi. Steve transferred to Saito, fully
embarrassed. doesn't do anything new, except JAC.

9-11-45

[redacted] Answer 2/15

to Steve - 10/15/00

* M.S. - Was Steve's data random typical sample (over)

* TAC & Aggregate Monitoring

RS - coalition review OK 3

75
3-172

10

3/65

Steve Smith - getting calls wanted to be sure I'm ok

[REDACTED]

3-172 - S.C. Sentinel

3-25

3/8/12 MJ - sent in write of Q's.

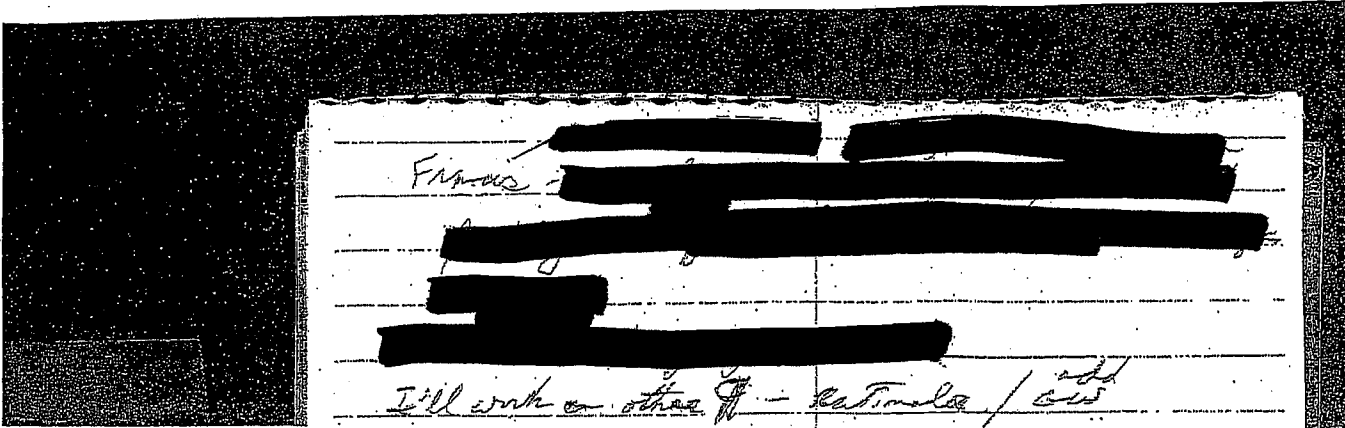
R5 - allows coalition meeting.

- He clipped out language for us that is clearer.

SIP - looks impressive.

[REDACTED]

Put out Q's Ed would like around



Francis

I'll work on other J - estimates / add
CWS

3-7-12 call
w/ Francis

From: Angela Schroeter
To: Frances McChesney; Lisa McCann; Michael Thomas; Roger Briggs
CC: Frances McChesney
Date: 3/1/2012 3:18 PM
Subject: Farr/Alejo Press Conference Tomorrow

Roger et al -

I just got a phone call from Steve Shimek to let me know that Farr and Alejo are holding a press conference tomorrow with Marc Los Huertos, Paul Robbins of the Monterey RCD, and Pappin (sp?) from Coast Watershed Council. I believe the purpose of the event (not certain) is to support work on Marc's report and make case that Ag should be given more time by our Board to continue work. If you think it is important, please let Rob Egel know.

Thanks,
Angela

From: Angela Schroeter
To: Frances McChesney; George Kostyrko; Lisa McCann; Michael Thomas; Roger Briggs; Timothy Moran
Date: 3/2/2012 9:13 AM
Subject: Fwd: PRESS ADVISORY: Farr and Alejo Call for Collaborative Water Control Policy

FYI

----- Forwarded message -----

From: Horwitz, Sasha <Sasha.Horwitz@asm.ca.gov>
Date: Thu, Mar 1, 2012 at 10:07 AM
Subject: PRESS ADVISORY: Farr and Alejo Call for Collaborative Water Control Policy
To: Assemblymember Alejo <Assemblymember.Alejo@assembly.ca.gov>

*****PRESS ADVISORY*****

PRESS ADVISORY Contact: Sasha Horwitz
March 1, 2011 (916) 319-2028 (tel:%28916%29%20319-2028)

Farr and Alejo Call for Collaborative Water Control Policy

WHAT: Assemblymember Luis A. Alejo and Congressman Sam Farr host a press conference urging the Regional Water Quality Control Board to use a collaborative and science-based approach to solving the region's agricultural water control problems.

WHERE: Office of Congressman Sam Farr
100 W. Allsai St.
Salinas, CA 93901

WHEN: Friday, March 2, 2012
9:00 a.m.

WHO: Assemblymember Luis A. Alejo
Congressman Sam Farr
Dr. Marc los Huertos, CUS Monterey Bay
Paul Robins, Resource Conservation District of Monterey County
Sacha Lozano, Monterey Bay National Marine Sanctuary

Luis Alejo represents the 28th District in the California State Assembly, which consists of San Benito County, the Salinas Valley, North Monterey County, South Santa Clara County and the city of Watsonville.

#

Sasha Horwitz
Office of Assembly Member Luis A. Alejo
State Capitol, Room 2137
Sacramento, CA 95814
(916) 319-2028 (tel:%28916%29%20319-2028) (office)
(916) 319-2128 (tel:%28916%29%20319-2128) (fax)
Sasha.Horwitz@asm.ca.gov

Sara Rubin
Monterey County Weekly, staff writer
(831) 394-5656 ext. 120
(831) 776-2163 (mobile)
sara@mcweekly.com
www.montereycountyweekly.com

[REDACTED]

[REDACTED]

From: Mike Johnston [REDACTED]
Sent: Tuesday, March 06, 2012 9:14 PM
To: Roger Briggs
Subject: Re: Questions

Sure. 11?

Mike Johnston
[REDACTED]

On Mar 6, 2012, at 6:01 PM, Roger Briggs <Rbriggs@waterboards.ca.gov> wrote:

Hi Mike,

I've been going over your questions, and have some feedback - with more tomorrow.

Will you be available maybe late morning to talk?

thanks,

Roger

Roger W. Briggs PE
Executive Officer
Central Coast Regional Water Quality Control Board
805-549-3140
fax 805-788-3511
rbriggs@waterboards.ca.gov
<<http://www.waterboards.ca.gov/centralcoast/>> <http://www.waterboards.ca.gov/centralcoast/>

>>> Mike Johnston [REDACTED] 3/6/2012 2:37 PM >>>

Roger,

This is a work in progress, I hope to finish it tomorrow. Any comments are appreciated.

Mike

<Briggs, Roger.vcf>

[REDACTED]

Mike Johnston

[REDACTED]

From: Roger Briggs [mailto:Rbriggs@waterboards.ca.gov]
Sent: Tuesday, March 06, 2012 6:02 PM
To: Mike Johnston
Subject: Re: Questions

Hi Mike,

I've been going over your questions, and have some feedback - with more tomorrow.

Will you be available maybe late morning to talk?

thanks,

Roger

Roger W. Briggs PE
Executive Officer
Central Coast Regional Water Quality Control Board
805-549-3140
fax 805-788-3511
rbriggs@waterboards.ca.gov
<<http://www.waterboards.ca.gov/centralcoast/>>
<http://www.waterboards.ca.gov/centralcoast/>

>>> Mike Johnston <[REDACTED]> 3/6/2012 2:37 PM >>>

Roger,

This is a work in progress, I hope to finish it tomorrow. Any comments are appreciated.

Mike

[REDACTED]

[REDACTED]

[REDACTED]

From: Roger Briggs
To: mjohnston890@gmail.com
CC: McChesney, Frances
Date: 3/7/2012 4:42 PM
Subject: Re: SIP Info
Attachments: Briggs, Roger.vcf

Mike, here's the info on SIP, which is from our record for the ag order. The letter summarizes the certification. Links in their letter include their 95 page standards for certification.

thanks,
Roger

Roger W. Briggs PE
Executive Officer
Central Coast Regional Water Quality Control Board
805-549-3140
fax 805-788-3511
rbriggs@waterboards.ca.gov
<http://www.waterboards.ca.gov/centralcoast/>

>>> Angela Schroeter 3/7/2012 2:49 PM >>>
Central Coast Vineyard Team - Letter from Dec. 2010 with link to SIP Guidelines in letter.
http://www.waterboards.ca.gov/centralcoast/water_issues/programs/ag_waivers/docs/ag_order2/10.pdf

Lisa McCann Phone Notes

[REDACTED]

3/8/12

Shirley re: conversation
w/ Rick Tomkinson + Gordon Brown

Strawberry Lammish; CALCAT

(Lammish) word not good
specificity good then not good

general as possible accepting
any 3rd party good idea

must be monitorable

[REDACTED]

From: Roger Briggs
To: McCann, Lisa; Shimek, Steve; Thomas, Michael
CC: McChesney, Frances; Schroeter, Angela
Date: 3/9/2012 9:37 AM
Subject: Re: Extra time
Attachments: Briggs, Roger.vcf

Mr. Shimek,

This note provides the Chair's decision on allotted time for the Ag Order hearing on Wednesday, March 14, 2012. We received several requests for additional time and the Chair has reduced all the requested times to some degree to provide an opportunity for all to speak, including those requesting just three minutes. You are allotted a total of 24 minutes.

Our staff will be providing for the Board, a handout which contains a hard copy of the presentation outline and a multi-slide per page presentation printout (with enough room for notes next to slides). We think this will help the Board members in understanding the presentation and make it easier for them to jot down questions next to the appropriate slides. Please bring these two items (if you have slides) for the Board for your presentation (10 copies please)

Thanks,
Roger Briggs

Roger W. Briggs PE
Executive Officer
Central Coast Regional Water Quality Control Board
805-549-3140
fax: 805-788-3511
rbriggs@waterboards.ca.gov
<http://www.waterboards.ca.gov/centralcoast/>

>>> Steve Shimek <exec@otterproject.org> 2/24/2012 10:27 AM >>>

Dear Mr. Briggs,

This email is my request for extra time to present information about the Ag Waiver. We request 30 minutes. We will present information comparing the various proposals including the iterations of the staff proposal and we will present our ideas for ways to improve upon the current staff proposal.

Thank you for letting us know about the move to March 14. Unfortunately, some members of our group cannot make the 14th. Our question is whether the Ag Waiver item will span both days or whether you anticipate a vote on the 14th?

Steve Shimek

Steve Shimek
The Otter Project, Chief Executive
Monterey Coastkeeper, Program Manager
475 Washington Street, Suite A
Monterey, CA 93940
831/646-8837 x114
831/241-8984 (cell)

[REDACTED]

[REDACTED]

-----Original Message-----

From: Roger Briggs [mailto:rbriggs@waterboards.ca.gov]
Sent: Sunday, March 11, 2012 5:46 AM
To: [REDACTED] Frances McChesney
Subject: Re: Possible edits for the order, Q&A Doc

Frances and Mike,
I may not be able to. If not, you two should talk and I'll catch up with Frances later.

Roger
Roger W. Briggs PE
Executive Officer
Central Coast Regional Board
805-549-3140
fax 805-788-3511
rbriggs@waterboards.ca.gov
<http://www.waterboards.ca.gov/centralcoast/>
>>> Frances McChesney 03/10/12 5:46 PM >>>
I can meet then for 1/2 hour-ish.

Frances

>>> Mike Johnston 3/10/2012 5:26 PM >>>
Roger
I just got this.
Tonight is tough. Can we do 11 or 12 tomorrow?
Mike

[REDACTED]

On Mar 10, 2012, at 3:00 PM, Roger Briggs wrote:

> Mike,
> Here are possible edits for the order (two docs here), and the draft Q&A Doc which we need to discuss before finaling.

[REDACTED]

>
>
> Let us know if you can talk at a specific time, perhaps this afternoon. But would be best if you read thru these first before we talk.
>
>

From: Mike Johnston <mjohnston890@gmail.com>
To: 'Roger Briggs' <Rbriggs@waterboards.ca.gov>
CC: 'Frances McChesney' <FMcChesney@waterboards.ca.gov>
Date: 3/12/2012 9:42 PM
Subject: language

Roger,

Can you please have Frances leave me copies of the language that we worked on at the desk at the hotel tomorrow night? Also, please e-mail me the final versions. That way I am sure that we are on the same page.

Thanks,

Mike

From: Roger Briggs
To: mjohnston890@gmail.com
CC: McChesney, Frances
Date: 3/13/2012 6:17 AM
Subject: Re: language

Mike, yes, will do. I intended to email to you asap. Frances is taking one last look and then we will do that. You wanted Jeff to have copies to, and we'll do that as well. thanks for your diligence.

Roger
Roger W. Briggs PE
Executive Officer
Central Coast Regional Board
805-549-3140
fax 805-788-3511
rbriggs@waterboards.ca.gov
<http://www.waterboards.ca.gov/centralcoast/>
>>> Mike Johnston 03/12/12 9:42 PM >>>
Roger,

Can you please have Frances leave me copies of the language that we worked on at the desk at the hotel tomorrow night? Also, please e-mail me the final versions. That way I am sure that we are on the same page.

Thanks.

Mike

From: Steve Shimek <exec@otterproject.org>
To: <Rbriggs@waterboards.ca.gov>, Frances McChesney <FMcChesney@waterboards.ca.gov>
Date: 3/13/2012 4:20 PM
Subject: Delgado

I just had a call from someone who talked with Bruce (I did NOT). Bruce apparently said that he represented mayors and municipal govts on the Board and they had asked him to vote no. I have no interest in steering his vote; but I do have an interest in it being clarified to him that he DOES NOT represent municipal govts on the board. Could you please clarify this for him. Thank you!!!

Steve

Pg 4, Finding 11:

The Central Coast Water Board encourages Dischargers to coordinate the effective implementation of cooperative water quality improvement efforts, local or regional scale water quality protection and treatment strategies (such as managed aquifer (recharge projects), and cooperative monitoring efforts to lower costs, maximize effectiveness, and achieve compliance with this Order. In cases where Dischargers are participating in effective local or regional treatment strategies, and individual on-farm discharges continue to cause exceedances of water quality standards in the short term, the Executive Officer will take into consideration such participation in the local or regional treatment strategy and progress made towards compliance with water quality standards in evaluating compliance with this Order. In cases where cooperative water quality improvement efforts, or local or regional treatment strategies, coordinated by a third-party group (e.g., watershed group, water quality coalition, or other similar cooperative effort) or by a group of Dischargers, necessitate alternative water quality monitoring or a longer time schedule to achieve compliance than required by this Order, Dischargers may submit an alternative water quality monitoring plan or time schedule for approval by the Executive Officer. In cases where groups of dischargers (e.g., if participating in a third-party group such as a watershed group or water quality coalition) propose to cooperatively monitor and report while individually implementing management or treatment, these Dischargers may also submit alternative water quality monitoring plans that include indicators of water quality improvement or pollution load reduction and aggregate monitoring and reporting (on a scale sufficient to track progress in small sub-basins). The Executive Officer will evaluate these situations on a case-by-case basis considering the effectiveness and rationale of the aggregate or alternative monitoring (e.g., request to conduct aggregate monitoring for a certain timeframe to give new practices or treatment time to maximize effectiveness, and other factors such as whether the farms are currently affecting an impaired surface water or ground water with drinking water wells, or whether farms are in compliance with other provisions such as (e.g. enrollment, or submittal of annual compliance information). Dischargers using aggregate or alternative monitoring maintain individual responsibility to comply with this Order's conditions.

Dischargers may continue to implement alternative treatment or monitoring approved by the Executive Officer as long as they demonstrate continuous improvement and sufficient progress towards water quality improvement based upon measurable indicators of pollutant load reduction. Disputed Executive Officer decisions may be considered by the Water Board.

p 28, conditions 72 and 73

72. By October 1, 2012, Tier 3 Dischargers must initiate individual surface water discharge monitoring per MRP Order No. R3-2011-0006-03, or alternative monitoring approved by EO as per finding 11.

73. By October 1, 2013 and annually thereafter, Tier 3 Dischargers must submit individual surface water discharge monitoring data and reports per MRP Order No. R3-2011-0006-03, electronically, in a format specified by the Executive Officer, or alternative monitoring approved by EO as per finding 11.

Edits to staff Draft Ag Order

Pg 4, Finding 11:

The Central Coast Water Board encourages Dischargers to coordinate the effective implementation of cooperative water quality improvement efforts, local or regional scale water quality protection and treatment strategies (such as managed aquifer recharge projects), and cooperative monitoring and reporting efforts to lower costs, maximize effectiveness, and achieve compliance with this Order. In cases where Dischargers are participating in effective local or regional treatment strategies, and individual on-farm discharges continue to cause exceedances of water quality standards in the short term, the Executive Officer will take into consideration such participation in the local or regional treatment strategy and progress made towards compliance with water quality standards in evaluating compliance with this Order. In cases where cooperative water quality improvement efforts, or local or regional treatment strategies, coordinated by a third-party group (e.g., watershed group, water quality coalition, or other similar cooperative effort) or by a group of Dischargers, necessitate alternative water quality monitoring or a longer time schedule to achieve compliance than required by this Order, Dischargers may submit an alternative water quality monitoring and reporting plan or time schedule for approval by the Executive Officer. Groups of Dischargers and/or third party groups (e.g., a watershed group or water quality coalition) may submit to the Executive Officer for approval alternative water quality monitoring and reporting programs. An alternative monitoring and reporting program must include collection of data that will provide indicators of water quality improvement or pollution load reduction, and aggregate monitoring and reporting must be on a scale sufficient to track progress in small sub-basins and be sufficiently representative of conditions. Aggregate monitoring may apply to surface and groundwater. The Executive Officer will evaluate the alternative monitoring and reporting programs on a case-by-case basis considering the potential effectiveness of the aggregate or alternative monitoring (e.g., request to conduct aggregate monitoring for a certain timeframe to give new practices or treatment time to maximize effectiveness, and other factors such as whether the farms are currently significantly contributing to impaired surface water or ground water with drinking water wells, or whether farms are in compliance with other provisions such as enrollment, or submittal of annual compliance information). Dischargers who participate in an alternative monitoring and reporting program maintain individual responsibility to comply with this Order's conditions.

Dischargers may continue to implement alternative treatment or monitoring programs approved by the Executive Officer as long as they demonstrate continuous improvement and sufficient progress towards water quality improvement based upon measurable indicators of pollutant load reduction. Dischargers may seek review of Executive Officer decisions by the Water Board.

Inserted between Staff Proposal Condition 10 and 11.

[We recommend editing Condition 10, 72 and 73 as shown below and adding new Condition 11 (and 11 becomes 12) with the NEW information. We recommend this so we leave the general statements in current condition 10 as is re 3rd party groups, individuals are responsible for compliance regardless of failures of 3rd party groups, but clarify in Condition 10, 72, 73 that if alternative monitoring requirements are approved by EO, they replace itemized requirements in MRP.]

Then we add NEW Condition 11 to address the details of cooperative efforts that allow moving to lower tier, TAC role, etc.

Also note that these "CONDITIONS" relate to and implement the "FINDINGS" in finding 11, as edited per aggregate monitoring issues.]

Pg 13, Condition 10:

Dischargers may comply with this Order by participating in third-party groups (e.g., watershed group, or water quality coalition, or other similar cooperative effort) approved by the Central Coast Water Board. In this case, the third-party group will assist individual growers in achieving compliance with this Order, including implementing water quality improvement projects and monitoring and reporting programs as described in MRP Order No. R3-2011-0006-01, MRP Order No. R3-2011-0006-02, and MRP Order No. R3-2011-0006-03, or alternative monitoring and reporting programs as provided in Condition 11 below. Consistent with the Water Board's Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program (NPS Policy, 2004), the ineffectiveness of a third-party group through which a Discharger participates in nonpoint source control efforts cannot be used as an excuse for lack of individual discharger compliance. Individual Dischargers continue to be responsible for complying with this Order.

p 28, conditions 72 and 73

72. By October 1, 2012, Tier 3 Dischargers must initiate individual surface water discharge monitoring as set forth in MRP Order No. R3-2011-0006-03, or alternative monitoring and reporting programs approved by Executive Officer as set forth in finding 11 and condition 11.

73. By October 1, 2013 and annually thereafter, Tier 3 Dischargers must submit individual surface water discharge monitoring data and reports per MRP Order No. R3-2011-0006-03, electronically, in a format specified by the Executive Officer, or alternative monitoring and reporting programs approved by the Executive Officer as set forth in finding 11 and condition 11.

New Condition 11 (all new language):

Dischargers may form third party groups to develop and implement alternative water quality management practices (i.e., group projects) or cooperative monitoring and reporting programs to comply with this Order. At the discretion of the Executive Officer, Dischargers that are a participant in a third party group that implements Executive Officer-approved water quality improvement projects or Executive Officer-approved alternative monitoring and reporting programs may be moved to a lower Tier (e.g., Tier 3 to Tier 2, Tier 2 to Tier 1) and/or provided alternative project-specific timelines, and milestones.

To be subject to Tier changes or alternative timelines, Projects will be evaluated for, among other elements:

- **Project Description.** Description must include identification of participants, methods, and time schedule for implementation.
- **Purpose.** Proposal must state desired outcomes or goals of the project (e.g., pollutants to be addressed, amount of pollution load to be reduced, water quality improvement expected).
- **Scale.** Solutions must be scaled to address impairment
- **Chance of Success.** Projects must demonstrate a reasonable chance of eliminating toxicity within the permit term (five years) or reducing discharge of nutrients to surface and groundwater.

- Long term solutions and contingencies. Proposals must address what new actions will be taken if the project does not meet goals and how the project will be sustained through time.
- Accountability. Proposals must set milestones that indicate progress towards goals stated as above in "purpose."
- Monitoring and reporting. Description of monitoring and measuring methods, and information to be provided to the Water Board. Monitoring points must be representative but may not always be at the edge-of-farm so long as monitoring results demonstrate water quality improvement and the efficacy of a project. In addition, monitoring must 1) characterize and be representative of discharge to receiving water, 2) demonstrate project effectiveness, 3) and verify progress towards water quality improvement and pollutant load reduction,

Project proposals will be evaluated by a Technical Advisory Committee (TAC) comprised of: Two researchers or academics skilled in agricultural practices and/or water quality, one farm advisor (NRCS or RCD), one grower representative, one environmental representative, one environmental justice or environmental health representative, and one Regional Board staff. The TAC must have a minimum of five members to evaluate project proposals and make recommendations to the Executive Officer. The Executive Officer has discretion to approve any project after receiving project evaluation results and recommendations from the committee. If the Executive Officer denies approval, the third party group may seek review by the Regional Board. As stated in the NPS Policy, management practice implementation is not a substitute for compliance with water quality requirements. If the project is not effective in achieving water quality standards, additional management practices by individual Dischargers or the third party group will be necessary.

H:\new\My Documents\Ag\AddlDraftEdits_030812_1_1FLM v3 rb - clean 3-13-12.docx

From: Mike Johnston [REDACTED]
To: Roger Briggs <Rbriggs@waterboards.ca.gov>
CC: Frances McChesney <FMcChesney@waterboards.ca.gov>
Date: 3/14/2012 7:44 AM
Subject: Re: language

Roger
[REDACTED]

Mike

Mike Johnston
[REDACTED]

On Mar 13, 2012, at 12:02 PM, Roger Briggs <Rbriggs@waterboards.ca.gov> wrote:

> Mike, here it is. Changes and new language in red. There's one bullet that has yellow highlight on it. I couldn't get rid of it. It doesn't mean anything - we'll fix it later after the meeting when this is part of the Order. We'll put a copy in your folder, which Frances will take to the hotel.
> I'll send to Jeff too and put a copy in his folder.
> Thanks again,
> Roger
>
>
> Roger W. Briggs PE
> Executive Officer
> Central Coast Regional Water Quality Control Board
> 805-549-3140
> fax 805-788-3511
> rbriggs@waterboards.ca.gov
> <http://www.waterboards.ca.gov/centralcoast/>
>
> >>> Mike Johnston [REDACTED] 3/12/2012 9:42 PM >>>
> Roger,
> Can you please have Frances leave me copies of the language that we worked on at the desk at the hotel tomorrow night? Also, please e-mail me the final versions. That way I am sure that we are on the same page.
> Thanks,
> Mike
> <AddIDraftEdits_030812_1_1FLM v3 rb - clean 3-13-12.docx>
> <Briggs, Roger.vcf>

From: Michael Thomas
To: Michael Thomas
Date: 3/22/2012 5:26 PM
Subject: Fwd: Re: Request for Additional Time

Is your private well water safe to drink? Click here for information:
http://www.waterboards.ca.gov/water_issues/programs/gama/wq_privatewells.shtml
>>> Marc Los Huertos <mloshuertos@csumb.edu> 3/9/2012 11:31 AM >>>
Dear Roger,

Thank you for the note. I appreciate the limitations of the day and the number of speakers you expect to fit in before the Board can actually discuss the various issues associated with the waiver. Based on last February's experience, I might be standing up there much longer. I felt bad that I was unable to communicate in an efficient way last time and the Board was there late into the evening. I hope you can build in some contingencies if I am stuck up there for more than my allotted time.

I know this might sound silly, but I have been trying to find "space" for the Staff Recommendations to adopted. I have been in contact with Gordon Burns over the last few weeks at CalEPA who gave me some specific suggestions to that end. I am not comfortable proposing these without your staff looking them over. But I don't know what the proper "legal" procedure is. Perhaps, making this request violates some procedural process. If the "space" is worth considering, it might allow each (some?) of the stakeholders to feel like they got most of what they needed. If this isn't appropriate, that is fine. I tried to suggest some changes in my last meeting but it seemed like the staff were not open to that. Again, I know there are many other issues that are taking precedence, and I only offer this if you think it would be useful.

Cheers, marc

On Fri, Mar 9, 2012 at 9:34 AM, Roger Briggs <Rbriggs@waterboards.ca.gov> wrote:

Dr. Los Huertos,

This note provides the Chair's decision on allotted time for the Ag Order hearing on Wednesday, March 14, 2012. We received several requests for additional time and the Chair has reduced all the requested times to some degree to provide an opportunity for all to speak, including those requesting just three minutes. Considering the extended period of time the Board allowed you at the workshop, and that you are now no longer representing an organized group, you are allotted a total of 10 minutes.

Our staff will be providing for the Board, a handout which contains a hard copy of the presentation outline and a multi-slide per page presentation printout (with enough room for notes next to slides). We think this will help the Board members in understanding the presentation and make it easier for them to jot down questions next to the appropriate slides. Please bring these two items (if you have slides) for the Board for you presentation (10 copies please)

Thanks,
Roger Briggs

Roger W. Briggs PE
Executive Officer
Central Coast Regional Water Quality Control Board

805-549-3140 (tel:805-549-3140)
fax 805-788-3511 (tel:805-788-3511)
rbriggs@waterboards.ca.gov
http://www.waterboards.ca.gov/centralcoast/
>>> Marc Los Huertos <mloshuertos@csumb.edu> 3/5/2012 12:01 PM >>>

Re: Extra Time for March 14th Hearing

Dear Roger Briggs,

I am requesting 30 minutes to provide a presentation regarding the upcoming March 14, 2012 hearing for the Agriculture Order. As highlighted by Chairman Young's letter, my proposal may not fit within the Farmer's for Water Quality proposal, thus am seeking my own time slot. I appreciated his comments. Especially since, I have been working with several environmental organizations to refine my proposal in a way to develop a range of endorsements. In particular, I have been working hard to develop a robust strategy to protect ground water. In part, I am responding to specific questions from Dr. Monica Hunter, Bruce Delgado, and Michael Johnston.

Over the last few weeks, I have spent significant time reflecting on how to approach the nonpoint source pollution problems associated with agriculture. I think I have created some space to address this vexing pollution issue without dismantling the Board's Staff recommendations.

I am certain that you and your staff feel I have misunderstood your approach and the overall goals. It is true I do not have a detailed understanding of the state's Water Code. What I do have is an understanding about how pollutants might leave a farm. I also have 15 years of experience working directly with growers on their farm fields to re-mediate pollution problems. Based on these two areas of knowledge, I think I have a reasonable way to address water quality issues in the long term.

Given the gravity of the pollution, and the importance of crafting effective regulation to address it, I would greatly appreciate 30 minutes of presentation time. I would also like to compliment on your tenure as Executive Officer of the Board. I have the greatest respect for your leadership skills and hope that your successor will maintain the high standards and integrity that has been associated with the Central Coast Regional Board.

Very Sincerely,

Marc Los Huertos

Dr. Marc Los Huertos
Associate Professor
Science and Environmental Policy,
Chapman Science Center
100 Campus Drive
Seaside CA, 93955

831-582-3209 (tel:831-582-3209)

<http://csumb.edu/site/x12183.xml>

—
Dr. Marc Los Huertos
Associate Professor
Science and Environmental Policy,
Chapman Science Center
100 Campus Drive
Seaside CA, 93955

831-582-3209 (tel:831-582-3209)

<http://csumb.edu/site/x12183.xml>

PETITION FOR REVIEW

EXHIBIT H

1 CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

2 CENTRAL COAST REGIONAL WATER BOARD

3 FRIDAY, JULY 8, 2010

4 ITEM 12: STRAWBERRY COMMISSION

5 -o0o-

6 CHAIRMAN YOUNG: Folks, take your seat, please.

7 We're not going to let them talk now, because the

8 others --

9 FEMALE VOICE: (Inaudible) water rights.

10 CHAIRMAN YOUNG: Okay. All right.

11 MALE VOICE: (Inaudible) somebody?

12 CHAIRMAN YOUNG: We are all here. Is staff here?

13 Merrill? Merrill?

14 MALE VOICE: No, it's Jim.

15 CHAIRMAN YOUNG: All right.

16 MALE VOICE: Right.

17 CHAIRMAN YOUNG: Okay. Is Mark Marai here from the

18 Strawberry Commission? Is he here?

19 MALE VOICE: Yes, sir.

20 MALE VOICE: He was, so I think he just stepped out.

21 CHAIRMAN YOUNG: Okay. Well, I was going to give him

22 the opportunity to go right now, so let's start with Lisa

23 Lurie, and then, are there a number of speakers that are

24 following you as part of your --

25 MS. LURIE: Six of us.

1 CHAIRMAN YOUNG: Six of you? Okay. All right.

2 Well, Mr. Marai may insert him as soon as he shows up.

3 MS. LURIE: Okay.

4 CHAIRMAN YOUNG: So why don't you go ahead and --
5 okay.

6 Mr. Marai, please come down here. You're going
7 to go first. You have a plane to catch. You have a plane
8 to catch. We'll take you now.

9 MR. MARAI: Thank you, Chairman Young.

10 CHAIRMAN YOUNG: Okay. Two minutes.

11 MR. MARAI: Members of the Board --

12 CHAIRMAN YOUNG: These. With these.

13 MR. MARAI: -- my name is Mark Marai. I'm the
14 president of the California Strawberry Commission and I'm
15 also a third generation strawberry grower. Thank you for
16 giving us some time. There's no doubt when I see some of
17 those slides that were put up, that's an example of some
18 bad situations here, but there's a lot of good examples of
19 some good practices that are happening, and many of those
20 were explained here today.

21 This is going to take a very comprehensive
22 approach to solve this problem. There's a lot of legacy
23 problems we're dealing with here, and I want to reach out.
24 I know the Board, or the staff has mentioned about some
25 outreach, but to be fair, I don't think it was very

1 extensive. As a matter of fact, Mr. Briggs, as you know,
2 we met after the draft was written, and I think the
3 Strawberry Commission sees a great opportunity here. We
4 are a good example of, we have an award-winning program
5 around food safety and training. We've actually trained
6 80 percent of our industry on a voluntary basis within the
7 last 14 months. And it's an award-winning program and it
8 can be done.

9 So I ask, and I know other ag associations and
10 other organizations. I saw the Monterey County Water
11 Resources Agency kind of panel of who kind of advises
12 them, and I really, at that point, I'd love to see the
13 Strawberry Commission be part of that, because this is
14 going to take an approach that's very comprehensive but
15 yet also have a laser-like focus around some of these
16 commodities. As you talk to a strawberry grower or a
17 lettuce grower here, we have very different ideas on what
18 we need to do to achieve certain goals, and we have to
19 look at some of the other complexities about who our
20 farmers are, like Mr. Shimek said, the movement there.

21 But then also, what we do as a California
22 strawberry grower and what we do as a California lettuce
23 grower, there could be some crossovers, but also, to
24 really hit the culture and to really change the culture of
25 the strawberry grower, we are going to need to take a

1 laser-like focus around that area and like some of the
2 other areas, and there are organizations that can help do
3 this. We just need extra collaboration. We need to ask
4 you to please direct the staff to work more
5 collaboratively with the organizations that represent some
6 of the commodities. Thank you.

7 CHAIRMAN YOUNG: Thank you. Briggs, you can make
8 note of that.

9 MR. BRIGGS: Well, we have met, as he said.

10 CHAIRMAN YOUNG: Okay. And not just strawberries,
11 but other commodities.

12 MR. BRIGGS: Right.

13 CHAIRMAN YOUNG: Yeah. All right. Lisa Lurie,
14 then. We have --

15 MS. LURIE: Right. Well, good afternoon. My name is
16 Lisa Lurie. I'm with the Monterey Bay National Marine
17 Sanctuary and I'm the coordinator of the ACWA Partnership.
18 The Agriculture Water Alliance, or ACWA, is a unique
19 partnership whose mission is to protect water quality in
20 the Monterey Bay National Marine Sanctuary and the
21 productivity of central coast ag lands through a voluntary
22 stewardship approach. ACWA is guided by a steering
23 committee whose members are here today to present
24 coordinated comments to the board to help us achieve our
25 mutual goal of water quality protection.

1 For over a decade, ACWA has brought together
2 growers, technical service providers, researchers, and
3 resource conservation agencies to address agricultural
4 water quality issues together. The 2004 Ag Waiver
5 acknowledged growers already participating in many
6 ACWA-supported programs such as the Short Course and Farm
7 Water Quality Plan. We encourage the regional board to
8 consider the following principles as we move forward in
9 this process to develop a revised ag order. First,
10 collaboration is critical for implementation of both
11 regulatory and non-regulatory approaches to protecting
12 water quality. Second, local experts recognize, as has
13 been mentioned, that there is no one-size-fits-all
14 solution. Growers need flexibility to implement practices
15 to improve water quality that makes sense on their field.

16 Thirdly, utilize local experts to evaluate the
17 technical feasibility and ability of proposed
18 recommendations to improve water quality. ACWA partners
19 can serve as a resource for this technical input. As you
20 elected this morning, this current process will continue
21 on until March of 2011. While the regulatory review
22 process marches on, stewardship efforts of growers and
23 ACWA partners continue. ACWA would like to keep the board
24 and the public apprised of our efforts and would propose
25 providing regular updates as a standing item on future

1 board agendas as something to consider.

2 With that, I'd like to turn it over to my fellow
3 ACWA partners.

4 MS. JOHNSON: My name is Marty Johnson and I'm the
5 Resource Conservation District Coordinator for the
6 Agricultural Water Quality Alliance. I've worked with our
7 cities in the Central Coast area since the year 2000 in
8 over six counties that joined the Monterey Bay National
9 Marine Sanctuary, and I apologize that I have a cough drop
10 in my mouth. I'm trying to fight back a cough that's
11 lingering. I just want to speak about why this history of
12 Central Coast grower involvement and ag water quality
13 protection is remarkable in California. Growers have been
14 involved with our effort for the last 15 years. They were
15 very proactively involved with the development of the ag
16 plan in the mid-1990s, and that pretty complicated
17 stakeholder process forged a partnership that has really
18 changed how ag water quality protection works in our
19 region.

20 That partnership was based on our identified
21 shared values of protecting water quality and also
22 protecting the productivity of central coast ag lands
23 through voluntary stewardship. After that process closed
24 with the ag plan, the Central Coast growers really carried
25 the torch for ag water quality protection. Before we even

1 had the staff that we now take for granted, growers were
2 themselves making individual calls to other growers to
3 spread the message to them of why protecting water quality
4 was important and why it was worthwhile to participate in
5 what were entirely voluntary educational initiatives at
6 that time. It was so remarkable that the California Farm
7 Bureau invited Central Coast growers to go to other
8 regions in California to explain to growers in other parts
9 of the state why they were doing this. Why were they
10 bothering to work on protecting water quality? So they
11 were essentially the messenger to other growers.

12 Again, all of this was prior to any kind of
13 regulatory action. When the first ag waiver bound came
14 about in our area, Central Coast growers were arguably the
15 most knowledgeable and dedicated growers for ag quality
16 water protection in the state. As the data expands to
17 help us understand the problem we face, we certainly
18 recognize among ACWA partners that there's --

19 CHAIRMAN YOUNG: Can you wrap it up?

20 MS. JOHNSON: Yeah -- that there's more and harder
21 work to do. I just want to urge you to prioritize that
22 collaborative spirit that's in our past, and just briefly,
23 I want to say that lest this seem like another plug for
24 kumbaya, I just want to say, having worked for the two
25 biggest technical service providers for the last 10 years,

1 I think that we're successful with voluntary collaboration
2 from growers, regardless of whether we are working in a
3 regulatory or non-regulatory context. Thank you.

4 CHAIRMAN YOUNG: Thank you. Okay. Next speaker.

5 MR. HAYNE: My name is Paul Hayne. I'm the president
6 of the Central Coast Ag Water Quality Coalition, fourth
7 generation organic farmer from San Mateo County, and I
8 grow organic poultry and nuts. I can recall back before
9 there was an ACWA, before there was a water quality plan,
10 there's quite a roundup that went on, and out of that grew
11 a model of cooperation in the Central Coast with everybody
12 involved. ACWA came out of that. The coalition focused
13 mainly as representing growers and as doing outreach and
14 education to instruct people of management practice,
15 monitoring, things like that, so they could actually
16 recognize and help improve water quality on their own
17 land.

18 Through ACWA, we've strengthened the partnership
19 in working with cooperative extension and NRCS to get more
20 technical services. I think we've realized over the past
21 couple of years, due to state budget crunches and things
22 like that, that that has been hampered, and therefore
23 water quality efforts have been hampered. But with
24 minimal staffs and things like that, we forge ahead, and
25 just wanted to end by saying that I think it's that spirit

1 of voluntary cooperation, even in a regulatory
2 environment, that gets the most work done on the ground.
3 Thank you.

4 CHAIRMAN YOUNG: Thank you.

5 MR. KAHN: Chairman and Board, good afternoon. My
6 name's Michael Kahn. I'm an Irrigation Water Resource
7 Advisor for University of California Cooperative Extension
8 and I work here on the Central Coast. I represent the
9 University of California's role in ACWA in terms of the
10 water quality research and education that we do. UC
11 researchers and advisors like myself participate in
12 evaluation and development of practices that can improve
13 farm water quality. However, although we are developing
14 effective practices, these practices can't be used in
15 every situation. We have no solution that works in all
16 situations, and one of the benefits of ACWA has been to
17 work with technical service providers like the RCD,
18 Resource Conservation District, the watershed coordinators
19 through the Farm Bureau, to work together to have a
20 unified approach to working with growers and provide that
21 technical assistance on farm.

22 I think in the future, we're going to have to
23 improve our technical capacity if we want growers to be
24 able to adopt these different practices for their
25 particular landscape and crops.

1 MR. ROBBINS: Hi, my name's Paul Robbins. I'm with
2 the Resource Conservation District of Monterey County.
3 You all saw me in San Luis Obispo. I've made brief
4 comment then, as well, pitching for a cooperative approach
5 regarding the waiver revision, and you already know the
6 approach of ACWA. You've heard it described. The RCD
7 approach is nested within that. our watchwords are
8 locally-liked conversation. We're non-regulatory and our
9 work hinges on the confidence and trust of growers and the
10 public and resource agencies place in us as partners that
11 are committed to a shared mission of resource and land
12 stewardship, and also, we provide mutual translation
13 services.

14 What we do together with these partnerships, we
15 don't exist without them, is the kind of studies looking
16 at how we can make vegetated treatment systems or
17 vegetated ditches work. My career is, the last 15 years,
18 at least, have been committed to this in trying like heck
19 to make it work, and it's not out of giving up that we
20 acknowledge its limitations. It's out of sheer
21 frustration on my part, but partners have included the
22 BPA, the Ag Research Service, all the universities in the
23 area, and so if you want that local information, please
24 take to the university folks like Michael Kahn, BUT also
25 Mark Cosuertos, folks at the Granite Canyon Marine Lab,

1 and we have a current example of this code of cooperation
2 in terms of a progressive program in Santa Clara county,
3 and it's a partnership with the Santa Clara Water Valley
4 District, the Santa Clara County Farm Bureau, the Ag Water
5 Quality Coalition, UC Extension, Cooperating Growers, and
6 our RCDs and NRCS in this irrigation efficiency program,
7 and we're trying to fine-tune these things locally.

8 We do have lots of studies that show how
9 wonderful vegetation treatment systems are working
10 elsewhere. That's the problem, is we've not been able to
11 replicate that on the Central Coast or even in the Central
12 Valley where I started my work. Anyhow, while refining
13 this irrigation efficiency program, which is in its second
14 year, is one, what folks are doing that is right, and
15 being able to work with them in terms of identifying
16 issues -- and I'll wrap up -- found out especially that it
17 takes time and a flexible, creative approach to ID these
18 issues and find the actual right treatment that's specific
19 to a locale and a crop, even with the experts on hand. So
20 for voluntary compliance, we are effectively the boots on
21 the ground, so please work with us.

22 CHAIRMAN YOUNG: Thank you for your comments.

23 MR. CASSELL: Good afternoon. I'm Rich Cassell. I'm
24 the district conservationist in Santa Cruz County for the
25 USDA Natural Resources Conservation Service. I've been a

1 Sistine farmer who's personally here on the Central Coast
2 since 1974. NRCS has a very long history of providing
3 science-based technical assistance and cautionary help,
4 enabling farmers and ranchers to address their natural
5 resource concerns through voluntary approaches. We've
6 learned the importance of collaboration in building trust.
7 We rely on our partnerships, such as with RCDs and ACWA to
8 guide NRCS's assistance, fund bill programs, and make
9 specific site recommendations.

10 Confidentiality of NRCS assistance has been an
11 important cornerstone of our conservation success and
12 trust building. The relationship has provided growers
13 added confidence and assurance that conservation practices
14 they install to maintain will improve agricultural
15 production and sustainability, provide protection to water
16 quality, quantity and other natural resources, and keep
17 them in compliance with environmental regulations.

18 For more than 10 years, the NRCS has been actively
19 involved in ACWA. Our collective work as an alliance has
20 allowed shared technical expertise, knowledge and
21 resources regarding water quality issues; strengthened
22 financial capability and use of available funding;
23 discovery of better and more sustainable practices to
24 protect water quality; and less chance of duplication of
25 and/or counterproductive efforts. In the last decade

1 alone, in region three, NRCS has awarded farm build
2 contracts worth over \$18 million to help producers
3 implement conservation practices on their farms and
4 ranches. Every identified resource issue requires a
5 site-specific evaluation and solution. No two situations
6 are alike. Recommendations made by NRCS are specifically
7 tailored to the unique set of circumstances that exist on
8 each farm.

9 In addition, changing trends and an
10 ever-changing agricultural landscape all factor in to the
11 need for site-specific recommendations, collaboration, and
12 shared technical expertise. We have concerns that the
13 preliminary draft ag order may compromise our ability to
14 work with farmers to support water quality protection and
15 believe that rigid, regulatory program will also
16 jeopardize collaborative efforts which have been critical
17 to protecting water resources. There is no
18 one-size-fits-all solution, and technical expertise must
19 play a central role in the review of recommendations for
20 the ag waiver order. Thanks for the opportunity to
21 comment.

22 CHAIRMAN YOUNG: Thank you. Okay. We'll go to our
23 next speakers. Kay Mercer, this says you're also part of
24 ACWA, right? You're also part of --

25 MS. MERCER: No.

1 CHAIRMAN YOUNG: Okay. Okay. And then I'm going to
2 read off 10 names, so get ready to come up here. Robert,
3 I think it's Dolsak, possibly. Okay. Thank you. Joy
4 Fitzu, Everard Olson --

5 FEMALE VOICE: (Inaudible).

6 CHAIRMAN YOUNG: Okay. Let's put it next to that.
7 Joel Wilkie, or Willie, BCA.

8 FEMALE VOICE: Wiley.

9 CHAIRMAN YOUNG: Okay. All right. Nina Beety, Tom
10 Crowe, Eric Jerlberg from Watsonville. He already spoke?
11 Okay. All right. Great. Okay.

12 MS. MERCER: Thank you. I'm Kay Mercer with the
13 Central Coast Ag Water Quality Coalition and thank you for
14 allowing me to come in front of you. I want to say that I
15 was really gratified to hear the presentation from Lisa
16 that there would be an approach to surface water that
17 takes different conditions into consideration. I wanted
18 to bring before Staff and the Board some ideas about --
19 that might also influence a similar approach to
20 groundwater leachate, and the Center for Water Resources
21 at UC Riverside has developed what they call a nitrate
22 hazard index.

23 It's a model that looks at three primary
24 variables: soil type, the type of irrigation system, and
25 the crop, and it's not enforceable in that it gives you an

1 absolute, but it does give a fantastic indicator or
2 guideline of how water nitrate could potentially leach out
3 of the crop root zone into groundwater, and it would be a
4 very good indicator or a guide in assistance so you
5 wouldn't have to apply sort of one regulation, one basic
6 requirement for all growers, because that really isn't
7 what happens out in the environment. There are variables
8 that influence how much leachate actually does move, so
9 that is really the only comment I had. Thank you for your
10 time.

11 CHAIRMAN YOUNG: Okay. And Kay, had you shared that
12 with Staff before?

13 MS. MERCER: Have I shared that with Staff before?

14 CHAIRMAN YOUNG: Yeah.

15 MS. MERCER: Yes. The Coalition provided three
16 educational seminars, one in Santa Maria, Morro Bay, and,
17 or provided this information in three seminars. We had a
18 seminar in Santa Maria. We provided the information --

19 CHAIRMAN YOUNG: I mean --

20 MS. MERCER: -- in Morro Bay and in --

21 CHAIRMAN YOUNG: -- to our staff.

22 MS. MERCER: -- Parkgrove Valley, and Staff attended
23 some of those meetings.

24 CHAIRMAN YOUNG: Okay. But I meant in terms of
25 formally, just letting them know, hey, this exists. This

1 is something you should be looking at and considering.

2 MS. MERCER: I don't know. I mean, I know that Staff
3 attended at least two of those meetings that we had.

4 CHAIRMAN YOUNG: Okay.

5 FEMALE VOICE: We're actually familiar with the
6 nitrate hazard index, and I appreciate that input. When I
7 mentioned in general earlier --

8 CHAIRMAN YOUNG: Okay.

9 FEMALE VOICE: -- that we were looking at ways to
10 tier the avocation of the groundwater protection
11 requirements, that is one of the primary --

12 CHAIRMAN YOUNG: Okay. Good. I just wanted to --

13 FEMALE VOICE: -- issues that we're looking at, are
14 the results of the work that you see at Riverside that
15 we're looking at as a way to do that.

16 CHAIRMAN YOUNG: Okay. I just want to make sure the
17 public should know that, don't wait to come here to the
18 board to give us new information or something you want
19 Staff to consider. Get to Staff as soon as you have
20 something that's important. Put it in writing and give it
21 to them. That's really how this system functions best.
22 Okay.

23 MR. DOLSAK: Robert Dolsak speaking for the
24 California Association for Nurseries and Garden Centers
25 and our members here on the Central Coast. In today's

1 testimony, particularly from the ag section but also from
2 other stakeholder groups that presented, you heard three
3 common themes, and I'd like to re-emphasize those three
4 themes. One is the practices, a broad toolkit of
5 practices, that offers the best opportunity to move the
6 needle to the right side of the dial. The second is that
7 goals should be set using science and they should be
8 determined mutually between the stakeholder groups and the
9 Board in order to accomplish its goals.

10 And finally, there's this element of time, how
11 long it will take for these to have measurable effect on
12 legacy problems that may have built up at one part per
13 million for 40 or 50 years, and so I would just invite the
14 Board and the Staff to focus on those three elements. One
15 of the directions that the Staff gave in its comments at
16 the last meeting was to the Staff to prioritize, to set
17 targets of what they could accomplish today with the
18 resources they have, and I would emphasize that we haven't
19 had any feedback and we don't know where the cheese is, so
20 when it come to giving better direction, better input, we
21 need more information back in this two-way process. Thank
22 you very much.

23 CHAIRMAN YOUNG: Okay. Thank you. Ms. Fitzu?

24 MS. FITZU: Good afternoon. Joy Fitzu, San Luis
25 Obispo County Farm Bureau. Thank you for this chance to

1 speak this afternoon. I am representing over a thousand
2 of our Farm Bureau members in San Luis Obispo County that
3 are production agriculturists, and some of them were able
4 to attend in May, but as with your environmental people,
5 many of them don't have the luxury to come, so I'm
6 standing here talking on their behalf. And I want to
7 acknowledge and thank Mr. Young and the Board for their
8 comments at the end of the May meeting, and I definitely
9 appreciate Staff is beginning to look at some changes.

10 I do feel there's more things that need to be
11 looked at, such as education. I still think that is a
12 very major part of the program, and even though it's not
13 been -- it's been eliminated from the current one, I feel
14 that I was part of and worked with cooperative extension
15 in nine of those courses, and they were very, very
16 effective. You can't put a dipstick in and say this
17 caused this guy to do one better practice, but with new
18 people coming into the field, where do they get the
19 education? And it's not going to be, as Mr. Shimek said,
20 fee or free if you don't have a system that actually has
21 that as part of it. Many in the market have nowhere to
22 go.

23 I also want to support our agricultural smart
24 sampling/smart monitoring, because this is actually
25 something that started way before the waiver, where they

1 were doing stuff like this already, and I think
2 confidentiality, as has been stated before, is a very
3 positive incentive, because you realize you have an
4 opportunity to improve things without having a hammer over
5 your head. I'm not going to go any further, but in
6 conclusion, I know that some of the Board members wanted
7 these buttons after last May's meeting, so I'm going to
8 give them to Mr. Thomas to distribute to you, and just
9 remember, don't wave agriculture good-bye.

10 CHAIRMAN YOUNG: Okay. Thank you. Mr. Will --

11 MR. WILEY: Wiley. Wiley. Thank you for being here
12 today. This is great. I am a CCA, and we've had a chance
13 to meet with Monica on establishing targets, crop targets
14 and crop removal rates, and it's a pretty complex issue
15 when you look at the key critical crops that they're
16 focused on being strawberries, broccoli, lettuce,
17 cauliflower and celery, having each one of those things
18 having the potential to have parts of that plant removed
19 and other parts left in the field. So crop removal
20 targets is a pretty difficult standard to set, and I know
21 Monica's working with a group of CCAs to do that, and it's
22 going to be difficult task. I was concerned when I saw
23 that the extension for the 18-month extension was denied,
24 because it is going to take all of that to try to put that
25 kind of information together to be workable with your

1 plan.

2 The other part of this is I don't think there's
3 enough technology, people available as DCAs, to be able to
4 sign off these nutrient plants. There was one individual
5 that came to our CCA meeting in San Luis Obispo that was
6 from region five, and he's working with the dairy
7 industry. He's working with 110 dairies and he has 12
8 individuals working full time on these nutrient plants. I
9 have a grower that handles 140 different lots and blocks
10 with different crops, different soils, different types.
11 Can you imagine complexity in the issues you're faced
12 with? Now that person is probably going to need at least,
13 if it's 110 people, I mean, 112 people that do dairies,
14 what it's going to require to do 140 blocks for one grower
15 and the number of people it'll take to do an extensive
16 nutrient plant. I think it's really important that we
17 create obtainable metrics that are valued by all parties,
18 so thank you.

19 CHAIRMAN YOUNG: Thank you for your comments.

20 MR. WILEY: Thanks.

21 CHAIRMAN YOUNG: Anita Beety? B-E-E-T-Y? Okay.

22 It's either Tom, I think it's Tom Crowe from Carmel
23 Valley. Okay. Not here. Elaine Ruckel and then Cecil
24 Mills, John Beard, looks like Lois Robin. Someone didn't
25 put their name on here, but they're from Boulder Creek.

1 Okay.

2 FEMALE VOICE: (Inaudible).

3 CHAIRMAN YOUNG: Oh, that's -- they're -- this isn't
4 a name, it just says workshop. So, yeah. What is your
5 name? Terrell Carson? Okay. Go ahead, Ms. Ruckel.

6 MS. RUCKEL: Thank you. My name's Elaine Ruckel and
7 it's the first time I've ever done anything like this, and
8 it won't be the last.

9 CHAIRMAN YOUNG: Well, take a deep breath.

10 MS. RUCKEL: Thank you. Can you hear my heart
11 pounding? Here's a steward of mother earth, a mom and a
12 grandma. My children and grandchildren own a home located
13 directly across the street from Strawberry Fields in
14 Watsonville, and they get notices on their door from the
15 growers that they are going to be spraying, and they're
16 just state, you know, close windows and doors and stay
17 inside, and they have had children and my little grandson
18 gets fevers and rashes and diarrhea when this comes about,
19 and they have a new baby and we have no idea if there'll
20 be health issues there. So I'm very heartfelt about you
21 regulating and doing what you're doing and I really
22 appreciate what you're doing, and as members of the human
23 race, I think we need to stop extending and postponing and
24 delaying and do it now, and I'm kind of glad you only went
25 until March. That seems like a good thing.

1 I'm going to share with you some words on water,
2 since that's what we're talking about. Water is the
3 living matrix. Water is used for all cellular activity
4 and function. Water is critical for efficient kidney
5 function waste elimination. It controls our body
6 temperature. It's essential solvent and transport system
7 for nutrients and oxygen. It lubricates our lungs and
8 digestive tract, plus it cushions our joints. Water
9 protects your eyes. Water is what makes blood cells
10 circulate. Water comprises 20 percent of bone mass and 75
11 percent of body mass. So I think it's pretty important we
12 have healthy water and all of us have healthy water.

13 We're all one in this big, beautiful mother
14 earth and we all need to take care of each other. I don't
15 think you can put a price tag on human health and on
16 mother earth. No amount of money will rectify what
17 happened in the gulf where regulations were not met, and
18 no amount of money is worth jeopardizing our children and
19 grandchildren and their health and our own health.
20 Decline of water quality will put us in that type of
21 jeopardy. Thank you.

22 CHAIRMAN YOUNG: Question for you. When your family
23 has had health reactions, do you think it's from overspray
24 of pesticides?

25 MS. RUCKEL: I think it's from the --

1 CHAIRMAN YOUNG: Yeah.

2 MS. RUCKEL: Because they're right across the street
3 from it, and yeah, I do.

4 CHAIRMAN YOUNG: Did you call the Agricultural
5 Commissioner's office?

6 MS. RUCKEL: No. That's -- I was just telling -- no.
7 The kids have lived there for five years, and I've always
8 just kind of dealt with this, and now the kids --

9 CHAIRMAN YOUNG: Well, how have you dealt with it?

10 MS. RUCKEL: Just like, they think it's --

11 CHAIRMAN YOUNG: They just accept it?

12 MS. RUCKEL: It just didn't occur to us that we
13 should tell somebody about it, you know, about the
14 spraying --

15 CHAIRMAN YOUNG: Okay.

16 MS. RUCKEL: -- so, but it's occurred to us now,
17 so --

18 CHAIRMAN YOUNG: Okay. You should call the office.

19 MS. RUCKEL: Yes. That's why I'm here.

20 CHAIRMAN YOUNG: Okay.

21 MS. RUCKEL: That's the reason I'm here. I'm being
22 an activist in my old age.

23 CHAIRMAN YOUNG: Okay, good. All right. Thank you.

24 MS. RUCKEL: Thank you.

25 CHAIRMAN YOUNG: Cecil Mills?

1 MS. MILLS: Hi. Cecile. Thank you again. As a
2 former educator, I'd like to remind all of you of taking
3 tests in school. You are presented with information and
4 then you were evaluated. We've all gone through it. We
5 know how the process works. I'm encouraging you to
6 consider writing clear, measurable objectives followed by
7 an evaluation of those objectives to see if they were met,
8 just like we used to do in school. What happens if the
9 objectives are not met? You redesign the processes until
10 those objectives are met, and it's fairly simple. Writing
11 those objectives is key. How would you get exactly the
12 right language?

13 Well, one way to do that would be to create a
14 website where discussion area might allow for people to
15 put in suggestive language. They could suggest monitoring
16 methods. They could share implementation and processes
17 and it would create a knowledge base. Why would you do
18 that? Well, it would determine more of this action by
19 mutual discussion. It would certainly involve more
20 people. It would bring in diverse, thinking you would be
21 able to bring in multiple solutions, and it would
22 certainly enlarge your presence in the discussion on
23 water, because until, like, last week, I didn't know you
24 guys existed.

25 I live in one of those rent spots they showed on

1 the Google map where the well water is unusable due to
2 nitrates. This is one reason I'm here. You also have a
3 model for how to implement this with the State Organic
4 Certification System. You could do that for all farms and
5 it would employ more people. What a good idea. Thank
6 you.

7 CHAIRMAN YOUNG: Thank you for your comments. John
8 Beard?

9 MR. BEARD: Almost good evening, Board. I'm John
10 Beard and I've been farming for 30 years. I'm actually a
11 nursery grower. I don't think my kids will continue in my
12 footsteps. They're doing other things. But I realize
13 most everything I wanted to talk about has already been
14 targeted today, but I would like you to take your time
15 implementing the waiver. This is a problem and it's taken
16 100 years in the making, and it's certainly not something
17 that we can clean up overnight, as you probably know.
18 Give it time, please. Patience. Thank you.

19 CHAIRMAN YOUNG: Thank you for your comments. Lois
20 Robin?

21 MS. DASHADAN: Lois is with the Paraja River
22 Committee and had to leave.

23 CHAIRMAN YOUNG: Okay.

24 MS. DASHADAN: So I was going to speak in her place.

25 CHAIRMAN YOUNG: And who are you?

1 MS. DASHADAN: My name's Deirdre Dashadan.

2 CHAIRMAN YOUNG: Oh, you were the next card.

3 MS. DASHADAN: Okay.

4 CHAIRMAN YOUNG: So why don't you --

5 MS. DASHADAN: Yeah. I'll just --

6 CHAIRMAN YOUNG: (Inaudible).

7 MS. DASHADAN: Lois and a number of people live in
8 the Watsonville area and they've worked a long time on
9 restoring the Paraja River to health. It is an impaired
10 water body, and implementing these standards is critical
11 for restoring it as a healthy river. I'm sorry I don't
12 have as much detail as Lois had. Lois is also concerned
13 about cutting riparian vegetation along the river, and we
14 hope that the Board will find other ways to achieve these
15 goals that attacked Pajararian habitat. Particularly, Lois
16 wanted to speak about the impact --

17 CHAIRMAN YOUNG: (Inaudible) make these your
18 comments.

19 MS. DASHADAN: Okay.

20 CHAIRMAN YOUNG: I'm not letting you speak for her --

21 MS. DASHADAN: Okay.

22 CHAIRMAN YOUNG: -- because she's not here.

23 MS. DASHADAN: Then I'll talk about, Elkhorn Slough
24 is in the -- it is one of the bodies that receives this
25 impaired water, particularly nitrates. Elkhorn Slough is

1 severely atrophic. The Elkhorn Slough Foundation is very
2 concerned that it might tip over to the point where the
3 dissolved oxygen levels get so low that crabs and other
4 sea life in the slough will die. There are a number of
5 commercially important fish that breed in the estuary.
6 Flat fish, including flounder and halibut, feed on eel
7 grass, breed and spawn on eel grass beds, and their
8 concern that you might start seeing, you know, die-offs of
9 those particular species of fish.

10 There's a hundred sea otters that are present in
11 the Moss Landing Harbor at times. They eat the clams, you
12 know, so it's very critical for the health of the bay.
13 While the runoffs may not be impacting the entire area,
14 these estuaries and river mountains are one of the most
15 fertile areas, and they're critically important for the
16 entire ecosystem. Thank you.

17 CHAIRMAN YOUNG: Thank you for your comments. Carol
18 Carson followed by Richard Smith and Dave Cavanaugh and
19 Rick, I think it's Sourwine. Go ahead.

20 MS. CARSON: Carol Carson. I do some volunteering
21 with Coastal Watershed Council, which is located in this
22 wonderful county of Santa Cruz, the greatest place to
23 live. Some of the things that we do other than ongoing
24 analysis of the water is that we have events, and one of
25 these we had recently, a few months ago, that we call

1 Snapshot Day, and what people who care about the water
2 quality here from Big Sur and to all the way up to Half
3 Moon Bay is that we all get together on one particular
4 day, and this happens yearly, and we go to all of the
5 streams that our team has to do water analysis with, so
6 we're out in the rivers and the streams and the creeks,
7 and then we all put back our information. That
8 information is then sent out to an outside lab. It's
9 totally transparent. We don't have any dog in that fight,
10 you know, and it's perfectly open for anybody with the
11 public to see what we have found.

12 It's such an easy way to do things that I'm
13 amazed at agribusinesses talking to us about how hard it
14 is to do this. I mean, we'd be more than happy to show
15 them how easy it would be to put together this -- and
16 also, I really am concerned about their accountability.
17 Maybe I'm just not a trusting person, but I have seen
18 their track record and I don't see that the Farm Bureau
19 has acted in the best interest of the water quality. They
20 ask their members to please fight against the Clean Water
21 Act. They ask their members to please support the AB15,
22 whatever bill for offshore drilling, which, thank
23 goodness, our representatives are a lot smarter than
24 those, I guess, around the Gulf of Mexico, because we
25 defeated that bill. They've also decided that they think

1 that methyl iodide is a good thing, and as a matter of
2 fact, if I can quote from their website --

3 CHAIRMAN YOUNG: You'll have to wrap it up with your
4 quote. Go ahead.

5 MS. CARSON: They think that the registration of
6 methyl iodide provides California farmers with more
7 flexibility in providing safe, affordable food for
8 consumers. Am I correct, Mr. Young, that you have sent,
9 the Board has sent a letter to the governor opposed to
10 that?

11 CHAIRMAN YOUNG: Our agency?

12 MS. CARSON: Yeah.

13 CHAIRMAN YOUNG: It was, well (inaudible).

14 MS. CARSON: Who was that, that it was, yeah.

15 CHAIRMAN YOUNG: Yeah. We sent a letter to the
16 Department of Pesticide Regulation, I believe it was,
17 regarding that (inaudible).

18 MS. CARSON: So you are against that? All right.
19 Thank you.

20 CHAIRMAN YOUNG: Okay. Richard Smith? No Richard
21 Smith. Dave Cavanaugh? Okay. All right. Rick Sourwine?
22 Okay. Followed by Phoenix Artemisia and then Jim Madasera
23 and David Costa. Okay. Go ahead.

24 MR. SOURWINE: Good afternoon, Mr. Chair and members
25 of the Board. My name's Rick Sourwine. I'm a registered

1 civil engineer in three states. I have worked for over 30
2 years as a civil engineer. I'm a first generation avocado
3 grower.

4 CHAIRMAN YOUNG: Well, that doesn't, you know.

5 MR. SOURWINE: That's right. So I'm a rookie.

6 CHAIRMAN YOUNG: In this crowd --

7 MR. SOURWINE: I'm a rookie at this.

8 CHAIRMAN YOUNG: -- you're like the rest of us.

9 MR. SOURWINE: There you go.

10 CHAIRMAN YOUNG: I'm sorry.

11 MR. SOURWINE: I'm here today to share with you,
12 first of all, that I've had an opportunity in my career to
13 work closely with the LA Regional Board as the Director of
14 Environmental Programs for the United States Navy down in
15 Ventura County, the naval base in Ventura County, and in
16 that capacity, we were able to very successfully work to
17 remediate both surface and groundwater contamination, that
18 it resulted from many, many years of bad management
19 practices. That program was successful to the point that
20 the Secretary of the Navy and the department -- or the
21 Secretary of Defense awarded the Pollution Prevention
22 Program to our staff in 1995, and I was one of the first
23 recipients of the White House Closing the Circle Award in
24 1995.

25 That aside, I want to tell you that given my

1 experience working through regulatory issues, I'm
2 encouraged by what I've heard here today, but yet I also
3 have some concerns. I think the staff is headed in a right
4 direction when they start talking about tiered approaches,
5 and not one size fits all. I think that's absolutely
6 essential, because I can tell you that the impact of the
7 rules, as they are drafted right now on my
8 seven-and-a-half-acre avocado operation, is it would
9 result in removing over 10 percent of my trees from
10 production. It also would remove a lot of that vegetative
11 and riparian habitat that Mr. Shimek has said is so
12 important. And so there are areas that need to be
13 addressed in the rules, but I think the most important
14 thing for the Board to consider is that you can't eat this
15 elephant all in one bite.

16 CHAIRMAN YOUNG: And why would you have to remove 10
17 percent of your crop?

18 MR. SOURWINE: Because it would lie within 50 feet of
19 the creek. So as I understand the three-tier setup that
20 you have right now, if you lie within 50 feet of the
21 creek, you have to take the trees, or all crops out of
22 production within, in that --

23 CHAIRMAN YOUNG: I don't know if that's true or not,
24 but Staff will have to look at that --

25 MALE VOICE: Yeah.

1 CHAIRMAN YOUNG: -- unless you have an answer.

2 MALE VOICE: It's not true. We've talked to other
3 orchard owners over the past several months and explained
4 that what we want is vegetation in the riparian area, and
5 trees are good.

6 CHAIRMAN YOUNG: That's --

7 MALE VOICE: It may mean that you have to have a more
8 heavy ground cover in that 50-foot or 75-foot or 100-foot
9 buffer area than you have now, but we're certainly not
10 saying take trees out of the riparian area.

11 CHAIRMAN YOUNG: Okay. All right. Thank you for
12 your comments.

13 MR. SOURWINE: That's certainly encouraging, and the
14 one other element that I think is absolutely critical in
15 your considerations is that as you develop the rule, bite
16 off the pieces where you can have some success. Don't try
17 to come up with a rule that is totally comprehensive in
18 nature. Go where you can get some immediate success and
19 build a system where you have continued stakeholder
20 involvement so that you can build the trust that obviously
21 is lacking right now between the various parties in this
22 interest. This is a long-term marathon. It's not a
23 sprint.

24 CHAIRMAN YOUNG: That's what we're trying to do.
25 Thank you for your comments. Phoenix Artemisia? Okay.

1 Not here, or he's not here. Jim Madasera and then David
2 Costa after him.

3 MR. MADASERA: Good afternoon, Chairman and Board and
4 Staff. I, too, am a first-generation farmer, but I'm so
5 damn old I've lived longer than some two generations of
6 farmers. I've listened to a lot of speakers kind of talk
7 about the benefits of hedge runs and leafy buffer zones
8 and all of that stuff, and nobody's talked about food
9 safety, and I've been involved in food safety programs for
10 20 years, and the 2006 spinach wasn't the first one.
11 There were many others before that. That was just the one
12 that got the public notice.

13 Many of those conservation things, and the
14 company I represent, that I work for, does a great deal of
15 conservation efforts. We work with NRCS, with RCD, with
16 ACWA, with many other groups, in an attempt to preserve as
17 much conservation efforts as we can. The item that is
18 often forgotten is that conservation, vegetative treatment
19 systems, buffer zones, trees, riparian habitat, all
20 provide harbors for vectors of E. coli.

21 You've heard quoted how six meters or one meter,
22 six feet, would eliminate and filter out the E. coli from
23 the cow patty. That's true. Ken Tate did that research.
24 He says it's true. I believe it. What it doesn't do is
25 affect the crow that picked the grain from that cow patty

1 and then flew over a lettuce field and did his job on the
2 lettuce leaf. Those are the things that have to be
3 considered in here, and most of the speakers today who
4 approved food safety, it's a very low percentage. Cow
5 birds, crows, five percent. Pigs, four percent. Deer
6 mice, one to two percent. They all pack E. coli. If your
7 kid got E. coli from eating that lettuce, would you feel
8 that one percent was not worth talking about? Thank you
9 very much.

10 CHAIRMAN YOUNG: Thank you for your comments.

11 MALE VOICE: Mr. Shallcross has a question.

12 CHAIRMAN YOUNG: All right.

13 MR. SHALLCROSS: Hello.

14 CHAIRMAN YOUNG: Yes.

15 MR. SHALLCROSS: I have a question for you. How is
16 removing riparian buffer, or vegetative buffer, going to
17 keep a crow from eating a kernel from a cow patty and then
18 flying over your field?

19 MR. MADASERA: It's not. But you don't need to have
20 a row of trees right along your field, and we have not
21 removed any of these, okay? What I'm telling you is that
22 when your provide harbridge, you're providing, you're
23 going to cause a problem, and I don't know how you prevent
24 a crow from flying over the field.

25 MALE VOICE: Scarecrows.

1 MR. MADASERA: Pardon? Shotguns don't work. They're
2 smarter than I am. They never get close to you when you
3 have a shotgun. Was that it?

4 MALE VOICE: That was it. Thank you.

5 MR. MADASERA: Thank you very much.

6 CHAIRMAN YOUNG: Okay. Jim Moore? No? Oh, yeah.
7 You know, I'm trying to --

8 MR. MOORE: Well, I have to disagree with the fellow
9 in front of me. I'm Jim Moore and I represent a company
10 called Fido Remediation Engineering, and we basically just
11 want to clean up the water, and we think the way to do it
12 is to start with the runoff with a riparian buffer that's
13 engineered to do that. That should be monitored. I'd
14 like to propose the project by the project at each county.
15 If there are any farmers who would work with us, then we
16 would set that up, do all the planning, and figure out how
17 it's going to happen, and that's pretty much the basics.
18 I agree in most parts with the channel keeper guy, the
19 coast -- excuse me, the coast keeper, and I think it's
20 time to start cleaning it up and stop fussing about who's
21 going to do what, and I would like to move in that
22 direction. Thank you.

23 CHAIRMAN YOUNG: Thank you. Okay. David Costa
24 followed by Bill Light, Darlene Den, Sarah Greene, April
25 Mackey. Yeah. Go ahead.

1 MR. COSTA: Thank you, Chairman Young and Board
2 members and Staff. My name's David Costa. I'm a farmer
3 in the Salinas Valley. This morning, Staff made a comment
4 that nitrate loading that is going on now may not show up
5 in the groundwater data for 20 years, and I just wanted to
6 ask, wouldn't the reverse also be true, that the progress
7 and any reductions in nitrate loading now or that has
8 occurred may not be reflected in the same data for 20
9 years? I think, just once, I'd like to hear both
10 scenarios presented at the same time.

11 With regards to wildlife, I think as growers
12 we're desperate to find a balance. Until you've gotten a
13 call from the FDA saying that they're coming in the
14 morning and that you may have supplied product implicated
15 in a food illness outbreak, you really don't know what
16 it's like. A year and a half ago, a friend of mine had
17 them on his ranch every day for three full weeks after his
18 company was implicated in an outbreak, and he said it felt
19 like a three-week colonoscopy. Okay? And that was seven
20 days a week. They didn't take off on Saturdays and
21 Sundays.

22 CHAIRMAN YOUNG: Well, I hope that was with the
23 medication that they give you.

24 MR. COSTA: Yeah. They even had a dog, a trained dog
25 name Zero that would sniff out feces or animal droppings,

1 and then they would dig around until they found it.
2 They'd bag it and they'd send it off to the lab, so that's
3 the extent that things have gotten to. To this day, 18
4 months later, he still hasn't gotten closure on the issue
5 with regards to his potential association with this
6 outbreak. So the issue is real.

7 My most recent call came two months ago
8 involving a positive test for salmonella, of which I was
9 one of three suppliers to a particular processor, and it
10 was stated that birds were the likely carrier, and the FDA
11 arrived prepared to collect 300 environmental samples from
12 the area surrounding my one 10-acre field where the
13 product came from, and that included soil from rodent
14 holes and runways and searches of water bodies nearby,
15 bird activity, and droppings. So it's not just an E. coli
16 issue, as the salmonella issue showed. The food safety
17 issue is real, the liability to growers is real, and we're
18 desperate to find a balance.

19 And lastly, I'd just like to make sure that
20 everybody realizes that not all parcels adjacent to a
21 water body slope to the water body, and so a blanket
22 buffer application, in some instances, serves no purpose
23 with surface water runoff.

24 CHAIRMAN YOUNG: Okay. Thank you for your comments.
25 Bill Light?

1 MR. LIGHT: Thank you, Chairman Young. Before I
2 start, I might offer a little bit of -- you asked a
3 question a while back when the gentleman from Monterey
4 County was here about the drop in fertilizer sales, or
5 nitrogen, tons of nitrogen sold, I believe, the CDF8
6 data --

7 CHAIRMAN YOUNG: Yeah.

8 MR. LIGHT: -- and just a little bit of an expert
9 opinion. In '08, there was a huge price increase on
10 product which drove sales down. Farmers were looking,
11 obviously, to get by as low as possible, and a federal
12 judge had an order over in Central Valley, which shut down
13 quite a bit of farmland, thousands and thousands of acres,
14 so that might help explain the drop in nitrogen, so --

15 CHAIRMAN YOUNG: Okay.

16 MR. LIGHT: -- I thought I'd just offer that up to
17 you.

18 CHAIRMAN YOUNG: Thank you.

19 MR. LIGHT: So thank you, Chairman Young and members
20 of the Board. I appreciate your time. I got to spend a
21 little bit of time with you down in San Luis as well, at
22 the last workshop meeting, and, you know, I just want to
23 state, there's a lot of people that feel, you know,
24 Central Coast farmers are some of the best people in the
25 world. They're innovative, they live on the land, they

1 act as stewards of their land. They hunt, fish, bike,
2 drink the water, swim in the lakes, swim in the rivers
3 just like everybody else, and I think it's shown today
4 through some of the presentations that not just the ag
5 presentation, but other groups that people in agriculture,
6 and farmers, in particular, are very much concerned about
7 the land, the water and sustainability.

8 Many of them are multi-generational farmers.
9 They want their sons and daughters to go on living the
10 dream that they've been able to realize, and what's at
11 stake here, for a lot of us, I represent a fertilizer
12 company, I'll admit that straight up, one of several in
13 the Salinas Valley. Those dreams are, in a lot of
14 people's minds are being, they're in great jeopardy. We
15 have an unelected, bureaucratic body drafting policy in
16 accordance with legislative law that is literally
17 jeopardizing the business, a business that creates
18 billions and billions of dollars, supports tens of
19 thousands of families, and makes their livelihood, and we
20 love to live here.

21 We love the area and it's just very worrisome
22 that the aggressive agenda being set forth, you know, like
23 several people have already said, it took 100 years for us
24 to get to where we are now, and to think that in two,
25 four, or six years it's going to be cleaned up is just

1 simply unrealistic, and it's not fair, and my fear is
2 that, obviously, is that if the dream dies and everybody
3 leaves and they go to Mexico or they go to South America
4 or Arizona or wherever else, that once it's gone, it's
5 gone. It's not coming back, and as a native son of
6 California, I won't get into all the generations; there've
7 been many people longer than my family, but the -- I am
8 second generation. I don't want that dream to die and I
9 don't want the lovely people, the really good people of
10 the Salinas Valley and the Central Coast in general, to
11 lose their dreams and to lose a very valuable industry,
12 not only to our local community but to the state overall.
13 Thank you for the time.

14 CHAIRMAN YOUNG: Thank you. Darlene Den and then
15 Sarah Greene.

16 MS. DEN: Good afternoon, Board members. Darlene
17 Den. I live in Watsonville, the city proper. Thank you
18 for being in my hometown. It's -- you look kind of
19 interesting up there when I'm used to looking at the City
20 Council, so it's new faces. I wanted to take this
21 opportunity to hit a couple points, and those are process
22 points, because what I do is Agriculture Public Policy and
23 I sit in meetings. There's a couple things that I think
24 are really important. Usually when people sit in
25 meetings, you do hear a very diverse, and you hear themes,

1 but there's also room for compromise within those themes,
2 and in a regulatory environment, I just think that the
3 carrot approach being one of the tools is really an
4 important approach, and since I personally, I'm not
5 embarrassed. I'll tell you I'm 52 years old and I started
6 working on public policy in 1974, my junior year in high
7 school, and my first project was the Pajaro River and the
8 Flood Control Project, and we're still working on it, so I
9 understand that things take a long time.

10 So that leads me into why the process is so
11 disconcerting to me. Agriculture, by statute, and your
12 lawyer's gone, but she didn't reaffirm this at yesterday's
13 meeting, is that we're under non-point source laws, and I
14 would just really ask you, when you look in cooperation
15 and you look at your regulatory framework, and I caution
16 you to not take such a strong point source approach.
17 Well, I do know you have authority, and I respect that
18 authority. I would just, you know, caution you to step
19 back and realize we will probably do more by finding the
20 on-the-ground, mud-in-the-boots solutions. That's how you
21 do water quality. And while I appreciate that point
22 source or going directly at an issue, and assuming that it
23 will be one, my dad, who's 90 years old, and his family
24 can go back to the 1600s, not in California but Nebraska
25 and Germany, you know, he always said when you fixed one

1 thing on a farm, three more things went wrong. So I thank
2 you for your time and I would just ask you to look at that
3 process.

4 CHAIRMAN YOUNG: Okay. And Ms. Den, just so you
5 know, what Frances said yesterday was that ag is not
6 considered a point source under the Federal Clean Water
7 Act.

8 MS. DEN: And I know the (inaudible).

9 CHAIRMAN YOUNG: In state law, there is not that
10 distinction.

11 MS. DEN: I understand, Jeffrey.

12 CHAIRMAN YOUNG: Okay.

13 MS. DEN: I just ask you to look at it in a broader
14 framework.

15 CHAIRMAN YOUNG: Okay.

16 MS. DEN: Thank you.

17 CHAIRMAN YOUNG: All right. Ms. Breen, now, you're
18 not going to speak on behalf of the CCWQP because they've
19 already had their allotted time, so if you have something
20 else that you want to share with us, remember the public,
21 that's fine, but, you know, that was part of the deal, was
22 that we'd have this collaborative, grouped effort.

23 MS. BREEN: Okay. Excuse me. Then I'll just go ahead
24 and ask whether or not I can speak to this in this forum,
25 and if not, I'll sit down. I just wanted to offer, based

1 on the questions that were asked of Dr. Hart's Following
2 the Eye presentation, I was concerned that there was some
3 aspects of my presentation that needed clarification, and
4 I was going to make those clarifications, but if the time
5 flat is up, then I --

6 CHAIRMAN YOUNG: No. I don't think so. I mean, I
7 don't think that there was any clarification needed.

8 MS. BREEN: Okay.

9 CHAIRMAN YOUNG: Okay.

10 MS. BREEN: Thanks.

11 CHAIRMAN YOUNG: Thank you. Unless I'm wrong.
12 Mr. Shallcross?

13 MR. SHALLCROSS: No. That's fine. But, you know, if
14 you do want to write us a letter of clarification, that
15 would be welcome, you know, just stating what you thought
16 needed to be clarified.

17 MS. DASHARDAN: I --

18 CHAIRMAN YOUNG: I'm just trying to make sure we get
19 out of here by 5:00, so otherwise --

20 MS. DASHARDAN: I just wanted to say real briefly --

21 CHAIRMAN YOUNG: Is this April Mackey?

22 MS. DASHARDAN: I -- no, I'm sorry. I just wanted to
23 say real briefly, I had some remarks about Santa Cruz
24 Agriculture. They have existing riparian buffers and I'm
25 going to send them a letter to them about it.

1 CHAIRMAN YOUNG: (Inaudible).

2 MS. DASHARDAN: But that was the remarks that I
3 prepared, but I gave Lois's remarks instead.

4 CHAIRMAN YOUNG: Okay. And your name?

5 MS. DASHARDAN: Deirdre Dashadan.

6 CHAIRMAN YOUNG: Oh, okay. All right. All right.
7 April Mackey?

8 MS. MACKEY: Good evening, Chairman Young, Board and
9 Staff. My name is April Mackey and I am a grower here in
10 the Salinas Valley. We grow all the way from Castroville
11 to San Ardo with over 3,000 acres. I am the Food Safety,
12 Water Quality and Organic Programs Manager, so I manage
13 all three aspects that everybody has discussed here today.
14 But I have a few recommendations in moving forward, so
15 it's probably nice that I'm, I guess, one of the last ones
16 to speak.

17 From a grower's perspective, I'd like you to
18 consider working towards your Board's recommendation from
19 the May workshop to pursue and work with agriculture and
20 other entities to develop an achievable solution. The ag
21 industry has provided you with much criticism, technical
22 information and examples of successful solutions. It
23 would be extremely beneficial for each of you to come out
24 on to our operations, get your boots dirty, and to become
25 educated and knowledgeable about all of the technical and

1 practical aspects that would help answer many of the
2 concerns and questions that you guys posed today.

3 Myself and other growers have invited you out to
4 our operations in the past, and I challenge your board to
5 take us up on these offers in order to help guide you in
6 making achievable and logical decisions. Farmers want to
7 work with you and comply with regulations to improve water
8 quality, but we want to do so in a logical and somewhat
9 economical manner, because we don't have a choice of which
10 wells we use. We use what we have. You may not think
11 that the ag proposal is perfect, but it has many more
12 achievable standards and recommendations than the staff's
13 original proposal. I look forward to you taking me up on
14 this challenge and working with my fellow farmers. Thank
15 you.

16 CHAIRMAN YOUNG: Thank you for your comments. Last
17 speaker is Gustavo Gonzalez.

18 MR. GONZALEZ: Good afternoon, Chairman Young and
19 Board members. My name is Gustavo Gonzalez and I am an
20 analyst with the Santa Cruz County Supervisor Tony
21 Kappas's office, and the supervisor regrets he couldn't
22 attend today because he had a previously planned trip, but
23 nevertheless, he's just asked me to, you know, hear the
24 testimony and just make a few comments on his behalf.
25 First, you know, it can't be disputed that water quality

1 is a concern, and certainly water supply is a concern in
2 this area, but also, it's important to recognize in terms
3 of any planned regulation that you plan to implement that
4 there're already some regulations that exist in Santa Cruz
5 County, as you may know, that Santa Cruz County has a
6 reputation of being environmentally conscious and there
7 are, for example, there's an existing commission on the
8 environment.

9 There's also an agricultural policy advisory
10 committee, and there's already existing regulation with
11 respect to buffers between ag uses, land uses, and as an
12 earlier speaker had mentioned, riparian corridor buffers,
13 and that varies depending on the type of water body, so I
14 think it's important to recognize that so there's isn't
15 any duplicate effort, or that perhaps maybe the regulation
16 that exists, you know, it serves well, maybe, you know,
17 for the Board to kind of look at that.

18 CHAIRMAN YOUNG: And is that buffer geared towards
19 water quality protection or just some other adjacent land
20 use practice?

21 MR. GONZALEZ: I know what -- it resulted -- it came
22 about as a result of environmental awareness back in the
23 70s, so it's been in existence for a long period of time.
24 I don't know if it's been amended over time, but, you
25 know, it speaks to a few mural streams, perennial streams,

1 lakes, and arroyos, so depending on the type of water
2 body, and also sometimes the slope, it actually varies.

3 CHAIRMAN YOUNG: Okay.

4 MR. GONZALEZ: Second, the supervisor thought it was
5 important --

6 CHAIRMAN YOUNG: Go ahead.

7 MR. GONZALEZ: -- thank you -- just to recognize the
8 current state of the economy. The supervisor district
9 includes Watsonville, the outlying area of the Pajaro
10 Valley, and we have a high unemployment rate, of, you
11 know, upwards of 20 percent, so we ask that you really
12 take that into consideration, in terms of the policy
13 that's implemented, and also the timing of any policy that
14 might have to come in to play.

15 Thirdly, enforcement, because again, Santa Cruz
16 County is kind of a leader in environmental awareness and
17 environmental enforcement. Sometimes, environmental
18 enforcement falls short in times of deficits, and
19 recently, the county made, as you may know, a \$17 million
20 cut to their budget, and so I think that's important to
21 recognize, because that certainly would translate to the
22 state enforcement, and so practical, in summary, it's
23 important just to consider the, certainly, water quality's
24 important, but we should, it should be certainly a lab
25 force sustainable land, local water supply, so that could

1 probably be tied in to the local issue here with respect
2 to water supply that's been going on, and also, please
3 take in consideration the economics, the impact that it
4 may have on the area.

5 CHAIRMAN YOUNG: Thank you for your comments.

6 MR. GONZALEZ: Thank you.

7 BOARD MEMBER: I have a question.

8 CHAIRMAN YOUNG: Yes.

9 BOARD MEMBER: Please, a couple questions.

10 CHAIRMAN YOUNG: Certainly.

11 BOARD MEMBER: Let's see. What was the first one?

12 The -- perhaps our staff has done this already and I'm not
13 aware of it, but have you compared your riparian buffer
14 requirements to our draft requirements?

15 MR. GONZALEZ: You know, I haven't. I don't have the
16 specifics. My understanding is it's 100 feet that was --

17 BOARD MEMBER: Well, it's variable.

18 MR. GONZALEZ: Okay. Okay.

19 BOARD MEMBER: But you haven't compared those?

20 MR. GONZALEZ: No. We don't have the (inaudible).

21 BOARD MEMBER: If we haven't done that already, we
22 will do that.

23 MR. GONZALEZ: Okay.

24 BOARD MEMBER: Second question was we've had comments
25 that, you know, that such a regulation would constitute a

1 regulatory taking. Were you sued or otherwise, did you
2 have claims against you for, or have you, for regulatory
3 taking, with having that regulation in place?

4 MR. GONZALEZ: Well, this regulation has been in
5 place since the 1970s. I will tell you that they are, I
6 know there is existing land where the county had
7 recognized what they call grandfather rights, because the
8 land use that had existed predated, you know, the -- say,
9 in this case, the riparian corridor. But I think it's
10 very rare and there're only a few exceptions where that's
11 found, I believe, in the, at least in the 4th District of
12 Santa Cruz County.

13 BOARD MEMBER: So the answer to my question is you
14 haven't had any claims of regulatory taking?

15 MR. GONZALEZ: You know, I probably can't speak
16 definitively to that question. Certainly, I've worked
17 with the supervisor, approaching five years. In that
18 amount of time, I've not been informed of any claims.

19 BOARD MEMBER: Okay. Thanks.

20 CHAIRMAN YOUNG: All right. Thank you.

21 MR. GONZALEZ: All right. Thank you.

22 CHAIRMAN YOUNG: Michelle Cross?

23 BOARD MEMBER: Oh, no. I was just going to say, it
24 may be worthwhile to have our staff get in touch with
25 their county council to look into that issue --

1 CHAIRMAN YOUNG: All right.

2 BOARD MEMBER: -- and whether there's been any
3 claims.

4 CHAIRMAN YOUNG: Probably what happened after the
5 ordinance was passed, you know, would be my guess.

6 BOARD MEMBER: But they would have records,
7 hopefully.

8 CHAIRMAN YOUNG: Yeah. Okay. Well, that -- that --
9 thanks. Okay. That concludes public comment on this.
10 It's up to the Board to --

11 (Conclusion of Recorded Material.)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

TRANSCRIPTIONIST'S CERTIFICATE

I, TERRI HARPER, do hereby certify:

That the foregoing audiotaped proceeding was received and transcribed into typewriting under my direction and supervision;

And I hereby certify that the foregoing transcript is a full, true and correct transcript of the audiotaped recording given to me.

I further certify that I am neither counsel for nor related to any party to said action, nor anyway interested in the outcome thereof.

In witness thereof, I have hereunto subscribed my name this 28th day of December, 2010.

Terri Harper

Terri Harper, Transcriptionist



1 SOMACH SIMMONS & DUNN
A Professional Corporation
2 THERESA A. DUNHAM, ESQ. (SBN 187644)
500 Capitol Mall, Suite 1000
3 Sacramento, CA 95814
Telephone: (916) 446-7979
4 Facsimile: (916) 446-8199

5 Attorneys for Petitioners GROWER-SHIPPER
ASSOCIATION OF CENTRAL CALIFORNIA,
6 GROWER-SHIPPER ASSOCIATION OF SAN LUIS
OBISPO AND SANTA BARBARA COUNTIES, and
7 WESTERN GROWERS



8
9
10 BEFORE THE
11 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

12
13 In the Matter of the Petition of Grower-Shipper
Association of Central California, Grower-
14 Shipper Association of San Luis Obispo and
Santa Barbara Counties, and Western Growers
15 for Review of Action and Failure to Act by
Central Coast Regional Water Quality Control
16 Board.

SWRCB/OCC File No. _____
GROWER-SHIPPER ASSOCIATION OF
CENTRAL CALIFORNIA, GROWER-
SHIPPER ASSOCIATION OF SAN LUIS
OBISPO AND SANTA BARBARA
COUNTIES, and WESTERN GROWERS'
REQUEST FOR STAY AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF
[Wat. Code, § 13320]

17
18
19
20
21 Pursuant to Water Code sections 13320 and 13321, and title 23, section 2053 of the
22 California Code of Regulations, the Grower-Shipper Association of Central California, Grower-
23 Shipper Association of San Luis Obispo and Santa Barbara Counties, and Western Growers
24 (Petitioners) hereby request a stay of certain provisions of Order No. R3-2012-0011 *Conditional*
25 *Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands* (Conditional
26 Waiver), Order No. R3-2012-0011-01 *Monitoring and Reporting Program for Tier 1 Dischargers*
27 *Enrolled Under the Conditional Waiver of Waste Discharge Requirements For Discharges from*
28 *Irrigated Lands* (Tier 1 MRP), Order No. R3-2012-0011-02 *Monitoring and Reporting Program*

1 *for Tier 2 Dischargers Enrolled Under the Conditional Waiver of Waste Discharge Requirements*
2 *for Discharges from Irrigated Lands (Tier 2 MRP), and Order No. R3-2012-0011-03 Monitoring*
3 *and Reporting Program for Tier 3 Dischargers Enrolled Under the Conditional Waiver of Waste*
4 *Discharge Requirements for Discharges from Irrigated Lands (Tier 3 MRP) (collectively, MRP*
5 *Orders), which were adopted by the Regional Water Quality Control Board, Central Coast Region*
6 *(Central Coast Water Board) on March 15, 2012. The Conditional Waiver and MRP Orders are*
7 *attached as Exhibits A through D, respectively, to Grower-Shipper Association of Central*
8 *California, Grower-Shipper Association of San Luis Obispo and Santa Barbara Counties, and*
9 *Western Growers' Petition For Review and Statement of Points and Authorities in Support*
10 *Thereof (Petition), filed concurrently herewith. In the Petition, Petitioners challenge the Central*
11 *Coast Water Board's adoption of the Conditional Waiver and MRP Orders, the Central Coast*
12 *Water Board's failure to properly consider the alternative proposed by agricultural interests,*
13 *including the Petitioners, and certain provisions of the Conditional Waiver and MRP Orders.*

14 Petitioners seek this stay on behalf of their members who are subject to certain provisions
15 in the Conditional Waiver and MRP Orders, which are specifically identified in section B below.
16 Petitioners' members include, among others, owners and operators of irrigated lands in the
17 Central Coast Region of California, who are considered to be agricultural dischargers under the
18 terms of the Conditional Waiver. (Conditional Waiver, Attachment A, p. 86; see Wat. Code,
19 § 13200(c) [definition of Central Coast Region.]) Many of Petitioners' members will be
20 subjected to the prescriptive Conditional Waiver provisions that apply to all farms/ranches in the
21 Central Coast Region and additional requirements will apply to farms/ranches categorized as
22 Tier 2 or Tier 3. Compliance with the provisions identified in this Stay Request while the State
23 Water Resources Control Board (State Water Board) considers the Petition will impose
24 substantial economic harm and immediate exposure to legal liability for agricultural dischargers
25 in the Central Coast.

26
27
28

1 On behalf of their members, Petitioners seek a stay of various provisions of the
2 Conditional Waiver and MRP Orders that are improper and unsupported. Petitioners request that
3 any such stay take effect as of the effective date of the Conditional Waiver and MRP Orders until
4 the State Water Board takes final action on the Petition.

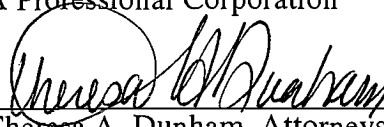
5 Concurrent with this Stay Request, Petitioners submit several declarations.¹ The Stay
6 Request and supporting declarations demonstrate that a stay is appropriate in this case because:
7 (1) the stay will prevent substantial harm to Petitioners, their members, and the public interest;
8 (2) the stay will not cause substantial harm to other interested persons or the public interest; and
9 (3) the Petition raises substantial questions of fact or law. (See Cal. Code Regs., tit. 23,
10 § 2053(a)(1)-(3).) In general, to comply with the Conditional Waiver and MRP Orders,
11 Petitioners' members must hire consultants, evaluate nitrate loading risks, prepare surface water
12 sampling and analysis plans, set aside riparian buffer areas, install back flow prevention devices
13 to irrigation systems, and immediately comply with all applicable water quality standards. In
14 short, absent a stay, Petitioners' members must spend a significant amount of private resources on
15 complying with the Conditional Waiver and MRP Orders *before* the State Water Board can
16 resolve the Petition. In addition, absent a stay, Petitioners' members are exposed to legal liability
17 due to noncompliance with water quality standards. The Memorandum of Points and Authorities
18

19 ¹ See Declaration of Peter C. Aiello in Support of Grower-Shipper Association of Central California, Grower-Shipper
20 Association of San Luis Obispo and Santa Barbara Counties, and Western Growers' Request For Stay (Aiello Decl.);
21 Declaration of Bob Campbell in Support of Grower-Shipper Association of Central California, Grower-Shipper
22 Association of San Luis Obispo and Santa Barbara Counties, and Western Growers' Request For Stay (Campbell
23 Decl.); Declaration of David Costa in Support of Grower-Shipper Association of Central California, Grower-Shipper
24 Association of San Luis Obispo and Santa Barbara Counties, and Western Growers' Request For Stay (Costa Decl.);
25 Declaration of Dirk Giannini in Support of Grower-Shipper Association of Central California, Grower-Shipper
26 Association of San Luis Obispo and Santa Barbara Counties, and Western Growers' Request For Stay (Giannini
27 Decl.); Declaration of Michael L. Johnson in Support of Grower-Shipper Association of Central California, Grower-
28 Shipper Association of San Luis Obispo and Santa Barbara Counties, and Western Growers' Request For Stay
(Johnson Decl.); Declaration of Robert Martin in Support of Grower-Shipper Association of Central California,
Grower-Shipper Association of San Luis Obispo and Santa Barbara Counties, and Western Growers' Request For
Stay (Martin Decl.); Declaration of Gary L. McKinsey in Support of Grower-Shipper Association of Central
California, Grower-Shipper Association of San Luis Obispo and Santa Barbara Counties, and Western Growers'
Request For Stay (McKinsey Decl.); Declaration of Claus Suverkropp in Support of Grower-Shipper Association of
Central California, Grower-Shipper Association of San Luis Obispo and Santa Barbara Counties, and Western
Growers' Request For Stay (Suverkropp Decl.); and, Declaration of Lowell Zelinski in Support of Grower-Shipper
Association of Central California, Grower-Shipper Association of San Luis Obispo and Santa Barbara Counties, and
Western Growers' Request For Stay (Zelinski Decl.).

1 following identifies the specific provisions of the Conditional Waiver and MRP Orders that the
2 Petitioners' seek to stay, and further demonstrates that such a stay is justified.

3 SOMACH SIMMONS & DUNN
4 A Professional Corporation

5 DATED: April 16, 2012

6 By: 
7 Theresa A. Dunham, Attorneys for Petitioners
8 Grower-Shipper Association of Central California,
9 Grower-Shipper Association of San Luis Obispo and
10 Santa Barbara Counties, and Western Growers

11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 Pursuant to Water Code sections 13320 and 13321, Petitioners concurrently file their
13 Petition related to the Conditional Waiver and MRP Orders. This Stay Request satisfies the
14 requirements of title 23, section 2053 of the California Code of Regulations.

15 **A. STATEMENT OF FACTS**

16 The Central Coast Water Board's process for adoption of the Conditional Waiver spanned
17 over two years. It was also fairly convoluted. To begin, a stakeholder process was initiated by
18 Central Coast Water Board staff and others to discuss issues for renewal of the 2004 Conditional
19 Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands (2004 Agricultural
20 Order). But the process broke down and ended in 2009. In response to the abandoned
21 stakeholder process, Central Coast Water Board staff prepared and then released a Preliminary
22 Draft Agricultural Order on February 1, 2010. After holding two public workshops and receiving
23 hundreds of comment letters, the Central Coast Water Board then released a draft order on
24 November 19, 2010, for public review and comment. The draft order issued on November 19,
25 2010, was subsequently revised, and new versions dated March 17, 2011, and September 1, 2011,
26 were released by Central Coast Water Board staff. The September 1, 2011 version, with some
27 minor proposed changes, was presented to the Central Coast Water Board on March 14, 2012, for
28 its consideration. Between September of 2011 and March 14, 2012, the Central Coast Water
Board was unable to take any final action on the Conditional Waiver because there was not a
quorum of members eligible to consider this item.

1 Concurrently, in response to the Central Coast Water Board's publicly distributed draft
2 orders, a coalition of agricultural organizations, including Petitioners, developed and submitted
3 various versions of a variable alternative for Central Coast Water Board consideration, each
4 version building upon the previous based on comments received. The first alternative was
5 submitted on December 3, 2010. Subsequently, Petitioners and other agricultural organizations
6 presented a more comprehensive alternative in redline format to the Central Coast Water Board at
7 a panel hearing held on March 17, 2011, and additional revisions at its subsequent panel hearing
8 on May 4, 2011. At the May 4, 2011 hearing, Central Coast Water Board staff were directed to
9 make changes in a manner consistent with that provided by Central Coast Water Board members
10 taking into consideration Board member comments given at the March 17 and May 4, 2011
11 hearings.

12 This Central Coast Water Board direction resulted in the preparation of a Staff
13 Addendum, and public notice and review with respect to the agricultural alternative. That public
14 comment period closed on August 1, 2011. Subsequently, the September 1, 2011 draft was
15 released for consideration at a hearing scheduled for September 1, 2011. However, due to a lack
16 of quorum, the September 1, 2011 hearing was canceled and nothing was publicly scheduled on
17 this item again until February 1, 2012, which was a workshop for the benefit of new Central
18 Coast Water Board members. The matter was then scheduled for Central Coast Water Board
19 consideration on March 14-15, 2012.

20 At the March 15, 2012 hearing, and after the matter was turned over to the Central Coast
21 Water Board, Board Member Johnston presented additional amendments for Central Coast Water
22 Board consideration. According to Board Member Johnston, he had prepared these amendments
23 in advance with assistance from the Central Coast Water Board's Executive Officer Roger Briggs
24 (Executive Officer Briggs) and legal counsel Ms. Frances McChesney (Counsel McChesney).
25 Ultimately, after some discussion, the Central Coast Water Board adopted the Conditional Waiver
26 and MRP Orders with Board Member Johnston's amendments and others. The origins of the
27 amendments, which are addressed in the Petition, raise significant issues with respect to improper
28 ex parte contacts and violations of due process. For purposes here, Petitioners seek immediate

1 relief for their members of the most harmful provisions that expose agricultural dischargers to
2 excessive economic harm as well as immediate liability while the Petition is considered by the
3 State Water Board. The questionable process for adoption, as well as many other substantive
4 issues raised by Petitioners, will be more fully considered as part of the Petition.

5 **B. PROVISIONS PETITIONERS SEEK TO STAY**

6 To avoid immediate harm to their members, Petitioners request a stay of the following
7 provisions:

8 1. Conditional Waiver Provision 22 of Part B, General Conditions and Provisions for
9 All Dischargers – Tier 1, Tier 2, and Tier 3, which requires all dischargers to immediately
10 “comply with applicable water quality standards, as defined in Attachment A, protect the
11 beneficial uses of waters of the State and prevent nuisance as defined in Water Code
12 section 13050.” (Conditional Waiver, p. 18);

13 2. Conditional Waiver Provision 23 of Part B, General Conditions and Provisions for
14 All Dischargers – Tier 1, Tier 2 and Tier 3, which requires all dischargers to immediately
15 “comply with applicable provisions of the Central Coast Region Water Quality Control Plan
16 (Basin Plan) and all other applicable water quality control plans as identified in Attachment A.”
17 (Conditional Waiver, p. 18);

18 3. Conditional Waiver Provision 31 of Part B, General Conditions and Provisions for
19 All Dischargers – Tier 1, Tier 2 and Tier 3, which requires all dischargers to install and/or
20 maintain back flow prevention devices for any irrigation system that is used to apply fertilizers,
21 pesticides, fumigants, or other chemicals by October 1, 2012 (Conditional Waiver, pp. 19-20);

22 4. Conditional Waiver Provision 39 of Part B, General Conditions and Provisions for
23 All Dischargers – Tier 1, Tier 2 and Tier 3, which requires all dischargers to immediately
24 “a) maintain existing, naturally occurring, riparian vegetative cover (such as trees, shrubs, and
25 grasses) in aquatic habitat areas as necessary to minimize the discharge of waste; and b) maintain
26 riparian areas for effective streambank stabilization and erosion control, stream shading and
27 temperature control, sediment and chemical filtration, aquatic life support, and wildlife support to
28 minimize the discharge of waste;” (Conditional Waiver, p. 20);

1 5. Subsection g of Conditional Waiver Provision 44 of Part B, General Conditions
2 and Provisions for All Dischargers – Tier 1, Tier 2, and Tier 3, which requires all dischargers to
3 describe and include results of methods used to verify practice effectiveness and compliance with
4 this Order by October 1, 2012 (Conditional Waiver, p. 22);

5 6. Conditional Waiver Provision 67 of Part E, Additional Conditions that Apply to
6 Tier 2 and Tier 3 Dischargers, which requires dischargers meeting the criteria or designation as
7 Tier 2 and/or Tier 3 to file by October 1, 2012 (and annually thereafter), an Annual Compliance
8 Form that includes all of the information requested, which is identified in the Tier 2 MRP and
9 Tier 3 MRP (Conditional Waiver, p. 27);

10 7. Conditional Waiver Provision 68 of Part E, Additional Conditions that Apply to
11 Tier 2 and Tier 3 Dischargers, which requires dischargers meeting the criteria or designation as
12 Tier 2 and/or Tier 3 to file by October 1, 2012, their determination of nitrate loading risk factor(s)
13 in accordance with requirements specified in the Tier 2 MRP and Tier 3 MRP, and to report by
14 October 1, 2012, the nitrate loading risk factors and overall Nitrate Loading Risk level calculated
15 for each ranch/farm or nitrate loading risk unit in the Annual Compliance Form (Conditional
16 Waiver, p. 28);

17 8. Conditional Waiver Provision 69 of Part E, Additional Conditions that Apply to
18 Tier 2 and Tier 3 Dischargers, which requires dischargers meeting the criteria or designation as
19 Tier 2 and/or Tier 3, and that have farms/ranches that are adjacent to or contain a waterbody
20 identified on the 2010 List of Impaired Waterbodies as impaired for temperature, turbidity, or
21 sediment to, by October 1, 2012, conduct and report photo monitoring of the condition of
22 perennial, intermittent, or ephemeral streams and riparian and wetland area habitat, and
23 demonstrate compliance with erosion and sedimentation requirements identified in Provision 80
24 of Part F, Additional Conditions that apply to Tier 3 Dischargers (Conditional Waiver, p. 28);

25 9. Conditional Waiver Provision 72 of Part F, Additional Conditions that Apply to
26 Tier 3 Dischargers, which requires dischargers meeting the criteria or designation as Tier 3 to
27 initiate individual surface water discharge monitoring in accordance with the requirements
28

1 specified in the Tier 3 MRP by October 1, 2012, or initiate an alternative that is approved by the
2 Central Coast Water Board's Executive Officer (Conditional Waiver, p. 29);

3 10. Conditional Waiver Provision 73 of Part F, Additional Conditions that Apply to
4 Tier 3 Dischargers, which requires dischargers meeting the criteria or designation as Tier 3 to
5 submit by March 15, 2014, individual surface water discharge monitoring data and reports as
6 required by the Tier 3 MRP, or submit alternative monitoring reporting program data approved by
7 the Central Coast Water Board's Executive Officer (Conditional Waiver, p. 29);

8 11. Conditional Waiver Provision 74 of Part F, Additional Conditions that Apply to
9 Tier 3 Dischargers, which requires dischargers meeting the criteria or designation as Tier 3 and
10 that have High Nitrate Loading Risk farms/ranches to, by October 1, 2013, determine typical crop
11 nitrogen uptake for each crop type produced and report the basis for the determination as required
12 by the Tier 3 MRP (Conditional Waiver, p. 29);

13 12. Subdivision a of Conditional Waiver Provision 80 of Part F, Additional Conditions
14 that Apply to Tier 3 Dischargers, as applied to dischargers meeting the criteria or designation as
15 Tier 2 and/or Tier 3 and that have farms/ranches adjacent to or containing a waterbody identified
16 on the 2010 List of Impaired Waterbodies as impaired for temperature, turbidity, or sediment
17 through the incorporation of this provision into Conditional Waiver Provision 69, which requires
18 dischargers to show compliance with maintaining a filter strip of appropriate width, and
19 consisting of undisturbed soil and riparian vegetation or its equivalent between significant land
20 disturbance activities and watercourses, lakes, bays, estuaries, marshes, and other waterbodies
21 (Conditional Waiver, p. 31);

22 13. Section A, paragraphs 1 through 5, and Section B of Tier 1 MRP Part 2,
23 Groundwater Monitoring and Reporting Requirements, which requires dischargers to sample
24 private domestic drinking water and agricultural groundwater wells by March 15, 2013, and to
25 report the results to the Central Coast Water Board by October 1, 2013 (Tier 1 MRP, pp. 8-10);

26 14. Section A, paragraphs 1 through 5, and Section B of Tier 2 MRP Part 2,
27 Groundwater Monitoring and Reporting Requirements, which requires dischargers to sample
28

1 private domestic drinking water and agricultural groundwater wells by March 15, 2013, and to
2 report the results to the Central Coast Water Board by October 1, 2013 (Tier 2 MRP, pp. 8-10);

3 15. Section C of Tier 2 MRP Part 2, Groundwater Monitoring and Reporting
4 Requirements, which requires dischargers meeting the criteria or designation as Tier 2 to
5 calculate the nitrate loading risk factor for each ranch/farm included in their operations, and
6 requires such Tier 2 dischargers with individual farms/ranches that have a HIGH nitrate loading
7 risk to report total nitrogen applied per crop, per acre, per year on the Annual Compliance Form
8 by October 1, 2012, and annually thereafter (Tier 2 MRP, pp. 11-12);

9 16. Tier 2 MRP Part 3, Annual Compliance Form, which requires dischargers meeting
10 the criteria or designation as Tier 2 to submit by October 1, 2012, and annually thereafter, an
11 Annual Compliance Form that includes, but is not limited to: identification of the application of
12 any fertilizers, pesticides, fumigants, or other chemicals through an irrigation system, proof of
13 proper backflow prevention devices, description of method and location of chemical applications
14 relative to surface water, Nitrate Loading Risk Factors; and, for dischargers meeting the criteria
15 or designation as Tier 2 and that have farms/ranches that contain or are adjacent to a waterbody
16 impaired for temperature, turbidity, or sediment photo monitoring to document conditions of
17 streams, riparian, and wetland area habitat (Tier 2 MRP, pp. 12-13);

18 17. Tier 2 MRP Part 4, Photo Monitoring and Reporting Requirements, which requires
19 dischargers meeting the criteria or designation as Tier 2 to conduct and submit by October 1,
20 2012, photo monitoring consistent with yet-to-be established protocols, and explain and
21 demonstrate compliance with erosion and sedimentation requirements (Tier 2 MRP, p. 14);

22 18. Section A, paragraphs 1 through 5, and Section B of Tier 3 MRP Part 2,
23 Groundwater Monitoring and Reporting Requirements, which requires dischargers to sample
24 private domestic drinking water and agricultural groundwater wells by March 15, 2013, and to
25 report the results to the Central Coast Water Board by October 1, 2013 (Tier 3 MRP, pp. 8-10);

26 19. Section C of Tier 3 MRP Part 2, Groundwater Monitoring and Reporting
27 Requirements, which requires dischargers meeting the criteria or designation as Tier 3 to
28 calculate the nitrate loading risk factor for each ranch/farm included in their operations, and

1 requires such Tier 3 dischargers with individual farms/ranches that have a HIGH nitrate loading
2 risk to report total nitrogen applied per crop, per acre, per year on the Annual Compliance Form
3 by October 1, 2012, and annually thereafter (Tier 3 MRP, pp. 10-12);

4 20. Tier 3 MRP Part 3, Annual Compliance Form, which requires dischargers meeting
5 the criteria or designation as Tier 3 to submit by October 1, 2012, and annually thereafter, an
6 Annual Compliance Form that includes, but is not limited to: identification of the application of
7 any fertilizers, pesticides, fumigants, or other chemicals through an irrigation system, proof of
8 proper backflow prevention devices, description of method and location of chemical applications
9 relative to surface water, Nitrate Loading Risk Factors; and, for dischargers meeting the criteria
10 or designation as Tier 2 and that have farms/ranches that contain or are adjacent to a waterbody
11 impaired for temperature, turbidity, or sediment photo monitoring to document conditions of
12 streams, riparian, and wetland area habitat (Tier 3 MRP, pp. 12-14);

13 21. Tier 3 MRP Part 4, Photo Monitoring and Reporting Requirements, which requires
14 dischargers meeting the criteria or designation as Tier 3 to conduct and submit by October 1,
15 2012, photo monitoring consistent with yet to be established protocols, and explain and
16 demonstrate compliance with erosion and sedimentation requirements (Tier 3 MRP, p. 14); and,

17 22. Tier 3 MRP Part 5, Individual Surface Water Discharge Monitoring and Reporting
18 Requirements, which requires dischargers meeting the criteria or designation as Tier 3 to submit
19 an individual surface water discharge Sampling and Analysis Plan and Quality Assurance Project
20 Plan (QAPP) by March 15, 2013, to monitor individual discharges of waste from their
21 farm/ranch, including irrigation run-off (including tailwater discharges and discharges from tile
22 drains, tailwater ponds, and other surface water containment features); and, which requires
23 dischargers meeting the criteria or designation as Tier 3 to initiate individual surface water
24 discharge monitoring per the Sampling and Analysis Plan and QAPP by October 1, 2013 (Tier 3
25 MRP, pp. 14-16.)

26 **C. STANDARD FOR ISSUANCE OF A STAY**

27 Water Code section 13321(a) provides: "In the case of a review by the state board under
28 Section 13320, the state board, upon notice and hearing, if a hearing is requested, may stay in

1 whole or in part the effect of the decision and order of a regional board or of the state board.”

2 The State Water Board’s regulations further provide that it may grant a stay if the petitioner
3 demonstrates:

- 4 (1) [S]ubstantial harm to petitioner or to the public interest if a stay is not
5 granted;
- 6 (2) [A] lack of substantial harm to other interested persons and to the public
7 interest if a stay is granted, and
- 8 (3) [S]ubstantial questions of fact or law regarding the disputed action.
9 (Cal. Code Regs., tit. 23, § 2053(a).)

10 The request for stay must be supported by a declaration under penalty of perjury of a
11 person or persons with knowledge of the facts alleged. (Cal. Code Regs., tit. 23, § 2053(a).) As
12 demonstrated below, Petitioners’ request satisfies these requirements.

13 **D. THE STATE WATER BOARD SHOULD ISSUE A STAY PENDING
14 RESOLUTION OF PETITIONERS’ PETITION FOR REVIEW**

15 Petitioners timely submit this request for a stay of certain provisions that were adopted by
16 the Central Coast Water Board on March 15, 2012. (See *In the Matter of the Petitions of Boeing
17 Company* (June 21, 2006), Order WQ 2006-0007 (Boeing Order), p. 5.) Petitioners’ members will
18 suffer substantial harm if the State Water Board does not grant the Stay Request; no substantial
19 harm to other interested persons or the public interest would result if the State Water Board grants
20 the Stay Request; and there are substantial questions of fact or law regarding the challenged
21 action.

22 **1. Petitioners’ Members Will Suffer Substantial Harm If the State Water Board
23 Does Not Grant Petitioners’ Stay Request**

24 Petitioners’ members will suffer substantial harm if the State Water Board does not grant
25 Petitioners’ Stay Request for the period of time pending resolution of the Petition. (See Boeing
26 Order, p. 4 [“whether a stay is appropriate must be judged in the temporal sense”].) For
27 Petitioners’ members, excessive costs and immediate exposure to liability will occur while the
28 State Water Board considers the underlying Petition.

As shown in the six declarations from representative impacted growers in the Central
Coast Region, costs for implementing the Conditional Waiver and MRP Orders in their entirety

1 are substantial. (See, e.g., Martin Decl., ¶¶ 5, 6; see also Costa Decl., ¶¶ 6, 7.) More
2 importantly, with respect to this Stay Request, costs for implementing certain Tier 2 and Tier 3
3 requirements between now and December of 2013 are excessive. (See, e.g., Martin Decl., ¶ 7;
4 see also Costa Decl., ¶ 8; see also Campbell Decl., ¶ 8.) For example, one of the representative
5 agricultural operations estimates that for its operation of 3,866 acres, the estimated cost between
6 now and December 2013 will range between \$519,082 and \$853,924. (Martin Decl., ¶¶ 1, 7.)
7 For another grower, the cost will range between \$557,951 and \$747,803. (Costa Decl., ¶ 8.)
8 These costs, of course, presume that the State Water Board will have resolved the Petition by
9 the end of 2013. Should the State Water Board not resolve the Petition by then, the costs would
10 continue to increase significantly. On a per acre basis, the growers' estimates for complying
11 with Tier 2 and Tier 3 provisions between now and December 2013 range from \$46 per acre
12 (Costa Decl., ¶ 7) up to \$310 per acre (Aiello Decl., ¶ 5). The range represents the varying
13 degrees of complexity for each individual operation, as well as any economies of scale. In any
14 case, costs to comply in the short-term for agricultural operations while the matter is under
15 review are considerable and excessive.

16 As a specific example of one provision's associated costs, cost estimates were obtained
17 from *independent* qualified consultants. The cost to prepare an individual Sampling and
18 Analysis Plan (SAP) and QAPP for Tier 3 farms/ranches as is required by the Conditional
19 Waiver and Tier 3 MRP, is estimated to be between \$17,000 and \$28,800. (Suverkropp Decl.,
20 ¶ 7; Johnson Decl., ¶ 6.) Further, if a grower were required to conduct just one sampling event
21 between now and when the State Water Board resolves this matter, the cost could be upwards of
22 \$7,000 to \$11,000 per sampling event if there are five to ten sampling locations, respectively.
23 (Suverkropp Decl., ¶ 8.) These costs are significant to agricultural producers in the Central
24 Coast Region.

25 Furthermore, growers are unable to pass on these regulatory costs. As explained by
26 Professor J. Bradley Barbeau from California State University, Monterey Bay School of
27 Business, individual growers are "price takers" and have limited ability to pass higher costs
28 upward through price increases. (J. Bradley Barbeau and Kay L. Mercer, *Economic and Cost*

1 *Analysis of the Proposed Ag Waiver and Ag Alternative* (Aug. 1, 2011) (Barbeau Report),
2 attachment to Farmers for Water Quality Comments submitted on August 1, 2011, to the Central
3 Coast Water Board, attached hereto as Exh. B, p. 5.) More specifically, Barbeau states as
4 follows:

5 There is no evidence that individual growers have the market power to be able to
6 control price in this way, nor that there are effective means of collusion to
7 accomplish monopoly pricing by the growers. Individual growers are price takers;
8 their prices are determined by market conditions at the time of sale. While at a
9 market level the prices may adjust somewhat to reflect the increased costs,
10 individual growers do not have the power to push through those increases
11 themselves. Only a reduction in the quantity of each commodity produced,
12 without a corresponding reduction in demand for the commodity, can drive the
13 field price of the commodity upward. *Prices respond to the quantity of a good*
14 *that is supplied, not to the cost of producing that supply.* Individual growers who
15 face higher costs of implementing the Waiver relative to other growers will not be
16 able to recoup these costs by raising their prices; they will of necessity be faced
17 with lower margins. (Barbeau Report, p. 5, emphasis in original.)

18 Accordingly, agricultural producers will face excessive economic harm if the stay of
19 certain provisions is not granted by the State Water Board. Excessive compliance costs may
20 justify a stay. (See *In the Matter of the Petition of International Business Machines* (Dec. 15,
21 1988), Order No. WQ 88-15 (*In the Matter of IBM*), pp. 5-6 [State Water Board agreed that
22 IBM could be substantially prejudiced by preparing technical reports and plans while the matter
23 was under review by the State Water Board]; *City of Manteca v. State Water Resources Control*
24 *Bd.* (Sacramento County Superior Court, Oct. 8, 2010, Case No. 34-2010-80000492-CU-WM-
25 GDS) (Manteca Decision), attached hereto as Exh. A [court found that State Water Board's
26 denial for a stay was improper because Manteca had established that compliance costs were
27 disproportionate to the benefit to be gained].) The specific provisions in question that cause the
28 greatest economic harm between now and December 2013 are the following provisions of the
29 Conditional Waiver that are identified in section B above in paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11,
30 12, 13, 14, 15, 16, 17, 18, 19, 20, and 22. Should the State Water Board not resolve this matter
31 timely, there are additional provisions not identified in this Stay Request that may cause
32 additional excessive economic harm, which would also need to be stayed at a later date.

33 Further, the costs of compliance for Petitioners' members are disproportionate to the
34 benefit to be gained. (See *In the Matter of the Petition of County of Sacramento Sanitation*

1 *District No. 1* (Aug. 22, 2003), Order WQO 2003-0010, p. 4; see also *In the Matter of the Petition*
2 *of Pacific Lumber Company* (May 17, 2001), Order WQ 2001-09, p. 3; see also Manteca
3 Decision.) The cost estimates identified in the accompanying Declarations of Aiello, Campbell,
4 Costa, Giannini, Martin, and McKinsey, primarily represent consulting and reporting costs – not
5 costs for implementing or installing new management practices. Further, as discussed in
6 section 3 below, the provisions in the Conditional Waiver and MRP Orders are unlikely to result
7 in improved water quality, or provide the Central Coast Water Board with any meaningful
8 information. For example, consider the individual surface water monitoring requirements. It will
9 cost an estimated \$17,000 to \$28,800 to prepare a proper SAP and QAPP. (Suverkropp Decl.,
10 ¶ 7; Johnson Decl., ¶ 6.) Each sampling event is then likely to cost an additional \$7,000 to
11 \$11,000. (Suverkropp Decl., ¶ 8.) However, the information obtained is unlikely to provide the
12 Central Coast Water Board with any real information with respect to water quality. (Transcript,
13 March 14, 2012 Hearing of the Waiver of Waste Discharge Requirements Discharged from
14 Irrigated Lands, Central Coast Regional water Quality Control Board, Panel Hearing (March 14,
15 2012 Transcript), p. 214:9-18 [“DR. LOS HUERTOS: The assumption is that we can use on-farm
16 monitoring to characterize water quality, and then use that to prioritize which farms to visit and
17 then, maybe, make some enforcements of the problem areas. The problem is that the on-farm
18 monitoring, four samples per year, cannot adequately describe water quality on the farm. It
19 doesn’t describe water quality. It doesn’t describe practice effectiveness and it doesn’t describe
20 any kind of trend analysis.”].)

21 Similarly, the Conditional Waiver, Tier 2 MRP, and Tier 3 MRP require growers to
22 determine nitrate loading risk factors for each farm/ranch using one of two methodologies
23 identified. (Conditional Waiver, p. 28; Tier 2 MRP, pp. 11-13; Tier 3 MRP, pp. 11-13.)
24 However, both methodologies are highly simplistic and unlikely to accurately determine nitrate
25 loading risks from each farm/ranch. (See Zelinski Decl., ¶¶ 7, 8, 9.) Thus, agricultural
26 dischargers subject to the Conditional Waiver will be required to spend significant resources to
27 comply, yet the information obtained will not improve water quality nor will it provide the
28 Central Coast Water Board with useful information.

1 Besides economic harm, growers will also face immediate liability with respect to
2 complying with certain provisions of the Conditional Waiver and MRP Orders. In particular,
3 Provisions 22 and 23 of the Conditional Waiver (section B above, ¶¶ 1 and 2) collectively create
4 an obligation for agricultural dischargers subject to the Conditional Waiver to immediately
5 comply with water quality standards. (Conditional Waiver, p. 18 [“Dischargers must comply
6 with applicable water quality standards, as defined in Attachment A, protect the beneficial uses of
7 waters of the State and prevent nuisance as defined in Water Code section 13050.”]; *ibid.*
8 [“Dischargers must comply with applicable provisions of the Central Coast Region Water Quality
9 Control Plan (Basin Plan) and all other applicable water quality control plans as identified in
10 Attachment A.”].) Such immediate compliance with all water quality standards is not feasible,
11 and to require such compliance subjects growers to immediate harm. In its adoption of the
12 Conditional Waiver, the Central Coast Water Board recognized that immediate compliance with
13 water quality standards was not achievable. (See Conditional Waiver, Attachment A, Additional
14 Findings, Applicable Water Quality Control Plans and Definitions for Conditional Waiver of
15 Waste Discharge Requirements for Dischargers from Irrigated Lands (Attachment A), p. 41
16 [“This Order includes specific dates to achieve compliance with this Order and milestones that
17 will reduce pollutant loading or impacts to surface water and groundwater in the short term (e.g.,
18 a few years) and achieve water quality standards in surface water and groundwater in the longer
19 term (e.g., decades);”].) However, and notwithstanding this finding, the provisions of the
20 Conditional Waiver require immediate compliance and are not subject to any compliance
21 schedule-type of provisions within the enforceable provisions of the Conditional Waiver. As in
22 all cases, the “hereby ordered” provisions create the rights and obligations of those subject to the
23 order. Accordingly, under the Conditional Waiver, dischargers must comply with water quality
24 standards – immediately.

25 When questioned about this issue, legal counsel advised the Central Coast Water Board
26 that for nonpoint source pollution “compliance with Water Quality Standards means to implement
27 management practices. If they aren’t effective in reducing discharges to meet Water Quality
28 Standards, that they revise or do new management practices.” (March 15, 2012 Transcript,

1 p. 54:1-5.) However, in the absence of any textual support stating this in the provisions
2 themselves, this intent is meaningless. (See *Natural Resources Defense Council v. County of Los*
3 *Angeles* (9th Cir., July 13, 2011, No. 10-56017) 2011 U.S. App. Lexis 14443.)

4 Furthermore, the groundwater monitoring and individual surface water discharge
5 monitoring requirements in the MRP Orders were adopted for the purpose of determining
6 compliance with the Order. Under these provisions, monitoring data must be collected and
7 reported by October 1, 2013 and March 15, 2014, respectively. (Tier 1 MRP, p. 10; Tier 2 MRP,
8 p. 10; Tier 3 MRP, pp. 10, 16.) This data may be used by the Central Coast Water Board staff
9 and others to allege a grower has violated the requirement with respect to needing to comply with
10 water quality standards, which could result in administrative or civil liability. (Conditional
11 Waiver, p. 6 [“The Central Coast Water board will evaluate various types of information to
12 determine compliance with this Order such as, . . . c) individual discharge monitoring results,
13 d) receiving water monitoring results, and e) related reporting.”]. Thus, the harm to growers
14 while the State Water Board conducts its review is more than just economic and may subject
15 growers to unwarranted liability.

16 With respect to the benefit to be gained, there is none.

17 Accordingly, the costs to agricultural producers are excessive in relation to the benefit to
18 be gained. Furthermore, being subject to immediate liability while the State Water Board reviews
19 the Petition would result in substantial harm to Petitioners’ members.

20 **2. If the State Water Board Grants the Stay, Neither Interested Persons Nor the**
21 **Public Interest Will Suffer Substantial Harm**

22 A stay of the provisions identified in section B will not cause substantial harm to
23 interested persons or to the public. Specifically, most of the provisions for which a stay is
24 requested are monitoring and reporting provisions. (Section B, above, ¶¶ 4-22.) A stay of these
25 provisions will in no way harm the public, as they are costly to growers but do not in of
26 themselves result in water quality improvements. (See *In the Matter of IBM*, p. 7 [State Water
27 Board found that delay of technical report resulted in no immediate impact to water quality].)
28 Their purpose is to provide information to the Central Coast Water Board – they will not improve

1 water quality. (Wat. Code, § 13267(b)(1).) Further, their benefit and value with respect to
2 providing the Central Coast Water Board staff with useful water quality information is also
3 suspect in any event. As indicated previously, the individual surface discharge monitoring
4 program will not adequately assess water quality on the farm, and the nitrate loading
5 methodologies are too simplistic and will not provide accurate field level information. (See
6 section D.1, above.)

7 The provisions for which a stay is requested that require immediate compliance with
8 either water quality standards or specific management practices (section B, above, §§ 1, 2, 3,
9 and 11) also will not cause substantial harm to the public while the State Water Board conducts
10 its review. With respect to the provisions identified in section B, paragraphs 1 and 2 of this Stay
11 Request, the Central Coast Water Board recognizes that compliance with water quality standards
12 may take decades. (Conditional Waiver, Attachment A, p. 41.) Thus, a stay of these provisions
13 in the short-term will not substantially harm the public.

14 With respect to provisions identified in section B, paragraphs 3, 4, and 12 of this Stay
15 Request, these requirements dictate management practices. Specifically, provisions identified in
16 paragraph 3 require all dischargers to install and/or maintain backflow prevention devices for any
17 irrigation system that is used to apply fertilizers, pesticides, fumigants, or other chemicals
18 (Conditional Waiver, pp. 19-20); provisions identified in paragraph 4 require all dischargers to
19 immediately maintain all exiting, naturally occurring, riparian vegetable cover, and riparian areas
20 for other multiple purposes (Conditional Waiver, p. 20); and, provisions identified in
21 paragraph 12 require maintaining filter strips of appropriate widths that consist of undisturbed soil
22 and riparian vegetation (Conditional Waiver, p. 31). A stay of these specific management
23 practices will not substantially harm the public. Moreover, the Conditional Waiver includes
24 another provision (which is *not* part of this Stay Request) to “implement management practices,
25 as necessary, to improve and protect water quality and to achieve compliance with applicable
26 water quality standards.” (Conditional Waiver, p. 15.) Through this provision, agricultural
27 dischargers must implement appropriate management practices. In contrast, provisions identified
28 in paragraphs 3, 4, and 12 of section B dictate the specific practices and provide no flexibility for

1 agricultural dischargers to self-select appropriate management practices. Staying the specific
2 management practices as requested does not remove any requirements with respect to
3 implementing management practices that must improve and protect water quality. Thus, the
4 public would not be harmed.

5 **3. The Disputed Actions Raise Substantial Questions of Fact or Law**

6 There clearly exist substantial questions of fact or law with respect to the provisions
7 identified in this Stay Request, as well as many others. In general, the challenged provisions, and
8 the Central Coast Water Board's adoption thereof, fail to meet the legal standards set forth in
9 statute; are not properly supported by findings; and, most importantly, were adopted illegally due
10 to improper ex parte communications and other due process violations.

11 As a preliminary matter, the Central Coast Water Board's adoption of the Conditional
12 Waiver and MRP Orders, in their entirety, is suspect. As fully documented in the Petition,
13 substantial evidence exists to show that amendments presented by Board Member Johnston
14 (hereafter referred to as the Johnston Proposal) after the close of the public comment hearing
15 where the result of improper, indirect ex parte communications between Board Member Johnston
16 and Mr. Steve Shimek (an interested party) through the actions of Executive Officer Briggs. In
17 short, Mr. Shimek presented proposed amendments (hereafter referred to as the Shimek Proposal)
18 to Central Coast Water Board staff and others, including Executive Officer Briggs. Concurrently,
19 it appears that Board Member Johnston approached Executive Officer Briggs with some ideas,
20 and wanted Central Coast Water Board staff's assistance in further developing his proposal.
21 After what appeared to be some back and forth between Board Member Johnston and Executive
22 Officer Briggs, the final Johnston Proposal was conveyed from Executive Officer Briggs to Board
23 Member Johnston and Chair Young the day before the hearing. The Johnston Proposal was then
24 presented to the rest of the Central Coast Water Board after the close of public comment, and at
25 the beginning of Board deliberations. The Johnston Proposal included a new Condition 11, which
26 essentially mirrored the Shimek Proposal. By taking the Shimek Proposal and inputting it into
27 Mr. Johnston's proposal, Executive Officer Briggs indirectly created an improper ex parte
28 communication between Shimek and Johnston. Such an action clearly violates the fundamental

1 principles of due process, and the statutory requirements with respect to ex parte communications.
2 Consequently, the Central Coast Water Board's action was invalid.

3 Notwithstanding the illegality of the Central Coast Water Board's actions with respect to
4 process, there are other significant questions of fact or law associated with the adopted
5 provisions. For example, the monitoring and reporting requirements (section B, above, ¶¶ 5-22)
6 were presumably adopted under the Central Coast Water Board's section 13267 authority.
7 (Conditional Waiver, p. 13; Conditional Waiver, Attachment A, p. 41; Wat. Code, § 13267(b)(1)
8 [provides the Water Board with authority to require technical or monitoring reports].) When
9 using its section 13267 authority, the Central Coast Water Board is required to show that the
10 burden for the report, including costs, bears a reasonable relationship to the need for the report.
11 (Wat. Code, § 13267(b)(1).) Further, when requiring such reports, the Central Coast Water Board
12 must provide the request in writing explaining the need, and *shall identify* the evidence that
13 supports the request. (Wat. Code, § 13267(b)(1).) Based on the plain reading of section 13267,
14 the Central Coast Water Board must follow this for each technical or monitoring report required.
15 This has not occurred. Instead, the Central Coast Water Board adopted a generic finding that
16 applied generally to all of the technical and monitoring requirements. (Conditional Waiver,
17 Attachment A, p. 43.) The Central Coast Water Board's failure to specifically identify the
18 evidence with respect to each report creates a substantial question of fact and law.

19 Moreover, evidence in the administrative record indicates the burden of preparing these
20 reports is not reasonable as compared to the benefit to be gained. For example, as discussed
21 above, an experienced professor in water quality issues testified that the individual surface water
22 monitoring provisions will not actually describe water quality on the farm, will not determine
23 practice effectiveness and will not provide any trend analysis (March 14, 2012 Transcript,
24 p. 214:14-18), which are presumably the Central Coast Water Board's reason for adopting such
25 requirements. (Conditional Waiver, Attachment A, p. 44 ["This Order also requires monitoring
26 and reporting as defined in MRP Order No. R3-2012-0011-01, MRP Order
27 No. R3-2012-0011-02, and MRP Order No. R3-2012-0011-03 to determine the effects of
28 discharges of waste from irrigated lands on water quality, verify the adequacy and effectiveness

1 of this Order's terms and conditions, and to evaluate individual Discharger's compliance with this
2 Order."].) Likewise, the nitrate loading risk determination and reporting requirements (section B,
3 above, ¶¶ 6, 7, 11, 15, 16, 19, and 20) will also fail to provide the Central Coast Water Board with
4 the information sought. (See Zelinski Decl., ¶¶ 7, 8, 9.)

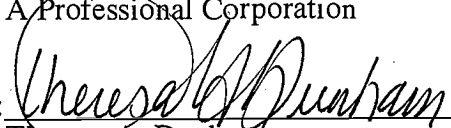
5 With respect to the specific management practices identified in the stay (section B, above,
6 ¶¶ 3, 4), the adoption of such requirements violates the statutory prohibition against dictating
7 manner of compliance. Water Code section 13360(a) states that no order of a regional board shall
8 specify "the design, location, type of construction, or particular manner in which compliance may
9 be had." Requiring agricultural dischargers to maintain riparian areas, including naturally
10 occurring riparian vegetative cover constitutes dictating the manner of compliance. The
11 requirement for installing and maintaining backflow prevention devices also rises to the level of
12 dictating manner of compliance.

13 Thus, substantial questions of fact or law exist.

14 **E. CONCLUSION**

15 This Stay Request demonstrates that the actions disputed in the Petition raise substantial
16 questions of fact or law. This Stay Request also demonstrates that a stay of the challenged
17 provisions of the Conditional Waiver and MRP Orders will not cause substantial harm to
18 interested persons or the public. However, a stay is necessary to prevent Petitioners' members
19 from incurring substantial harm in the form of an expenditure of private resources and immediate
20 exposure to liability. Accordingly, Petitioners respectfully request that the State Water Board
21 stay the provisions identified.

22
23
24 DATED: April 16, 2012

SOMACH SIMMONS & DUNN
A Professional Corporation
By: 
Theresa A. Dunham
Attorneys for Petitioners Grower-Shipper
Association of Central California, Grower-
Shipper Association of San Luis Obispo and
Santa Barbara Counties, and Western Growers

REQUEST FOR STAY

EXHIBIT A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ENDORSED
OCT - 8 2010
By S. Lee, Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

CITY OF MANTECA,
Petitioner and Plaintiff,
v.
STATE WATER RESOURCES
CONTROL BOARD,
Respondent and Defendant.

Case No. 34-2010-80000492-CU-WM-GDS
**RULING ON SUBMITTED MATTER:
ORDER GRANTING IN PART AND
DENYING IN PART PETITIONER CITY
OF MANTECA'S PETITION FOR WRIT
OF MANDATE AND REQUEST FOR
STAY**

On March 26, 2010, Petitioner and Plaintiff City of Manteca ("Manteca") filed its Petition for Writ of Mandate and Request for Stay ("Petition") pursuant to Water Code §§ 13321(c) and 13330 and Civil Procedure Code § 1094.5. Manteca challenges Respondent and Defendant State Water Resources Control Board's (the "State Board") denial of Manteca's November 9, 2009 Stay Request pursuant to Section 2053 of Title 27 of the California Code of Regulations ("CCR"). Manteca seeks a stay of a certain effluent limitation requirement and related time schedule order imposed on Manteca by the Regional Water Quality Control Board, Central Valley Region ("Regional Board").¹

On August 12, 2010, the Court issued a Tentative Ruling ordering the parties to appear before the Court on August 13, 2010, to address certain issues related to the merits of Manteca's

¹ The Regional Board, originally a party to the action, was dismissed from the action on May 26, 2010.

1 Petition. After oral argument, at which both parties appeared, the Court took the matter under
2 submission. The Court, having heard oral argument, read and considered the written argument of
3 all parties, and read and considered the documents and pleadings in the above-entitled action,
4 now rules on the Manteca's Petition as follows:

5 **I. FACTUAL AND PROCEDURAL BACKGROUND**

6 On October 8, 2009, the Regional Board adopted *Waste Discharge Requirements Order*
7 *No. R5-2009-0095, NPDES Permit No. CA0081558, and Time Schedule Order for City of*
8 *Manteca Wastewater Quality Control Facility, San Joaquin County*, ("WDRs") to govern
9 discharges from the Manteca Wastewater Quality Control Facility ("WQCF"). (Administrative
10 Record ("AR") at 41-232.) The WDRs impose an effluent limitation requirement of 700
11 μ mhos/cm EC to control salinity in the WQCF's discharge. (AR at 46, 49.) The time schedule
12 order ("TSO") requires Manteca to achieve the 700 μ mhos/cm EC effluent limitation requirement
13 in accordance with the following deadlines:

14 <u>Task:</u>	<u>Date Due:</u>
15 Submit Method of Compliance 16 Workplan/Schedule	Within 6 months of adoption of this Order
17 Submit and implement a Pollution 18 Prevention Plan (PPP) pursuant to CWC section 13263.3	Within 6 months of adoption of this Order
19 Annual Progress Reports, which 20 must "detail what steps have been 21 implemented towards achieving 22 compliance with waste discharge 23 requirements, including studies, construction progress, evaluation of measures implemented, and recommendations for additional measures as necessary to achieve full compliance by the final date")	1 December, annually, after approval of workplan until final compliance
24 Full compliance with the effluent 25 limitations for electrical conductivity	1 October 2014

26 (AR at 49.)

27 Manteca alleges that in order to comply with the WDRs, it must plan, design, and install
28 microfiltration and reverse osmosis facilities at a substantial cost to Manteca. (Memorandum at

1 2:12-14.) More specifically, Manteca alleges that compliance with the WDRs would cost
2 approximately \$38.4 million for initial construction and an additional cost of approximately \$3.7
3 million for capital improvements and operation and maintenance, exclusive of costs Manteca will
4 have to incur to properly dispose of the 0.5 mgd of saline brine the new treatment facilities would
5 generate. (Memorandum at 2:14-19; 9:17-19; AR at 409 (Declaration of Phil Govea in Support of
6 Manteca's Stay Request ("Govea Decl.") at ¶ 9.) Installation of the new treatment facilities
7 would likely require preparation and public review of an environmental impact report pursuant to
8 the California Environmental Quality Act ("CEQA"). (Memorandum at 2:19-2; AR at 409
9 (Govea Decl. at ¶ 11.) Manteca estimates the planning, pre-design, and CEQA-compliance costs
10 will approach \$1.6 million. (Memorandum at 9:20-22; AR at 410 (Govea Decl. at ¶ 11).) Once
11 expended, these costs are irretrievable. (AR at 410 (Govea Decl. at ¶ 11).) Compliance with the
12 WDRs will "essentially double the sewer rates" paid by Manteca residents. (AR at 362
13 (Transcript at 35:3-4).)

14 Prior to the issuance of the WDRs, Manteca was complying with Regional Board Order
15 No. R5-2004-0028, as modified by State Board Order No. WQ 2005-0005. (AR at 234-345; see,
16 e.g., Declaration of Roberta L. Larson in Support of Petition for Writ of Mandate and Request for
17 Stay ("Larson Decl.") at Exh. "A" (*In the Matter of the Petition of City of Manteca* (Mar. 16,
18 2005), Order WQ 2005-0005).) In State Board Order No. WQ 2005-0005, the State Board found
19 the limitation of 1,000 µmhos/cm EC appropriate to control salinity in the WQCF's discharge.
20 (Memorandum at 10-7-9; Larson Decl. at Exh. "A" (*In the Matter of the Petition of City of*
21 *Manteca* (Mar. 16, 2005), Order WQ 2005-0005 at 14, 22.) In response to these orders, Manteca
22 upgraded the WQCF and pursued alternative supplies of water, resulting in a reduction of salinity
23 in the WQCF's effluent of nearly 30%. (Memorandum at 4:1-9, 10:5-17; AR at 9; see also AR at
24 182 (WDRs, Exh. "F" (Fact Sheet) at F-50).)

25 On November 9, 2009, Manteca filed a Petition for Review and Statement of Points
26 Authorities in Support thereof ("Petition for Review") with the State Board challenging, in
27 relevant part, the 700 µmhos/cm EC effluent limitation requirement and the corresponding TSO
28 imposed by the Regional Board. (See, e.g., AR at 1-40.) The State Board acknowledged receipt

1 of Manteca's Petition for Review in a letter dated November 10, 2010. (AR at 423-426.)

2 In connection with its Petition for Review, Manteca filed a Stay Request pursuant to
3 Water Code § 13321 and 23 CCR § 2053. (*See, e.g.*, AR at 31-40.) Manteca sought a stay of the
4 700 µmhos/cm EC effluent limitation requirement and the TSO pending the State Board's
5 resolution of Manteca's Petition for Review. (AR at 31.) In its Stay Request, Manteca argued
6 each of the three preconditions for a stay pursuant to 23 CCR § 2053: (1) the Regional Board's
7 adoption of the WDRs raised substantial questions of fact and law; (2) Manteca and the public
8 interest would suffer substantial harm if the State Board did not grant Manteca's Stay Request;
9 and (3) neither interest persons nor the public interest would suffer substantial harm if the State
10 Board granted Manteca's Stay Request.

11 Also on November 9, 2009, Manteca wrote to the State Board requesting that the parties
12 enter into a stipulation staying the TSO and the 700 µmhos/cm EC effluent limitation requirement
13 challenged by Manteca pursuant to its Petition for Review. (AR at 417-19.) In a letter dated
14 December 14, 2009, the State Board declined Manteca's offer to enter into a stipulation, stating it
15 was inappropriate for the State Board, as the adjudicating body, to enter into such a stipulation.
16 Instead, Manteca should propose a similar stipulation to the interested parties for consideration by
17 the State Board. (AR at 431-34.)

18 In a letter dated February 26, 2009, the State Board notified Manteca that the State Board
19 had denied Manteca's Stay Request. (AR at 447-49.) Enclosed was a February 18, 2010
20 memorandum outlining the basis for the State Board's denial ("Stay Denial"). (AR at 457-61.)
21 In the Stay Denial, the State Board reiterated the legal standard applicable to stay requests
22 pursuant to 23 CCR § 2053:

23 The State [] Board has recognized the extraordinary nature of a stay remedy and
24 places a heavy burden on a petitioner seeking a stay. [Footnote omitted.] The
25 State [] Board's regulations provide that a stay may be granted only if a petitioner
alleges facts and produces proof of *all* of the following:

- 26 (1) substantial harm to Petitioner or to the public interest if a stay is not
27 granted;
28 (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 disputed action.

1 (AR at 458-59 (footnote omitted).)

2 The Stay Denial was predicated only on Manteca's perceived failure to establish the
3 substantial harm Manteca would suffer if its Stay Request was denied. (AR at 459-460.) The
4 State Board's finding in this regard was based on three conclusions. First, the State Board
5 determined that "mere expense, even if relatively substantial, does not justify the granting of a
6 stay." (AR at 459 (footnote omitted).) "In this instance, the threatened harm consists entirely in
7 planning expenditures while the petition is pending, and a speculative claim of future penalties if
8 Petitioner fails to meet the five-year deadline." (AR at 459.)

9 Second, the State Board found Manteca's claim of harm deficient in light of recent
10 precedential orders issued by the State Board holding that similar permits should contain the same
11 effluent limitations that Manteca challenged. (AR at 459.) In those precedential orders, the State
12 Board "discussed several practical ways of meeting the limitations or of providing a basis for
13 changing them." (AR at 459.)

14 Third, the State Board concluded that Manteca misunderstood the nature of a stay
15 pursuant to 23 CCR § 2053. (AR at 459-460.) According to the State Board, "[a] stay does not
16 extend the deadlines in permits or even in a TSO; it removes the necessity to comply with given
17 requirements during the period of the stay." (AR at 460.) Accordingly, "[o]nce the petition is
18 reviewed, if the underlying order is upheld, the stay is dissolved and the requirements remain in
19 place." (AR at 460.) Thus, Manteca would be required to comply with any and all deadlines that
20 were previously in place prior to implementation of the stay. (*See also* AR at 3 ("A stay is not
21 designed to apply beyond the determination of the petition itself . . .").)

22 With respect to the other two requirements, the State Board declined to address the merits
23 of Manteca's arguments in detail because "Petitioner has failed to satisfy the first stay
24 requirement" ² (AR at 460.)

25 Subsequently, Manteca filed its Petition seeking a peremptory writ of mandate directing
26

27 ² With respect to the third requirement – substantial questions of law or fact – the State Board also stated: "However,
28 as discussed above, the State [] Board has considered similar legal arguments in two recent, precedential conclusions
and rejected arguments similar to Petitioner's." (AR at 460 (Stay Denial at 4).)

1 the State Board to grant Manteca's Stay Request and/or a Court order staying the 700 µmhos/cm
2 EC effluent limitation and the TSO pending the State Board's resolution of Manteca's Petition for
3 Review.

4 **II. DISCUSSION**

5 **A. The State Board abused its discretion in denying Manteca's Stay Request.**

6 Pursuant to Code of Civil Procedure § 1094.5, a court's review "extend[s] to the questions
7 whether the respondent has proceeded without, or in excess of jurisdiction; whether there was a
8 fair trial; and whether there was any prejudicial abuse of discretion." (*Duncan v. Dept. of*
9 *Personnel Admin.* (2000) 77 Cal.App.4th 1166, 1173; Civ. Proc. Code § 1094.5(b).) Abuse of
10 discretion is established if the respondent has not proceeded in the manner required by law, the
11 order or decision is not supported by the findings, or the findings are not supported by the
12 evidence." (*Duncan, supra*, 77 Cal.App.4th at 1173.)

13 The parties disagree regarding the standard of review applicable to the Court's
14 review of the State Board's Stay Denial. While Manteca contends the independent
15 judgment standard of review applies, the State Board contends the substantial evidence
16 standard of review applies.

17 Numerous factors lend confusion to the landscape related to the State Board's authority to
18 stay a regional board's waste discharge requirements. For instance, the titles of both Water Code
19 §§ 13320 and 13321 seemingly authorize the State Board to act on Manteca's Stay Request.
20 Water Code § 13320 is titled "Review by state board; Evidence; Findings; Submission of
21 disagreement between regional boards; Action on request for stay." Water Code § 13321 is titled
22 "Stay of decision and order of regional or state board; Duration on petition to court."

23 Additionally, the language of both Water Code §§ 13320 and 13321 appear to authorize
24 the State Board to act on Manteca's Stay Request. Water Code §13320(e) provides:

25 If a petition for state board review of a regional board action on waste discharge
26 requirements includes a request for a stay of the waste discharge requirements, the
27 state board shall act on the requested stay portion of the petition within 60 days of
accepting the petition. The board may order any stay to be in effect from the
effective date of the waste discharge requirements.

28 ///

1 Water Code § 13321(a) provides:

2 In the case of a review by the state board under Section 13320, the state board,
3 upon notice and hearing, if a hearing is requested, may stay in whole or in part the
effect of the decision and order of a regional board or of the state board.

4 Finally, 23 CCR § 2053, outlining the requirements for the issuance of a stay by the State
5 Board, cites both Water Code §§ 13320 and 13321 as the authorities for the regulation.

6 Despite this confusion, the Court agrees with the State Board that the substantial evidence
7 standard of review appropriately governs this Court's review of the State Board's Stay Denial.

8 The primary purpose of Water Code § 13320 relates to the State Board's authorization to
9 review "any action or failure to act by a regional board" pursuant to enumerated sections and /or
10 chapters of the Water Code.³ In reviewing a regional board's action, the State Board:

11 [M]ay find that the action of the regional board, or the failure of the regional
12 board to act, was appropriate and proper. Upon finding that the action of the
13 regional board, or failure of the regional board to act, was inappropriate or
14 improper, the state board may direct the appropriate action be taken by the
regional board, refer the matter to any other state agency having jurisdiction, take
15 the appropriate action itself, or take any combination of those actions. In taking
any such action, the state board is vested with all of the powers of the regional
boards under this division.

16 (Water Code § 13320(c).) Although Water Code § 13320(e) relates to a stay of a regional board's
17 waste discharge requirements, the Court agrees with the State Board that this subsection merely
18 provides for the timing of the State Board's stay decision and the permissible effective date of the
19 State Board's decision if a stay is granted. The true authority of the State Board to rule on a stay
20 request lies in Water Code § 13321(a), which expressly provides that the State Board "may stay
21 in whole or in part the effect of the decision and order of a regional board."⁴ (*See City of*
22 *Huntington Beach v. Bd. of Admin.* (1992) 4 Cal.4th 462, 468 ("In this regard, all parts of a statute

23 ³ These sections and/or chapters include Water Code § 13225(c) (authorizing a regional board to "require as
24 necessary any state or local agency to investigate and report on any technical factors involved in water quality control
or to obtain and submit analyses of water"); Article 4 of Chapter 4 (relating to a regional board's authority with
25 respect to waste discharge requirements); Chapter 5 (administrative enforcement and remedies by regional boards);
Chapter 5.5 (compliance with the Federal Water Pollution Control Act); Chapter 5.9 (the Storm Water Enforcement
26 Act of 1998); and Chapter 7 (the Water Recycling Law).

27 ⁴ The argument now set forth by Manteca in connection with its Petition appears to contradict the position set forth in
its Stay Request. Although the introductory paragraph indicates that Manteca submitted its Stay Request "[p]ursuant
28 to Water Code sections 13320 and 13321 (Stay Request at 3:2), Manteca goes on to quote only Water Code § 13321
and 23 CCR § 2053 for the "Standards for Issuance of a Stay" (*id.* at Section B).

1 should be read together and construed in a manner that gives effect to each, yet does not lead to
2 disharmony with the others”) (citation omitted.)

3 If a petitioning party is unsatisfied with the State Board’s decision regarding a regional
4 board’s actions, Water Code § 13330 allows that party to file a petition for writ of mandate with
5 the court, requesting that the court review the State Board’s decision. (Water Code §§ 13330(a),
6 (b).) Water Code § 13330(d) delineates the standard of review to be employed by the Court in
7 reviewing the State Board’s decision and provides in relevant part:

8 For purposes of subdivision (c) of Section 1094.5 of the Code of Civil Procedure,
9 the court shall exercise its independent judgment on the evidence in any case
10 involving the judicial review of a decision or order of the state board issued under
11 Section 13320

11 (Water Code § 13320(d).)

12 Here, there is no evidence that Manteca presented (or was authorized to present) its Stay
13 Request to the Regional Board. Thus, no Regional Board decision regarding Manteca’s Stay
14 Request exists for the State Board to review. Instead, Manteca’s Stay Request was appropriately
15 presented to the State Board for consideration, which subsequently issued its Stay Denial. In
16 issuing its Stay Denial, the State Board was not reviewing an “action or failure to act by a
17 regional board” in accordance with Water Code § 13320 and, accordingly, Manteca is not seeking
18 review of a State Board decision or order issued pursuant to Water Code § 13320.

19 However, regardless of whether the independent judgment or substantial evidence
20 standard of review applies, the Court finds that the State Board abused its discretion in denying
21 Manteca’s Stay Request. The State Board’s Stay Denial is unsupported by the evidence, thereby
22 constituting an abuse of discretion under both the independent judgment and substantial evidence
23 standards of review. Neither the weight of the evidence nor substantial evidence supports the
24 State Board’s Stay Denial.

25
26
27
28 ///

1 **B. Manteca is entitled to a stay of the WDRs and TSO pending the State Board's review**
2 **of Manteca's Petition for Review.**

3 In order to obtain a stay of the TSO and the 700 µmhos/cm EC effluent limitation
4 requirement pursuant to 23 CCR § 2053, Manteca must establish:

- 5 1. Substantial harm to Manteca or to the public interest if a stay is not granted;
- 6 2. A lack of substantial harm to other interested persons and to the public
7 interest if a stay is granted; and
- 8 3. Substantial questions of fact or law regarding the disputed action.

9 (23 CCR § 2053(a)(1)-(3).)

10 As discussed further below, the Court finds that Manteca sustained its burden of
11 demonstrating that it and/or the public interest would suffer substantial harm if its Stay Request is
12 not granted and a lack of substantial harm to other interested persons and to the public interest if a
13 stay is granted. The Court additionally finds that substantial questions of fact or law exist
14 regarding the disputed action.

- 15 1. **Denial of Manteca's Stay Request results in substantial harm to Manteca and**
16 **the public interest, including its ratepayer citizens.**

17 The State Board contends that Manteca fails to establish that substantial harm to Manteca
18 or the public interest will result if the stay is not granted because: (1) Manteca failed to establish
19 that reverse osmosis was the only method through which Manteca could achieve compliance with
20 the salinity effluent limitation requirements; and (2) compliance costs, without more, do not
21 constitute substantial harm. (Opposition at 7:11-13:10.)

- 22 a. **Manteca demonstrates that reverse osmosis is the only feasible**
23 **alternative available to achieve compliance with the WDRs within five**
24 **years.**

24 Manteca presented the testimony and declaration of Phil Govea in support of its Stay
25 Request.⁵ Mr. Govea declared that "Manteca has no other certain alternative beside [reverse

26 ⁵ In support of its Stay Request, Manteca submitted the Declaration of Phil Govea establishing that he is qualified to
27 testify regarding the impact of the WDRs and TSO. (See, e.g., AR at 408-410.) Mr. Govea attested that he is the
28 Deputy Director of Public Works – Utility Engineering for Manteca. Although he had only held the position for over
two years as of November 2009, he held other engineering positions with Manteca for ten years prior to his tenure as
Deputy Director. Mr. Govea attested that he had personally managed and been responsible for significant

1 osmosis] to comply with the final effluent limitations of 700 μ mhos/cm for EC.” (AR at 409
2 (Govea Decl. at ¶ 10).) In his testimony before the Regional Board, Mr. Govea further explained
3 that in light of previous improvements to the WQCF and actions by Manteca designed to reduce
4 the salinity in the WQCF’s effluent,⁶ reverse osmosis is the only certain alternative Manteca can
5 implement to achieve the 700 μ mhos/cm EC effluent limitation requirement. (AR at 359
6 (Transcript at 32:6-33:4).) Mr. Govea testified:

7 So with that in mind, this – we also are looking at other measures for reducing
8 EC. Unfortunately, there isn’t a smoking gun, an industrial discharger, left in our
9 system to regulate, to take more EC out, to achieve the 700 limit. All that is left
10 was the Eckert Industry, and they are no longer in our system. We are in the
11 initial stages of looking at water softener reduction or elimination, but some of
12 our preliminary analysis doesn’t show that will be a promising solution.

13 So we believe that all that is left, really, for us to achieve, consistently achieve,
14 compliance, with an EC limit of 700 is to go to advanced treatment microfiltration
15 and reverse osmosis.

16 (AR at 360-36 (Transcript at 33:16-34:5).)

17 Weighing heavily in Manteca’s favor are comments by the State Board itself, which
18 concede, contrary to the State Board’s Opposition, that reverse osmosis is the only feasible option
19 to achieve compliance with the WDRs. In Order No. WQ 2005-0005, the State Board states:
20 “assuring compliance with the 700 μ mhos/cm EC effluent limitation in the City’s permit for April
21 through August would probably require construction and operation of a reverse osmosis treatment
22 plant for at least a portion of the City’s effluent at a very large cost.” (Larsen Decl. at Exh. “A”
23 (*In the Matter of the Petition of City of Manteca* (Mar. 16, 2005), Order No. WQ 2005-0005 at
24 12).) The State Board more conclusively stated:

25 modifications to the Manteca WQCF, was personally involved in reviewing the Report of Waste Discharge for the
26 Manteca WQCF to the Regional Board and more, and directed and oversaw work performed by consultants and staff
27 for activities directly and indirectly related to compliance with the WDRs and TSO.

28 ⁶ In its Petition for Review submitted to the State Board, Manteca asserts that, in response to Order No. R5-2004-
0028, Manteca already obtained higher quality surface water from the South County Water Supply Program to blend
with Manteca’s existing groundwater drinking water supply to improve the water supply source; added biological
nitrification-denitrification to the secondary treatment process; added a secondary effluent equalization pond, tertiary
filters, an ultraviolet light pathogen deactivation system, and recycled water pumping station; and modified the
WQCF to separate fully the food-processing wastes from the municipal effluent. (AR at 9.) The Regional Board
confirms that Manteca “has replaced a portion of its groundwater supplies with lower salinity surface water from the
South San Joaquin Irrigation District” and “removed the food processing wastewater from Eckhart Cold Storage from
its waste-stream that is discharged to the San Joaquin River.” (AR at 182 (WDRs, Exh. “F” (Fact Sheet) at F-50).)

1 The record indicates, however, that compliance with the permit effluent limitation
2 of 700 µmhos/cm EC scheduled to become effective on April 1, 2005, could not
3 be assured without construction and use of reverse osmosis facilities.
4 Construction and operation of reverse osmosis facilities to treat discharges from
the City's WQCF, prior to implementation of other measures to reduce the salt
load in the southern Delta, would not be a reasonable approach.

5 (Larsen Decl. at Exh. "A" (*In the Matter of the Petition of City of Manteca* (Mar. 16, 2005), Order
6 No. WQ 2005-0005 at 12 (emphasis added)).) As recently as October 2009, the Regional Board
7 confirmed that [t]he facts regarding the need to construct reverse osmosis to meet the 700
8 µmhos/cm EC standard have not changed."⁷ (AR at 182.)

9 In light of the State Board's own statements regarding the necessity of reverse osmosis to
10 achieve the 700 µmhos/cm EC limit, the State Board's statements regarding other alternatives
11 available to Manteca carry little weight (in addition to being refuted by evidence in the record).
12 This is especially true when one of the State Board's suggested alternatives is non-compliance.
13 Non-compliance is not a credible alternative for Manteca for numerous reasons, the most obvious
14 being that non-compliance does nothing to achieve the 700 µmhos/cm EC limit and directly
15 violates the WDRs and TSO.

16 **b. Substantial harm to Manteca and the public interest will result if**
17 **Manteca's Stay Request is denied.**

18 The State Board nebulously contends that compliance costs, *without more*, do not
19 constitute substantial harm. However, the State Board fails to provide any information on
20 precisely what "more" a petitioner is required to demonstrate in order to establish substantial
21 harm when exorbitant compliance costs constitute the brunt of the harm suffered by that
22 petitioner. Here, however, the Court finds that Manteca has demonstrated substantial harm in
23 accordance with the standards articulated (albeit somewhat inconsistently) by the State Board in
24 prior decisions.

25 In *In the Matter of the Petition of International Business Machines*, the State Board

26
27 ⁷ About one month after adoption of the WDRs, the Regional Board acknowledged that "compliance with the 700
28 µmhos/cm effluent limitation may not be feasible without use of expensive and energy-intensive salt removal
technologies." (AR at 429.)

1 addressed International Business Machines' ("IBM") request for a stay, which was predicated in
2 part on the contention that "IBM will suffer substantial harm if it is required to submit a technical
3 report regarding a continuously pumping monitoring well and groundwater reuse plan for the
4 well, by December 15, 1988." (*In the Matter of the Petition of International Business Machines*
5 (Dec. 15, 1988), Order No. WQ 88-15 at 4.) IBM disputed the necessity and technical
6 effectiveness of the well and alleged that it was not reasonably feasible to provide a groundwater
7 reuse plan by the timeframe established by the Regional Board. (*Id.* at 5.) IBM contended,
8 "requiring such a well now will necessitate the re-evaluation of other aspects of the long term
9 plan . . ."; IBM previously demonstrated the technical effectiveness of the requested well;
10 "[e]valuation of reuse options would require detailed analyses of water quality cost, and liability,
11 duration of pumping and other factors, involving extensive discussion with many parties"; and
12 that IBM would "be substantially prejudiced by having to expend this effort in evaluating reuse
13 options while the State Board is considering the petition which may render the issue moot." (*Id.*
14 at 5-6.) The State Board agreed "that IBM could be substantially prejudiced by preparing the
15 extensive technical report and groundwater reuse plan adequate to meet the Regional Board's
16 order by December 15, 1988." (*Id.* at 6.)

17 Implicit in the State Board's decision is the State Board's understanding of the potentially
18 unnecessary effort and expenditure of costs related to a Regional Board requirement that could
19 potentially be reversed by the State Board. In granting IBM's stay request, the State Board did
20 not require IBM to establish anything "more" as it purports to require of Manteca. Manteca's
21 Stay Request is predicated on similar contentions. Even the Regional Board conceded: "We
22 agree with Manteca that funds should not be expended on design and construction of salinity
23 removal technologies that could prove to be unnecessary, depending on the outcome of current
24 planning efforts." (AR at 429.)

25 Although unclear from the State Board's Opposition, the State Board appears to have
26 previously required other aggrieved parties to demonstrate that "the costs of compliance with the
27 Regional Board order are disproportionate to the benefit to be gained by the required water
28 quality monitoring." (*See In the Matter of the Petition of County of Sacramento Sanitation*

1 *District No. 1* (Aug. 22, 2003), Order WQO 2003-0010 at 4; *In the Matter of the Petition of*
2 *Pacific Lumber Company* (May 17, 2001), Order WQ 2001-09 at 3.) Manteca estimates that the
3 planning, pre-design, and CEQA-compliance costs required to be expended in order to prepare to
4 comply with the WDRs and TSO approach \$1.6 million. (Memorandum at 9:20-22; AR at 410.)
5 Actual compliance with the WDRs would cost approximately \$38.4 million for initial
6 construction and an additional cost of approximately \$3.7 million for capital improvements and
7 operation and maintenance. (Memorandum at 2:14-19; 9-17-19; AR at 409.) Importantly, once
8 expended, these costs are irretrievable and will result in significant rate increases for Manteca
9 residents. (AR at 410 (Govea Decl. at ¶¶ 9, 11); AR at 362 (Transcript at 35:3-4).)

10 Given the Court's conclusions regarding the lack of substantial harm to interested parties
11 and the public interest if Manteca's Stay Request is granted (which are discussed by the Court in
12 detail below), the Court finds that Manteca has established that these compliance costs "are
13 disproportionate to the benefit to be gained by the required water quality monitoring."

14 2. **Manteca demonstrates a lack of substantial harm to other interested persons**
15 **and to the public interest if its Stay Request is granted.**

16 In arguing that Manteca failed to demonstrate a lack of substantial harm to interested
17 persons or to the public if the stay is granted, the State Board focuses entirely on Manteca's
18 perceived sole reliance on the testimony of Mr. Govea in the underlying proceedings.
19 (Opposition at 14:14-17.) In doing so, the State Board ignores the vast majority of evidence in
20 the record establishing the lack of substantial harm to interested persons or to the public if
21 Manteca's Stay Request is granted.

22 Prior to issuance of the TSO and WDRs at issue here, Manteca had complied and
23 continues to comply with Regional Board Order No. R5-2004-0028, as modified by State Board
24 Order No. WQ 2005-0005. (AR at 233-345; Larson Decl., Exh. "A.") In State Board Order No.
25 WQ 2005-0005, the State Board found the limitation of 1,000 μ mhos/cm EC appropriate to
26 control salinity in the WQCF's discharge. (Memorandum at 10:7-9; Larson Decl., Exh. "A" at
27 14, 22.) In response to these orders, Manteca spent approximately \$65 million upgrading the
28 WQCF and related facilities and pursued alternative supplies of water, resulting in a reduction of

1 salinity in the WQCF's effluent of nearly 30%. (Memorandum at 4:1-9, 10:5-17; AR at 5, 9.)

2 As a result of the upgrades, the WQCF's discharge now averages 735 $\mu\text{mhos/cm}$ EC on a
3 monthly basis, which closely approximates the 700 $\mu\text{mhos/cm}$ EC effluent limitation requirement
4 required by the WDRs. (Memorandum at 13:11-12, n.11; AR at 359, 362 (Transcript of Regional
5 Board Hearing (Oct. 8, 2009) 32:2-5, 35:15-36:5).)

6 In correspondence dated December 9, 2009, the Regional Board expressed its support of
7 Manteca's Stay Request, confirming Manteca's minimal contribution to the salinity in the San
8 Joaquin River:

9 Manteca's discharge is not a significant source of salt to the San Joaquin River, so
10 the environmental benefits from reduced effluent salinity are minimal, although
not insignificant.

11 * * *

12 Manteca's current irrigation-season salinity level of 745 $\mu\text{mhos/cm}$ is already
fairly close to the existing 700 $\mu\text{mhos/cm}$ irrigation season receiving water quality
13 objective, and is within the ranges that are being discussed as potential new south
Delta water quality objections.

14 (AR at 429-430.)

15 During oral argument, the State Board relied on the Regional Board's statement that the
16 environmental benefits of Manteca's compliance with the WDRs, although minimal, are "not
17 insignificant" in support of the State Board's argument that Manteca failed to demonstrate a lack
18 of substantial harm if a stay is granted. The State Board's reliance on this statement, however, is
19 undermined by the State Board's own comments in Order No. WQ 2005-0005, which concede the
20 limited impact that Manteca's compliance with the WDRs will have on salinity levels.

21 In revising upward the original effluent limitation for EC imposed by the Regional Board
22 in Order No. R5-2004-0028, the State Board acknowledged that the existing record supported the
23 conclusion that "because of the relatively high salinity of the receiving water and the relatively
24 small portion of flow provided by the City's discharge, the City's use of reverse osmosis would
25 have relatively little effect on the EC of water in the river." (Larsen Decl. at Exh. "A" (Order No.
26 WQ 2005-0005 at 12.) The State Board continued:

27 The causes and potential solutions to the salinity problems in the southern Delta
28 are highly complex subjects that have received and are continuing to receive an
unprecedented amount of attention from the State Board in the exercise of its

1 coordinated authority over water rights and water quality. The southern Delta
2 water quality objectives for EC referenced by the Regional Board were
3 established in the State Board's 1995 Delta Plan. Although the ultimate solutions
4 to southern Delta salinity problems have not yet been determined, previous
5 actions establish that the State Board intended for permit effluent limitations to
6 play a limited role with respect to achieving compliance with the EC water
7 quality objectives in the southern Delta.

8 (Larsen Decl. at Exh. "A" (Order No. WQ 2005-0005 at 13-14 (emphasis added).)

9 Mr. Govea's testimony corroborates the Regional Board's and State Board's conclusions
10 and confirms that the impact of Manteca's compliance with the WDRs would have a minimal
11 impact on the salinity of the water:

12 Looking at it, at this issue, another perspective put in context, the two left bars are
13 Manteca treatment plant is putting out, as I said, about 735 micromhos per
14 centimeter right now. The river concentration is about 594 micromhos per
15 centimeter. The two right most bars, if the plant were to achieve 700 through
16 microfiltration and reverse osmosis, the river would drop from 594.13 to 594.01; a
17 .02 per cent reduction in salinity.

18 To put this into context even further. If you think about loading in the San Joaquin
19 River, the amount of EC, salinity, that is there now and put it in terms of height,
20 there is the equivalent of the Empire State Building in terms of loading in the river;
21 and the amount of contribution that the City has is equivalent of a six-foot-six
22 person.

23 (AR at 361-62 (Transcript of Regional Board Hearing (Oct. 8, 2009) at 35:15-36:5).)

24 **3. Substantial questions of fact and law support the issuance of a stay.**

25 *In the Matter of the Petition of International Business Machines* also is instructive with
26 respect to whether substantial questions of fact and law support the issuance of a stay. There, the
27 State Board held that "there are substantial questions of fact as to whether the Gap well as
28 required by the Regional Board is needed at all. We will be addressing these in greater detail as
part of our review of the petition as a whole." (*In the Matter of the Petition of International*
Business Machines (Dec. 15, 1988), Order No. WQ 88-15 at 4.)

Similarly, substantial questions of fact and law exist as to whether Manteca will need to
comply with the 700 μ mhos/cm EC effluent limitation requirement – an issue the State Board will
address as part of its review of Manteca's Petition for Review. The Regional Board confirms:

The [State Board] is reexamining the salinity standards in the Bay Delta Plan,
which might ultimately change the receiving water standards with which Manteca
must comply. CVSALTS may provide other regulatory options to the City, and

1 should ultimately reduce salinity in the San Joaquin River. Either of these efforts
2 may resolve Manteca's salinity issues without the need for litigation. . . . The
3 planning efforts, and not the courts, are the appropriate venue to resolve these
4 issues. We agree with Manteca that funds should not be expended on design and
5 construction of salinity removal technologies that could prove to be unnecessary,
6 depending on the outcome of the current planning efforts.

7 (AR at 429-30.)

8 The State Board relies on *In the Matter of the Petitions of Stockton, et al.* (Oct. 6, 2009),
9 Order WQ 2009-0012, and *In the Matter of the Petition of Environmental Law Foundation* (MAY
10 19, 2009), Order WQ 2009-0003, in contending that no substantial questions of fact or law exist.
11 "In these orders, the State [] Board held, unequivocally, that the water quality objectives of the
12 Bay-Delta Plan apply to municipal treatment facilities, and that salinity limitations of 700
13 $\mu\text{mhos/cm}$ are appropriate." (Opposition at 16:8-10.)

14 The Court agrees with Manteca, however, that the State Board's decisions in these other
15 matters are not determinative of whether substantial questions of law or fact exist with respect to
16 Manteca. The State Board previously went out of its way to distinguish the "unique background
17 and facts" related to Manteca from those related to the Cities of Tracy and Stockton. (Larsen
18 Decl. at Exh. "A" (Order No. WQ 2005-0005 at 15.) The Court also notes that the very decisions
19 on which the State Board relies are being challenged by the Cities of Stockton and Tracy in
20 separate judicial proceedings, the outcome of which could impact the validity of the State Board's
21 actions with respect to these other municipalities, as well as Manteca. (*See Declaration of*
22 *Roberta Larson in Support of Manteca's Reply Brief ("Larson Reply Decl.")* at ¶¶ 8, 9, Exhs.
23 "G," "H.") Additionally, as Manteca notes – and the State Board does not refute – the "EC
24 objectives for the southern Delta are in a state of flux." (*See Memorandum* at 16:23-17:12.)

25 Accordingly, the Court finds that Manteca is entitled to a stay of the 700 $\mu\text{mhos/cm}$ EC
26 effluent limitation requirement and TSO pending the State Board's review of Manteca's Petition
27 for Review. However, as further discussed below, the Court finds that Manteca fails to establish
28 that it is entitled to an extension or tolling of the TSO deadlines.

///

1 C. Manteca fails to establish that it is entitled to an extension or tolling of the TSO
2 deadlines.

3 Through its Petition, Manteca seeks more than just a stay of the TSO deadlines. Manteca
4 actually seeks a tolling or an extension of the TSO deadlines as they relates to 700 µmhos/cm EC
5 effluent limitation requirement:

6 Manteca requests that the Court grant the stay and make it effective as of
7 November 27, 2009, when the Permit and TSO took effect. [Citations.] With
8 respect to the provisions that would be subject to the stay, its effect would be to
9 commence the schedule for the various compliance deadlines upon the final
disposition of the Petition for review. By virtue of the stay, the total period for
compliance would not change, but each deadline would shift by a period equal to
the time between November 27, 2009, and the date of the disposition.

10 (Memorandum at 7:3-9.) The State Board objects to Manteca's request, arguing that "[a] stay, as
11 authorized by Water Code section 13321, would not provide the tolling relief sought by
12 Petitioner." (Opposition at 1:23-25; 4:14-5:18.) The Court agrees.

13 Manteca relies in part on 23 CCR § 2053 for its argument that a stay can include a
14 "shifting" of the TSO deadlines. 23 CCR § 2053 provides that a stay extends to the "effect" of an
15 action of a regional board. Because the effect of the TSO is to impose compliance deadlines,
16 Manteca argues that a stay can be granted to relieve Manteca of these deadlines by essentially
17 modifying the TSO deadlines.

18 In making this argument, Manteca ignores the fact that a stay is intended to preserve the
19 status quo. "A stay is meant to provide a brief period of relief from a Regional Board's order
20 pending resolution on the merits." (*In the Matter of the Petitioners of Boeing Company* (June 21,
21 2006), Order WQ 2006-0007 at 8; *See also In the Matter of Tahoe-Truckee Sanitation Agency*
22 *Request for Stay* (Feb. 2, 1978), Order No. 78-3 at 4 ("It is appropriate to note here that the
23 general purpose of granting a stay is to provide that the 'status quo', or existing situation, will be
24 maintained pending resolution of the matters under review").) The State Board has interpreted 23
25 CCR § 2053 as authorizing a stay only until the State Board issues a decision on Manteca's
26 Petition for Review. "The interpretation of a regulation, like the interpretation of a statute, is, of
27 course, a question of law, and while an administrative agency's interpretation of its own
28 regulation obviously deserves great weight, the ultimate resolution of such legal questions rests

1 with the courts.’ [Citation.] However, the court generally will not depart from the agency’s
2 interpretation unless it is clearly erroneous or unauthorized.” (*Physicians and Surgeons Labs.,*
3 *Inc. v. Dept. of Health Servs.* (1992) 6 Cal.App.4th 968, 986-87 (citation omitted).)

4 Manteca does not allege that the Department’s interpretation of 23 CCR § 2053 is clearly
5 erroneous or unauthorized. Instead, Manteca argues that the Department has previously granted
6 such extensions of TSO deadlines in other matters and should essentially exercise its discretion to
7 do so with respect to Manteca. Manteca relies on *In the Matter of Cease and Desist Order*
8 *against the Department of Water Resources and the United States Bureau of Reclamation, In the*
9 *Matter of the Review on Own Motion of Waste Discharge Requirements for Vacaville’s Easterly*
10 *Wastewater Treatment Plant*, and *In the Matter of the Petition of City of Stockton*⁸ in support of
11 its argument. The authorities cited by Manteca are distinguishable and/or fail to support
12 Manteca’s argument that the Court is authorized to toll or extend the TSO deadlines pursuant to
13 23 CCR § 2053.

14 The State Board distinguishes the controlling legal authority in the *Department of Water*
15 *Resources and the United States Bureau of Reclamation* matter, arguing that it allowed the State
16 Board to stay and extend the compliance deadlines at issue. There, the State Board modified a

17
18 ⁸ The State Board objects to the introduction of *In the Matter of the Petition of City of Stockton* (Oct. 17, 2002),
19 Order WQ 2002-00018, because it is a non-precedential decision. Although, the State Board’s objection to the
20 decision is sustained, the Court notes that the *Stockton* matter offers little assistance to Manteca in support of its
21 argument that it is entitled to a tolling and/or extension of the TSO deadlines. In the *Stockton* matter, the Regional
22 Board and the City of Stockton entered into a stipulation staying certain compliance deadlines and expressly
23 providing:

24
25 With respect to the stay of compliance periods as provided above, the effect of the stay shall be to
26 commence the schedule for the compliance periods, and the periods for interim steps toward
27 compliance, upon the date the State Board issues a dispositive order on the Petition, if the State
28 Board untimely upholds the challenged provision or on the date the State Board dismisses the
29 Petition. The total period for compliance, and the periods for interim steps toward compliance,
30 will equal the period or periods provided in the applicable provision, unless ultimately enlarged by
31 the State Board.

(Larson Reply Decl. at ¶ 2, Exh. “B.”)

32 This stipulation was ultimately approved by the State Board. Manteca fails to provide an explanation for why, if the
33 Regional Board previously supported its Stay Request, Manteca and the Regional Board did not enter into a similar
34 stipulation for approval by the State Board. This is particularly interesting given that Manteca originally proposed to
35 the State Board that the parties enter into a similar stipulation. (AR at 417-19.) The State Board declined, stating
36 that as the adjudicating authority, it was inappropriate for the State Board to enter into such a stipulation. (AR at
37 431-34.) However, the State Board informed Manteca that municipalities had entered into such agreements with
38 regional boards that were then submitted to the State Board for approval.

1 cease and desist order issued against the Department of Water Resources (“DWR”) and the
2 United States Bureau of Reclamation (“USBR”) in response to the threatened violation of DWR’s
3 water rights permits for the State Water Project and USBR’s water right license and permits for
4 the Central Valley Project. (*In the Matter of Cease and Desist Order against the Department of*
5 *Water Resources and the United States Bureau of Reclamation* (Jan. 5, 2010), Order WR 2010-
6 0002 at 2.) The purpose of the proceeding was to “determine whether to modify the compliance
7 schedule contained in Order WR 2006-0006, and whether to impose any interim protective
8 measures.” (*Ibid.*)

9 The State Board decided:

10 We will extend the compliance deadline until after we have completed our current
11 review of the salinity objectives and associated program of implementation
12 contained in the [2006 Bay-Delta Plan] and any subsequent water right
13 proceeding so that, in developing a revised compliance plan, DWR and USBR can
14 take into account any change to their responsibility for meeting the objective that
15 may occur as a result of our review.”

14 (*Ibid.*)

15 Importantly, Water Code § 1832, not 23 CCR § 2053, authorized the State Board to
16 modify, not simply stay, the cease and desist order:

17 Cease and desist orders of the board shall be effective upon the issuance thereof.
18 The board may, after notice and opportunity for hearing, upon its own motion or
19 upon receipt of an application from an aggrieved person, modify, revoke, or stay
20 in whole or in part any cease and desist order issued pursuant to this chapter.

20 (*Id.* at 3.) Accordingly, the Court finds that the *DWR* matter does not support Manteca’s
21 argument in support of a tolling or extension of the TSO deadlines.

22 The *Vacaville* matter also is of no assistance to Manteca.⁹ There, the State Board stayed
23 various waste discharge requirements and compliance deadlines until the Regional Board dealt
24 with the matter on remand. In issuing the stay, the State Board stated: “By staying these
25 schedules, the Board intends that the schedules not run during the stay period. This means that

26 _____
27 ⁹ Manteca attaches only four pages of a 77-page decision to the Declaration of Ms. Larson in support of its Reply.
28 (*See* Larson Reply Decl. at ¶ 2, Exh. “A.”) The State Board’s objection to this evidence is sustained on this basis.
However, because the State Board attaches a complete copy of the State Board’s decision in the *Vacaville* matter, the
Court will address the decision in its ruling.

1 the effective date of the relevant final limits will be delayed beyond their existing effective date
2 by a period of time equal to the stay period.” (*In the Matter of the Review on Own Motion of*
3 *Waste Discharge Requirements Order No. 5-01-044 for Vacaville’s Easterly Wastewater*
4 *Treatment Plant* (Oct. 3, 2002), WQO 2002-0015 at 75.)

5 Upon review of the State Board’s decision in the *Vacaville* matter, the Court finds no
6 indication that that the stay issued by the State Board was issued pursuant to 23 CCR § 2053 or
7 was based on the same or similar criteria outlined in 23 CCR § 2053. In fact, the State Board
8 contends that the State Board stayed a compliance schedule as part of the final relief granted by
9 the State Board on Vacaville’s petition for review – a contention undisputed by Manteca and
10 supported by the Court’s review of the decision.

11 **D. The Parties’ Requests for Judicial Notice.**

12 Manteca’s Request for Judicial Notice, which is unopposed by the State Board, is
13 GRANTED.

14 Manteca’s Request for Judicial Notice in Support of Reply, which also is unopposed by
15 the State Board, is GRANTED in part and DENIED in part as follows: Requests for Judicial
16 Notice Nos. 1, 3, and 4, which consist only of partial sections of various State Board orders, are
17 DENIED. The remaining Requests for Judicial Notice are GRANTED.

18 The State Board’s first Request for Judicial Notice, which is unopposed by Manteca, is
19 GRANTED.

20 The State Board’s Second Request for Judicial Notice, which also is unopposed by
21 Manteca, is GRANTED.

22 **E. The State Board’s Objections to Manteca’s Evidence.**

23 The State Board objects to Exhibit “A” of the Larson Declaration on the ground that
24 Manteca fails to attach a complete copy of the State Board’s Order WQO-00015, *In the Matter of*
25 *the Review of Own Motion of Waste Discharge Requirements Order No. 5-01-044 for Vacaville’s*
26 *Easterly Wastewater Treatment Plant* (Oct. 3, 2002). The State Board’s objection is
27 SUSTAINED. The Court instead will consider the complete copy of State Board Order WQO-
28 00015 attached as Exhibit “F” to the State Board’s Second Request for Judicial Notice.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The State Board also objects to Exhibit "B" of the Larson Declaration on the ground that Manteca cites to and relies on a non-precedential State Board decision, State Board Order WQO-2002-0018, *In the Matter of the Petition of City of Stockton*, and a related stipulation. The State Board's objection is SUSTAINED.

III. DISPOSITION

A judgment shall be issued in favor of Manteca, and against the State Board, GRANTING in part and DENYING in part Manteca's Petition. A peremptory writ shall issue from this Court to the State Board, commanding the State Board to vacate its Stay Denial, grant Manteca's Stay Request in accordance with this Court's ruling, and to take any further action especially enjoined on it by law. The writ shall further command the State Board to make and file a return within 30 days after issuance of the writ, setting forth what it has done to comply with the writ. The Court reserves jurisdiction in this action until there has been full compliance with the writ.

In accordance with Local Rule 9.16, Manteca is directed to prepare a judgment, incorporating this Court's ruling as an exhibit, and a peremptory writ of mandamus; submit them to opposing counsel for approval as to form in accordance with Rule of Court 3.1312(a); and thereafter submit them to the Court for signature and entry of judgment in accordance with Rule of Court 3.1312(b).

DATED: October 8, 2010

MICHAEL KENNY

Judge MICHAEL P. KENNY
Superior Court of California,
County of Sacramento

CERTIFICATE OF SERVICE BY MAILING
(C.C.P. Sec. 1013a(4))

I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of the above-entitled **RULING ON SUBMITTED MATTER** in envelopes addressed to each of the parties, or their counsel of record as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at 720 9th Street, Sacramento, California.

Theresa A. Dunham, Esq.
SOMACH SIMMONS & DUNN
500 Capitol Mall, Suite 1000
Sacramento, CA 95814

Jeffrey P. Reusch
Deputy Attorney General
Office of the Attorney General
1300 I Street
Sacramento, CA 94244-2550

Superior Court of California,
County of Sacramento

Dated: October 8, 2010

By: S. LEE
Deputy Clerk

REQUEST FOR STAY

EXHIBIT B

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

J. Bradley Barbeau, Ph.D.

California State University, Monterey Bay School of Business

Kay L. Mercer, M.S., PCA

KMI

August 1, 2011

8/1/2011 3:53 PM

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

REQUEST FOR STAY, Exhibit B

Contents

Executive Summary	3
Introduction.....	4
Background: Economic Impacts of the Ag Waiver.....	5
Methodology	7
Grower Costs of Compliance for the Proposed Waiver.....	8
Average Total Costs of Compliance	8
Distribution of Costs by Operation	9
Individual Items Representing Major Costs.....	12
Costs difficult to estimate.....	14
Efficiency Gains.....	15
Landowner Impacts	16
Economic Impacts.....	16
Costs of the Third Party Plan	17
Conclusions, Implications and Recommendations	19
Appendix A: Actions Required by the Proposed Waiver.....	22
Appendix B: IMPLAN Definitions	28

Executive Summary

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

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

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

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

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

Introduction

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

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

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

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

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

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

Background: Economic Impacts of the Ag Waiver

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

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

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

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

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

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

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

The second factor, competitive effects, are likely to have the opposite time pattern. In the short run, increased costs of production in the region will likely fall heavily on growers, as individual growers have little bargaining power in the agricultural supply chain. Consumer prices may rise to some degree, but this would depend on reductions in total output of a given commodity resulting from the Waiver and the price elasticity of that commodity¹. Over time, growers faced with higher costs of production in the region will be encouraged to shift production to other regions where costs may be lower, including nondomestic regions. The likely extent of this effect is not known.

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

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

Methodology

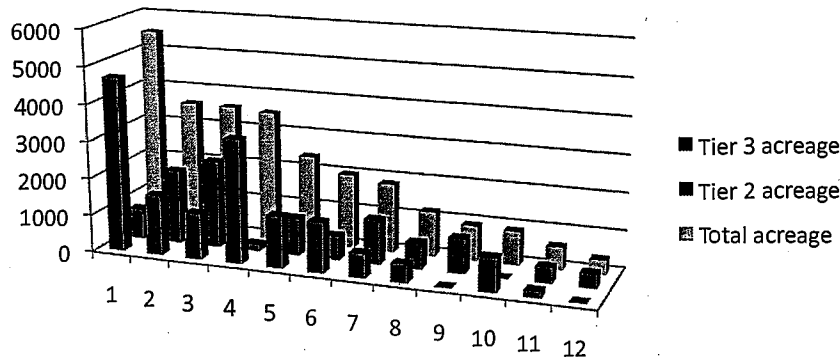
We interviewed 12 vegetable growers with operations ranging from 378 acres to 5510 acres, with the 12 operations totaling 26,448 acres. The 26,448 acres represents about 6.1% of the 435,000 irrigated acres in the Central Coast region. We estimate that 15,824 of these acres would fall into tier 3, with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

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

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

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

Distribution of Acreage in Sample



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

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

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

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

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

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

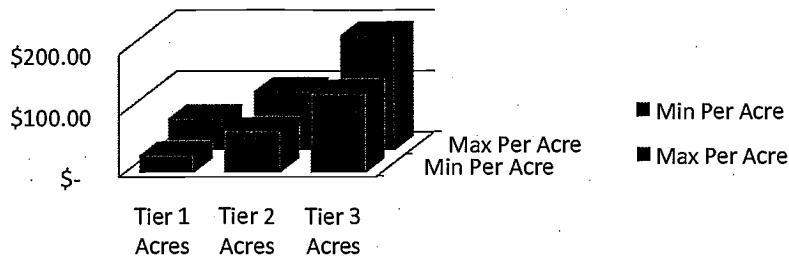
Grower Costs of Compliance for the Proposed Waiver

Average Total Costs of Compliance

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

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

Cost Per Acre - Average Across Sample

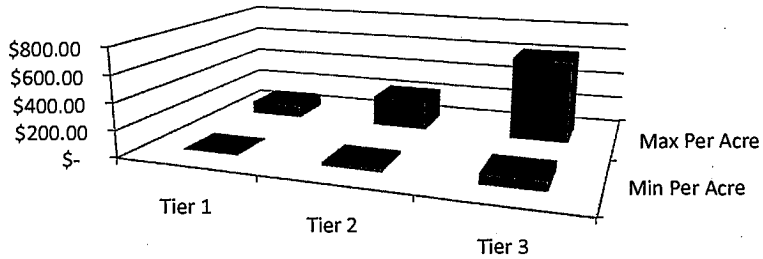


Tier 1 averaged cost estimates ranged from \$27.78 per acre to \$51.82 per acre, tier 2 averaged costs ranged from \$67.54 per acre to \$96.21 per acre, and tier 3 averaged costs ranged from \$128.79 to \$187.48. These numbers are represented graphically in the above figure. From this, it is expected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

Distribution of Costs by Operation

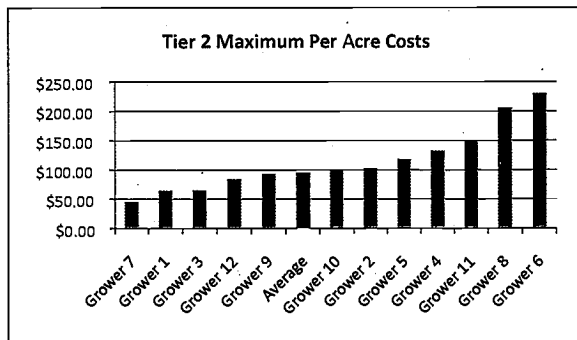
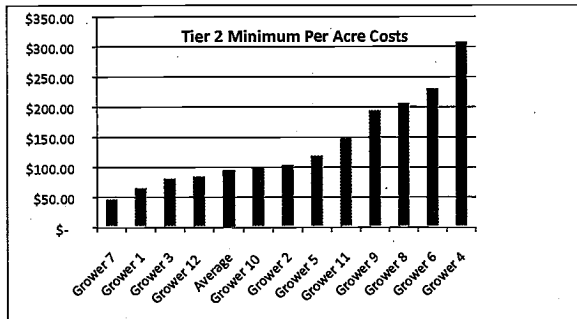
In addition to looking at averages, it is worthwhile also considering the range of costs across growers. This may give a picture of what an individual grower may face, since few operations will be "average." For individual growers in the survey, tier 1 costs ranged from a low of \$4.66 per acre to a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

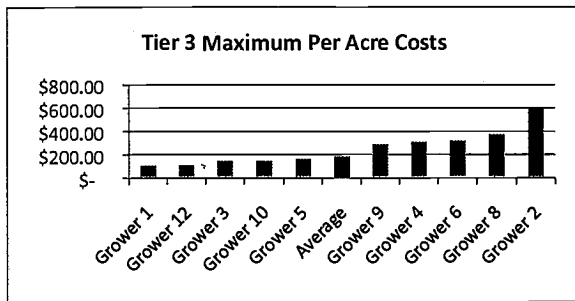
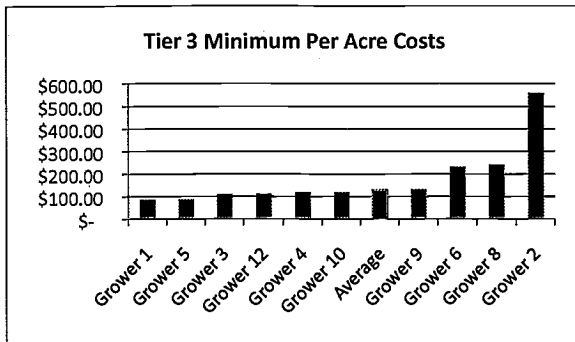
Range of Annualized Cost Per Acre By Operation



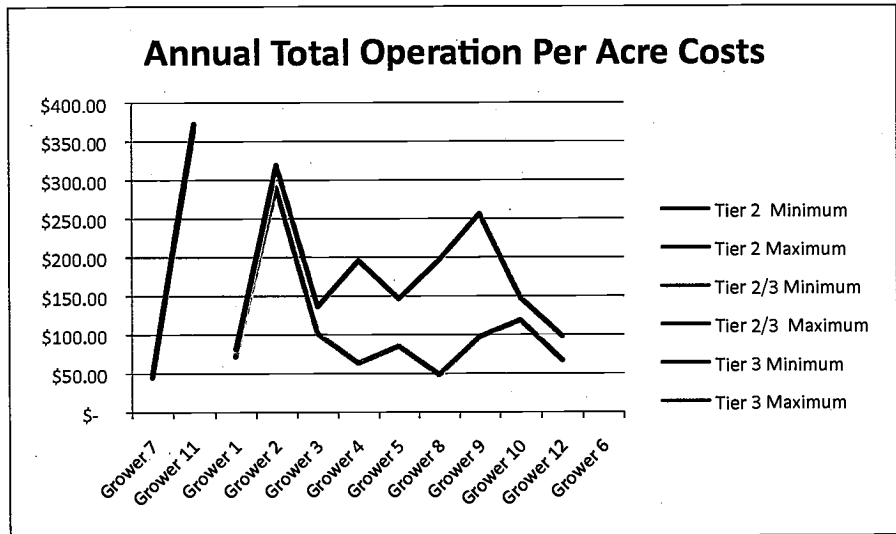
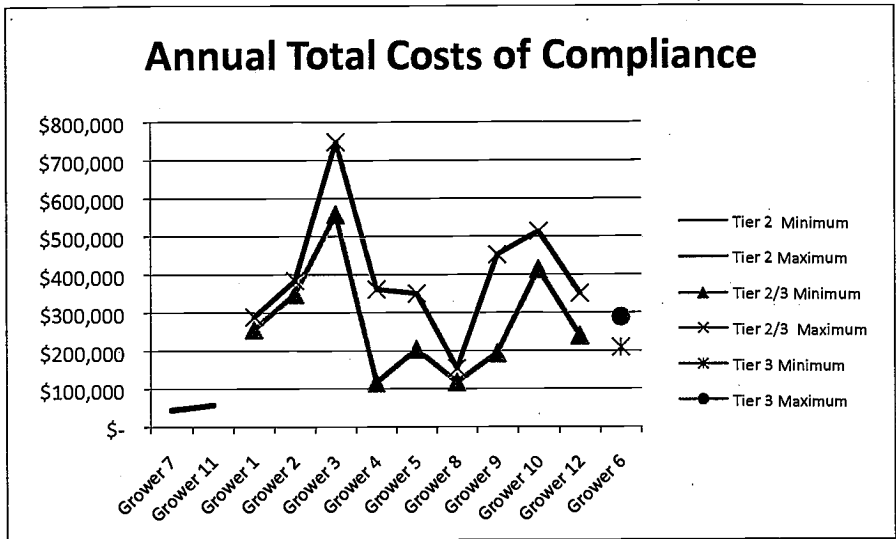
	Tier 1	Tier 2	Tier 3
Min Per Acre	\$4.66	\$23.74	\$73.11
Max Per Acre	\$98.97	\$231.19	\$620.55

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





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



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

Individual Items Representing Major Costs

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

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

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

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

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

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

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

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

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

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

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

Costs difficult to estimate

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

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

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

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

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

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

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

Efficiency Gains

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

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

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

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

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

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

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

Landowner Impacts

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

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

Economic Impacts³

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

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

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

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

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

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

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

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

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

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

Costs of the Third Party Plan

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

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

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

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

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

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

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

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

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

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

Conclusions, Implications and Recommendations

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

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

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

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

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

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

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

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

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

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

Appendix A: Actions Required by the Proposed Waiver

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

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

Appendix A, Continued

TIER 2 AND TIER 3 GROWER REQUIREMENTS	
1	Discharger must submit an annual compliance form
2	Photo-monitor riparian and wetland habitat every 4 years
3	Tier 2 growers with High NO₃ Loading Risk must record and report the total N applied per acre to each farm/ranch or NO₃ loading risk unit including organic and inorganic fertilizers, slow release products, compost, compost teas, manure, extracts, N present in the soil and NO₃ in irrigation water or propose an individual GW monitoring reporting program.
4	Determine GW NO₃ loading risk factor for each ranch/farm or "NO₃ loading risk units"
5	Calculate the NO₃ loading risk level as "low, medium or high".

Appendix A, Continued

TIER 3 GROWER REQUIREMENTS	
L	Must do individual surface WQ monitoring
L2	Must submit an individual surface water discharge Sampling and Analysis Plan which includes
L3	Individual Sampling and Assessment Plan and QAPP are subject to approval by Executive Officer.
L4	Must select monitoring points to characterize at least 80% of the estimated irrigation runoff discharge volume from each farm-ranch at the point in time the sample is taken, including tailwater discharges and discharges from tile drains.
L5	Tailwater ponds must be sampled twice during the dry season and 4 times during the wet season
L6	Monitoring Parameters for tailwater ponds and other surface containment features are volume of pond and NO3 +Nitrite (as N).
L7	Must include at least one monitoring point from each farm/ranch which drains areas where chlorpyrifos or diazinon are applied and monitoring of runoff or tailwater must be conducted within one week of chemical application.
L8	Annually submit individual surface water discharge monitoring data and reports.
L9	Must use a state registered professional engineer, registered geologist or certified laboratory to submit lab data.
L10	Must develop a WQ Buffer Plan or submit evidence that discharge is adequately treated.
L11	WQ Buffer Plan must include a minimum of a 30 foot buffer
L12	Must maintain a filter strip of appropriate width between disturbed land and "surface water features". If doing any "construction" must maintain a 30' buffer strip.
L13	Must include a WQ Buffer Plan or alternative in the Annual Compliance Plan.
L14	Must add the following to the Annual Compliance Form
L15	Must take an N soil sample prior to planting or seeding a field.
L16	Must take a leaf sample prior to applying more N.
L17	Must determine typical crop N uptake for each crop type and report the basis for determination
L18	Must develop a certified Irrigation and Nutrient Management Plan using a professional soil scientist, professional agronomist or crop advisor.

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

Appendix B: IMPLAN Definitions

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

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

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

SOMACH SIMMONS & DUNN
A Professional Corporation

1 SOMACH SIMMONS & DUNN
A Professional Corporation
2 THERESA A. DUNHAM, ESQ. (SBN 187644)
500 Capitol Mall, Suite 1000
3 Sacramento, CA 95814
Telephone: (916) 446-7979
4 Facsimile: (916) 446-8199

5 Attorneys for Petitioners GROWER-SHIPPER
ASSOCIATION OF CENTRAL CALIFORNIA, GROWER-
6 SHIPPER ASSOCIATION OF SAN LUIS OBISPO AND
SANTA BARBARA COUNTIES, and WESTERN
7 GROWERS



8
9 BEFORE THE
10 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

11
12 In the Matter of the Petition of Grower-Shipper
Association of Central California, Grower-
13 Shipper Association of San Luis Obispo and
Santa Barbara Counties, and Western Growers
14 for Review of Action and Failure to Act by
Central Coast Regional Water Quality Control
15 Board.

SWRCB/OCC File No. _____

DECLARATION OF RICK TOMLINSON
IN SUPPORT OF GROWER-SHIPPER
ASSOCIATION OF CENTRAL
CALIFORNIA, GROWER-SHIPPER
ASSOCIATION OF SAN LUIS OBISPO
AND SANTA BARBARA COUNTIES, and
WESTERN GROWERS' PETITION FOR
REVIEW

16
17
18
19 I, Rick Tomlinson, declare as follows:

20 1. I am the Vice-President for Public Policy at the California Strawberry
21 Commission, and am responsible for assisting the Commission and its members on all public
22 policy issues related to the environment, including policy issues with respect to water quality.

23 2. I have been involved with and have participated in the Central Coast Regional
24 Water Quality Control Board's (Central Coast Water Board) process for renewing Order
25 No. R3-2012-0011, Conditional Waiver of Waste Discharge Requirements for Discharges from
26 Irrigated Lands (Conditional Waiver) on behalf of the Commission and the Commission's
27 members.


28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. On March 6, 2012, I received proposed draft language from California Environmental Protection Agency (CalEPA) Undersecretary Gordon Burns referenced as "Shimek Proposal" for potential insertion into the Conditional Waiver. A true and correct copy of the proposed draft language is attached hereto as Exhibit 1.

4. On March 7, 2012, I participated in a telephone conference with CalEPA Undersecretary Burns and Mr. Steve Shimek to discuss the merits of the proposed draft language. During that conversation, Mr. Shimek conveyed that he had presented the proposed draft language to CalEPA Undersecretary Burns and to staff at the Central Coast Water Board. Mr. Shimek further conveyed that he had already presented the language to the staff earlier in the day.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 14th day of April 2012, at Sacramento, California.


Rick Tomlinson

TOMLINSON DECL.

EXHIBIT 1

Inserted between Staff Proposal Condition 10 and 11.

Groups may form around watersheds or other commonalities to propose creative water quality projects and solutions, and to clarify group efforts which could lead to compliance with this order (i.e. commodity based certification programs such as SIP). At the discretion of the executive officer, groups may be granted down-classifications (i.e. Tier 3 to Tier 2) and project-specific timelines, benchmarks, and monitoring requirements. The purpose of this provision is to encourage innovation, site-specific solutions, and to remove barriers to long-term investments (i.e. engineered wetlands).

Projects will be evaluated for, among other things:

- Scale. Solutions must be scaled to address impairment
- Chance of success. Projects must demonstrate a reasonable chance of eliminating toxicity within the permit term (5 years) and reducing discharge of nutrients to surface and groundwaters.
- Commitment to solving the problem. Proposals must address what new actions will be taken if the project does not meet goals and how the project will be sustained through time.
- Benchmarks and accountability. Proposals must set benchmarks and describe monitoring and measuring methods. Monitoring points must be at the point of discharge but may not always be at the edge-of-field, so long as monitoring results demonstrate water quality improvement and the efficacy of a project.

Project proposals will be evaluated by a committee comprised of: [Two?] Three researchers or academics skilled in agricultural practices and/or water quality, one farm advisor (NRCS or RCD), one grower representative, one environmental representative, one environmental justice or environmental health representative, and one RWQCB staff member. The RWQCB Executive Officer has sole discretion in giving final approval of any project after receiving project evaluation results and recommendations from the committee.

SOMACH SIMMONS & DUNN
A Professional Corporation

1 SOMACH SIMMONS & DUNN
A Professional Corporation
2 THERESA A. DUNHAM, ESQ. (SBN 187644)
500 Capitol Mall, Suite 1000
3 Sacramento, CA 95814
Telephone: (916) 446-7979
4 Facsimile: (916) 446-8199

5 Attorneys for Petitioners CALIFORNIA
STRAWBERRY COMMISSION, GROWER-
6 SHIPPER ASSOCIATION OF CENTRAL
CALIFORNIA, GROWER-SHIPPER
7 ASSOCIATION OF SAN LUIS OBISPO AND
SANTA BARBARA COUNTIES, and WESTERN
8 GROWERS



9
10 BEFORE THE
11 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

12
13 In the Matter of the Petition of California
Strawberry Commission, Grower-Shipper
14 Association of Central California, Grower-
Shipper Association of San Luis Obispo and
15 Santa Barbara Counties, and Western Growers
for Review of Action and Failure to Act by
16 Central Coast Regional Water Quality Control
Board.

SWRCB/OCC File No. _____

DECLARATION OF PETER C. AIELLO IN
SUPPORT OF CALIFORNIA
STRAWBERRY COMMISSION,
GROWER-SHIPPER ASSOCIATION OF
CENTRAL CALIFORNIA, GROWER-
SHIPPER ASSOCIATION OF SAN LUIS
OBISPO AND SANTA BARBARA
COUNTIES, and WESTERN GROWERS'
REQUEST FOR STAY

17
18
19
20 I, Peter C. Aiello, declare as follows:

21 1. I am the owner and operator of Uesugi Farms, which is located within the
22 geographic boundaries of the Central Coast Regional Water Quality Control Board (Central Coast
23 Water Board). We grow approximately 1,300 acres of fruits and vegetables in this area and have
24 an additional 1,000 acres under contract with other growers in the area as well. In addition to our
25 growing operation, we also harvest, pack, cool, market, and ship the products yielded by these
26 combined 2,300 acres.

27 2. On March 15, 2012, the Central Coast Water Board adopted Order
28 No. R3-2012-0011 *Conditional Waiver of Waste Discharge Requirements for Discharges from*

1 *Irrigated Lands* (Conditional Waiver), Order No. R3-2012-0011-02 *Monitoring and Reporting*
2 *Program for Tier 2 Dischargers Enrolled Under the Conditional Waiver of Waste Discharge*
3 *Requirements for Discharges from Irrigated Lands* (Tier 2 MRP), and Order
4 No. R3-2012-0011-03 *Monitoring and Reporting Program for Tier 3 Dischargers Enrolled*
5 *Under the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated*
6 *Lands* (Tier 3 MRP). (True and Correct copies of these Orders are attached to the Petition as
7 Exhibits 1, 2 and 3.) The Conditional Waiver, Tier 2 MRP, and Tier 3 MRP collectively contain
8 new requirements that will apply to our family farm.

9 3. The Conditional Waiver, Tier 2 MRP, and Tier 3 MRP collectively require farm
10 owners and operators of irrigated lands within the Central Coast Region to determine tier
11 classifications for each farm/ranch. Requirements in the orders apply based on the tiering
12 classification for each farm/ranch. Between now and December of 2013, the new specific
13 provisions that apply to farms/ranches that are classified as Tier 2 and Tier 3 include annual
14 compliance reporting, determination of nitrate loading risk factors, and photomonitoring. These
15 requirements are in addition to the requirements for filing notices of intent for each farm/ranch,
16 and Farm Plans for each farm/ranch, which are requirements that apply to all tier classifications.
17 Further, between now and December of 2013 the new specific provisions that apply to
18 farms/ranches that are classified as Tier 3 also include preparation and submittal of an individual
19 surface water discharge Sampling and Analysis Plan and Quality Assurance Project Plan to
20 monitor individual discharges of waste from each Tier 3 farm/ranch and its tile drains, tailwater
21 ponds and any other surface water containment structures; and begin monitoring individual
22 surface water discharge per the approved Sampling and Analysis Plan and Quality Assurance
23 Project Plan; and, determine and report typical crop nitrogen uptake.

24 4. Uesugi Farms employs over 500 people and consists of a total of 47 individual
25 farms/ranches that grow peppers, Napa cabbage, sweet corn, pumpkins, beans, and strawberries
26 throughout the year. From the 47 individual ranches, I estimate that eight (8) of the
27 farms/ranches will be considered to be Tier 2 farms/ranches under the criteria set forth in the
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Conditional Waiver, and that one (1) of the farms/ranches will be considered to be a Tier 3 farm/ranch under the criteria set forth in the Conditional Waiver.

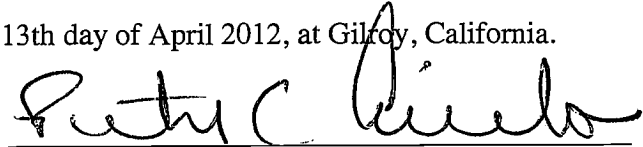
5. For our Tier 3 farm/ranch, I estimate the cost of compliance with all of the applicable Conditional Waiver provisions to be \$387 per acre. Of that cost, I estimate that the Tier 3 requirements that must be met between now and December of 2013 (i.e., filing of Notices of Intent, updating Farm Plans, annual compliance form reporting, determination of nitrate hazard indexes, photomonitoring, and individual surface water discharge monitoring requirements) to be \$310 per acre.

6. For our Tier 2 farms/ranches, I estimate the cost of compliance with all of the applicable Conditional Waiver provisions to be \$145 per acre. Of that cost, I estimate that the Tier 2 requirements that must be met between now and December of 2013 (i.e., filing of Notices of Intent, updating Farm Plans, annual compliance form reporting, determination of nitrate hazard indexes, and photomonitoring) to be \$116 per acre.

7. For the nine (9) farms/ranches in total, I estimate that the cost of compliance between now and December of 2013 to be almost \$40,000.

8. Once expended, costs spent for compliance with the Conditional Waiver are irretrievable.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 13th day of April 2012, at Gilroy, California.


Pete Aiello

SOMACH SIMMONS & DUNN
A Professional Corporation

1 SOMACH SIMMONS & DUNN
A Professional Corporation
2 THERESA A. DUNHAM, ESQ. (SBN 187644)
500 Capitol Mall, Suite 1000
3 Sacramento, CA 95814
Telephone: (916) 446-7979
4 Facsimile: (916) 446-8199



5 Attorneys for Petitioners CALIFORNIA STRAWBERRY
COMMISSION, GROWER-SHIPPER ASSOCIATION
6 OF CENTRAL CALIFORNIA, GROWER-SHIPPER
ASSOCIATION OF SAN LUIS OBISPO AND SANTA
7 BARBARA COUNTIES, and WESTERN GROWERS

8

9

BEFORE THE

10

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

11

12

In the Matter of the Petition of California
Strawberry Commission, Grower-Shipper
13 Association of Central California, Grower-
Shipper Association of San Luis Obispo and
14 Santa Barbara Counties, and Western Growers
for Review of Action and Failure to Act by
15 Central Coast Regional Water Quality Control
Board.

SWRCB/OCC File No. _____

16

DECLARATION OF BOB CAMPBELL IN
SUPPORT OF CALIFORNIA
17 STRAWBERRY COMMISSION,
GROWER-SHIPPER ASSOCIATION OF
CENTRAL CALIFORNIA, GROWER-
SHIPPER ASSOCIATION OF SAN LUIS
OBISPO AND SANTA BARBARA
COUNTIES, and WESTERN GROWERS'
REQUEST FOR STAY

18

19

I, Bob Campbell, declare as follows:

20

1. I am the owner/operator of Bob Campbell Ranches, Inc.

21

2. On March 15, 2012, the Central Coast Water Board adopted Order

22

No. R3-2012-0011 *Conditional Waiver of Waste Discharge Requirements for Discharges from*

23

Irrigated Lands (Conditional Waiver), Order No. R3-2012-0011-02 *Monitoring and Reporting*

24

Program for Tier 2 Dischargers Enrolled Under the Conditional Waiver of Waste Discharge

25

Requirements for Discharges from Irrigated Lands (Tier 2 MRP), and Order

26

No. R3-2012-0011-03 *Monitoring and Reporting Program for Tier 3 Dischargers Enrolled*

27

Under the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated

28

Lands (Tier 3 MRP). (True and correct copies of the Orders are attached to the Petition as

1 Exhibits A, C and D.) The Conditional Waiver, Tier 2 MRP, and Tier 3 MRP collectively
2 contain new requirements that will apply to the farms/ranches owned and managed by Bob
3 Campbell Ranches, Inc.

4 3. The Conditional Waiver, Tier 2 MRP, and Tier 3 MRP collectively require farm
5 owners and operators of irrigated lands within the Central Coast Region to determine tier
6 classifications for each farm/ranch. Requirements in the orders apply based on the tiering
7 classification for each farm/ranch. Between now and December of 2013, the new specific
8 provisions that apply to farms/ranches that are classified as Tier 2 and Tier 3 include annual
9 compliance reporting, determination of nitrate loading risk factors, and photomonitoring. These
10 requirements are in addition to the requirements for filing notices of intent for each farm/ranch,
11 and Farm Plans for each farm/ranch, which are requirements that apply to all tier classifications.
12 Further, between now and December of 2013, the new specific provisions that apply to
13 farms/ranches that are classified as Tier 3 also include preparation and submittal of an individual
14 surface water discharge Sampling and Analysis Plan (SAP) and Quality Assurance Project Plan
15 (QAPP) to monitor individual discharges of waste from each Tier 3 farm/ranch and its tile drains,
16 tailwater ponds and any other surface water containment structures; begin monitoring individual
17 surface water discharge pursuant to the approved SAP and QAPP; and, determine and report
18 typical crop nitrogen uptake.

19 4. Bob Campbell Ranches, Inc. employs over 120 employees, and consists of a total
20 of 38 individual ranches that grow a wide range of crops throughout the year. Bob Campbell
21 Ranches, Inc. currently grows 18 different crops.

22 5. To the best of my knowledge, I have determined that all 38 ranches would be
23 considered Tier 2 farms/ranches under the criteria set forth in the Conditional Waiver. However,
24 there is a slight possibility that a small number of these farms/ranches could be considered Tier 3
25 farms/ranches under the criteria set forth in the Conditional Waiver.

26 6. If any of our farms/ranches are considered to be in Tier 3, I estimate the cost of
27 compliance with all of the applicable Conditional Waiver provisions to range between \$120 and
28

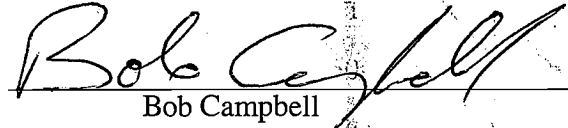
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

\$190 per acre. Of that cost, I estimate the cost to comply with the Tier 3 requirements that must be met between now and December of 2013 to be between \$120 and \$150 per acre.

7. For our Tier 2 farms/ranches, I estimate the cost of compliance with all of the applicable Conditional Waiver provisions to range between \$65 and \$100 per acre. Of that cost, I estimate that the Tier 2 requirements that must be met between now and December 2013 to range between \$65 and \$80 per acre.

8. For the 38 farms/ranches in total, I estimate the cost of compliance between now and December 2013 to be between \$155,740 and \$191,680.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 13th day of April 2012, at Lompoc, California.



Bob Campbell

SOMACH SIMMONS & DUNN
A Professional Corporation

1 SOMACH SIMMONS & DUNN
2 A Professional Corporation
3 THERESA A. DUNHAM, ESQ. (SBN 187644)
4 500 Capitol Mall, Suite 1000
5 Sacramento, CA 95814
6 Telephone: (916) 446-7979
7 Facsimile: (916) 446-8199



5 Attorneys for Petitioners CALIFORNIA STRAWBERRY
6 COMMISSION, GROWER-SHIPPER ASSOCIATION
7 OF CENTRAL CALIFORNIA, GROWER-SHIPPER
8 ASSOCIATION OF SAN LUIS OBISPO AND SANTA
9 BARBARA COUNTIES, and WESTERN GROWERS

9 BEFORE THE
10 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

12 In the Matter of the Petition of California
13 Strawberry Commission, Grower-Shipper
14 Association of Central California, Grower-
15 Shipper Association of San Luis Obispo and
16 Santa Barbara Counties, and Western Growers
17 for Review of Action and Failure to Act by
18 Central Coast Regional Water Quality Control
19 Board.

SWRCB/OCC File No. _____

DECLARATION OF DAVID COSTA IN
SUPPORT OF CALIFORNIA
STRAWBERRY COMMISSION,
GROWER-SHIPPER ASSOCIATION OF
CENTRAL CALIFORNIA, GROWER-
SHIPPER ASSOCIATION OF SAN LUIS
OBISPO AND SANTA BARBARA
COUNTIES, and WESTERN GROWERS'
REQUEST FOR STAY

19 I, David Costa, declare as follows:

20 1. I am one of five owners of a family farm that is located in the Salinas Valley of
21 California, which is located within the geographic boundaries of the Central Coast Regional
22 Water Quality Control Board (Central Coast Water Board).

23 2. On March 15, 2012, the Central Coast Water Board adopted Order
24 No. R3-2012-0011 *Conditional Waiver of Waste Discharge Requirements for Discharges from*
25 *Irrigated Lands* (Conditional Waiver), Order No. R3-2012-0011-02 *Monitoring and Reporting*
26 *Program for Tier 2 Dischargers Enrolled Under the Conditional Waiver of Waste Discharge*
27 *Requirements for Discharges from Irrigated Lands* (Tier 2 MRP), and Order
28 No. R3-2012-0011-03 *Monitoring and Reporting Program for Tier 3 Dischargers Enrolled*

1 *Under the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated*
2 *Lands* (Tier 3 MRP). (True and Correct copies of these Orders are attached to the Petition as
3 Exhibits A, C and D.) The Conditional Waiver, Tier 2 MRP, and Tier 3 MRP collectively
4 contain new requirements that will apply to our family farm.

5 3. The Conditional Waiver, Tier 2 MRP, and Tier 3 MRP collectively require farm
6 owners and operators of irrigated lands within the Central Coast Region to determine tier
7 classifications for each farm/ranch. Requirements in the orders apply based on the tiering
8 classification for each farm/ranch. Between now and December of 2013, the new specific
9 provisions that apply to farms/ranches that are classified as Tier 2 and Tier 3 include annual
10 compliance reporting, determination of nitrate loading risk factors, and photomonitoring. These
11 requirements are in addition to the requirements for filing notices of intent (NOI) for each
12 farm/ranch, and Farm Plans for each farm/ranch, which are requirements that apply to all tier
13 classifications. Further, between now and December of 2013 the new specific provisions that
14 apply to farms/ranches that are classified as Tier 3 also include preparation and submittal of an
15 individual surface water discharge Sampling and Analysis Plan and Quality Assurance Project
16 Plan to monitor individual discharges of waste from each Tier 3 farm/ranch and its tile drains,
17 tailwater ponds and any other surface water containment structures; and begin monitoring
18 individual surface water discharge per the approved Sampling and Analysis Plan and Quality
19 Assurance Project Plan; and, determine and report typical crop nitrogen uptake.

20 4. Our family farm employs over 500 employees, and consists of a total of
21 38 individual ranches that grow cool season vegetables throughout the year. Based upon review
22 of my NOI, staff has determined that 34 of the ranches we operate will be considered Tier 2, and
23 2 ranches will be considered Tier 3 under the criteria set forth in the Conditional Waiver.

24 5. Each ranch/farm is divided further divided into blocks/fields, and in total our farm
25 consists of 414 blocks/fields. Each block/field will have multiple staggered plantings, and we
26 average 2.1 crops per acre per year. We currently grow 20 different crops, and have grown
27 4 others in previous years. The total number of plantings for us within one year is
28 approximately 1350.

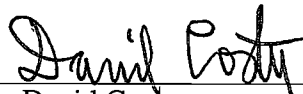
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

6. For our Tier 3 farms/ranches, I estimate the cost of compliance with all of the applicable Conditional Waiver provisions to range between \$554 and \$739 per acre. Of that cost, we estimate that the Tier 3 requirements that must be met between now and December of 2013 (i.e., filing of Notices of Intent, updating Farm Plans, annual compliance form reporting, determination of nitrate hazard indexes, photomonitoring and individual surface water discharge monitoring requirements) to range between \$110 and \$148 per acre.

7. For our Tier 2 farms/ranches, I estimate the cost of compliance with all of the applicable Conditional Waiver provisions to range between \$231 and \$331 per acre. Of that cost, I estimate that the Tier 2 requirements that must be met between now and December of 2013 (i.e., filing of Notices of Intent, updating Farm Plans, annual compliance form reporting, determination of nitrate hazard indexes, and photomonitoring) to range between \$46 and \$66 per acre.

8. For the 38 farms/ranches in total, I estimate that the cost of compliance between now and December of 2013 to be between \$557,951 and \$747,803.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 13th day of April 2012, at Salinas, California.



David Costa

1 SOMACH SIMMONS & DUNN
A Professional Corporation
2 THERESA A. DUNHAM, ESQ. (SBN 187644)
500 Capitol Mall, Suite 1000
3 Sacramento, CA 95814
Telephone: (916) 446-7979
4 Facsimile: (916) 446-8199

5 Attorneys for Petitioners GROWER-SHIPPER
ASSOCIATION OF CENTRAL CALIFORNIA,
6 GROWER-SHIPPER ASSOCIATION OF SAN LUIS
OBISPO AND SANTA BARBARA COUNTIES, and
7 WESTERN GROWERS

8

9

BEFORE THE

10

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

11

12 In the Matter of the Petition of Grower-Shipper
Association of Central California, Grower-
13 Shipper Association of San Luis Obispo and
Santa Barbara Counties, and Western Growers
14 for Review of Action and Failure to Act by
Central Coast Regional Water Quality Control
15 Board.

SWRCB/OCC File No. _____

16

DECLARATION OF DIRK GIANNINI IN
SUPPORT OF GROWER-SHIPPER
ASSOCIATION OF CENTRAL
CALIFORNIA, GROWER-SHIPPER
ASSOCIATION OF SAN LUIS OBISPO
AND SANTA BARBARA COUNTIES, and
WESTERN GROWERS' REQUEST FOR
STAY

17

18

19 I, Dirk Giannini, declare as follows:

20

21

22

23

24

25

26

27

28

1. I am the fourth generation owner and operator of Christensen & Giannini, which is located within the geographic boundaries of the Central Coast Regional Water Quality Control Board (Central Coast Water Board). My wife and daughters, as well as my parents, live in homes on a farm in the Northern part of the Salinas Valley. We have grown crops in the region for over 80 years. I was born and raised on this ranch that we currently farm, and grow leafy greens, mixed vegetables, and rotate with strawberry growers on the farm we reside on, as well as other farms throughout the valley.

2. On March 15, 2012, the Central Coast Water Board adopted Order No. R3-2012-0011 *Conditional Waiver of Waste Discharge Requirements for Discharges from*

1 *Irrigated Lands (Conditional Waiver), Order No. R3-2012-0011-02 Monitoring and Reporting*
2 *Program for Tier 2 Dischargers Enrolled Under the Conditional Waiver of Waste Discharge*
3 *Requirements for Discharges from Irrigated Lands (Tier 2 MRP), and Order*
4 *No. R3-2012-0011-03 Monitoring and Reporting Program for Tier 3 Dischargers Enrolled*
5 *Under the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated*
6 *Lands (Tier 3 MRP). (True and Correct copies of these Orders are attached to the Petition as*
7 *Exhibits A, C and D.) The Conditional Waiver, Tier 2 MRP, and Tier 3 MRP collectively contain*
8 *new requirements that will apply to our family farm.*

9 3. The Conditional Waiver, Tier 2 MRP, and Tier 3 MRP collectively require farm
10 owners and operators of irrigated lands within the Central Coast Region to determine tier
11 classifications for each farm/ranch. Requirements in the orders apply based on the tiering
12 classification for each farm/ranch. Between now and December of 2013, the new specific
13 provisions that apply to farms/ranches that are classified as Tier 2 and Tier 3 include annual
14 compliance reporting, determination of nitrate loading risk factors, and photomonitoring. These
15 requirements are in addition to the requirements for filing notices of intent for each farm/ranch,
16 and Farm Plans for each farm/ranch, which are requirements that apply to all tier classifications.
17 Further, between now and December of 2013 the new specific provisions that apply to
18 farms/ranches that are classified as Tier 3 also include preparation and submittal of an individual
19 surface water discharge Sampling and Analysis Plan and Quality Assurance Project Plan to
20 monitor individual discharges of waste from each Tier 3 farm/ranch and its tile drains, tailwater
21 ponds, and any other surface water containment structures; and begin monitoring individual
22 surface water discharge per the approved Sampling and Analysis Plan and Quality Assurance
23 Project Plan; and, determine and report typical crop nitrogen uptake.

24 4. Christensen & Giannini employs 50 employees, and consists of a total of
25 17 individual ranches that grow a variety of row crops and rotate with strawberry growers
26 throughout the year. Based upon review of my NOI, staff has determined that of the
27 17 individual ranches we operate, 13 of the farm/ranches will be considered to be Tier 2
28 farms/ranches under the criteria set forth in the Conditional Waiver, and 2 of the farm/ranches

1 will be considered to be Tier 3 farms/ranches under the criteria set forth in the Conditional
2 Waiver.

3 5. We currently grow 15 different crops at an average of 2.1 crops per acre grown
4 annually.

5 6. For our Tier 3 farms/ranches, I estimate, based on calculations made in July 2011
6 with the assistance of a technical provider, the cost of compliance with all of the applicable
7 Conditional Waiver provisions to range between \$602.35 and \$745.47 per acre. Of that cost, I
8 estimate that the Tier 3 requirements that must be met between now and December of 2013 (i.e.,
9 filing of Notices of Intent, updating Farm Plans, annual compliance form reporting, determination
10 of nitrate hazard indexes, photomonitoring and individual surface water discharge monitoring
11 requirements) to range between \$192.97 and \$237.34 per Tier 3 acre.

12 7. For our Tier 2 farms/ranches, I estimate the cost of compliance with all of the
13 applicable Conditional Waiver provisions to range between \$405.91 and \$507.13 per acre. Of
14 that cost, I estimate that the Tier 2 requirements that must be met between now and December of
15 2013 (i.e., filing of Notices of Intent, updating Farm Plans, annual compliance form reporting,
16 determination of nitrate hazard indexes, and photomonitoring) to range between \$132.90 and
17 \$163.62 per Tier 2 acre.

18 8. For the 15 farms/ranches that are categorized as tiers 2 & 3, I estimate the total
19 cost of compliance between now and December of 2013 to be between \$574,874.12 and
20 \$707,419.66.

21 9. Once expended, costs spent for compliance with the Conditional Waiver are
22 irretrievable.

23 I declare under penalty of perjury under the laws of the State of California that the
24 foregoing is true and correct. Executed this 16th day of April 2012, at Salinas, California.

25 

26 Dirk Giannini
27
28

SOMACH SIMMONS & DUNN
A Professional Corporation

1 SOMACH SIMMONS & DUNN
A Professional Corporation
2 THERESA A. DUNHAM, ESQ. (SBN 187644)
500 Capitol Mall, Suite 1000
3 Sacramento, CA 95814
Telephone: (916) 446-7979
4 Facsimile: (916) 446-8199



5 Attorneys for Petitioners CALIFORNIA STRAWBERRY
COMMISSION, GROWER-SHIPPER ASSOCIATION
6 OF CENTRAL CALIFORNIA, GROWER-SHIPPER
ASSOCIATION OF SAN LUIS OBISPO AND SANTA
7 BARBARA COUNTIES, and WESTERN GROWERS

8

9

BEFORE THE

10

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

11

12 In the Matter of the Petition of California
Strawberry Commission, Grower-Shipper
13 Association of Central California, Grower-
Shipper Association of San Luis Obispo and
14 Santa Barbara Counties, and Western Growers
for Review of Action and Failure to Act by
15 Central Coast Regional Water Quality Control
Board.

SWRCB/OCC File No. _____

DECLARATION OF MICHAEL L.
JOHNSON IN SUPPORT OF CALIFORNIA
STRAWBERRY COMMISSION,
GROWER-SHIPPER ASSOCIATION OF
CENTRAL CALIFORNIA, GROWER-
SHIPPER ASSOCIATION OF SAN LUIS
OBISPO AND SANTA BARBARA
COUNTIES, and WESTERN GROWERS'
REQUEST FOR STAY

16

17

18

19 I, Michael L. Johnson, declare as follows:

20 1. I am President and Managing Partner of MLJ-LLC, a water quality consulting firm
21 that offers expertise in ecology and toxicology, knowledge of quality assurance, understanding
22 and management of laboratory performance, research based on peer reviewed science, and
23 expertise in sampling various media in a range of environments.

24 2. I have a Ph.D. in Ecology from the University of Kansas and a B.A. and M.A. in
25 Biology from the University of Colorado. I have spent the last 20 years performing monitoring
26 and research on water quality issues in California. From 1992-2010, I worked at the University
27 of California, Davis, beginning as a Research Scientist in the Department of Civil and
28 Environmental Engineering. I joined the Center for Watershed Sciences in the John Muir

1 Institute of the Environment in 1998 and later joined the Department of Medicine and
2 Epidemiology in the School of Veterinary Medicine as an Adjunct Professor. Since 2005, I have
3 provided consulting services to a variety of clients including agricultural coalitions, urban
4 stewardship organizations, various agencies and public utilities. I have expertise in developing
5 and preparing surface water sampling and analysis plans and Quality Assurance Project Plans
6 (QAPP).

7 3. Through MLJ-LLC, I have served as technical program manager and technical
8 lead for two agricultural coalitions in the San Joaquin Valley – the East San Joaquin Water
9 Quality Coalition and the San Joaquin County and Delta Water Quality Coalition. Both coalition
10 programs involve monitoring for toxicity, pesticides, nutrients, and salts. I regularly meet with
11 Central Valley Water Board staff regarding coalition monitoring and data interpretation and I am
12 involved in technical and policy discussions on behalf of the coalitions with irrigation districts,
13 the dairy industry and agricultural industry suppliers.

14 4. I am familiar with Order No. R3-2012-0011 *Conditional Waiver of Waste*
15 *Discharge Requirements for Discharges from Irrigated Lands* (Conditional Waiver), and Order
16 No. R3-2012-0011-03 *Monitoring and Reporting Program for Tier 3 Dischargers Enrolled*
17 *Under the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated*
18 *Lands* (Tier 3 MRP) (true and correct copies of the Orders are attached to the Petition as
19 Exhibits A and D), which were adopted by the Central Coast Regional Water Quality Control
20 Board on March 15, 2012.

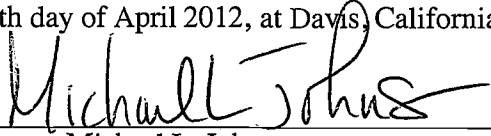
21 5. I understand that the Conditional Waiver and Tier 3 MRP collectively require farm
22 owners and operators of irrigated lands within the Central Coast Region to prepare and submit an
23 individual surface water discharge Sampling and Analysis Plan (SAP) and a QAPP to monitor
24 individual discharges of waste from each Tier 3 farm/ranch and its tile drains, tailwater ponds,
25 and any other surface water containment structures.

26 6. Based on my professional judgment, the cost to prepare an individual SAP and
27 QAPP for a Tier 3 farm/ranch that complies with requirements in the Tier 3 MRP would be
28 approximately \$28,800, regardless of the size of the farm/ranch. For each additional parcel, the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

cost would be an estimated 5% more for costs associated with mapping and researching additional waterbodies.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 12th day of April 2012, at Davis, California.



Michael L. Johnson

SOMACH SIMMONS & DUNN
A Professional Corporation

1 SOMACH SIMMONS & DUNN
A Professional Corporation
2 THERESA A. DUNHAM, ESQ. (SBN 187644)
500 Capitol Mall, Suite 1000
3 Sacramento, CA 95814
Telephone: (916) 446-7979
4 Facsimile: (916) 446-8199



5 Attorneys for Petitioners GROWER-SHIPPER
ASSOCIATION OF CENTRAL CALIFORNIA,
6 GROWER-SHIPPER ASSOCIATION OF SAN LUIS
OBISPO AND SANTA BARBARA COUNTIES, and
7 WESTERN GROWERS

8
9
10
11

BEFORE THE
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

12 In the Matter of the Petition of Grower-Shipper
Association of Central California, Grower-
13 Shipper Association of San Luis Obispo and
Santa Barbara Counties, and Western Growers
14 for Review of Action and Failure to Act by
Central Coast Regional Water Quality Control
15 Board.

SWRCB/OCC File No. _____
DECLARATION OF ROBERT MARTIN IN
SUPPORT OF GROWER-SHIPPER
ASSOCIATION OF CENTRAL
CALIFORNIA, GROWER-SHIPPER
ASSOCIATION OF SAN LUIS OBISPO
AND SANTA BARBARA COUNTIES, and
WESTERN GROWERS' REQUEST FOR
STAY

16
17
18
19
20
21
22
23
24
25
26
27
28

I, Robert Martin, declare as follows:

1. I am the Farm Manager for Rio Farms, which is located within the geographic boundaries of the Central Coast Regional Water Quality Control Board (Central Coast Water Board). Rio Farms employs over 500 employees and grows onions, peppers, and cool season vegetables on approximately 3,866 acres of owned and leased land near King City, California.

2. On March 15, 2012, the Central Coast Water Board adopted Order No. R3-2012-0011 *Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands* (Conditional Waiver), Order No. R3-2012-0011-02 *Monitoring and Reporting Program for Tier 2 Dischargers Enrolled Under the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands* (Tier 2 MRP), and Order

1 No. R3-2012-0011-03 *Monitoring and Reporting Program for Tier 3 Dischargers Enrolled*
2 *Under the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated*
3 *Lands* (Tier 3 MRP). (True and correct copies of these Orders are attached to the Petition as
4 Exhibits A, C and D.) The Conditional Waiver, Tier 2 MRP, and Tier 3 MRP collectively
5 contain new requirements that will apply to the farms/ranches owned and managed by Rio Farms.

6 3. The Conditional Waiver, Tier 2 MRP, and Tier 3 MRP collectively require farm
7 owners and operators of irrigated lands within the Central Coast Region to determine tier
8 classifications for each farm/ranch. Requirements in the orders apply based on the tiering
9 classification for each farm/ranch. Between now and December of 2013, the new specific
10 provisions that apply to farms/ranches that are classified as Tier 2 and Tier 3 include annual
11 compliance reporting, determination of nitrate loading risk factors, and photomonitoring. These
12 requirements are in addition to the requirements for filing notices of intent for each farm/ranch,
13 and Farm Plans for each farm/ranch, which are requirements that apply to all tier classifications.
14 Further, between now and December of 2013, the new specific provisions that apply to
15 farms/ranches that are classified as Tier 3 also include preparation and submittal of an individual
16 surface water discharge Sampling and Analysis Plan (SAP) and Quality Assurance Project Plan
17 (QAPP) to monitor individual discharges of waste from each Tier 3 farm/ranch and its tile drains,
18 tailwater ponds and any other surface water containment structures; and begin monitoring
19 individual surface water discharge per the approved SAP and QAPP; and, determine and report
20 typical crop nitrogen uptake.

21 4. Rio Farms consists of a total of 11 individual ranches. To the best of my
22 knowledge, I estimate that nine of the farms/ranches will be considered to be Tier 2 farms/ranches
23 under the criteria set forth in the Conditional Waiver, and that two of the farms/ranches will be
24 considered to be Tier 3 farms/ranches under the criteria set forth in the Conditional Waiver.

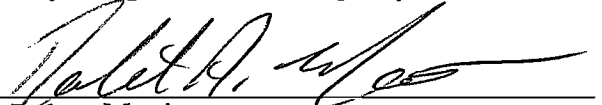
25 5. For Rio Farms' Tier 3 farms/ranches, I estimate the cost of compliance with all of
26 the applicable Conditional Waiver provisions in the next five years to range between \$503 to
27 \$916 per acre. Of that cost, I estimate that the Tier 3 requirements that must be met between now
28 and December 2013, except for individual surface water discharge monitoring requirements, to

1 range between \$152 to \$243 per Tier 3 acre. The Tier 3 requirements in this estimate include
2 filing of Notices of Intent, updating Farm Plans, annual compliance form reporting, determination
3 of nitrate hazard indexes, and photomonitoring

4 6. For Rio Farms' Tier 2 farms/ranches, I estimate the cost of compliance with all of
5 the applicable Conditional Waiver provisions to range between \$366 to \$733 per acre. Of that
6 cost, I estimate that the Tier 2 requirements that must be met between now and December of 2013
7 (i.e., filing of Notices of Intent, updating Farm Plans, annual compliance form reporting,
8 determination of nitrate hazard indexes, and photomonitoring), to range between \$127 to \$212 per
9 Tier 2 acre.

10 7. For the 11 farms/ranches in total, I estimate the cost to comply with the Tier 2 and
11 Tier 3 requirements between now and December 2013 to be between \$519,082 and \$853,924.

12 I declare under penalty of perjury under the laws of the State of California that the
13 foregoing is true and correct. Executed this 16th day of April 2012, at King City, California.

14 
15 _____
16 Robert Martin

17
18
19
20
21
22
23
24
25
26
27
28

SOMACH SIMMONS & DUNN
A Professional Corporation

1 SOMACH SIMMONS & DUNN
A Professional Corporation
2 THERESA A. DUNHAM, ESQ. (SBN 187644)
500 Capitol Mall, Suite 1000
3 Sacramento, CA 95814
Telephone: (916) 446-7979
4 Facsimile: (916) 446-8199



5 Attorneys for Petitioners GROWER-SHIPPER
ASSOCIATION OF CENTRAL CALIFORNIA,
6 GROWER-SHIPPER ASSOCIATION OF SAN LUIS
OBISPO AND SANTA BARBARA COUNTIES, and
7 WESTERN GROWERS

8

9

BEFORE THE

10

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

11

12

In the Matter of the Petition of Grower-Shipper
Association of Central California, Grower-
Shipper Association of San Luis Obispo and
Santa Barbara Counties, and Western Growers
for Review of Action and Failure to Act by
Central Coast Regional Water Quality Control
Board.

SWRCB/OCC File No. _____

13

14

15

16

17

DECLARATION OF ROBERT MARTIN IN
SUPPORT OF GROWER-SHIPPER
ASSOCIATION OF CENTRAL
CALIFORNIA, GROWER-SHIPPER
ASSOCIATION OF SAN LUIS OBISPO
AND SANTA BARBARA COUNTIES, and
WESTERN GROWERS' REQUEST FOR
STAY

18

19

I, Robert Martin, declare as follows:

20

1. I am the Farm Manager for Rio Farms, which is located within the geographic
boundaries of the Central Coast Regional Water Quality Control Board (Central Coast Water
Board). Rio Farms employs over 500 employees and grows onions, peppers, and cool season
vegetables on approximately 3,866 acres of owned and leased land near King City, California.

21

22

23

24

2. On March 15, 2012, the Central Coast Water Board adopted Order
No. R3-2012-0011 *Conditional Waiver of Waste Discharge Requirements for Discharges from
Irrigated Lands* (Conditional Waiver), Order No. R3-2012-0011-02 *Monitoring and Reporting
Program for Tier 2 Dischargers Enrolled Under the Conditional Waiver of Waste Discharge
Requirements for Discharges from Irrigated Lands* (Tier 2 MRP), and Order

25

26

27

28

1 No. R3-2012-0011-03 *Monitoring and Reporting Program for Tier 3 Dischargers Enrolled*
2 *Under the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated*
3 *Lands* (Tier 3 MRP). (True and correct copies of these Orders are attached to the Petition as
4 Exhibits A, C and D.) The Conditional Waiver, Tier 2 MRP, and Tier 3 MRP collectively
5 contain new requirements that will apply to the farms/ranches owned and managed by Rio Farms.

6 3. The Conditional Waiver, Tier 2 MRP, and Tier 3 MRP collectively require farm
7 owners and operators of irrigated lands within the Central Coast Region to determine tier
8 classifications for each farm/ranch. Requirements in the orders apply based on the tiering
9 classification for each farm/ranch. Between now and December of 2013, the new specific
10 provisions that apply to farms/ranches that are classified as Tier 2 and Tier 3 include annual
11 compliance reporting, determination of nitrate loading risk factors, and photomonitoring. These
12 requirements are in addition to the requirements for filing notices of intent for each farm/ranch,
13 and Farm Plans for each farm/ranch, which are requirements that apply to all tier classifications.
14 Further, between now and December of 2013, the new specific provisions that apply to
15 farms/ranches that are classified as Tier 3 also include preparation and submittal of an individual
16 surface water discharge Sampling and Analysis Plan (SAP) and Quality Assurance Project Plan
17 (QAPP) to monitor individual discharges of waste from each Tier 3 farm/ranch and its tile drains,
18 tailwater ponds and any other surface water containment structures; and begin monitoring
19 individual surface water discharge per the approved SAP and QAPP; and, determine and report
20 typical crop nitrogen uptake.

21 4. Rio Farms consists of a total of 11 individual ranches. To the best of my
22 knowledge, I estimate that nine of the farms/ranches will be considered to be Tier 2 farms/ranches
23 under the criteria set forth in the Conditional Waiver, and that two of the farms/ranches will be
24 considered to be Tier 3 farms/ranches under the criteria set forth in the Conditional Waiver.

25 5. For Rio Farms' Tier 3 farms/ranches, I estimate the cost of compliance with all of
26 the applicable Conditional Waiver provisions in the next five years to range between \$503 to
27 \$916 per acre. Of that cost, I estimate that the Tier 3 requirements that must be met between now
28 and December 2013, except for individual surface water discharge monitoring requirements, to

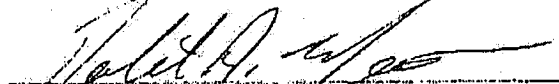
SOMACH SIMMONS & DUNN
A Professional Corporation

1 range between \$152 to \$243 per Tier 3 acre. The Tier 3 requirements in this estimate include
2 filing of Notices of Intent, updating Farm Plans, annual compliance form reporting, determination
3 of nitrate hazard indexes, and photomonitoring

4 6. For Rio Farms' Tier 2 farms/ranches, I estimate the cost of compliance with all of
5 the applicable Conditional Waiver provisions to range between \$366 to \$733 per acre. Of that
6 cost, I estimate that the Tier 2 requirements that must be met between now and December of 2013
7 (i.e., filing of Notices of Intent, updating Farm Plans, annual compliance form reporting,
8 determination of nitrate hazard indexes, and photomonitoring), to range between \$127 to \$212 per
9 Tier 2 acre.

10 7. For the 11 farms/ranches in total, I estimate the cost to comply with the Tier 2 and
11 Tier 3 requirements between now and December 2013 to be between \$519,082 and \$853,924.

12 I declare under penalty of perjury under the laws of the State of California that the
13 foregoing is true and correct. Executed this 16th day of April 2012, at King City, California.

14 
15 Robert Martin

16
17
18
19
20
21
22
23
24
25
26
27
28

1 SOMACH SIMMONS & DUNN
A Professional Corporation
2 THERESA A. DUNHAM, ESQ. (SBN 187644)
500 Capitol Mall, Suite 1000
3 Sacramento, CA 95814
Telephone: (916) 446-7979
4 Facsimile: (916) 446-8199

5 Attorneys for Petitioners CALIFORNIA STRAWBERRY
COMMISSION, GROWER-SHIPPER ASSOCIATION
6 OF CENTRAL CALIFORNIA, GROWER-SHIPPER
ASSOCIATION OF SAN LUIS OBISPO AND SANTA
7 BARBARA COUNTIES, and WESTERN GROWERS



8
9 BEFORE THE
10 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

11
12 In the Matter of the Petition of California
Strawberry Commission, Grower-Shipper
13 Association of Central California, Grower-
Shipper Association of San Luis Obispo and
14 Santa Barbara Counties, and Western Growers
for Review of Action and Failure to Act by
15 Central Coast Regional Water Quality Control
Board.

SWRCB/OCC File No. _____
DECLARATION OF GARY L. MCKINSEY
IN SUPPORT OF CALIFORNIA
16 STRAWBERRY COMMISSION,
GROWER-SHIPPER ASSOCIATION OF
17 CENTRAL CALIFORNIA, GROWER-
SHIPPER ASSOCIATION OF SAN LUIS
OBISPO AND SANTA BARBARA
18 COUNTIES, and WESTERN GROWERS'
REQUEST FOR STAY

19 I, Gary L. McKinsey, declare as follows:

20 1. I am the owner of B&D Farms Inc., which is located within the geographic
21 boundaries of the Central Coast Regional Water Quality Control Board (Central Coast Water
22 Board). We farm in the Arroyo Grande area, around the city of Guadalupe, and south of
23 Guadalupe on Highway 1.

24 2. On March 15, 2012, the Central Coast Water Board adopted Order
25 No. R3-2012-0011 *Conditional Waiver of Waste Discharge Requirements for Discharges from*
26 *Irrigated Lands* (Conditional Waiver), Order No. R3-2012-0011-02 *Monitoring and Reporting*
27 *Program for Tier 2 Dischargers Enrolled Under the Conditional Waiver of Waste Discharge*
28 *Requirements for Discharges from Irrigated Lands* (Tier 2 MRP), and Order

1 No. R3-2012-0011-03 *Monitoring and Reporting Program for Tier 3 Dischargers Enrolled*
2 *Under the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated*
3 *Lands* (Tier 3 MRP). (True and Correct copies of the Orders are attached to the Petition as
4 Exhibits A, C and D.) The Conditional Waiver, Tier 2 MRP, and Tier 3 MRP collectively
5 contain new requirements that will apply to our family farm.

6 3. The Conditional Waiver, Tier 2 MRP, and Tier 3 MRP collectively require farm
7 owners and operators of irrigated lands within the Central Coast Region to determine tier
8 classifications for each farm/ranch. Requirements in the orders apply based on the tiering
9 classification for each farm/ranch. Between now and December of 2013, the new specific
10 provisions that apply to farms/ranches that are classified as Tier 2 and Tier 3 include annual
11 compliance reporting, determination of nitrate loading risk factors, and photomonitoring. These
12 requirements are in addition to the requirements for filing notices of intent for each farm/ranch,
13 and Farm Plans for each farm/ranch, which are requirements that apply to all tier classifications.
14 Further, between now and December of 2013 the new specific provisions that apply to
15 farms/ranches that are classified as Tier 3 also include preparation and submittal of an individual
16 surface water discharge Sampling and Analysis Plan and Quality Assurance Project Plan to
17 monitor individual discharges of waste from each Tier 3 farm/ranch and its tile drains, tailwater
18 ponds, and any other surface water containment structures; and begin monitoring individual
19 surface water discharge per the approved Sampling and Analysis Plan and Quality Assurance
20 Project Plan; and, determine and report typical crop nitrogen uptake.

21 4. B&D Farms Inc. employs over 35 employees, and consists of a total of
22 6 individual ranches that cumulatively result in 1,071 acres being planted annually.¹ From the
23 six individual ranches, we estimate that five of the farm/ranches will be considered to be Tier 2
24 farms/ranches under the criteria set forth in the Conditional Waiver, and that none of the
25 farm/ranches will be considered to be Tier 3 farms/ranches under the criteria set forth in the
26 Conditional Waiver.

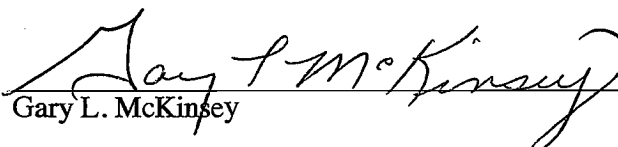
27 _____
28 ¹ The average figure here represents the total acreage (409 acres) multiplied by the number of plantings (2.6) per
acre, per year.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

5. For our Tier 2 farms/ranches, I estimate the cost of compliance with all of the applicable Conditional Waiver provisions to range between \$67.54 to \$96.20 per acre planted. Of that cost, I estimate that the Tier 2 requirements that must be met between now and December of 2013 (i.e., filing of Notices of Intent, updating Farm Plans, annual compliance form reporting, determination of nitrate hazard indexes, and photomonitoring) to range between \$55.39 to \$78.89 per acre planted.

6. For the five farms/ranches in Tier 2, I estimate that the cost of compliance between now and December of 2013 to be between \$56,165 to \$79,994.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 13th day of April 2012, at Arroyo Grande, California.


Gary L. McKinsey

SOMACH SIMMONS & DUNN
A Professional Corporation

1 SOMACH SIMMONS & DUNN
A Professional Corporation
2 THERESA A. DUNHAM, ESQ. (SBN 187644)
500 Capitol Mall, Suite 1000
3 Sacramento, CA 95814
Telephone: (916) 446-7979
4 Facsimile: (916) 446-8199



5 Attorneys for Petitioners CALIFORNIA STRAWBERRY
COMMISSION, GROWER-SHIPPER ASSOCIATION
6 OF CENTRAL CALIFORNIA, GROWER-SHIPPER
ASSOCIATION OF SAN LUIS OBISPO AND SANTA
7 BARBARA COUNTIES, and WESTERN GROWERS

8

9

BEFORE THE

10

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

11

12 In the Matter of the Petition of California
Strawberry Commission, Grower-Shipper
13 Association of Central California, Grower-
Shipper Association of San Luis Obispo and
14 Santa Barbara Counties, and Western Growers
for Review of Action and Failure to Act by
15 Central Coast Regional Water Quality Control
Board.

SWRCB/OCC File No. _____

DECLARATION OF CLAUS SUVERKROPP
IN SUPPORT OF CALIFORNIA
STRAWBERRY COMMISSION, GROWER-
SHIPPER ASSOCIATION OF CENTRAL
CALIFORNIA, GROWER-SHIPPER
ASSOCIATION OF SAN LUIS OBISPO
AND SANTA BARBARA COUNTIES, and
WESTERN GROWERS' REQUEST FOR
STAY

16

17

18

19

I, Claus Suverkropp, declare as follows:

20

1. I am employed as an Associate by Larry Walker Associates (LWA) in Davis,

21

California: LWA is an environmental engineering firm that provides consulting services ranging

22

from traditional water and wastewater engineering to highly specialized water quality, storm

23

water and watershed management services. LWA provides regulatory and National Pollutant

24

Discharge Elimination System (NPDES) permit assistance, water quality monitoring and data

25

evaluation, and water quality monitoring and management support to agricultural coalitions.

26

2. I have a B.A. and M.Sc. in aquatic biology from the University of California,

27

Santa Barbara, and the University of California, Davis, respectively.

28

1 3. I have been employed by LWA for over 20 years, and specialize in monitoring,
2 assessment of water quality, integrative data analysis, and regulatory issues. I have analyzed
3 receiving water, agricultural runoff and return flows, stormwater, wastewater, and sediment
4 monitoring data, toxicity bioassay data, and water quality and beneficial use assessment studies.

5 4. On March 15, 2012, the Central Coast Water Board adopted Order
6 No. R3-2012-0011 *Conditional Waiver of Waste Discharge Requirements for Discharges from*
7 *Irrigated Lands* (Conditional Waiver), and Order No. R3-2012-0011-03 *Monitoring and*
8 *Reporting Program for Tier 3 Dischargers Enrolled Under the Conditional Waiver of Waste*
9 *Discharge Requirements for Discharges from Irrigated Lands* (Tier 3 MRP). (True and correct
10 copies of these Orders are attached to the Petition as Exhibits A and D.)

11 5. I am familiar with the water quality monitoring and reporting requirements
12 contained in the Conditional Waiver and Tier 3 MRP.

13 6. Between now and March 2014, the new specific provisions that apply to farms and
14 ranches that are classified as Tier 3 include preparation and submittal of an individual surface
15 water discharge Sampling and Analysis Plan (SAP) and a Quality Assurance Project Plan (QAPP)
16 to monitor individual discharges of waste from each Tier 3 farm and ranch and its tile drains,
17 tailwater ponds and any other surface water containment structures; monitoring of individual
18 surface water discharges pursuant to the approved SAP and QAPP; and, reporting of the results to
19 the Central Coast Water Board.

20 7. Based on my professional judgment, I estimate that the cost to prepare an
21 individual SAP and QAPP for a Tier 3 farm/ranch that complies with requirements in the Tier 3
22 MRP, would be approximately \$17,000.

23 8. Also based on my professional judgment, I estimate that if a grower uses
24 chlorpyrifos or diazinon, and if the grower has five to ten sampling locations, then the cost of
25 each sampling event will range from \$7,000 to \$11,000.

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 12th day of April 2012, at Davis, California.



Claus Suverkropp

SOMACH SIMMONS & DUNN
A Professional Corporation

1 SOMACH SIMMONS & DUNN
A Professional Corporation
2 THERESA A. DUNHAM, ESQ. (SBN 187644)
500 Capitol Mall, Suite 1000
3 Sacramento, CA 95814
Telephone: (916) 446-7979
4 Facsimile: (916) 446-8199



5 Attorneys for Petitioners GROWER-SHIPPER
ASSOCIATION OF CENTRAL CALIFORNIA,
6 GROWER-SHIPPER ASSOCIATION OF SAN LUIS
OBISPO AND SANTA BARBARA COUNTIES, and
7 WESTERN GROWERS

8
9 BEFORE THE
10 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

11
12 In the Matter of the Petition of Grower-Shipper
Association of Central California, Grower-
13 Shipper Association of San Luis Obispo and
Santa Barbara Counties, and Western Growers
14 for Review of Action and Failure to Act by
Central Coast Regional Water Quality Control
15 Board.

SWRCB/OCC File No. _____

DECLARATION OF LOWELL ZELINSKI
IN SUPPORT OF GROWER-SHIPPER
ASSOCIATION OF CENTRAL
CALIFORNIA, GROWER-SHIPPER
ASSOCIATION OF SAN LUIS OBISPO
AND SANTA BARBARA COUNTIES, and
WESTERN GROWERS' REQUEST FOR
STAY

16
17
18
19 I, Lowell Zelinski, declare as follows:

20 1. I am the owner of Precision Ag Consulting, which provides agronomic and
21 nutrient management consulting services to agriculture in the Central Coast Region and in the San
22 Joaquin Valley. I have over 30 years of experience in the field of agricultural and soil sciences.

23 2. I have a Ph.D. in Soil Science with an emphasis in soil plant water relations from
24 the University of California at Davis. Previously, I worked as a UC Extension Farm Advisor, and
25 was the national agronomist for a large worldwide corporation.

26 3. I am familiar with Order No. R3-2012-0011 *Conditional Waiver of Waste*
27 *Discharge Requirements for Discharges from Irrigated Lands* (Conditional Waiver), and Order
28 Nos. R3-2012-0011-02 *Monitoring and Reporting Program for Tier 2 Dischargers Enrolled*

1 *Under the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated*
2 *Lands (Tier 2 MRP), and R3-2012-0011-03 Monitoring and Reporting Program for Tier 3*
3 *Dischargers Enrolled Under the Conditional Waiver of Waste Discharge Requirements for*
4 *Discharges from Irrigated Lands (Tier 3 MRP) (true and correct copies of these Orders are*
5 *attached to the Petition as Exhibits A, C and D), which were adopted by the Central Coast*
6 *Regional Water Quality Control Board on March 15, 2012.*

7 4. I understand that the Conditional Waiver requires growers to install and maintain
8 approved backflow prevention devices, and provide proof of proper backflow prevention devices
9 by October 1, 2012. (Conditional Waiver, pp. 19-20; Tier 2 MRP, p. 13; Tier 3 MRP, p. 13.)

10 5. I understand that the Conditional Waiver, Tier 2 MRP, and Tier 3 MRP
11 collectively require farm owners and operators of irrigated lands within the Central Coast Region
12 designated as Tier 2 and/or Tier 3 to calculate the nitrate loading risk factor for each farm/ranch
13 so designated. The nitrate loading risk factor must be based on the highest risk activity existing at
14 each farm/ranch. To calculate the nitrate loading risk factor, the Tier 2 MRP and Tier 3 MRP
15 require growers to use the criteria and methodology established by the Central Coast Water Board
16 in Table 4 of the Tier 2 MRP and Table 4 of the Tier 3 MRP, or use the Nitrate Groundwater
17 Pollution Hazard Index developed by University of California Division of Agriculture and
18 Natural Resources (UCANR). (Tier 2 MRP, p. 11; Tier 3 MRP, p. 11.)

19 6. Based on my professional judgment, the requirement with respect to installation of
20 backflow prevention devices is not clear. If the requirement is intended to require the installation
21 of pressure drop devices, the cost may be significant for large diameter pipes. Considering the
22 number of smaller diameter pipes in the Central Coast Region, there may be an insufficient
23 supply of smaller devices available as well as qualified pump installers to add such devices to the
24 large number of wells in the time provided.

25 7. Based on my professional judgment, the two methods for determining nitrate
26 loading risk are too simplistic to adequately and accurately assess nitrate loading risks for
27 individual farms/ranches.

28

SOMACH SIMMONS & DUNN
A Professional Corporation

1 SOMACH SIMMONS & DUNN
A Professional Corporation
2 THERESA A. DUNHAM, ESQ. (SBN 187644)
500 Capitol Mall, Suite 1000
3 Sacramento, CA 95814
Telephone: (916) 446-7979
4 Facsimile: (916) 446-8199

5 Attorneys for Petitioners GROWER-SHIPPER
ASSOCIATION OF CENTRAL CALIFORNIA,
6 GROWER-SHIPPER ASSOCIATION OF SAN LUIS
OBISPO AND SANTA BARBARA COUNTIES, and
7 WESTERN GROWERS

8
9 BEFORE THE
10 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD
11

12 In the Matter of the Petition of Grower-Shipper
Association of Central California, Grower-
13 Shipper Association of San Luis Obispo and
Santa Barbara Counties, and Western Growers
14 for Review of Action and Failure to Act by
Central Coast Regional Water Quality Control
15 Board.

SWRCB/OCC File No. _____

PROOF OF SERVICE

16
17 I am employed in the County of Sacramento; my business address is 500 Capitol Mall,
Suite 1000, Sacramento, California; I am over the age of 18 years and not a party to the foregoing
18 action.

19 On April 16, 2012, I served a true and correct copy of the following documents:

- 20 1. GROWER-SHIPPER ASSOCIATION OF CENTRAL CALIFORNIA, GROWER-
SHIPPER ASSOCIATION OF SANTA BARBARA AND SAN LUIS OBISPO
21 COUNTIES, and WESTERN GROWERS' PETITION FOR REVIEW AND
STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT THEREOF [Wat.
22 Code, § 13320], including Exhibits A through H;
- 23 2. DECLARATION OF RICK TOMLINSON IN SUPPORT OF GROWER-SHIPPER
ASSOCIATION OF CENTRAL CALIFORNIA, GROWER-SHIPPER ASSOCIATION
24 OF SAN LUIS OBISPO AND SANTA BARBARA COUNTIES, and WESTERN
GROWERS' PETITION FOR REVIEW, including Exhibit 1;
- 25 3. GROWER-SHIPPER ASSOCIATION OF CENTRAL CALIFORNIA, GROWER-
SHIPPER ASSOCIATION OF SAN LUIS OBISPO AND SANTA BARBARA
26 COUNTIES, and WESTERN GROWERS' REQUEST FOR STAY AND
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF [Wat.
27 Code, § 13320], including Exhibits A and B;

- 1 4. DECLARATION OF PETER C. AIELLO IN SUPPORT OF GROWER-SHIPPER
2 ASSOCIATION OF CENTRAL CALIFORNIA, GROWER-SHIPPER ASSOCIATION
3 OF SAN LUIS OBISPO AND SANTA BARBARA COUNTIES, and WESTERN
4 GROWERS' REQUEST FOR STAY;
- 5 5. DECLARATION OF BOB CAMPBELL IN SUPPORT OF GROWER-SHIPPER
6 ASSOCIATION OF CENTRAL CALIFORNIA, GROWER-SHIPPER ASSOCIATION
7 OF SAN LUIS OBISPO AND SANTA BARBARA COUNTIES, and WESTERN
8 GROWERS' REQUEST FOR STAY;
- 9 6. DECLARATION OF DAVID COSTA IN SUPPORT OF GROWER-SHIPPER
10 ASSOCIATION OF CENTRAL CALIFORNIA, GROWER-SHIPPER ASSOCIATION
11 OF SAN LUIS OBISPO AND SANTA BARBARA COUNTIES, and WESTERN
12 GROWERS' REQUEST FOR STAY;
- 13 7. DECLARATION OF DIRK GIANNINI IN SUPPORT OF GROWER-SHIPPER
14 ASSOCIATION OF CENTRAL CALIFORNIA, GROWER-SHIPPER ASSOCIATION
15 OF SAN LUIS OBISPO AND SANTA BARBARA COUNTIES, and WESTERN
16 GROWERS' REQUEST FOR STAY
- 17 8. DECLARATION OF MICHAEL L. JOHNSON IN SUPPORT OF GROWER-SHIPPER
18 ASSOCIATION OF CENTRAL CALIFORNIA, GROWER-SHIPPER ASSOCIATION
19 OF SAN LUIS OBISPO AND SANTA BARBARA COUNTIES, and WESTERN
20 GROWERS' REQUEST FOR STAY;
- 21 9. DECLARATION OF ROBERT MARTIN IN SUPPORT OF GROWER-SHIPPER
22 ASSOCIATION OF CENTRAL CALIFORNIA, GROWER-SHIPPER ASSOCIATION
23 OF SAN LUIS OBISPO AND SANTA BARBARA COUNTIES, and WESTERN
24 GROWERS' REQUEST FOR STAY;
- 25 10. DECLARATION OF GARY L. MCKINSEY IN SUPPORT OF GROWER-SHIPPER
26 ASSOCIATION OF CENTRAL CALIFORNIA, GROWER-SHIPPER ASSOCIATION
27 OF SAN LUIS OBISPO AND SANTA BARBARA COUNTIES, and WESTERN
28 GROWERS' REQUEST FOR STAY;
11. DECLARATION OF CLAUS SUVERKROPP IN SUPPORT OF GROWER-SHIPPER
ASSOCIATION OF CENTRAL CALIFORNIA, GROWER-SHIPPER ASSOCIATION
OF SAN LUIS OBISPO AND SANTA BARBARA COUNTIES, and WESTERN
GROWERS' REQUEST FOR STAY; and
12. DECLARATION OF LOWELL ZELINSKI IN SUPPORT OF GROWER-SHIPPER
ASSOCIATION OF CENTRAL CALIFORNIA, GROWER-SHIPPER ASSOCIATION
OF SAN LUIS OBISPO AND SANTA BARBARA COUNTIES, and WESTERN
GROWERS' REQUEST FOR STAY

XXX (by mail) on the parties in said action, in accordance with Code of Civil Procedure §1013a(3), by placing a true copy thereof enclosed in a sealed envelope, with postage fully paid thereon, in the designated area for outgoing mail, addressed as set forth below.

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

Courtesy Copy:
Kari E. Fisher, Esq.
California Farm Bureau Federation
2300 River Plaza Drive
Sacramento, CA 95833

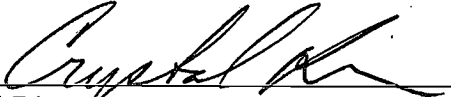
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Frances McChesney, Sr. Staff Counsel
Office of Chief Counsel
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Philip Wyels, Assistant Chief Counsel
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Courtesy Copy:
William Thomas, Esq.
Best Best & Krieger
500 Capitol Mall, Suite 1700
Sacramento, CA 95814

I declare under penalty of perjury that the foregoing is true and correct. Executed on
April 16, 2012, at Sacramento, California.


Crystal Rivera