

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 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 cooperate 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:

- Identification of each property covered by enrollment,
- Tier applicable to each farm/ranch,
- Landowner(s),
- Operator(s),
- Contact information,
- 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.
- Option selected to comply with surface receiving water quality monitoring conditions (cooperative monitoring or individual),
- Option selected to comply with groundwater monitoring conditions (cooperative monitoring or individual),
- Location of operation, including specific farm(s)/ranch(es),
- Farm/ranch map with discharge locations and groundwater wells identified,
- Total and irrigated acreage,
- Crop type,
- Irrigation type,
- Discharge type,
- Chemical use,
- ~~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 ²	Ongoing ³
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



