

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

**STAFF REPORT FOR REGULAR MEETING OF SEPTEMBER 1, 2011  
Prepared on August 10, 2011**

**ITEM NUMBER: 17**

**SUBJECT: Addendum to Staff Report for an Updated Conditional Waiver of Waste Discharge Requirements for Irrigated Agricultural Waste Discharges, Draft Agricultural Order No. R3- 2011-0006; Evaluation of New Information Provided by Agricultural Industry Representatives on March 17, 2011 and May 4, 2011**

**INTRODUCTION**

This Staff Report consists of the July 7, 2011 “Addendum to the March 17, 2011 Staff Report” released on the Water Board’s website on July 7, 2011, along with some new text that is in bold and the following additional information:

- Attachment 4 - Response to Comments and Errata Sheet.
- Recommended changes to the Draft Agricultural Order shown highlighted in the redline-strikeout version of Attachment 1 (p. 18 - 26)
- Recommended changes to the Monitoring and Reporting Program shown highlighted in the redline-strikeout version of Attachment 2 (Tier 1 MRP, p 10; Tier 2 MRP, p.9 and p.14; Tier 3 MRP, p. 21)
- Addendum to the Subsequent Environmental Impact Report that explains that the staff’s revisions to the Draft Agricultural Order do not change the conclusions of the environmental analysis presented in the Final Subsequent Environmental Impact Report and Resolution Certifying the Final Subsequent Environmental Impact Report (Appendix H of the Staff Report Proposing a Draft Agricultural Order For Water Board Action, Agenda Item #19 for Board Meeting of March 17, 2011). The report and resolution can be viewed at:

[http://www.waterboards.ca.gov/centralcoast/board\\_info/agendas/2011/march/Item\\_14/14\\_att8\\_030211.pdf](http://www.waterboards.ca.gov/centralcoast/board_info/agendas/2011/march/Item_14/14_att8_030211.pdf)

**SUMMARY**

A panel of four members of the Regional Water Quality Control Board, Central Coast Region (Water Board) conducted a hearing to receive comments on the Updated Conditional Waiver of Waste Discharge Requirements for Irrigated Agricultural Waste Discharges, Draft Agricultural Order No. R3- 2011-0006 (Draft Agricultural Order) on March 17, 2011 and May 4, 2011. The Water Board does not have a quorum of members eligible to participate in and vote on the Draft Agricultural Order at this time. When there is a quorum available, the Water Board will consider adoption of an Agricultural Order based on the record, including the written comments and testimony provided at the panel hearing.

Prior to the panel hearing, the Water Board provided an opportunity to submit written comments and the deadline for submittal of comments was January 3, 2011. At the panel hearing, agricultural industry representatives requested that the Water Board consider additional documents, including a redline/strikeout version of the Draft Agricultural Order and documents to clarify their proposal to address third-party groups or coalitions (new information). At the conclusion of the panel hearing, the Water Board Chair accepted the new information into the record for the Draft Agricultural Order. The Water Board panel also instructed staff to provide an addendum to the Staff Report evaluating and comparing this new information and the Draft Agricultural Order as proposed by staff. This document constitutes the Addendum to the Staff Report (Addendum). Interested persons will be provided an opportunity to comment on the Addendum and the new information prior to the September 2011 Water Board meeting. The comments and responses to the comments will be included in the record.

**Since the May hearing, Water Board** staff met with representatives from the agricultural industry, specifically representing Grower-Shipper Association of Central California, Grower-Shipper Association of Santa Barbara and San Luis Obispo Counties, Monterey County Farm Bureau and legal counsel for the California Strawberry Commission, Western Growers, and San Benito, Santa Cruz, Santa Clara, and San Luis Obispo Farm Bureaus, to explain and discuss the new information and how it modified the Agricultural Alternative Proposal submitted December 3, 2010. Staff also met with representatives from environmental groups and environmental justice groups to discuss the Draft Agricultural Order and the new information.

Staff evaluated the new information and concluded that, like the December 3, 2010 Agricultural Alternative Proposal, some of the agricultural industry representatives' proposed recommendations, particularly with respect to third-party groups, are not consistent with Water Code section 13269 that applies to waivers of waste discharge requirements or were incomplete and unclear so could not be evaluated, as explained further in this Addendum. The Agricultural Alternative Proposal does not require compliance with water quality standards and is not clearly enforceable, as required by Water Code section 13269. It would limit the Board's authority and discretion to enforce when the Board finds or measures discharges of wastes or exceedances of water quality standards by defining compliance with the "waiver" as implementation of farm water quality practices, rather than compliance with water quality standards as required by the Water Code and the State Water Resources Control Board's "Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program" (NPS Policy). Furthermore, the Agricultural Alternative Proposal would be less stringent than the current 2004 Ag Order and would not sufficiently address the severe water quality conditions in agricultural areas and the significant impacts to water quality resulting from agricultural discharges.

Although, in general staff concludes that the Agricultural Alternative Proposal does not comply with Water Code section 13269 and the NPS Policy, staff does agree with some of the changes proposed by agricultural representatives. **Staff's meetings with the various representatives were helpful in gaining understanding of why some of staff's proposed language was confusing to certain individuals, and where clarification would prevent continued misunderstanding.** In this Addendum, based on review of the new information and discussions with interested persons, staff also, therefore, recommends additional revisions to staff's Draft Agricultural Order that

address some of the concerns expressed during our meetings with agricultural and environmental representatives. Attachment 1 to this Addendum is a red-line strikeout version of staff's recommended Draft Agricultural Order and Attachment 2 is a red-line strikeout version of staff's recommended Monitoring and Reporting Program (MRP), which contain the additional revisions discussed in more detail in the sections below. In addition, per the request of the Water Board, Attachment 3 to this Addendum includes a matrix that generally compares staff's Draft Agricultural Order to the various alternatives submitted by stakeholders, a summary table specifically comparing the Agricultural Alternative Proposal and staff's Draft Agricultural Order, and an update on the status of staff's efforts related to the co-management of food safety and water quality issues. Attachment 4 to this Addendum includes a summary of comments received during the public comment period and responses, and an errata sheet which includes a list of errors and their corrections.

Staff recommends that the Central Coast Water Board adopt the updated Conditional Waiver of Waste Discharge Requirements for Irrigated Agricultural Waste Discharges, Draft Order No. R3- 2011-0006 with staff's recommended revisions.

## DISCUSSION

### New Information Submitted on the Agricultural Alternative Proposal

The new information submitted by agricultural industry representatives was posted on the Water Board's website on May 27, 2011. The new information includes the following documents, submitted on the dates indicated, and is accessible at the links shown below.

#### Submitted May 4, 2011

Order Attachment B, Terms and Conditions for Discharger Compliance Through Third Party Group with redline and strikeout (replaces version submitted March 17, 2011)-  
[http://www.waterboards.ca.gov/centralcoast/water\\_issues/programs/ag\\_waivers/docs/ag\\_order/050411\\_order\\_atb\\_redline\\_coalition\\_revisions.pdf](http://www.waterboards.ca.gov/centralcoast/water_issues/programs/ag_waivers/docs/ag_order/050411_order_atb_redline_coalition_revisions.pdf)

Part 2. Groundwater Assessment, Monitoring and Reporting Requirements-  
[http://www.waterboards.ca.gov/centralcoast/water\\_issues/programs/ag\\_waivers/docs/ag\\_order/050411\\_groundwater\\_monitoring\\_part2\\_v5.pdf](http://www.waterboards.ca.gov/centralcoast/water_issues/programs/ag_waivers/docs/ag_order/050411_groundwater_monitoring_part2_v5.pdf)

#### Submitted March 17, 2011

Draft Agricultural Order with redline and strikeout-  
[http://www.waterboards.ca.gov/centralcoast/water\\_issues/programs/ag\\_waivers/docs/ag\\_order/draft\\_ag\\_order\\_031711\\_ag\\_revisions.pdf](http://www.waterboards.ca.gov/centralcoast/water_issues/programs/ag_waivers/docs/ag_order/draft_ag_order_031711_ag_revisions.pdf)

Order Attachment B, Terms and Conditions for Discharger Compliance Through Third Party Group-  
[http://www.waterboards.ca.gov/centralcoast/water\\_issues/programs/ag\\_waivers/docs/ag\\_order/031711\\_order\\_atb-revised\\_coalition\\_provisions.pdf](http://www.waterboards.ca.gov/centralcoast/water_issues/programs/ag_waivers/docs/ag_order/031711_order_atb-revised_coalition_provisions.pdf)

Monitoring and Reporting Program for Third Party Group Participants-  
[http://www.waterboards.ca.gov/centralcoast/water\\_issues/programs/ag\\_waivers/docs/ag\\_rep\\_submission\\_2011/draft\\_third\\_party%20mrp.pdf](http://www.waterboards.ca.gov/centralcoast/water_issues/programs/ag_waivers/docs/ag_rep_submission_2011/draft_third_party%20mrp.pdf)

This information has been added to the record of documents for the Water Board's consideration of Draft Agricultural Order. All of the documents in the record are available at:

[http://www.waterboards.ca.gov/centralcoast/water\\_issues/programs/ag\\_waivers/ag\\_order.shtml](http://www.waterboards.ca.gov/centralcoast/water_issues/programs/ag_waivers/ag_order.shtml).

The record includes, but is not limited to, the following documents:

- February 1, 2010- Preliminary Draft Staff Recommendations for an Updated Agricultural Order
- April 1, 2010- Preliminary Alternative Agricultural Proposal- California Farm Bureau Federation
- April 1, 2010- OSR Enterprises, Inc.'s Recommendations for an Agriculture Order to Control Discharges from Irrigated Lands
- April 1, 2010- Environmental Defense Center, Monterey Coastkeeper, Ocean Conservancy, Santa Barbara Channelkeeper, Surfrider Foundation- Santa Barbara Chapter Alternative
- April 1, 2010- Comments Received on February 1, 2010, Preliminary Draft Staff Recommendations

- April 2, 2010- October 15, 2010- Comments Received after the April 1, 2010 requested end of comment period
- May 12, 2010- Water Board Workshop to Discuss Preliminary Draft Staff Recommendations for an Updated Agricultural Order- Staff Report, Supplemental Sheet, Audio, and Presentation Materials
- July 8, 2010- Water Board Workshop to Discuss Preliminary Draft Staff Recommendations for an Updated Agricultural Order- Staff Report, Supplemental Sheet, Audio, and Presentation Materials
- August 18, 2010- August 27, 2010- CEQA Comments
- November 19, 2010- Staff's Recommendations for the Agricultural Order (including the Draft Agricultural Order, Draft Monitoring and Reporting Program, Staff Report including the Subsequent Environmental Impact Report for the Regulation of Waste Discharge from Irrigated Lands)
- November 19, 2010- January 3, 2011- Comments Received on November 19, 2010 Staff Recommendation for the Agricultural Order (including CEQA Comments)
- January 20, 2011- February 19, 2011- Late Comments Received on November 19, 2010 Staff Recommendation for the Agricultural Order
- Letters from Legislators and staff responses
- December 3, 2010- Draft Central Coast Agriculture's Alternative Proposal for the Regulation of Discharges from Irrigated Agricultural Lands (Revised Alternative)
- March 17, 2011- Water Board Panel Hearing to Consider the staff recommendation for an updated Agricultural Order- Draft Agricultural Order, Draft Monitoring and Reporting Program, Staff Report including the Subsequent Environmental Impact Report, Supplemental Sheet, Supplemental Sheet 2, Audio, Presentation Materials and comments submitted in written form on testimony cards
- May 4, 2011- Continuation of Water Board Water Board Panel Hearing to Consider the staff recommendation for an updated Agricultural Order- Draft Agricultural Order, Draft Monitoring and Reporting Program, Staff Report including the Subsequent Environmental Impact Report, Supplemental Sheet, Supplemental Sheet 2, Audio, and Presentation Materials
- May 4, 2011- New Information as listed above.
- September 1, 2011- Addendum to the March 17, 2011 Staff Report, comments, and responses.

### **Evaluation and Comparison of New Information**

On December 3, 2010, the California Farm Bureau Federation submitted an "Agricultural Alternative Proposal" (Agricultural Proposal) signed by several individuals and entities associated with irrigated agriculture ("Ag Group").<sup>1</sup> The primary focus of the Agricultural

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<sup>1</sup> The Agricultural Proposal was signed by specific individuals, but it is unclear on whose behalf the new information was submitted. Some agricultural organizations' representatives told staff that they are not necessarily aligned with the "ag working group" or the "ag coalition." Representatives who have presented information to the Water Board and met with staff most recently are from organizations whose constituents appear to include a large percentage of potential Tier 3 dischargers, including the CA Strawberry Commission, Central California Grower-Shipper Association, Southern San Luis Obispo and Santa Barbara Counties Grower-Shipper Association and Monterey County Farm Bureau, and California Farm Bureau Federation.

Proposal was to create waiver conditions specific to the formation of third-party groups in the form of a stand-alone order. In the March 17, 2011 new information, the Ag Group essentially inserted the provisions of the Agricultural Proposal into staff's Draft Agricultural Order in the form of redline/strikeout, created a stand-alone Attachment B to that Order containing conditions specific to third-party groups, and a MRP for third-party groups. In other words, the Ag Group put their proposal into the same format as staff's draft. In their May 4, 2011 submittals, the Ag Group provided edits to their Attachment B and added a proposed groundwater monitoring program.

The Agricultural Proposal, including the new information, includes many edits to the findings and order portion of the staff's Draft Agricultural Order and adds an alternative set of conditions for dischargers who elect to participate in a third party group. Some of the specific proposed edits to the Draft Agricultural Order would delete conditions that require submittal of evidence of compliance with other laws; delete a requirement to submit Farm Plans to the Water Board; edit the conditions regarding inspections; delete the condition to require submittal of monitoring results to the Water Board; delete conditions with respect to vegetated buffer or filtration strips, and would delete the condition to require compliance with applicable water quality control plans and policies. Attachment B to the Agricultural Proposal would establish a different standard for those dischargers who join a third party group compared to those who do not. Persons who join a third-party group would be required to "work towards compliance" with water quality standards, rather than comply with water quality standards; would establish different criteria for tiers that would be under the control of the third-party group. Persons who join a third-party group would not be required to submit individual monitoring data. In addition, it would reduce some conditions for those who elect the third party group, even for those with the highest impact or risk to water quality (designated as Tier 3 dischargers in the Draft Agricultural Order). Farm Plans would be required, but the content would be recommended, not mandated, and the Farm Plans would remain on the farm. The Agricultural Proposal would include an audit system and reporting as a group in place of individual farm reporting, even for basic information such as management practices implemented. The details of the audit system are not specified.

#### Legal Evaluation of the Agricultural Proposal

Water Code section 13269 authorizes the Water Board to waive waste discharge requirements for individual dischargers who comply with the conditions; requires compliance with the Water Quality Control Plan (Basin Plan), including water quality standards and applicable implementation programs; requires protection of beneficial uses; and requires compliance with other applicable policies. Many of the proposed changes in the Agricultural Proposal are legally supportable and consistent with applicable law and policy, but many would not be consistent with the Water Code, the Basin Plan, or the NPS Policy. For example, the Agricultural Proposal would allow the "third-party group" to be responsible for compliance, rather than individual dischargers. Individual dischargers have the responsibility to comply with the Water Code, not a group that is undefined and may or may not be a discharger. Individuals may join a group to assist and coordinate in compliance, including cooperative monitoring and management practices, however the individual is responsible for compliance even if a third-party group carries out the tasks.

The Agricultural Proposal also would establish a separate and less stringent compliance standard for those dischargers who join a third party group than those who do not. The Agricultural Proposal would require those who join a third party group to “work toward compliance” with water quality standards, which is vague and open-ended. The Water Code and the NPS Policy require that nonpoint source discharges are controlled to achieve and maintain water quality standards and protect beneficial uses. The current 2004 Ag Order requires dischargers to implement management practices to achieve water quality standards and the Draft Agricultural Order would continue to include the same standard. The Agricultural Proposal would require third-party groups to “work toward compliance” and appears to allow dischargers to stop complying with any water quality standard pending formation of third party groups. The Agricultural Proposal is not clearly enforceable since many of the conditions are recommended, or up to the discretion of the group, and since most information would not be provided to the Water Board, the Water Board could not readily determine compliance or effectiveness of the conditions of the Order. The Proposal would limit the Water Board’s authority and discretion to enforce water quality standards and other conditions of the Order by defining compliance with the “waiver” as implementation of farm water quality practices, rather than compliance with water quality standards as required by the Water Code and the NPS Policy. The NPS Policy, for examples, states that 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 bear responsibility for compliance with orders to control waste discharges. Some of the language and conditions in the Agricultural Proposal for dischargers who elect to participate in third party groups are unclear and/or inconsistent with this Policy.

In summary, the Agricultural Proposal’s approach to the use of third-party groups is generally not consistent with the Water Code and creates an unfair distinction between individuals because those who join a group would not be directly accountable to the Board or the public for complying with the Water Code. The staff’s Draft Agricultural Order includes the option for third party groups, or coalitions, to provide assistance to individual growers in achieving compliance with the Order (Condition 10), but does not provide an alternative set of conditions for those electing to participate in a third party group.

#### Comparison of Agricultural Proposal and Draft Agricultural Order

In its November 2010 Staff Report, staff had already evaluated the Agricultural Proposal. This Addendum evaluates the new information. Staff evaluated the Agricultural Proposal, and concluded that the conditions and requirements put forth in these documents would not result in adequate control of waste discharges from irrigated agriculture. The conditions and requirements in the Agricultural Proposal do not clearly demonstrate how water quality will be protected or improved consistent with Water Code section 13269 and the NPS Policy. Several key components of the Agricultural Proposal were unclear or incomplete, preventing staff’s evaluation of those sections. Attachment 3 provides additional detail in a tabular form to compare the Agricultural Alternative Proposal and staff’s Draft Agricultural Order. However, certain aspects of the differences between proposals require more narrative explanation to be meaningful.

The following provides more detailed comparison of the new information as directed by the Water Board members. Specifically, staff has identified the following limitations of the Agricultural Proposal:

- Dischargers who elect to participate in third party groups or coalitions do not have to monitor or report any information that measures either 1) the effectiveness of their individual on-farm management practices or 2) pollutant load reduction from their farms.
- Dischargers who elect to participate in third party groups or coalitions do not have to meet any specified milestones or timeframes.
- Dischargers who elect to participate in third party groups or coalitions will not be audited by third party groups nor have their implementation status reported until two or more years after approval of the Order. The Draft Agricultural Order immediately requires all individual dischargers to plan and implement management practices, and to plan and measure effectiveness of practices. The Draft Agricultural Order requires the first reports on practices implemented and indicators of effectiveness and/or pollution reduction be submitted approximately 15 months after approval of the Order.
- Some dischargers who elect to participate in the third party groups will have to wait for several months to years before they are assessed for risk or provided assistance or evaluations of their progress. The Draft Agricultural Order enrollment requirements provide for assessments of all individual farms' risk or contributions to water quality in a matter of months, and self-assessments, and individual farm progress reports sooner and more efficiently than the Agricultural Proposal.
- Fundamental components of the Agricultural Proposal related to third party groups are currently incomplete and undeveloped. Consequently, full implementation of all actions to create functioning third party groups and audit dischargers as proposed is questionably achievable on the proposed schedule. The Agricultural Proposal puts off implementation of pollution control and submittal of the first annual compliance report for more than two years while these components are developed. Such components include 1) qualifications of a third party group, and 2) the content for the "General Report/Workplan" for the third party group that identifies the audit process. The audit process is intended to insure farmers implement management practices and improve water quality, and replaces individual compliance monitoring and reporting.
- The Agricultural Proposal sets up a dual standard for those who elect to join a third party group and for those who do not.
- The Agricultural Proposal does not require compliance with water quality standards and is not clearly enforceable. It would limit the Board's authority and discretion to enforce water quality standards by defining compliance with the "waiver" as implementation of farm water quality practices, rather than compliance with water quality standards as required by the Water Code and the NPS Policy.

As discussed, the primary purpose of the Agricultural Proposal is to establish a framework for third-party groups. It is important to recognize that the Draft Agricultural Order proposed by staff also explicitly allows for third-party groups (Condition #10) and provides incentives for third-party certifications that require implementation of similar management practices as the Draft Agricultural Order (e.g. Sustainable in Practice, Condition #14.1d). In addition, the Draft Agricultural Order encourages participation in cooperative water quality improvement efforts, such as the implementation of local or regional scale water quality protection and treatment strategies (Finding #12). And, for these cooperative efforts, the Draft Agricultural Order provides for the opportunity to

propose alternative monitoring and alternative time schedules to allow flexibility for such cooperative efforts (Condition #12). Furthermore, the Draft Agriculture Order also allows dischargers to implement cooperative or individual surface receiving water monitoring (Condition #52), and staff has proposed revisions to allow dischargers to participate in individual or cooperative groundwater monitoring. Finally, the Draft Agricultural Order also specifies that individual dischargers or groups of dischargers (e.g. commodity groups) can request individual or general orders tailored to their specific operation or type of discharge (Condition #6).

### **Water Board Member Direction**

The Water Board Members specifically directed staff to evaluate the Agricultural Proposal for the following issues or specific questions and the results of those evaluations follow each question below.

*1. What is voluntary versus what is required in the Agricultural Proposal?*

The Agricultural Proposal generally requires similar types of conditions (management practices to control discharges, some monitoring and reporting) as the Draft Agricultural Order, unless a grower elects to participate in a third party group/coalition. Dischargers who elect to participate in the third party group have significantly fewer required conditions to meet than those who do not elect participation, even for types of farms with the greatest potential to discharge waste to surface waters and groundwater, designated as Tier 3 dischargers in the Draft Agricultural Order.

For all dischargers, whether they elect to participate in a third party group or not, the Agricultural Proposal changes several conditions in the Draft Agricultural Order so they are either voluntary or not clearly required. Additionally, the Agricultural Proposal deleted some required conditions from the Draft Agricultural Order. These changes are described below, followed by a description of what is voluntary versus what is required for those that elect to participate in a third party group.

*General Conditions: Voluntary Versus Required*

The Agricultural Proposal deleted several required conditions (32, 33, 35, 36 and 38, respectively) that apply to all enrolled growers (Tiers 1-3) whether they elect to participate in a third party group or not:

- Use containment structures in a way that prevents percolation of waste to groundwater that causes exceedances or overflows to surface water that degrade water;
- Implement chemical storage and handling to prevent discharge to waters;
- Implement management practices to prevent site conditions (such as unpaved roads) from exposing sediment to runoff and practices
- Implement management practices to prevent the discharge of sediment or erosion from stormwater runoff;
- Implement management practices to protect existing, naturally occurring riparian vegetation to minimize waste discharges and to maintain streambank stability, shading for temperature control, and wildlife habitat.

- Include a description and time schedule for management practices, treatment or control of waste discharges in farm plans;
- Include a description and results of methods used to verify effectiveness of practices in farm plans.

Ag representatives explained in a meeting with Water Board staff on May 25, 2011, that these deletions were made because the proposal replaced them in Condition 43.f. by specifying similar components that “shall be included in the Farm Plan.” Staff did not interpret the new language added in Condition 43.f. as adequate replacement for the conditions listed above because the language implies that they are voluntary or makes it unclear as to whether they are required. For example, the Agricultural Proposal says “*examples of components shall include...Irrigation Management Practices, including as follows: i. a grower will have to plan to address and improve (where appropriate) irrigation efficiency by addressing the irrigation delivery...and/or irrigation scheduling...ii. Irrigation efficiency of applied irrigation water should be known and a plan for improvement should be included, if applicable.*” [italics added] The proposal deleted the requirement in the Draft Agricultural Order in Condition 43.f. which says “Dischargers *must* update an existing or develop a new farm plan...At a minimum, Farm Plans *must* include:...Description and time schedule for any farm water quality management practices.” [italics added]

The Agricultural Proposal also added Condition 43.g. which says a Farm Plan “may include, but is not required to include, on farm verification sampling...is a voluntary management practice...is confidential...not subject to review and inspection by Regional Board staff upon review of the Farm Plan.” The proposal deleted the requirements in the Draft Agricultural Order in Conditions 43.g. which says “Dischargers *must* ...include:... Description and results of methods used to verify practice effectiveness.” [italics added] Note here that the Draft Agricultural Order does not require that dischargers use any particular form of sampling to verify effectiveness of practices, nor that all results of all verification sampling, whether on-farm water quality sampling, audits, or measurements of source reduction or runoff reduction, be included in the Farm Plan. The Draft Agricultural Order requires results of practice effectiveness be included in the Farm Plan but allows dischargers flexibility as to how they evaluate effectiveness and describe the results.

*Third party Group Participant Conditions: Voluntary Versus Required*

The Agricultural Proposal significantly reduces, and all but eliminates, most required conditions in the Draft Agricultural Order for dischargers who elect to participate in a third party group, even for types of farms with the greatest potential to discharge waste to surface waters and groundwater, designated as Tier 3 dischargers in the Draft Agricultural Order.

The Agricultural Proposal edited Condition 58, so it does not require dischargers who elect to participate in a third party group to identify if they are in Tier 1, Tier 2 or Tier 3. The language in Condition 58 in the Draft Agricultural Order required all dischargers to identify in the electronic NOI if they are in Tier 1, tier 2, or Tier 3.

The Agricultural Proposal deleted all the required conditions in Part F. of the Draft Agricultural Order that applied to Tier 2 and Tier 3 dischargers, and all the required conditions in Part. G. of the Draft Agricultural Order that applied uniquely to Tier 3

dischargers. Those required conditions are grouped in the Draft Agricultural Order into the following categories specified below:

For Tier 2 and Tier 3-

- Annual compliance reporting (Conditions 67-68);
- Photo-monitoring for each farm (Condition 69); and
- Total Nitrogen Reporting for farms with High Nitrate Loading Risk (Conditions 70-71).

For Tier 3 only-

- Individual surface water discharge monitoring (Conditions 72-73);
- Irrigation and Nutrient Management Plans for farms with High Nitrate Loading Risk (Conditions 74-79);
- Water Quality Buffer Plans for farms adjacent to or containing a waterbody impaired for temperature, turbidity or sediment; and
- Time schedules for compliance (Conditions 84-87).

In place of these required conditions, the Agricultural Proposal allows dischargers to elect to participate in a third party group that meets the requirements specified in "Attachment B: Terms and Conditions for Discharger Compliance Through Third Party Groups." The Agricultural Proposal also replaces these required conditions for individual dischargers with required conditions that apply to the third party group and not individual dischargers.

The required conditions for individual dischargers who elect to participate in a third party group include only the following:

- Dischargers shall implement management practices<sup>2</sup> (Condition A. 6.);
- Dischargers shall work with the third party group to identify the risk of their operation (Condition A. 7.);
- Discharger voids selection or notification to participate in a third party group if they fail to pay fees (Condition A. 8.); and
- Dischargers must conduct surface water receiving water quality monitoring and reporting consistent with the monitoring requirements in the Monitoring and Reporting Program for all dischargers in the Draft Agricultural Order (not individual monitoring).

Several other required conditions in the Agricultural Proposal apply to the third party group only and not to individual dischargers or apply to "the third party group and/or its participants." This makes it unclear who is required to implement the condition, which is responsible for failure to implement or meet the condition, and how meeting the condition can or should be determined. For example, in Attachment B, Part. A. General,

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<sup>2</sup> In the Agricultural Proposal, implementation of management practices is qualified with language "as necessary, to achieve best practicable treatment or control of the discharge to reduce wastes in the discharges to the extent feasible and that will work towards achieving compliance with applicable water quality standards, protect beneficial uses of water of the state, and prevent nuisance" compared to the language in the Draft Agricultural Order about implementation of management practices that says "implement management practices, as necessary, to improve and protect water quality and to achieve compliance with applicable water quality standards."

Condition 9 says “A third party group and/or its participants shall take all reasonable steps to work towards meeting applicable water quality standards,” and Condition 10 says “A third party group and/or its participants shall maintain in good working order and operate as efficiently as possible any facility or control system.” In these conditions, “work towards”, “reasonable” and “as efficiently as possible” are vague terms and difficult to evaluate whether they are met.

In general, there are three significant required conditions that apply to a third party group:

- Submittal of a Notice of Intent to be a third party group to implement and meet Conditions A.1-10 in Attachment B (Terms and Conditions for Discharger Compliance Through Third Party Group) of the Agricultural Proposal;
- Development and submittal of a General Report/Workplan that will describe 1) how the group will determine the level of risk to water quality of participants, 2) how the group will conduct audits; and 3) how the group will conduct an audit review process; and
- Submittal of the General Report annually after the General Report/Workplan is approved by the Executive Officer.

While these conditions are stated as required or “must do,” they are largely incomplete and undeveloped as described in the Agricultural Proposal.

The required conditions related to the submittal of the Notice of Intent to be a third party group are examples of incomplete and undeveloped conditions. The Agricultural Proposal’s conditions related to the establishment of and Notice of Intent to be a third party group are contained in edits to Part F. of the Draft Agricultural Order, and in Attachment B (Part B. Technical Reports). Part. F. in the Draft Agricultural Order says that “Dischargers may indicate...their intent to join a third party group that meets the requirements specified in Attachment B.” Attachment B. Part B., Condition 1 says that “A third party group...shall submit a completed NOI ...The NOI shall include the name of the third party group, the geographic area and/or commodity for which the third party group intends to cover, contact information, and an explanation as to how the third party group intends to operate and conduct the functions identified above.” The word “above” in this condition refers to the conditions in Part A. General, which staff found unclear as previously discussed. The Agricultural Proposal contains no other language to indicate examples or requirements to qualify as a third party group even though the industry is proposing organization and implementation by third party groups as an alternative means of compliance and effective implementation of water quality improvements by hundreds or thousands of dischargers.

The required conditions related to the submittal of the General Report/Workplan are also incomplete and undeveloped, including 1) how the group will determine the level of risk to water quality of participants, 2) how the group will conduct audits to insure farmers implement management practices and improve water quality; and 3) how the group will conduct an audit review. For example, Condition 4.a. states that the third party group, *shall* submit a General Report/Workplan that *shall* identify the specific criteria and weighting system the third party group intends to use to determine an operation’s level of risk to water quality for the following four individual categories: Toxicity and Sediment in Stormwater, Toxicity in Irrigation Runoff, Nutrients in Irrigation Runoff and Nitrate Leaching to Groundwater. This Condition also includes some criteria that *may* be included. The types of criteria listed (that *may* be included) are a diverse set of site-

specific conditions that appear to require a robust site characterization and evaluation of technical and physical information that may not be readily available for every farm. This makes it unclear as to how and when the third party group will effectively prioritize the dischargers who elected to participate in the third party group and calls into question whether this can reasonably be accomplished on the time schedule proposed. The Agricultural Proposal states that the criteria for determining risk will be included in the General Report/Workplan due six months after a third party group has been approved by the Executive Officer. The proposal further indicates that the risk determination will be completed as part of the audits. The audits will be conducted for at least 20% of the participants each year and at least once for all participants in the five-year term of the order. This means that some farms, even some considered high risk for waste discharges (Tier 3) in the Draft Agricultural Order, may not have their risk to water quality determined until three to five years from approval of the order.

The Draft Agricultural Order requires all dischargers to determine the applicable Tier or risk to water quality with their Notice of Intent to enroll in the Order within thirty days of approval of the Order. Furthermore, the Draft Agricultural Order specifies information to be submitted to an electronic database with the Notice of Intent that allows both the discharger and the Water Board to assess a farm's risk to water quality within weeks or months, while the criteria to determine risk to water quality for the dischargers who elect to participate in the third party group would still be in development. Both the Agricultural Proposal and Draft Agricultural Order assign higher priority to farms in impaired watersheds or in areas with known nitrate impairments to groundwater. However, the Draft Agricultural Order enrollment requirements provide for assessments of individual farms' risk or contributions to water quality, self-assessments, and individual farm progress reports sooner and more efficiently. The Agricultural Proposal would allow or cause some dischargers who elect to participate in the third party groups to wait for several months to years before they are assessed for risk or provided assistance or evaluations of their progress.

The Agricultural Proposal puts off implementation of pollution control and submittal of the first annual compliance report for more than two years. This is because, in part, the required conditions for each of these components, states that the reports must be submitted and approved by the Executive Officer. This necessarily requires a reasonable time schedule, which is included in the Agricultural Proposal, but it is questionably achievable because the criteria and language regarding what the content of each submittal must contain or by what criteria they should be evaluated are unspecified and unclear. The description and establishment of a third party group and the audit process, at best, puts full establishment at approximately 15 months after the Order is approved. The first annual report is proposed to be submitted one year after the establishment of the third party group and the audit process. Consequently, the first annual report submittal date will occur 27 months (more than two years) after the Draft Agricultural Order is approved. This timing for components in the Agricultural Proposal related to the third party group and reports is illustrated in the following table relative to the day the Order is approved.

Table 1. Timeframe for Agricultural Proposal Third Party Groups and Reports

Time from Order Approval	Agricultural Proposal Components related to Third Party Groups and Reports
3 months	Third party group submits Notice of Intent
5 months	Executive Officer approves third party group
7 months	Dischargers enroll in third party group
13 months	Third party group submits General Report/Workplan
16 months	Executive Officer approves General Report/Workplan
28 months	Third party group submits General Report, including results of audits for 20% of participants, aggregated status of implementation, and identification of first participants terminated for failure to implement
Three - four years	Third party group submits subsequent General Reports including results of additional audits, additional aggregated status of implementation, and identification of other participants terminated

Furthermore, the adequacy and effectiveness of the proposed annual General Report to identify progress in controlling waste discharges and compliance with the order, depends on prior development and approval of third party coalitions, discharger risk determination, and auditing criteria and processes. Submittal and approval of each component depends on the previous component. More specifically, the General Report/Workplan is dependent on the timely and adequate submittal of the description and establishment of the third party coalition. It is unlikely all potential third party coalitions can form, organize, and submit Notices of Intent within three months. Submittal of the annual report is dependent on the timely and adequate submittal of the General Report/Workplan that explains the audit process and criteria. This makes it risky to assume the conditions associated with these components in the Agricultural Proposal can be implemented and approved by the Executive Officer on the proposed schedule. If these components are not submitted or approved on schedule, or if the schedule is extended to provide greater assurance that these components are established and approved, implementation, tracking and reporting of pollution control and water quality improvement will be further delayed.

The Draft Agricultural Order, and the Agricultural Proposal as proposed for dischargers who do not elect to participate in a third party group, require individual dischargers to plan and initiate or continue implementation of management practices, and treatment and pollution reduction controls, as well as actions to measure the effectiveness of practices and controls. The first reports including descriptions of practices implemented and indicators of practice effectiveness and pollution reduction must be submitted approximately 15 months after approval of the Order, compared to 28 to 48 months for the Agricultural Proposal.

2. *What is the regional/aggregate data design for monitoring and reporting in the Agricultural Proposal versus the Draft Agricultural Order's data objectives for monitoring and reporting? Does the proposed aggregate data and information reporting in the Agricultural Proposal inform water quality problems and identify specific facilities discharging pollutants to surface water or groundwater?*

### Surface Water Monitoring and Reporting Requirements

The Agricultural Proposal, for all dischargers, includes surface water monitoring similar to the current surface water cooperative monitoring program for receiving waters and as proposed in the Draft Agricultural Order, and as currently carried out by the Cooperative Monitoring Program. Results of this monitoring will continue to provide information about the general conditions of surface water bodies and provide data by which to prioritize based on knowing the locations of the most impaired areas. The results of this monitoring will not identify specific facilities discharging pollutants to surface water.

In the Agricultural Proposal, dischargers who elect to participate in the third party group will not be required to conduct individual monitoring or reporting, even if they are the highest impacting or risk to water quality. Therefore, the results of monitoring for the dischargers who elect to participate in third party groups will not improve understanding of sources of water quality problems nor identify specific facilities discharging pollutants to surface water. Water Code section 13269 requires that monitoring be used to verify the adequacy and effectiveness of the order's conditions.

For dischargers who do *not* elect to participate in a third party group, the Agricultural Proposal also includes the same individual monitoring requirements as the Draft Agricultural Order. The results of this monitoring, along with reporting on management practices and treatment controls, would identify specific facilities discharging or potentially discharging pollutants to surface water.

The Agricultural Proposal includes the following annual reporting requirements for third party groups. Note that there are no reporting requirements for individual dischargers who elect to participate in a third party group.

The Agricultural Proposal states that the information contained in the annual reports may provide progress on general implementation, e.g., if dischargers are implementing practices and what types. However, this information does not include any indicators or measurements of management practice effectiveness or pollution load reductions, either in aggregate or for individual farms. This information will not identify specific facilities discharging pollutants to surface water or groundwater. Furthermore, the proposal does not specify what information will be included in the aggregate summary of the audit results as shown by the language in v. below. Therefore, it is difficult to predict what questions staff will be able to answer or what evaluations or compliance determinations staff will be able to make with the reported information.

The Agricultural Proposal states that the Third Party group shall submit a report to the Central Coast Water Board that includes the results of the audit evaluations in an aggregated format, and summaries of other activities. The aggregated report shall include the following:

- i. The names of the Participants in the third party group that are in good standing (e.g., have paid applicable fees);
- ii. The number of Participants' operations for which audit evaluations were conducted over that 12 month period;
- iii. The identification of the sub-watersheds where the audit evaluations were conducted;

- iv. The names of the Participants whose operations were audited;
- v. An aggregated summary of the audit results (summary of audit results shall not be operator specific). For example, the annual report could indicate the number or percentage of operations that are implementing Farm Water Quality Management Plans and appropriate management practices to control the discharge of pollutants to ground and/or surface water to the maximum extent practicable. An aggregated summary should be provided for each of the four categories of risk to water quality.
- vi. A general summary of assistance that the third party group provided to Participants to assist them in updating Farm Water Quality Management Plans and in implementing management practices;
- vii. An aggregated summary of any educational workshops conducted by the third party group, and a list of the those that attended the educational workshop; and,
- viii. An aggregated summary of any other activities conducted by the third party group towards the improvement of water quality.

#### Groundwater Assessment, Monitoring and Reporting Requirements

The Agricultural Proposal, for all dischargers, included an alternative groundwater monitoring program titled "Part 2. Groundwater Assessment, Monitoring and Reporting Requirements" submitted on May 4, 2011 (hereafter referred to as the Agricultural Proposal's groundwater monitoring requirements).

The Agricultural Proposal's groundwater monitoring requirements identified a Part 2.A. and a Part 2.B. that apply to Tier 1, Tier 2, and Tier 3 dischargers, as well as to dischargers that have elected to participate in a third party group. The Agricultural Proposal's Part 2.A. included conditions 1 through 7, but there was no Part 2.B. included with the May 4, 2011 submittal and therefore, Part 2.B. could not be evaluated by staff. Based on further discussion with agricultural industry representatives who submitted the Agricultural Proposal, the Part 2. Groundwater Assessment, Monitoring and Reporting Requirements is a replacement to all of the groundwater monitoring requirements contained in the Draft Agricultural Order and associated MRP.

After evaluating the Agricultural Proposal's groundwater monitoring requirements in detail, staff concluded that the Agricultural Proposal's groundwater monitoring requirements provide little to no individual discharger accountability for groundwater monitoring, does not provide sufficient information to identify and prioritize areas and farms at greatest risk for waste discharge and nitrogen loading, does not identify or evaluate groundwater that may be used for domestic drinking water, and does not provide any results of groundwater monitoring earlier than five years. Based on these deficiencies and additional uncertainties about implementation, staff finds the groundwater monitoring requirements insufficient and unacceptable given the severity of the impacts of agricultural discharges to groundwater.

#### *Groundwater Monitoring Purpose and Design-*

The Agricultural Proposal includes groundwater monitoring requirements with minimal requirements for individual dischargers. The only requirement for an individual discharger is included in Part 2.A. Condition (1) which states that "Dischargers must elect to participate in a cooperative monitoring program to comply with groundwater assessment, monitoring, and reporting requirements." Beyond electing a cooperative

monitoring program and providing notice to the Water Board, no other groundwater monitoring requirements apply to the individual discharger. The groundwater monitoring requirements only include requirements that apply to a cooperative monitoring program and include the submittal of a workplan in one year and a final report in five years of adoption of the Order. These requirements are discussed in further detail below. For dischargers who don't elect to participate in a cooperative monitoring program, it appears that no other requirements apply. This framework will not provide the necessary information necessary to improve groundwater quality and protect drinking water.

In contrast, the Draft Agricultural Order does not require a workplan and requires individual dischargers to conduct groundwater monitoring within one year at an existing groundwater well, specifically the primary irrigation well and any well that is used or may be used for drinking water purposes, or an acceptable alternative. The Draft Agricultural Order also requires individual dischargers to report the results of groundwater monitoring within two years.

The groundwater monitoring in the Agricultural Proposal has a fundamentally different purpose and design than the requirements in the Draft Agricultural Order. The stated objectives of the groundwater monitoring requirements in the Agricultural Proposal are "to assess the status of groundwater quality and associated beneficial uses in agricultural groundwater basins, and to provide feedback to growers in areas of concern." The Agricultural Proposal's requirements focus on the use of existing public supply well data for conducting groundwater assessment (Condition A.4a), while the Draft Agricultural Order requirements prioritize the collection of groundwater quality data at agricultural and domestic drinking water wells to characterize shallow or intermediate groundwater depths that would provide shorter term indicators of impacts from agricultural discharges and threat to drinking water beneficial uses.

While the analysis of public supply well data is important and useful, the inclusion of public supply well data as part of a regulatory requirement related to agricultural discharges provides little additional benefit. Groundwater quality information from public supply wells is already available to dischargers, the Water Board, and the public. Generally, public supply wells provide information about relatively deeper groundwater, are often not representative of groundwater in rural areas, and are constructed to avoid impacts from nitrate and other pollutants. In addition, public supply wells are routinely abandoned once they become impacted by pollutants and treatment costs exceed the cost of drilling a new well. Thus, public supply wells provide indication of the quality of deeper, better quality groundwater and may underestimate shallower groundwater degradation.

Public supply wells are typically the last to see the effects of changes to land use practices (i.e., least responsive to application of more or less nitrogen from fertilizers) due to depth and groundwater travel times. Public supply wells provide limited information in the short term about areas and farms in agricultural areas at greatest risk for nitrogen loading which may degrade more shallow domestic drinking water wells or which may continue to load nitrate to deeper groundwater where impacts are not yet detected. In addition, data from public supply wells also provides limited information for growers to evaluate or modify implementation of nutrient management practices, and if used for this purpose, may result in continued discharge of nitrogen to groundwater. In other words, reliance on public supply wells for groundwater monitoring provides little to

no opportunity to avoid impacts from agricultural discharges or to measure progress towards water quality improvement in the short term.

In contrast, groundwater monitoring for nitrate at individual agricultural wells, as required in staff's recommended Draft Agricultural Order, provides information to the grower to account for nitrogen in irrigation water and subsequently reduce the amount of applied fertilizer, when appropriate. This requirement may prove to be one of the most effective and immediate ways by which applied nitrogen and subsequent loading to groundwater can be significantly reduced in areas of the most severe and widespread nitrate impacts. In addition, the groundwater monitoring as set forth in the Draft Agricultural Order complies with Water Code section 13269 because it assists in evaluating the effectiveness of conditions of the waiver. The resulting water quality data will provide the Central Coast Water Board with necessary information to prioritize areas and farms for follow-up actions related to the implementation of nutrient management practices and drinking water protection. This type monitoring should already be routine under the existing 2004 Agricultural Order since this is such a fundamental practice. Consequently, the proposed requirement adds minimal to no cost for those growers already using this practice (estimated at 95% of growers by one agricultural representative from the Farm Bureau).

The Agricultural Proposal's groundwater monitoring requirements related to the workplan did include a footnote (p. 2) that stated that the workplan "shall identify appropriate monitoring locations that are distributed throughout agricultural areas, and are representative of locations and depths of groundwater basins of interest". The requirements did not specify how appropriate and representative locations will be determined or how groundwater basins of interest will be identified. The requirements also did not specify how monitoring sites will be selected (e.g., random, purpose-based, or other). There were no requirements or suggestions related to the number of monitoring sites, monitoring density or scale of the monitoring program. Furthermore, there was no requirement for the workplan to be approved by the Water Board or Executive Officer prior to implementation and it is not clear in what cases such a work plan may or may not be technically acceptable.

The Agricultural Proposal's groundwater monitoring requirements generally included similar groundwater monitoring parameters and analytical methods compared to the Draft Agricultural Order. In contrast, the Agricultural Proposal's groundwater monitoring requirements requires four years of groundwater monitoring for those who elect cooperative monitoring (and an unspecified timeframe for those who elect individual groundwater monitoring), while the Draft Agricultural Order requires one year of groundwater monitoring for all growers.

#### *Groundwater Monitoring Reports -*

The groundwater monitoring requirements in the Agricultural Proposal requires a final report be submitted to the Water Board in five years after adoption of the Order, and that the final report will include the general location of groundwater wells sampled but would not provide the specific property location of groundwater wells sampled. This does not provide sufficient information to the Water Board to enable staff to identify and prioritize areas and farms at greatest risk for waste discharge, nitrogen loading, and exceedance of drinking water standards. Because the scale and area of the monitoring program, number and density of monitoring sites, and location and depth of monitoring sites are all unknown, the extent to which such a groundwater monitoring effort can effectively

identify impacted areas or prioritize farms that are at greater risk for pollutant loading is uncertain and limited. In addition, the groundwater reporting requirements did not include any requirements related to the identification of groundwater wells that may be used for domestic drinking water purposes or any requirements related to determining whether or not such wells meet safe drinking water standards.

The Draft Agricultural Order requires dischargers to report the number, use, characteristics, and location of groundwater wells at farms. In addition, the Draft Agricultural Order also requires dischargers to report groundwater monitoring results within two years. Such reporting enables the Water Board to identify and locate more degraded groundwater to prioritize areas and individual farms that are at greater risk for pollutant loading for follow-up. The reporting also allows the Water Board to communicate information about local water quality to domestic well users in the immediate vicinity who might be affected by poor water quality.

The Agricultural Proposal's requirements to submit a final report in year five provides no time until after the next updated order is adopted for the Water Board, dischargers, or other stakeholders to evaluate or take action in response to the information contained within the report. Furthermore, the requirements state that the final report must include "a reasonable characterization/assessment of the groundwater for the area covered by the cooperative monitoring program in question." It did not specify any required elements for the final report, beyond the submittal of laboratory data in a specific format, and did not specify what constitutes a reasonable characterization or assessment.

The Draft Agricultural Order requires individual dischargers to conduct groundwater monitoring and report results much sooner, within two years after approval of the Order. This timing allows the Water Board, dischargers, and other stakeholders to evaluate and determine next steps to best protect groundwater quality, including prioritizing areas and farms for nutrient management practice implementation, as well as take steps to ensure protection of drinking water beneficial uses.

In summary, staff concluded that the Agricultural Proposal's groundwater monitoring requirements provide little to no individual discharger accountability for groundwater monitoring, does not provide sufficient information to identify and prioritize areas and farms at greatest risk for waste discharge and nitrogen loading, does not identify or evaluate groundwater that may be used for domestic drinking water, and does not provide any results of groundwater monitoring earlier than five years. In addition, staff also recommends some changes to the Draft Agricultural Order groundwater monitoring requirements which are discussed on page 22 of this Addendum that clarify, among other issues, that the Board will keep precise groundwater well locations and proprietary farm information confidential.

*3. How do the milestones/timeframes compare to those in the Draft Agricultural Order? Does anything in the Agricultural Proposal close the gap for meeting the Draft Agricultural Order's short-term and priority objectives?*

No new milestones were presented in the new information for the Agricultural Proposal. However, the latest proposal deleted the milestone in the Draft Agricultural Order to meet water quality standards in five years. 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. Table 2 below compares the milestones in the Draft Agricultural Order with those in the Agricultural Proposal. This is the same as the table comparing milestones in the March 17, 2011 Staff Report (on page 91 in Appendix D), shown here again for convenience.

As previously discussed, the general timeframes for implementation, tracking and reporting are much longer in the Agricultural Proposal for those dischargers who elect to participate in a third party group. According to the proposed time schedule, the description and establishment of a third party group and the audit process, at best, puts full establishment at approximately 15 months after the Order is approved. The first annual report is proposed to be submitted one year after the establishment of the third party group and the audit process. Consequently, the first annual report submittal date is 27 months (more than two years) after adoption, while the Draft Agricultural Order requires submittal of the first reports (electronically), including descriptions of practices implemented and indicators of practice effectiveness and pollution reduction, approximately 15 months after approval of the Order.

As required by the Water Code, the Draft Agricultural Order requires dischargers to comply with specific conditions to ensure that agricultural discharges do not cause or contribute to the exceedance of any Regional, State, or Federal numeric or narrative water quality standard. In requiring compliance with water quality standards, the Draft Agricultural Order requires dischargers to 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 achieve compliance with the Order. In practice, as indicated in the Draft Agricultural Order, the Water Board will consider the following information in determining the extent to which Dischargers are effectively controlling individual waste discharges and complying with the Order: a) compliance with the time schedules; b) effectiveness of management practice implementation; c) effectiveness of treatment or control measures; 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; and f) other information obtained by Water Board staff during inspections at operations or submitted in response to Executive Officer orders. The tables containing milestones make clear that the milestones are not themselves enforceable.

Table 2. Comparison of Milestones in Draft Agricultural Order and Agricultural Proposal

REQUIREMENT	STAFF DRAFT AGRICULTURAL ORDER  MILESTONE/ DATE	AG GROUP AGRICULTURAL PROPOSAL <sup>3</sup>  MILESTONE/ DATE
<u>Reduce Pesticides and Toxic Substances in Receiving Waters</u>	Meet water quality standards (per Attachment A of the Order)  5 years	Reduce in-stream organophosphate toxic units at current Cooperative Monitoring Program (CMP) sites by 50%  4 years  Meet water quality objectives for diazinon and chlorpyrifos  8 years.
<u>Tier 3 Dischargers: Reduce Pesticides and Toxic Substances in Individual Waste Discharges</u>	One of two individual discharge monitoring samples is not toxic  2 years  Two of two individual discharge monitoring samples are not toxic  3 years	
<u>Reduce Sediment and Turbidity in Receiving Water</u>	Meet water quality standards (per Attachment A of the Order)  5 years	Decrease in-stream sediment loads from current CMP sites by 20%  5 years
<u>Tier 3 Dischargers: Reduce Sediment and Turbidity in Individual Waste Discharges</u>	Four individual discharge monitoring samples are collected and analyzed for turbidity  2 years  75% reduction in turbidity or sediment load in individual discharge (or meet water quality standards for turbidity or sediment in individual discharge)  4 years	
<u>Reduce Nutrients in Receiving Water</u>	Meet water quality standards (per Attachment A of the Order)  5 years	Decrease nitrate loads from current CMP sites by 10%  10 years

<sup>3</sup> The revised Agricultural Proposal accepted into the record at the May 2011 Board meeting (so called "New Information") did not include milestones. Staff questioned these omissions, and agriculture representatives said that it was an inadvertent omission and these milestones should be included. Milestones are short-term goals and not enforceable.

REQUIREMENT	STAFF DRAFT AGRICULTURAL ORDER  MILESTONE/ DATE	AG GROUP AGRICULTURAL PROPOSAL <sup>3</sup>  MILESTONE/ DATE
<u>Tier 3 Dischargers: Reduce Nutrients in Individual Waste Discharges to Surface Waters</u>	Four individual discharge monitoring samples are collected and analyzed  2 years  50% load reduction in nutrients in individual discharge (or meet water quality standards for nutrients in individual discharge)  3 years  75% load reduction in nutrients in individual discharge (or meet water quality standards for nutrients in individual discharge)  4 years	
<u>Tier 3 Dischargers: Reduce Nutrients in Individual Waste Discharges to Groundwater</u>	Achieve annual reduction in nitrogen loading to groundwater  3 years	

4. *What are the consequences for not meeting the conditions in the Agricultural Proposal?*

In general, the consequences for not meeting conditions in the Agricultural Proposal for dischargers who elect to participate in a third party are minimal because most of the conditions apply to the third party group only and not to individual dischargers or they apply to “the third party group and/or its participants.” This makes it unclear who is required to implement the condition, who is responsible for failure to implement or meet the condition, and how meeting the condition can or should be determined. However, the Agricultural Proposal includes the following indications of consequences for not meeting conditions:

*For the third party group-*

- If an audit evaluation indicates that the participant has incorrectly characterized the risk of his/her operation...the General Report/Workplan shall include a process whereby a participant is asked to modify their risk characterization.
- If an audit evaluation indicates that the participant’s Farm Plan needs to be amended, and the operation needs to implement new or additional management practices..., the General Report/ Workplan shall include a process whereby the

third party group works with the individual participant to assist in updating the Farm Plan and educating the participant...

- The General Report/Workplan shall include a process for termination of ...participants that includes the following:
  - A process for termination if the participant fails to update Farm Plan, fails to begin implementing management practices...within 12 months of it being determined that such changes are necessary.
  - Reporting participants' termination to the Central Coast Water Board within 30 days of the participants' failure to respond to the third party group.
- Executive Officer may terminate a third party group for failure to provide the required technical reports.

*For individual dischargers-*

- Unspecified consequences to be determined by the processes referred to above that will be proposed to the Executive Officer in the General Report/Workplan by the third party nine months to one year after adoption of the Order.
- Cannot participate in a third party group if fail to pay fees to a third party group.
- Liability for failure to comply with surface receiving water monitoring requirements.

The primary consequence for an individual discharger, per the Agricultural Proposal, is termination as a participant in a third party group. However, that termination could be up to a year after the coalition determines improvements are needed, presumably after an audit. Audits for 20% of the operations would be in year five after Order adoption (40% would not be audited until year four, etc), so termination could be up to six years after Order adoption (yet the term of the Order is only five years). This consequence can be seen as a benefit or opportunity for a discharger to avoid compliance with conditions to implement management practices and report on effectiveness. If a discharger is terminated from participation in a third party group, that discharger will default to required conditions in the Draft Agricultural Order, including monitoring and reporting. At that time, the Water Board will essentially have a "new enrollee" who has not had to comply with requirements or time schedules while they "participated" in the third party group. Furthermore, since the reporting for the participants in third party groups does not include any information on specific farms and no specific status of management practices or effectiveness of practices, the Water Board will have no information about this discharger three, four, five, or six years after approval of the Order, at the time of termination (see Timeframes above). This means as late as 2014 and beyond, some dischargers (who are not cooperating or implementing) will begin to be subject to trackable and enforceable requirements to control their waste discharges for the first time. This is another example of the dual standard for those who join a third party group to use the group as a shield from complying with the Water Code.

As mentioned previously, the Agricultural Proposal deleted several required conditions for all dischargers and the Tier 2 and Tier 3 conditions for dischargers who elect to participate in a third party group. As a result, the Agricultural Proposal appears to allow dischargers to stop complying with any water quality standard pending formation of third party groups. These deletions also reduce the clarity in the Draft Agricultural Order for specific implementation and reporting requirements, limit the Water Board's ability to conduct compliance determinations or evaluate water quality improvement progress, and

limit the Water Board's ability to enforce for those who are doing nothing to make improvements.

The Draft Agricultural Order includes conditions that allow the Water Board to determine 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. Some agricultural stakeholders have indicated that they are concerned that the Draft Agricultural Order requires immediate compliance with water quality standards. That is not the case. Finding 10 of the Draft Agricultural Order states that the "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 NPS Policy, dischargers comply by implementing and improving management practices. The 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 minimize discharges. If the discharger fails to address impacts to water quality by taking the actions required by the Order, including evaluating the effectiveness of their management practices and improving as needed, the discharger would then be subject to progressive enforcement and possible monetary liability. As with any waste discharge requirements or waiver, dischargers are subject to enforcement action for failing to comply with conditions, such as monitoring, reporting, paying fees, etc. If any enforcement action is taken, the discharger would have an opportunity to present their side of the story to the Board before monetary liability could be imposed. The Water Board and/or the Executive Officer could also terminate the discharger's participation in the Order and issue individual waste discharge requirements.

#### **Additional Revisions to the Draft Agricultural Order and Monitoring and Reporting Program, Including Addendum to the Subsequent Environmental Impact Report**

**Staff made some additional revisions to the Draft Agricultural Order and to the Monitoring and Reporting Program either in response to comments or because an error was identified. These changes are indicated in Attachment 4 - Response to Comments and Errata Sheet. The actual revisions to the Draft Agricultural Order are shown highlighted in the redline-strikeout version of Attachment 1 (p. 18, 19, 20 and 25) and revisions to the Monitoring and Reporting Program are shown highlighted in the redline-strikeout version of Attachment 2 (Tier 2 MRP, p.9). Some of these revisions override or change the list of revisions originally included in this Addendum to the Staff Report and shown in the lists below.**

**In summary, staff recommends the following changes to the Draft Order and MRP based on comments received during the July 8, 2011 – August 1, 2011. These changes are shown highlighted on Attachment 1 - Red-line strikeout version of the Draft Agricultural Order with revisions:**

- **Deleted language regarding groundwater well construction (Condition #31, p. 18);**

- Clarified language about keeping the Farm Plans on-site (Condition #43, p. 20);
- Replaced language requiring “proof” of compliance with DPR regulation with requiring information about compliance with DPR regulations (Condition 34, p. 19);
- Delete language requiring “legal justification” to address trade secrets or proprietary information (Condition 65, p. 25)

*Addendum to the Subsequent Environmental Impact Report*

The Central Coast Water Board staff prepared a Final Subsequent Impact Report (Final SEIR) consistent with the requirements of the California Environmental Quality Act (CEQA) Guidelines (Cal. Code Regs., tit 14 § 15162.) which can be viewed at:

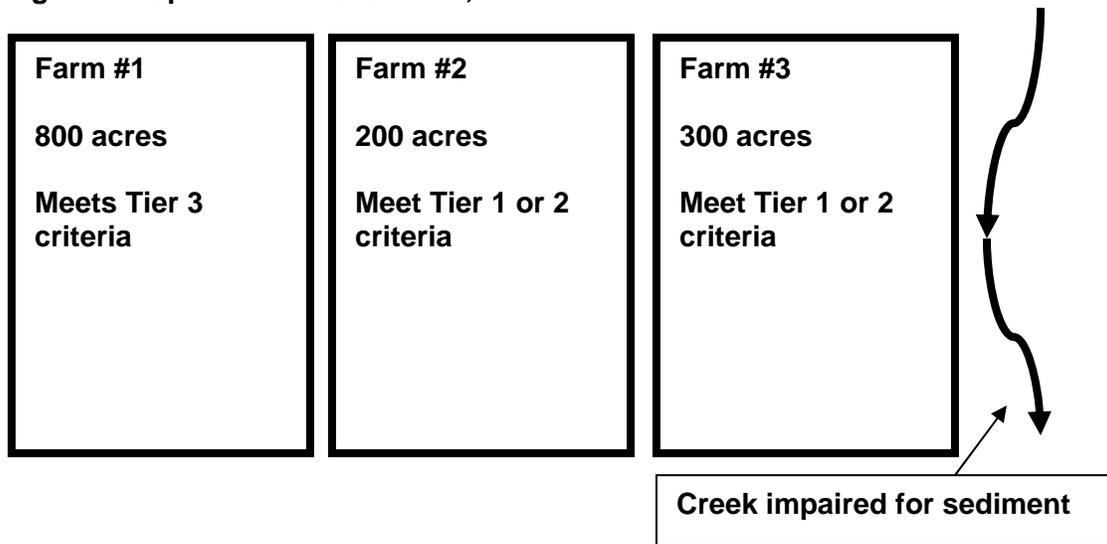
<http://www.ceres.ca.gov/ceqa/guidelines/art11.html>.

Since the preparation of the Final SEIR, a panel of the Central Coast Water Board held a multi-day hearing to consider the adoption of a waiver of waste discharge requirements for discharges of waste from irrigated lands. In response to oral and written comments to the Water Board, staff proposed revisions to the Draft Agricultural Order. Some changes and additions to the Final SEIR are necessary to reflect revisions to the Draft Agricultural Order. A new SEIR is not required because the revisions to the Draft Agricultural Order have either already been evaluated in the Final SEIR or the 2004 Negative Declaration, or the revisions do not constitute substantial changes that involve new significant environmental effects or a substantial increase in the severity of previously identified significant effects (Cal. Code Regs. tit. 14, §§ 15164, 15162).

The Final SEIR evaluated whether the project would have a significant environmental impact on agricultural resources. Several statements in the Final SEIR are inaccurate:

Page 2, paragraph 3 states: “As described in the Section 2.4 of this Final SEIR, the draft 2011 Agricultural Order would impose additional conditions on approximately 100 to 300 of the 3000 of owners or operators [Tier 3] currently enrolled in the 2004 Agricultural Order.” The September 1, 2011 revisions to the Agricultural Order would revise the tiering criteria that were used in the Final SEIR to identify the number of enrollees that would be subject to the Tier 3 conditions. The revised tiering criteria (“farms” instead of “operations” and different acreage criteria) would result in a similar number of dischargers that could be subject to Tier 3. The number of acres of land subject to Tier 3 would remain approximately the same or less even with the revised tiering criteria. This is because tiering on “operations” (which often have more than one farm or ranch associated with them) results in Tier 3 conditions applying to one of the “farms” in the “operation” even though that “farm” does not independently meet the Tier 3 criteria. For example, in the diagram below, the Tier 3 condition to use riparian buffers or equivalent measures to control sediment discharges directly to creeks already impaired from sediment discharges, applies if tiering criteria are based on “operation” but does not apply when tiering criteria are based on “farm” because only Farm #1 would be in Tier 3 and it is not adjacent to the impaired creek.

Diagram 1: Operation = 1300 acres, 3 Farms



Thus, the environmental impacts addressed in that portion of the Final SEIR that discuss the environmental impacts of the Tier 3 conditions remains the same, as follows:

Page 5, paragraph 1 states: “As discussed further below and in Appendix F of Draft Staff Report recommending the Draft Agricultural Order, if all growers in Tier 3 chose to install buffer strips to comply with the Order, approximately 82 to 233 acres or 0.002 to 0.004% of the 540,000 acres of agricultural lands within the Region, would be taken out of production. Given the total number of acres farmed in the Central Coast Region, the impact on acres farmed is not cumulatively significant even if all 233 acres was converted to some other use.”

The conclusions in the Final SEIR are not affected by the proposed revisions to the Order.

See Final Subsequent Environmental Impact Report (Appendix H of the Staff Report Proposing a Draft Agricultural Order For Water Board Action, Agenda Item #19 for Board Meeting of March 17, 2011).

### ***Summary of Revisions***

At the panel hearing, staff presented a summary of changes to the Draft Agricultural Order and the Monitoring and Reporting Program under consideration in response to Water Board member questions and stakeholder comments. Staff further evaluated these changes and also evaluated the new information associated with Agricultural Proposal. In particular, staff prioritized evaluating potential revisions related to groundwater monitoring and the desire of agricultural operators to conduct cooperative groundwater monitoring and keep groundwater well locations confidential. This was a major area of discussion for all stakeholders and Board Members. Many stakeholders support inclusion of groundwater monitoring (and the Agricultural Proposal included monitoring to some degree) but some operators objected to specific well data availability to the public. Based on this evaluation, staff recommends the list of additional revisions

to the Draft Agricultural Order itemized below. The revisions identified with an asterisk(\*) are those recommended by staff in response to recent discussions with agricultural representatives and evaluation of the new information submitted with the Agricultural Proposal. Included in the discussion is also the basis for staff's recommended revisions. In addition, a red-line strikeout version of the Draft Agricultural Order is included as Attachment 1 to this staff report, which contains the revisions identified below and other, minor revisions.

*Revisions discussed at the May 4, 2011 Board Meeting:*

1. Remove the Executive Officer's authority to change tiering criteria.\*
2. Use individual farms instead of operations as the appropriate level to consider tiering criteria. \*
3. Change the tiering criteria related to acreage and crop types with high potential to discharge nitrogen to groundwater. \*
4. Provide dischargers with the option to use the Nitrate Hazard Index to evaluate nitrate loading risk.\*
5. Change compliance due dates in the Order and MRP relative to the date of Board adoption.

*Additional revisions recommended by staff since the May 4, 2011 Board Meeting:*

6. Replace specific prohibitions with conditions, by removing the words "is prohibited" and adding the words "Dischargers must" or other appropriate language. \*
7. Clarify that, in cases where cooperative efforts (e.g., through coalitions), or local or regional treatment strategies 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.
8. Replace the words "groundwater sampling" with the words "groundwater monitoring."
9. Clarify that 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.\*
10. Clarify that dischargers may participate in an acceptable cooperative groundwater monitoring program, as an alternative to individual groundwater monitoring requirements.\*
11. Clarify that requirements related to compliance with Department of Pesticide Regulation (DPR), Department of Fish and Game (DFG), and California Department of Forestry and Fire (CalFIRE) require dischargers to show proof of compliance with relevant requirements, upon request of the Executive Officer.\*
12. Change the due date for submittal of the Notice of Intent from 30 days of Order adoption to 60 days of Order adoption.\*
13. Clarify the definition of public water system well per California Health and Safety Code section 116275.\*
14. Clarify specific requirements related to Farm Plans (e.g., farm/ranch maps, characteristics of discharge). \*
15. Clarify when Water Board staff may investigate the property of dischargers subject to the Order.\*

16. Clarify how the Water Board will evaluate if a Discharger is effectively controlling waste discharge and compliance with the Order. \*
17. Clarify the definition of farm, operation, and public water system. \*
18. Clarify reporting relative to proprietary information such as trade secrets and secret processes. \*
19. Clarify requirements related to nitrogen soil sampling in the Tier 3 Irrigation and Nutrient Management Plan and remove the requirement related to leaf samples. \*
20. Remove the requirement for including the “total nitrogen removed at harvest” in the nitrogen balance ratio. \*
21. Modify groundwater monitoring requirements to allow for additional laboratory methods for nitrate.
22. Modify surface receiving water monitoring sites, and monitoring for total phenolic compounds instead of phenol.

#### Basis for Specific Revisions to the Draft Agricultural Order

##### *(1) Remove the Executive Officer’s authority to change tiering criteria –*

This change removes the Executive Officer’s authority to change the Agricultural Order tiering criteria, and replaces with Water Board action. The basis for this change stems from comments from agricultural stakeholders that the Executive Officer should not have the authority to modify tiering criteria and that action should be reserved solely for the Water Board. Staff agrees with this comment and recommends this change to the Draft Agricultural Order. This change will provide stability in the tiering criteria and will provide more stability and certainty for dischargers to plan their operations and actions necessary for compliance. In addition, this change will also allow any modifications of the tiering criteria to be considered with the level of public process associated with Water Board actions.

##### *(2) Use individual farm instead of operations to apply tiering criteria –*

This change removes operations as the basis for applying tiering criteria, and replaces with individual farm or ranch. The basis for this change stems from comments by agricultural representatives that the tiering criteria in the Agricultural Order should be based upon the characteristics of individual farms, not operations. Staff agrees with this comment and recommends this change to the Draft Agricultural Order. This change responds to the concern that (lower tier) individual farms could be treated differently and would be subject to more stringent requirements, only because of their association with a particular operation that included other higher tier farms.

*(3) Change the tiering criteria related to acreage and crop types with high potential to discharge nitrogen to groundwater -* This change modifies the specific tiering criteria related to acreage and crop types with high potential to load nitrogen to groundwater, including: Tier 1 farms that grow crop types with high potential to load nitrogen to groundwater and less than 50 acres; Tier 2 farms that grow crop types with high potential to load nitrogen to groundwater and between 50 and 500 acres; Tier 3 farms that grow crop types with high potential to load nitrogen to groundwater and greater or equal to 500 acres. The basis for this change is from comments from stakeholders (not just agricultural interests) that Tier 3 criteria related to 1000 acre operations were inappropriate, and staff’s evaluation of relative nitrate loading risk. Staff evaluated individual farm acreage relative to nitrate loading risk and concludes that farm size is a meaningful tiering criteria. For farms that grow crop types with high potential to load

nitrogen to groundwater, larger acreages, of course, have the potential to load larger volumes of nitrogen – in some cases potential loading (estimated by excess nitrogen application) may increase by orders of magnitude. For example, with similar leaching rates a 1000 acre lettuce farm could load 20 times as much nitrogen to groundwater as a 50 acre lettuce farm, while affecting an aerial portion of the groundwater basin that could also be 20 times greater.

*(4) Provide dischargers with the option to use the Nitrate Hazard Index to evaluate nitrate loading risk* – This change allows dischargers to use the Nitrate Hazard Index (NHI) to evaluate nitrate loading risk. This basis for this change comes from comments from agricultural stakeholders that soil type is an important factor in evaluating nitrate loading risk. Initially, staff omitted soil type for the nitrate loading risk evaluation in an effort to simplify and be reasonable, since soil type is variable and a requirement to characterize soil type at the farm level may be burdensome for some dischargers. The University of California - Division of Agriculture and Natural Resources (UCANR) confirmed that soil type is easily available to growers and that they have an online NHI tool for growers and others to calculate nitrate loading risk.

*(6) Replace specific prohibitions with conditions, by removing the words “is prohibited” and adding the words “Dischargers must” or other appropriate language*– This change would remove the section with general prohibitions and add related conditions. A prohibition is not necessary to address the subject waste.

*(7) Clarify that, in cases where cooperative efforts, or local or regional treatment strategies 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* – This change allows specific growers to utilize an alternative monitoring plan or time schedule. The basis for this change is the desire to provide incentive for grower participation in effective treatment or water quality improvement projects that may require alternative water quality monitoring or an alternative time schedule for compliance.

*(8) Replace the words “groundwater sampling” with the words “groundwater monitoring”* – This change would explicitly use the word monitoring because it is routinely associated with the reporting of results, and the expectation is that groundwater monitoring results are reported to the Water Board. Some stakeholders said that the use of the term sampling may inadvertently imply that dischargers do not have to report groundwater results.

*(9) Clarify that 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* - This change clarifies that the Central Coast Water Board will not make the precise location of any groundwater well monitored in compliance with the Agricultural Order available for public inspection. Some agricultural stakeholders commented that well locations should remain confidential, and staff concluded there is a valid public safety interest in keeping precise well location information private.

*(10) Clarify that dischargers may participate in an acceptable cooperative groundwater monitoring effort, as an alternative to individual groundwater monitoring requirements* - This change clarifies that dischargers may participate in a cooperative groundwater

monitoring program that has been approved by the Executive Officer, as an alternative to individual groundwater monitoring (e.g., a group of dischargers whose groundwater wells all screen a similar water bearing zone may select a subset of wells for monitoring in compliance with the Agricultural Order.) Some agricultural representatives stated that participation in an acceptable cooperative groundwater monitoring is a reasonable alternative to individual groundwater monitoring requirements.

*(11) Clarify that requirements related to compliance with Department of Pesticide Regulation (DPR), Department of Fish and Game (DFG), and California Department of Forestry and Fire (CalFIRE) are to show proof of compliance with relevant requirements, upon request of the Executive Officer* - This change would specify that dischargers must only provide proof of compliance with relevant DPR, DFG, or CalFIRE requirements upon request of the Executive Officer. This change is based on comments from agricultural stakeholders that explicit requirements to comply with another agency's requirements results in duplicate regulation and that proof of compliance with relevant requirements should only be required upon request. For example, some pesticide labeling requirements require that specific pesticides must not be applied within a certain proximity to a surface waterbody. In pesticide impaired areas, the Executive Officer may require dischargers to document compliance with the subject pesticide labeling requirements.

*(14) Clarify specific requirements related to Farm Plans (e.g., farm/ranch maps, characteristics of discharge)* – This change adds language to clarify what content must be included in the Farm Plan. This change is based on comments submitted by agricultural stakeholders.

*(15) Clarify when Water Board staff may investigate the property of dischargers subject to the Order* – This change clarifies that Water Board staff or authorized representatives may investigate the property of persons subject to the Agricultural Order to evaluate compliance with the Porter-Cologne Water Quality Control Act and the Agricultural Order. The change further clarifies that inspections shall be made with the consent of the owner or a duly issued warrant, or without a warrant in the event of an emergency affecting public health and safety. This change is based on comments from agricultural stakeholders that this requirement should be clarified to be consistent with Title 13 Code of Civil Procedure Part 3 (Section 1822.50).

*(16) Clarify how the Water Board will evaluate if a Discharger is effectively controlling waste discharge and compliance with the Order* - As previously discussed, this clarification is in response to concerns from agricultural stakeholders that the Draft Agricultural Order appears to require immediate compliance with water quality standards. Consistent with the NPS Policy, the Order requires dischargers to comply with water quality standards through the use of management practices. The Order requires dischargers to address water quality problems by evaluating the effectiveness of their management practices, treatment and/or control measures, and taking action to improve management practices as needed to reduce discharges of waste to attain water quality standards. The proposed changes clarify the intent of the Order and the multiple factors that the Water Board would evaluate to assess the extent to which dischargers are controlling waste discharges and complying with the Order (such as time schedules, management practice implementation and effectiveness, effectiveness of any treatment or control measures, results of monitoring and reporting).

(17) *Clarify the definition of operation, farm, and public water system* – This change adds language to clarify the definition of operation, farm, and public water system. This change is based on the Order and tiering criteria focus on the characteristics of individual farms instead of operations, and the agricultural stakeholders request that the Order's definition of public water system be clarified to be consistent with the Health and Safety Code.

(18) *Clarify reporting requirements relative to proprietary information such as trade secrets and secret processes* – This change adds language to instruct dischargers in how to report information that may be exempt from public disclosure.

(19) *Clarify requirements related to nitrogen soil sampling in the Tier 3 Irrigation and Nutrient Management Plan and remove the requirement related to leaf samples* – This change clarifies that the Order allows alternatives for nitrogen soil sampling and also removes the explicit requirement to conduct leaf samples. The change is based on comments staff heard from agricultural representative and to provide additional flexibility. Staff also clarified that Certified Crop Advisors with experience in hydrogeology or similarly qualified professionals can evaluate the effectiveness of the Irrigation and Nutrient Management Plan.

(20) *Remove the requirement for including the “total nitrogen removed at harvest” in the nitrogen balance ratio* – This change clarifies that considering the total nitrogen removed at harvest in the calculation of the nitrogen balance ratio is a long term goal and not an explicit requirement for the term of this Order. This change is based on comments staff heard from agricultural representatives submitting the Agricultural Proposal that, in many cases, the amount of nitrogen removed at harvest may be unknown and difficult to quantify at this time.

(21) *Modify groundwater monitoring requirements to allow for additional laboratory methods for nitrate* – This change adds language to allow the discharger to utilize multiple laboratory methods to analyze for nitrate. The basis for this change is to provide additional flexibility.

(22) *Modify surface receiving water monitoring sites and monitoring for total phenolic compounds instead of phenol* – This change deletes Harkins Slough and adds San Luis Obispo Creek to the list of surface receiving water monitoring sites. The basis for deleting Harkins Slough is because Harkins Slough is not on the Clean Water Act 303(d) List of Impaired Waterbodies for agricultural related pollutants. The basis for adding San Luis Obispo Creek is because it is listed for nitrate. This change also requires surface receiving water monitoring of total phenolic compounds, instead of phenol. The basis for this change is that the analytical cost of total phenolic compounds is significantly less than individual phenols and still provides adequate information for the purposes of assessing surface receiving water quality and compliance with the Order.

### **Comparison of the Relative Degree of Regulation**

Another way to compare the Agricultural Proposal and the Draft Agricultural Order is to evaluate the relative degree of regulation. The diagram below indicates that the relative degree of regulation, in both the Agricultural Proposal and the Draft Agricultural Order, is low given the severity of water quality impact for irrigated agriculture compared to other



be beneficial for some dischargers and the Draft Agricultural Order explicitly allows for third-party groups and provides incentives for participation in cooperative water quality improvement efforts. While it allows for the development of third-party groups, the Draft Agricultural Order also requires individuals in such groups to comply with the Water Code to the same extent as other dischargers.

Staff evaluated the new information and concluded that, like the December 3, 2010 version of the Agricultural Proposal, some of the agricultural industry representatives' proposed recommendations, particularly with respect to third-party groups, do not generally comply with Water Code section 13269 and the NPS Policy as it would set up a less stringent standard for those in a third-party group and would not provide the accountability required by Water Code section 13269. The Agricultural Proposal does not require compliance with water quality standards and is not clearly enforceable, as required by Water Code section 13269. The Proposal would limit the Water Board's authority and discretion to enforce water quality standards and other conditions of the Order by defining compliance with the Order as implementation of farm water quality practices, rather than compliance with water quality standards as required by the Water Code and the NPS Policy. Staff also concluded that the Agricultural Proposal was insufficient, particularly for farms that present an increased risk to water quality, given the severity of water quality conditions in agricultural areas and the magnitude of actual and potential impacts resulting from agricultural discharges

After adoption of the revised Agricultural Order, staff would welcome proposals for third-party groups, including specific MRPs or other cooperative proposals, as necessary and appropriate.

## **RECOMMENDATION**

Staff recommends that the Central Coast Water Board adopt the updated Conditional Waiver of Waste Discharge Requirements for Irrigated Agricultural Waste Discharges, Draft Order No. R3- 2011-0006 with recommended revisions.

## **ATTACHMENTS**

Attachment 1: Red-line strikeout version of the Draft Agricultural Order with revisions.

Attachment 2: Red-line strikeout version of the MRP with revisions.

Attachment 3: Matrix comparing staff's Draft Agricultural Order to the alternatives submitted by stakeholders, table comparing the Agricultural Alternative Proposal and staff's Draft Agricultural Order, and an update on the status of staff's efforts related to the co-management of food safety and water quality issues.

**Attachment 4: Response to Comments and Errata Sheet**