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Central Coast Region

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Agricultural Order Renewal

Public Comments and Alternatives to

02/01/2010 Preliminary Draft Staff Recommendations

Group 4: Comment Letters

Comment ID	Affiliation	Date Received
A21	Grower Shipper Association/ Somach Simmons & Dunn	4/1/2010
A22	California Strawberry Commission	4/1/2010
A23	Independent Growers Association, Inc.	4/1/2010
A24	Central Coast Agricultural Water Quality Coalition	4/1/2010
A26	Grower Shipper Association (Draft Summary)	4/1/2010
F1	Kenneth MacIntyre	3/30/2010
F2	Jeff Lundberg	3/30/2010
F3	Cliff Garrison	3/31/2010
F4	Barbara Walter	3/31/2010
F5	Dawn Dunlap	3/31/2010
F6	William J. Thomas	4/01/2010
F7	Nancy Kawaguchi	3/31/2010
F8	Michael Scattini	3/31/2010
F9	Charles Evans	3/31/2010
F10	Jim Miller	4/1/2010
F11	Dirk Giannini	4/1/2010
F12	Jim Aquistapace	4/1/2010
F13	Tom A. Bengard	4/1/2010
F14	Craig Reade	4/1/2010
F15	Carol Allen	4/1/2010

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April 1, 2010

Mr. Roger Briggs
Executive Officer
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Subject: Preliminary Draft Staff Recommendations for an Agricultural Order Conditionally Waiving Individual Waste Discharge Requirements for Discharges From Irrigated Lands

Dear Mr. Briggs:

Our firm represents the Grower-Shipper Association of Santa Barbara and San Luis Obispo Counties (GSA) in the Central Coast Regional Water Quality Control Board's (Central Coast Water Board) matter for adoption of new regulations pertaining to discharges from irrigated lands. On behalf of GSA, we have reviewed the Preliminary Draft Staff Recommendations for an Agricultural Order (Preliminary Draft Staff Report), the Preliminary Draft Order Agricultural Order No. R3-2010-00XX (Preliminary Draft Order), and other associated documents.

The GSA is a non-profit agricultural trade association organized in 1947 to promote the general welfare of the produce industry in Santa Barbara and San Luis Obispo Counties. The GSA has 135 members who farm vegetables and strawberries in the Santa Maria, Arroyo Grande, and Lompoc valleys of central California. The GSA estimates its members annually ship over 60 million cartons of produce representing approximately $500 million in gross sales. The GSA employs in the aggregate approximately 15,000 workers. The GSA and its members will be directly impacted by the proposed staff recommendations contained in the February 1, 2010 Preliminary Draft Order.

In general, the Preliminary Draft Order includes significant and prescriptive requirements that gravely impact growers and the agricultural industry in the Central Coast. The proposed requirements are not only unlawful but put Central Coast growers at a severe disadvantage in a very competitive marketplace. If the Preliminary Draft Order is adopted as is, many growers in the Central Coast will no longer be able to afford to grow vegetables in this region, and potentially in California. Considering the devastating impact that this Preliminary Draft Order would have on the region's economy, we encourage you to direct staff to rescind the Preliminary Draft Staff Report and Preliminary Draft Order in their

entirety and instead enter into a constructive dialogue with the local agricultural community. To that end, the GSA supports the alternative agricultural proposal that has been submitted to the Central Coast Water Board under separate cover.

In the unfortunate event that the Central Coast Water Board staff proceed with recommending adoption of the Preliminary Draft Order, we submit the following significant comments on the Preliminary Draft Staff Report, Preliminary Draft Order, and associated documents.

As a preliminary matter, we must express our outrage with the tone and representation of information contained in the Preliminary Draft Staff Report. Never before have we experienced such biased hostility in a public document that should objectively explain the issue of concern and provide a well-balanced, rational basis for the requirement being proposed. Furthermore, the Preliminary Draft Staff Report makes blanket inflammatory statements but fails to provide any evidence to support staff's conclusion. For example, it states that because "evidence of on-farm improvements and reductions in pollution loading from farms is not required, . . .[it] therefore probably does not exist for most farms." (Preliminary Draft Staff Report, p. 7.) The statement implies that because reporting on-farm information is not required, farmers are not making on-farm improvements and reductions in pollutant loading. This type of a conclusion is unwarranted and not supported with any evidence. In fact, many growers in the Central Coast have changed cultural practices to better protect water quality. A lack of reporting such changes to the Central Coast Water Board in no way constitutes evidence that improvements are not being made.

We also take issue with the claim that "[t]he agricultural industry must implement the most effective management practices (related to irrigation, nutrient, pesticide and sediment management) that will most likely yield the greatest amount of water quality protection, and verify their effectiveness with on-farm data." (Preliminary Draft Staff Report, p. 7.) This statement is directly contrary to the legislative intent and purpose of the Porter-Cologne Water Quality Control Act (Porter-Cologne), Assem. Bill 413 Stats. 1969, ch. 482, codified at Water Code section 13000 et seq. Specifically, Porter-Cologne requires the Central Coast Water Board to regulate "to attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters . . . ." (Wat. Code, § 13000.) Thus, any regulation of the agricultural industry must be reasonable considering a number of factors, including cost. Effectiveness alone is not a legal requirement in Porter-Cologne.

Additionally, the Preliminary Draft Order proposes to regulate agricultural discharges in a manner that far exceeds requirements imposed on municipal stormwater discharges subject to federal National Pollutant Discharge Elimination System (NPDES) permits. Agricultural discharges are specifically exempt from the NPDES permit provisions of the federal Clean Water Act (CWA), codified at 33 U.S.C. section 1251 et seq. (See 33 U.S.C. § 1342(l); CWA § 402(l); see also 40 C.F.R. § 122.3(e).) However, discharges from agriculture and municipal stormwater are similar in nature and include similar types of

pollutants (e.g., pesticides, nutrients). Although subject to different regulatory schemes (i.e., CWA v. Porter-Cologne), it makes no sense to regulate agricultural discharges more prescriptively than discharges from municipal stormwater.

Specifically, the CWA requires controls on municipal stormwater discharges to reduce pollutants "to the maximum extent practicable." (See 33 U.S.C. § 1342(p); CWA § 402(p).) The CWA *does not* require municipal stormwater discharges to comply with water quality standards, nor does it require the application of effluent limitations to the discharge. (*Defenders of Wildlife v. Browner* (1999) 191 F.3d 1159, 1166.) Like CWA requirements for municipal stormwater, Porter-Cologne does not require agricultural discharges to meet water quality standards at the end of the field. With respect to adopting a waiver, the Central Coast Water Board is required to ensure that the waiver is "consistent with any applicable state or regional water quality control plan and is in the public interest." (Wat. Code, § 13269(a)(1).) The Water Quality Control Plan for the Central Coast Region (Basin Plan) indicates that the Central Coast Water Board is implementing controls on nonpoint source pollution through outreach, education, public participation, technical assistance, financial assistance, interagency coordination, demonstration projects, and regulatory activities such as imposing septic tank area prohibitions. (See Basin Plan at p. IV-42 (Sept. 8, 1994).) Further, the Basin Plan states agricultural wastewaters and the effect of agricultural operations are a result of land use practices. (See Basin Plan at p. IV-46.) Nowhere does the Basin Plan state that the Central Coast Water Board is required or encouraged to adopt permit conditions on agriculture which require irrigation runoff to meet water quality standards at the end of the field. Considering the economic impact that the Preliminary Draft Order will have on individuals and the region in general, and the lack of consistency with the Basin Plan, the Preliminary Draft Order fails to meet the requirements for adoption as expressed in Water Code section 13269 because it is not consistent with the Basin Plan or in the public interest.

As a final general comment, the Central Coast Water Board must comply with Water Code section 13141 by first amending the Basin Plan to estimate the total cost and potential sources of funding for such a program. (See Wat. Code, § 13141.) In their current form, neither the Preliminary Draft Staff Report nor the Preliminary Draft Order indicate that the Central Coast Water Board intends to adopt a Basin Plan amendment that estimates the total cost and potential sources of funding for such a program. Failure to adopt a Basin Plan amendment with this information in advance of adopting a new agricultural water quality program would violate Porter-Cologne. (See Memorandum to Roy C. Hampson, Executive Officer of the Lahontan Regional Water Quality Control Board from the Office of the Chief Counsel (Jan. 21, 1983, at p. 6).)

When Water Code section 13141 was amended to include requirements related to agricultural water quality control programs, it was clear that these requirements would be met before implementation of any such program, including the type and nature of programs identified in the Preliminary Draft Order. More specifically, the State Water Board stated in its Enrolled Bill Report to the Governor's office that "[t]his bill will not prevent

implementation and enforcement of agricultural water quality control programs. It will require, however, that the State and Regional Boards consider, and include in the basin plans, an economic study of an agricultural water quality control program in terms of total cost estimate and potential sources of financing *before* implementing such a program." (See Enrolled Bill Report to SB 904 from State Water Resources Control Board at p. 1, emphasis added.) The purpose of this provision, and the State Water Board's reason for encouraging signature of the legislation, was further expressed as follows:

> This bill is consistent with existing SWRCB policy regarding regulation of agricultural wastewater discharges.
>
> Agriculture is presently the largest user of the State's freshwater resources. The Board recognizes that in many instances discharges of agricultural wastewaters create water quality problems. However, the Board also recognizes that there are inadequate institutional, financial, and technological means at this time for the development and management of a comprehensive and effective agricultural water quality control program. While, in specific instances, agricultural discharges can and should be dealt with under existing law, long-term water quality problems, such as nonpoint source control and salinity control programs, represent more difficult problems and the costs associated with implementation of these programs can be enormous. *Therefore, it is the Board' policy that any agricultural water quality control program must be carefully examined and formulated before it is implemented, and the costs and sources of financing would be a material consideration before any decision is made.* (*Id.* at p. 2, emphasis added.)

In light of the requirements expressed in Water Code section 13141, and the clear intent with respect to application of these requirements, the Preliminary Draft Staff Report must reflect the Central Coast Water Board's obligation to pursue a Basin Plan amendment accordingly prior to adoption of the program described in the Preliminary Draft Order. Further, as indicated above, the Central Coast Water Board must materially consider the costs associated with the program prior to adoption. Thus, we encourage the Central Coast Water Board to immediately commence development of cost information.

I. The Terms and Conditions in the Preliminary Draft Order Exceed the Central Coast Water Board's Lawful Authority to Protect Water Quality

The Preliminary Draft Order consists of many different parts, all of which are objectionable. The actual "waiver" is set forth in the Preliminary Draft Order and consists of 25 pages and 141 findings. The inaccuracy and unlawfulness of the findings are too many to address here. Further, the findings express the same hostility and bias found in the Preliminary Draft Staff Report. As stated earlier, we find the tenor and tone of the staff recommendation to be completely offensive as it fails to review information objectively and fails to propose a reasonable program to control agricultural discharges. Additionally, the

operative provisions of the Preliminary Draft Order contained in the various attachments are unlawful for many reasons, which are addressed below.

Attachment B to the Preliminary Draft Order, titled *Terms and Conditions for Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands* (Attachment B) contains most of the substantive provisions that would be applied to agricultural growers in the Central Coast Region. In general, Attachment B includes significant substantive provisions that exceed the Central Coast Water Board's legal authority to protect water quality. As indicated earlier, activities which may affect the quality of waters "shall be regulated to attain the highest water quality which is *reasonable*, considering all demands being made and to be made on those waters, ..." (Wat. Code, § 13000, emphasis added.) The Central Coast Water Board is required to conform to and implement these policies. (See Wat. Code, § 13001.) Significant provisions of Attachment B which fail to comply with the Legislature's intent, as well as other requirements in Porter-Cologne, include but are not limited to certain general provisions specified in Part A, certain discharge prohibitions in Part B, technical report requirements in Part C, management practice implementation requirements in Part E, groundwater protection requirements in Part F, and aquatic habitat protection requirements in Part G. Water quality standards identified in Part D are discussed with our comments on application of water quality objectives.

A. General Provisions – Part A

Part A provides general provisions with which growers would be required to comply. Failure to comply with the general provisions or any other provision in Attachment B may result in an enforcement action under the California Water Code. Enforcement under the Water Code may include the assessment of significant monetary penalties for failing to comply. Considering the potential impact that may result from a grower's inability to comply with the proposed conditions set forth in Attachment B, it is imperative that all of the terms and conditions be reasonable and feasible. Unfortunately, this is not the case. Many of the requirements expressed in Part A are not applicable to agricultural discharges, are inconsistent with Porter-Cologne, and/or are not reasonable.

For example, Part A would require dischargers to comply with the Basin Plan and all other applicable water quality control plans identified in Attachment A, *Applicable Water Quality Control Plans and Definitions for Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands* (Attachment A). (Attachment B at p. 52.) However, Attachment A identifies several plans and policies that are not applicable to discharges from agricultural operations. In particular, the following policies listed in Attachment A do not apply: *Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Waters and Enclosed Bays and Estuaries of California*, *Water Quality Control Policy for Enclosed Bays and Estuaries of California*, *Sources of Drinking Water Policy* (except as incorporated directly into the Basin Plan), *Policy for Implementation of*

Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California, and *Water Quality Control Plan for Ocean Waters of California*.

In another example, Part A would require agricultural growers to not "(a) cause, (b) have a reasonable potential to cause, or (c) contribute to an excursion above or outside the acceptable range for any Regional, State or Federal numeric or narrative water quality standard . . . ." (Attachment B at p. 52.) The terms "cause," "have the reasonable potential to cause," "or contribute to an excursion" are legal terms used in the federal regulatory scheme for the application of water quality based effluent limitations to point sources subject to NPDES permit requirements. (See 40 C.F.R. § 122.44(d)(1)(i).) Such a requirement is inapplicable to agricultural discharges because discharges from agriculture are specifically exempt from the NPDES permit provisions of the CWA. (See CWA § 402(l); see also 40 C.F.R. § 122.3(e).)

Additionally, Part A would require irrigation water to be of a quality that complies with groundwater quality objectives at the time of application. (See Attachment B at p. 52.) Although the language used attempts to connect the requirement to excess irrigation water as it "enter[s] the ground," in reality the only way to "assure" protection is to control the quality of water used for irrigation. This requirement is unreasonable and inconsistent with Porter-Cologne because the use of water for irrigation is not a "discharge of waste."

The legislative history of Porter-Cologne indicates "[t]he discharge of waste does not take place while water is still being used to irrigate crops in the fields." (Report of the Assembly Committee on Water concerning Assem. Bill 413 (Assembly Report) at p. 3.) The Legislature also made the following clarification: "after the irrigation has taken place and after a subsequent discharge into a watercourse or other waters of the state of runoff water or return flows from the irrigated fields, it is not intended to limit the existing authority of the regional boards to issue waste discharge requirements that are needed to protect the quality of the waters of the state." (Assembly Report at p. 3.) The State Water Board's Office of Chief Counsel further explained "discharges of agricultural drainage which seep through the soil and reach groundwater come under the regulatory authority of the Regional Board." (Analysis of Legal Issues Raised by the San Joaquin River Basin Technical Committee, Prepared by Sheila K. Vassey, Office of Chief Counsel, State Water Resources Control Board (Feb. 1987, as amended April 1987) (Analysis) at p. 45.)

The Legislature has not defined what constitutes "agricultural drainage." The regulatory distinction between percolation from irrigation and agricultural drainage resulting in discharge is unclear. The State Water Board Office of Chief Counsel appears to support the argument that the discharge of agricultural drainage occurs after the drainage water has been collected and stored in a manner that then seeps through soil to reach groundwater. (Analysis at p. 45 ["[b]ecause irrigation return flows and agricultural drainage waters constitute waste, the discharge of these wastes into a disposal area or into receiving waters is subject to regulation if the discharge could affect either surface or groundwaters"].) Further,

the State Water Board's regulations governing the appropriation of water rights specifically provide that "[n]o permittee shall be required to file a report of waste discharge pursuant to Section 13260 of the Water Code for percolation to the groundwater of water resulting from the irrigation of crops." (Cal. Code Regs., tit. 23, § 783.) Thus, the State Water Board does not consider the percolation of irrigation water to groundwater a "discharge of waste."

Based on the State Water Board's treatment of the distinction between percolation and discharge, agricultural activities subject to regional board authority for the protection of groundwater is limited to those activities that collect and store agricultural drainage water versus the application of water for irrigation that may percolate to groundwater. Thus, the Central Coast Water Board proposes to exceed its authority by requiring irrigation water to be of a quality sufficient to protect beneficial uses.

Part A also includes mandates for compliance that apply to more specific provisions contained in other parts of Attachment B (e.g., Farm Plans and monitoring requirements). Our concerns with these provisions are addressed below.

B. Discharge Prohibitions – Part B

Part B includes discharge prohibitions that exceed relevant provisions in Porter-Cologne. Porter-Cologne provides "[a] regional board, in a water quality control plan or in waste discharge requirements, may specify certain conditions or areas where the discharge of waste, or certain types of waste, will not be permitted." (Wat. Code, § 13243.) Porter-Cologne does not authorize a regional board to prohibit discharges as part of a waiver issued pursuant to Water Code section 13269. (Wat. Code, § 13269.)

Furthermore, the discharge prohibition provisions proposed undercut the primary purpose for adoption of a waiver, or any order for that matter. Waivers from waste discharge requirements and water discharge requirements in general are intended to ensure that discharges of waste are controlled to protect water quality considering the beneficial uses of waters of the state, and water quality objectives reasonably required for the purpose of protecting beneficial uses. (See Wat. Code, §§ 13263, 13269.) Part B would propose blanket prohibitions on any discharge that may violate applicable water quality standards. For example, provision 21 directly contradicts provision 4 in Part A. Provision 4 in Part A provides for a compliance schedule in which discharges may not violate water quality standards. In contrast, provision 21 in Part B constitutes a direct prohibition without any consideration or application of time schedules contained in the Preliminary Draft Order.

Other discharge prohibitions in Part B are unlawful because they are completely unrelated to the discharge of waste and outside the Central Coast Water Board's authority to regulate and protect water quality. In particular, provisions 27 and 31 would prohibit activities that are NOT a discharge of waste. Provision 27 would prohibit the use of fertilizers in excess of crop needs. The Central Coast Water Board has no authority to dictate or control the amount of fertilizer used by any grower. Furthermore, the Central Coast Water Board

does not have the ability or expertise to determine if fertilizer application is in fact in excess of crop needs. As a practical matter, growers do not typically apply fertilizers in excess of crop needs because to do so is expensive and wasteful.

With respect to provision 31, the Central Coast Water Board is attempting to prohibit the degradation of habitat, which again exceeds the Central Coast Water Board's authority. Prohibiting activities that may degrade habitat is unrelated to a prohibition against a discharge of waste. Moreover, many of the activities identified in provision 31 are subject to review and regulation by the California Department of Fish and Game and its authority to regulate any activity that may substantially impact any bed, bank or channel of any stream. (See Fish & G. Code, § 16000 et seq.)

C. Technical Reports – Part C

According to Part C, the Central Coast Water Board is requiring technical reports pursuant to Water Code section 13267. The Central Coast Water Board's ability to require reports pursuant to this provision is not without constraints. In order for a section 13267 request to be upheld, the Central Coast Water Board has the burden of explaining to the discharger the need for the information and for identifying substantial factual evidence that supports requiring the reports, *i.e.*, demonstrates a nexus between the requested information and the Central Coast Water Board's statutory authority to investigate water quality. Mere assertions that such a nexus exists are insufficient to support a section 13267 request. Most of the technical report requests proposed in Part C, and the specific information required in Part E discussed in section I.D below, fail in whole or part to meet the Central Coast Water Board's statutory authority. Further, many of the technical report requirements include substantive provisions that exceed the Central Coast Water Board's authority.

1. Notice of Intent (NOI)

To be classified as a "Low-Risk Discharge," a grower would need to demonstrate in the NOI that all tailwater has been eliminated anad the farm is not within 1,000 feet of an impaired surface water body. Additionally, the NOI would need to demonstrate effective use of integrated pest management (IPM), a certified nutrient management plan and use of stormwater control measures. In this case, if the discharger is able to demonstrate that tailwater has been eliminated, there is no need for the discharger to provide information regarding location of the operation versus impaired water bodies. Also, the burden of demonstrating effectiveness of IPM and use of nutrient management plans bears no reasonable relationship to the Central Coast Water Board's need for the information.

For those that do not meet the eligibility requirements as a "Low-Risk Discharge," the NOI must include information regarding crops, chemical inputs used, irrigation system type, and nitrate concentrations in irrigation source water, among other things. In particular, the NOI would need to include an identification of "[c]hemicals applied in a manner that may result in the material coming in contact with irrigation water, stormwater, surface water, or

groundwater[,]" and would require identification of "nitrate concentration in irrigation source water." (Attachment B at p. 58.) The request for this information does not meet the Central Coast Water Board's burden because the Central Coast Water Board has failed to explain how the burden of providing such information assists them in investigating water quality associated with "discharges of waste." For example, chemicals are often applied to crops through the irrigation system (i.e., chemigation). However, the use of chemigation does not mean that agricultural tailwater will in fact include concentrations of these chemicals in levels that will impact water quality standards, which are applicable to the receiving waters.[1] Thus, this information would provide the Central Coast Water Board with no real information regarding water quality levels in nearby waters of the state. In contrast, the burden of identifying all potential chemicals that might be used within the five-year term of the waiver by an ever-changing farming operation would be speculative, and leave the grower in peril if a chemical needed in five years was not identified with the original NOI.

Similarly, the Central Coast Water Board fails to properly support its request for nitrate concentrations in irrigation source water. The level of nitrate in irrigation source water does not necessarily predict the level of nitrate that may result in receiving waters due to discharges of agricultural waste. The cost of testing irrigation source water that may be used within the next five-year period, however, is unreasonable as compared to the usefulness of the information. Thus, the request for this information in the NOI does not satisfy the requirements specified in Water Code section 13267.

2. Farm Water Quality Management Plan (Farm Plan)

Under the Preliminary Draft Order, the required Farm Plan would need to identify certain types of management practices including the use of IPM. In fact, the Farm Plan would require a grower to maximize IPM practices. However, the Central Coast Water Board has no authority to mandate or require the use of IPM by individual growers. IPM is defined in Attachment A to mean a pest management strategy that focuses on long-term prevention or suppression of pest problems and uses pesticides only when necessary according to pre-established guidelines or treatment thresholds. (Attachment A at p. 33.) In other words, through the Farm Plan, the Central Coast Water Board is attempting to prohibit the use of pesticides except in accordance with IPM guidelines and treatment thresholds.

In California, pesticides are regulated by the California Department of Pesticide Regulation (DPR). (Food & Agr. Code, § 11454.) The DPR's primary purposes include (1) providing for the proper, safe, and efficient use of pesticides essential for production of food and fiber; (2) protecting public health and safety; (3) protecting the environment; (4) protecting agricultural and pest control workers; (5) assuring consumers and users that pesticides are properly labeled; and (6) encouraging the development and implementation of pest management systems that stress application of biological and cultural pest control

[1] As discussed further in section II below, water quality standards apply to waters of the state, not tailwater leaving an agricultural property.

techniques with selective pesticides when necessary. (Food & Agr. Code, § 1501.) In 1984, the California Legislature declared that, "matters relating to (pesticides) are of a statewide interest and concern and are to be administered on a statewide basis by the state unless specific exceptions are made in state legislation for local administration." (Stats. 1984, ch. 1386.) To ensure that the state maintained sole jurisdictional authority over the regulation of pesticides, the California Legislature adopted a statute that vested complete control and regulation of pesticides including the registration, sale, transportation, or use of pesticides with the state, and the DPR in particular. (Food & Agr. Code, § 11501.1.)

Although the Central Coast Water Board is a state agency, it is not vested with the authority to regulate or restrict pesticide use by individuals. As the Food and Agricultural Code indicates, the DPR is vested with the authority to regulate and restrict the use of pesticides in California. The Central Coast Water Board's authority is limited to matters that pertain to water quality. (Wat. Code, § 13225.) It does not include the authority to direct growers with regard to its pesticide applications, storage and use records, or to direct the means to comply with a permit. Thus, the requirements in the Preliminary Draft Order that direct the growers to implement IPM practices are unlawful.

Additionally, Attachment B would require growers to submit the Farm Plans at any time, upon the request of the Executive Officer. (Attachment B at p. 60.) The burden of submitting Farm Plans, which will automatically make them public documents, does not bear a reasonable relationship to the Central Coast Water Board's need. Farm Plans contain significant amounts of proprietary information. Those individuals required to submit Farm Plans will be at a competitive disadvantage versus those that are not. In the meantime, the Central Coast Water Board has the authority to visit grower operations and review Farm Plans on-sight without requesting their submittal. Thus, the Central Coast Water Board is able to review Farm Plan content without placing an undue burden on some by requiring them to submit Farm Plans to a public agency thereby making public previously held proprietary information.

D. Management Practice Implementation Requirements – Part E

As discussed in part above, many of the Farm Plan requirements exceed the Central Coast Water Board's legal authority specified in Porter-Cologne. Part E provides further detail with respect to those Farm Plan requirements and therefore provides additional information to further support the fact that the Central Coast Water Board is attempting to place unlawful requirements on growers under the guise of protecting water quality. Applicable in all of the management practice implementation requirements is a prohibition of irrigation runoff from a farming operation that is "adjacent to, or in close proximity" of an impaired water body or a tributary to an impaired water body. (See Attachment B at pp. 62-65.) "Adjacent to or close proximity" is defined to mean within 1,000 feet. As stated previously, the Central Coast Water Board has the authority to place conditions on dischargers through waivers to protect beneficial uses and reasonable water quality objectives,

however, the Central Coast Water Board has no authority to require the elimination of tailwater discharges altogether. Further, discharge prohibitions must be adopted as part of a water quality control plan or waste discharge requirements, and are limited in scope and area. (See Wat. Code, § 13243.) Defining "adjacent to or in close proximity" to mean 1,000 feet is unreasonable and hardly limited in scope and area. To put it into perspective, 1,000 feet exceeds the distance of three football fields. The Central Coast Water Board has provided no justification or evidence to support the need for a discharge prohibition within 1,000 feet of an impaired water body or its tributaries.

We address other specific management practice implementation requirements in more detail here.

1. Irrigation Management

Attachment B would require submittal of irrigation management information that exceeds the Central Coast Water Board's authority pursuant to Water Code section 13267. As discussed above, Water Code section 13267 requires that technical report information bear a reasonable relationship to the Central Coast Water Board's need for the information. Further, a regional board bears the burden of showing that the request is reasonable. Part E would require a Farm Plan to include in relevant part information regarding: type of irrigation system, distribution efficiency, and distribution uniformity; average total water demand per crop; total water applied per crop; and, schedule, duration, and frequency of irrigation waters. The burden on a grower to prepare and put forward this type of information in a Farm Plan for the Central Coast Water Board's purposes is significant. Specifically, agriculture is not a static endeavor that remains the same on an annual, or seasonal basis. Irrigation demand is constantly changing due to hydrology and crop needs. It is not possible for a Farm Plan that is supposed to be prepared prospectively to include the schedule, duration, and frequency of irrigation for any crop. Thus, to meet the Farm Plan requirements, growers will need to speculate on future irrigation schedules. In contrast, speculative information regarding irrigation schedules provides the Central Coast Water Board with no useful information regarding potential impacts to water quality.

In another egregious example, Attachment B would set minimum irrigation system distribution uniformity requirements. (See Attachment B at p. 62.) As explained previously, the Central Coast Water Board has the authority to place conditions on waste discharges to protect waters of the state, not dictate agricultural irrigation management. Further, this requirement violates Water Code section 13360, which prohibits the regional board from dictating the particular manner of compliance.

2. Pesticide Runoff/Toxicity Elimination

As indicated above, the Central Coast Water Board does not have the legal authority to require growers to implement IPM, or the legal authority to restrict the use of pesticides. However, the pesticide runoff and toxicity elimination management measures include

requirements with respect to IPM and pesticide use restrictions that are outside the Central Coast Water Board's water quality authority. Specifically, Attachment B would require growers to use University of California IPM program guidelines and set buffers for pesticide applications. The use of IPM is voluntary and may not be mandated by the Central Coast Water Board, or for that matter, the DPR. More importantly, restrictions on the use of pesticides are solely within the DPR's legal authority. (Food & Agr. Code, § 11501.1.) Buffers are established on labels for specific pesticides, where appropriate. Moreover, the DPR is considering the adoption of *Restrictions to Address Pesticide Drift and Runoff to Protect Surface Water* (Surface Water Regulations).[2] In the draft Surface Water Regulations, DPR proposes to restrict ground applications of pesticides within 25 feet of any sensitive aquatic site. (See DPR's Draft Surface Water Regulations at § (a)(1).) Contrary to DPR's proposed regulations, the Central Coast Water Board proposes to limit ground applications of pesticides within 50 feet of *any* surface water body. (Attachment B at p. 64.) Regardless of the conflict, the Central Coast Water Board has no authority to restrict the use of pesticides in the manner proposed.

Further, the buffer requirements specified in Attachment B violate Water Code section 13360. As stated before, section 13360 prohibits the Central Coast Water Board from dictating the manner of compliance. In this case, Attachment B proposes to set forth specific prescriptions for which growers would need to comply. As such, the buffer requirements dictate the manner of compliance and are unlawful. (See *In the Matter of the Petition of the United States Department of Agriculture, Forest Service, etc.* (April 21, 1983) Order No. WQ 83-3, at pp. 4-6, State Water Board found certain best management practices to require dischargers to follow certain prescriptions and such prescriptions specified the manner of compliance in violation of Wat. Code, § 13360.)

3. Nutrient and Salt Management

The Central Coast Water Board proposes to regulate the use of fertilizers in a manner that far exceeds its authority to protect water quality. As stated previously in many ways, the Central Coast Water Board's authority to protect water quality is not without constraints. In general, Porter-Cologne requires a regional board to regulate in a manner that is reasonable, considering all the demands being placed on the water. Porter-Cologne also asserts that a regional board's request for technical information may not be unreasonable as compared to the burden of compiling the information, including cost. The proposed requirements related to nutrient and salt management clearly exceed any normal person's perception of what is reasonable.

For example, the nutrient management element of the Farm Plan must be approved by a Certified Crop Advisor, and would be required to include, in part, the following: (1) average total crop nutrient demand and method(s) of determination per crop; (2) average

[2] DPR is currently holding workshops on the proposed regulations and anticipates submitting them to the Office of Administrative Law in June of 2010. For more information, visit http://www.cdpr.ca.gov/docs/emon/surfwtr/regulatory.htm.

total water demand per crop and total water applied per crop; (3) monthly record of fertilizer applications per crop; (4) nitrate concentration of irrigation source water; (5) timing of fertilizer application to maximize crop uptake; (6) estimation of the amount of fertilizer applied in excess of crop needs; and (7) estimation of excess or residual fertilizer/nutrients in the root zone at the end of the crop growing season. While most of this information may be useful to a grower for business purposes, this information provides no benefit to the Central Coast Water Board to determine if best management practices are being implemented to protect water quality. Further, the request to compile this information into a Farm Plan that may become a public document upon the Central Coast Water Board's request is unreasonable as compared to the burden on the individual grower. Not only is there the cost of having a Certified Crop Advisor prepare and certify the nutrient management element, but it also provides for public access to proprietary information.

With respect to salt management, the provisions in Attachment B are *not* consistent with the salt management provisions in the Basin Plan. For example, Attachment B would propose to eliminate the use of leaching to control salt in the soil profile. However, the Basin Plan provides that implementation of leaching with the use of low leaching fractions can be beneficial. (See Basin Plan at p. IV-48.) The Basin Plan also recognizes that with salts the issue is much larger to solve than can be accomplished on an individual farm basis, yet the Preliminary Draft Order fails to recognize the need to address the issue regionally. (See Basin Plan at p. IV-49 ["The off- farm part of drainage, however, is too big for individual farmers to solve, and some form of collective, organized large scale action is needed."].)

4. Aquatic Habitat Protection

As with the other management practice implementation requirements, the information requested in conjunction with the aquatic habitat protection element of the Farm Plan exceeds the Central Coast Water Board's authority to request information. The burden of preparing the information does not bear a reasonable relationship to the Central Coast Water Board's need for the information. For example, the Farm Plan would need to document a wetland area habitat. The term wetland is somewhat ambiguous and has yet to be defined by the State Water Board. The definition identified in Attachment A is a definition developed for the Technical Advisory Team for the California Wetland and Riparian Area Protection Policy. The document that discusses the definition states upfront that "[t]his is not a draft or final California state wetland definition. This is the wetland definition recommended by the Technical Advisory Team to the Policy Development Team for the California Wetland and Riparian Area Protection Policy." In other words, the definition is not one proposed or adopted by the State Water Board in any way. Thus, it is inappropriate for the Central Coast Water Board to use the definition here. Further, it is unreasonable to request growers to identify wetland areas when such a term is not currently defined by the State Water Board for water quality regulatory purposes. Considering the controversy surrounding what constitutes a wetland, such an exercise would be futile.

Moreover, the requirements specified in Part G for which implementation is required as part of the Farm Plan, are unlawful and must be removed. We provide more specific comments on Part G below.

E. Groundwater Protection Requirements – Part F

The Central Coast Water Board may not require dischargers to construct and maintain ponds, reservoirs, and other containment structures to avoid leaching of waste to groundwater. (See Attachment B at p. 69.) As discussed previously, prescriptive requirements such as these are considered to dictate the manner of compliance, which is unlawful. (See section I.D.2, *ante*.) With respect to provision 77, it is unnecessary for the Central Coast Water Board to identify actions that the Central Coast Water Board "might" take. In this provision, the Central Coast Water Board attempts to threaten growers by stating that the Executive Officer may require sampling of private wells pursuant to Water Code section 13267, however, the provision does not indicate under what circumstances the Executive Officer would issue such an order. As indicated above, the Central Coast Water Board's authority, as implemented here through the Executive Officer, is not without constraints. Before requiring a grower to conduct such sampling, the Executive Officer would need to provide sufficient evidence to show that the cost and burden of collecting the information was necessary for the Central Coast Water Board's purposes.

Provision 77 further attempts to threaten growers by stating that the Central Coast Water Board may require growers to provide alternative water supplies pursuant to Water Code section 13304. Unfortunately, the references to this authority are incomplete and fail to fully explain how the Central Coast Water Board might be able to require growers to provide alternative water supplies. Water Code section 13304 is an enforcement mechanism that allows regional boards to issue Cleanup and Abatement Orders where waste is, or probably will be, discharged into waters of the state, and threatens to create a condition of pollution or nuisance. As part of a Cleanup and Abatement Order, a regional board may require replacement water be provided. To issue a Cleanup and Abatement Order, the Central Coast Water Board will need to provide substantial evidence that the grower in question was causing the condition of pollution or nuisance. It is not an authority that the Central Coast Water Board may use without appropriate due process. Nor is it appropriate to reference the Central Coast Water Board's enforcement authority here because it implies that it is a substantive provision of the Preliminary Draft Order itself.

F. Aquatic Habitat Protection Requirements – Part G

The aquatic habitat provisions in Part G are unlawful and impractical for many reasons. Among other things, the provisions result in an unconstitutional taking of private property, unlawfully dictate the manner of compliance, supersede the authority of the Department of Fish and Game, prevent waterway maintenance activities for flood control, prohibit growers from complying with buyer specifications that may be necessary for food

safety reasons, and unlawfully require federal permits under the CWA for activities that are specifically exempt.

1. The Aquatic Habitat Restrictions Are an Unconstitutional Taking of Private Property

The Preliminary Draft Order proposes minimum riparian buffer widths of 50 feet, 75 feet, and 100 feet for tier 1, 2, and 3 streams, respectively. The Preliminary Draft Order argues that the buffers are necessary to protect aquatic habitat. Additionally, the Preliminary Draft Order would mandate that growers maintain vegetation in the buffer zones, and would prohibit the removal of vegetation for food safety reasons. Individually and collectively, the aquatic habitat requirements are governmental regulations that deprive agricultural landowners near streams of the economic benefit of their private property. Deprivation in this manner constitutes a taking under the State and Federal Constitutions. (See *Penn Central Transp. Co. v. City of New York* (1978) 438 U.S. 104; see also *Allegretti & Co. v. County of Imperial* (2006) 138 Cal.App.4th 1261.) Pursuant to current regulatory takings jurisprudence, in making this determination courts examine the economic impact on the land in question, the investment-backed expectations of the landowner, and the character of the government action. For the reasons below, the Central Coast Water Board's aquatic habitat provisions would meet the balancing test set forth by the courts, and would be considered a taking of private property.

First, to address economic impact, it must be determined if the regulation unreasonably impairs the value or use of the property in light of the owner's general use of that property. The economic impact of the aquatic habitat regulations on growers in the Central Coast is potentially significant. Productive farmland will be forced out of production and produce buyers may not purchase product from growers where there is significant vegetation near the edge of the field. Thus, not only will growers lose valuable farmland in the buffer area, but the crop as a whole may be unmarketable because of the vegetation that would be required in the buffer area. Second, the general use of land affected by the proposed regulation is most likely designated for and dedicated to the production of agriculture. This general use would be completely eliminated by the regulatory requirements mandating the maintenance of a riparian buffer zone, thereby causing an unquestionably severe economic impact on the landowner. Next, the regulations proposed by the Central Coast Water Board would almost certainly interfere with the investment-backed expectations of the landowners. Agricultural land is purchased with the expectation that it is productive ground—suitable for the crops grown by the grower. With the purchase of agricultural land, growers also invest in machinery and a labor force necessary to grow and harvest the commodity in question. By depriving landowners of all economically beneficial use of the land by designating a riparian buffer zone and requiring maintenance of vegetation regardless of food safety concerns, the proposed regulation will severely interfere with the investment-backed expectations of the landowners. Finally, while the proposed regulation may not constitute a typical physical invasion or appropriation of the land, the proposed regulation would effectively appropriate

these riparian buffer zones to the Central Coast Water Board for their perceived public benefit. Even if no such appropriation is found, the severity of the economic impact and the devastation of the investment-backed expectations of the landowners are sufficient to demonstrate a regulatory taking.

2. The Aquatic Habitat Regulations Unlawfully Dictate the Manner of Compliance

As discussed previously (section II.D.2, *ante*), the Central Coast Water Board is prohibited from prescribing the manner of compliance. (Wat. Code, § 13360.) A regional board may adopt waiver conditions that identify what must be done (i.e., protect aquatic habitat); however, a regional board cannot prescribe how it should be done. In the Preliminary Draft Order, the Central Coast Water Board proposes to dictate that buffers of certain sizes must be maintained, vegetation must be maintained, clearing of beneficial vegetation is prohibited, clear cutting or creating bare dirt is prohibited, and channel clearing is prohibited. All of these requirements clearly dictate how to comply with the general requirement to protect aquatic habitat. Furthermore, the requirement for clear cutting or creating bare dirt would apply to all areas of the agricultural operation and not just the riparian buffer areas. In other words, growers would be prohibited from removing vegetation and debris prior to preparing ground for the next planting.

3. The Central Coast Water Board Is Attempting to Supersede the Department of Fish and Game's Requirements for Streambed Alteration Requirements

In Part G, the Central Coast Water Board is attempting to take control of decisions that are rightfully administered by the California Department of Fish and Game (DFG). Department of Fish and Game Code section 1600 et seq. provide the DFG with the authority for reviewing and approving any proposed activity that may substantially, "divert or obstruct the natural flow of, or substantially change or use any material from the bed, channel or bank of, any river, stream, or lake . . . ." (Fish & G. Code, § 1602.) Without the DFG's approval, the activity is prohibited. (*Id.*) Here, the Central Coast Water Board is attempting to interfere with the DFG's authority by prohibiting any such activities altogether. We contend that the Central Coast Water Board has neither the authority nor the expertise to prohibit activities in the stream.

First, relevant portions of the Fish and Game Code may only be administered and enforced through the DFG. (Fish & G. Code, § 702.) Second, staff at the DFG have the expertise to determine what activities in streams may be detrimental to aquatic life—not Central Coast Water Board staff. Instead of adopting blanket prohibitions, the Central Coast Water Board should merely reference the need to comply with Fish and Game Code section 1600 et seq., as administered by the DFG.

4. The Central Coast Water Board Is Attempting to Expand Application of CWA Requirements

Provision 80 of the Preliminary Draft Order implies that an agricultural discharge to a water of the United States is subject to CWA permitting requirements. (Attachment B at p. 70.) If that is so, the Central Coast Water Board is ignoring the provisions in the CWA that specifically exempt agricultural discharges from the NPDES permitting requirements of the CWA. Further, the primary purpose of the Preliminary Draft Order is to provide growers with the ability to comply with Porter-Cologne. As worded in provision 80, the Preliminary Draft Order would not provide the regulatory mechanism for discharges to surface waters that are considered waters of the United States.

II. Preliminary Draft Order Inappropriately Proposes Application of Water Quality Objectives to Irrigation Runoff and Unlawfully Creates Unadopted Water Quality Objectives

Buried in the preface to Tables 1A and 1B in Attachment A is the statement that "water quality objectives indicated by a double asterisk (**) must be met in irrigation runoff per the compliance time schedule contained in the Preliminary Draft Agricultural Order, Part H and are included as individual discharge monitoring requirements." (Attachment A at p. 40.) Water quality objectives identified with the double asterisk include toxicity, ammonia, nitrate, pH, temperature, total dissolved solids, and turbidity. By requiring irrigation runoff to meet water quality objectives, the Central Coast Water Board is in effect adopting end-of-pipe effluent limitations for all irrigation runoff. Additionally, Tables 1A and 1B include numeric values as "Indicators of Narrative Objective" that are de facto water quality objectives.

Water quality objectives are defined to mean, "the limits or levels of water quality constituents or characteristics which are established for the *reasonable* protection of beneficial uses of water . . . ." (Wat. Code, § 13050(h), emphasis added.) Porter-Cologne requires each regional board to establish water quality objectives in Basin Plans, and to adopt the Basin Plans through a public hearing process. (Wat. Code, §§ 13241, 13244.) More importantly, when adopting water quality objectives, regional boards must comply with Water Code section 13241, which requires consideration of a number of factors, including economics and the feasibility of the meeting the objective. (See Wat. Code, §§ 13241(c), (d).) Table 1A identifies many "Indicators of Narrative Objectives." For example, the Biostimulatory Substances objective includes an indicator of 1 mg/L of nitrate to protect aquatic life beneficial uses from biostimulation. (Attachment A at p. 43.) The source for this indicator is a technical paper prepared by the Central Coast Water Board staff. The indicator of 1 mg/L for nitrate has never been proposed or adopted as a water quality objective. Thus, it has not been found to be necessary to *reasonably* protect the aquatic life beneficial use. Without going through the formal adoption process, it is impossible to know the economic impacts associated with meeting this objective, and if it could reasonably be achieved. The Central Coast Water Board cannot ignore its legal responsibility to adopt water quality

objectives pursuant to Porter-Cologne by claiming that they are "Indicators of Narrative Objectives." Unless the Central Coast Water Board adopts the pseudo water quality objectives pursuant to the law, the "indicator" values identified are unlawful and must be removed from Tables 1A and 1B.

Next, water quality objectives are adopted to protect the beneficial uses of the *receiving water*. In other words, water quality objectives apply to the receiving waters of the state and not irrigation runoff at the end of the field. It is inappropriate for the Central Coast Water Board to adopt blanket end-of-field effluent limitations for constituents by claiming that the objectives must be met in irrigation runoff. Effluent limitations are typically ordered by a regional board through the adoption of waste discharge requirements under Water Code section 13263. When adopting waste discharge requirements, a regional board is required to consider a number of factors, including the provisions of Water Code section 13241 (e.g., economics). (Wat. Code, § 13263(a).) A blanket effluent limitation as proposed for adoption here ignores the requirements of Water Code section 13263. Further, the adoption of effluent limitations is not consistent with adoption of a waiver from waste discharge requirements, and the Central Coast Water Board's adoption of a waiver cannot be used to circumvent requirements in Porter-Cologne that would otherwise apply.

As a practical matter, some of the constituents identified with a double asterisk cannot be applied directly to irrigation runoff. For example, the water quality objectives for pH and turbidity specifically refer to ambient, or receiving water conditions. Thus, it is impossible to apply these objectives directly to irrigation runoff. Attachment A and Tables 1A and 1B must be revised to indicate that the water quality objectives identified apply only to waters of the state, and not at the end of the field or in agricultural drainage facilities. Further, only actual water quality objectives adopted legally into the Basin Plan should be included in the tables. All others must be deleted, as they are unlawfully adopted water quality objectives.

III. The Burden of Preparing and Complying With the Monitoring and Reporting Requirements Fails to Bear a Reasonable Relationship to the Need, and Therefore are Unlawful

The Preliminary Draft Report describes the monitoring and reporting requirements anticipated for growers subject to the Preliminary Draft Order, including as follows: (1) Individual Discharge Characterization Monitoring; (2) Individual Discharge Monitoring; (3) Watershed Monitoring; and (4) Additional Monitoring Required by the Executive Officer. (See Preliminary Draft Report at pp. 19-25.) Although the details of the proposed monitoring programs have yet to be released, the descriptions provided indicate that the burden of preparing the individual discharge characterization and conducting individual discharge monitoring will not bear a reasonable relationship between the Central Coast Water Board's need for the information as compared to the benefits to be obtained. (See Wat. Code, § 13267(b)(1).) In particular, as part of the characterization report, individual growers will be required to monitor, among other things, flow, toxicity, total nitrogen, nitrate, and ammonia in

both surface and groundwater discharge. The brief description provided does not explain how or where a grower is to measure "discharge to groundwater." Further, the brief description does not indicate the frequency of monitoring that will be required as part of the characterization report. Based on the information obtained from the individual characterization report, we can anticipate that individuals will then be required to continue to monitor for these and perhaps other constituents on an ongoing basis. Individual growers will also be required to participate in watershed monitoring efforts for both surface water and groundwater. The collective costs for monitoring on an individual basis and participating in watershed monitoring efforts are likely to be extensive. In exchange, the Central Coast Water Board obtains reams of information that would not directly relay data results regarding water quality in waters of the state. For example, monitoring irrigation runoff is not useful for it fails to account for dilution and degradation of constituents that may occur prior to entering or impacting a water of the state. Considering the costs associated with individual monitoring, and the Central Coast Water Board's inability to determine water quality impacts to waters of the state from concentration levels in irrigation runoff, the burden does not bear a reasonable relationship to the benefits.

In light of the significant legal and practical failings in the Preliminary Draft Order, Central Coast Water Board staff have no alternative other than to rescind the Preliminary Draft Order in its entirety. Once rescinded, Central Coast Water Board staff can then turn their attention to working with the Central Coast agricultural community to draft a reasonable program as set forth in the agricultural alternative that GSA, Farm Bureaus, and others support.

Sincerely,

Theresa A. Dunham

cc: Jeffrey S. Young, Chair, CCRWQCB (via U.S. mail only)
Russell M. Jeffries, Vice Chair, CCRWQCB (via U.S. mail only)
Gary C. Shallcross, Member, CCRWQCB (via U.S. mail only)
Tom P. O'Malley, Member, CCRWQCB (via U.S. mail only)
John H. Hayashi, Member, CCRWQCB (via U.S. mail only)
David T. Hodgin, Member, CCRWQCB (via U.S. mail only)
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Angela Schroeter, Agricultural Regulatory Program Manager
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(via email only hkolb@waterboards.ca.gov)
Richard S. Quandt, President, GSA (via email only)

TAD:cr

April 1, 2010

Mr. Jeffrey S. Young, Chairman
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906
SUBMITTED ELECTRONICALLY TO: aschroeter@waterboards.ca.gov

Re: Strawberry Growers on the Central Coast Will Experience Significant Negative Impacts if the Central Coast Regional Water Quality Control Board (CCRWQCB) Adopts the *"Preliminary Draft Staff Recommendations for an Agricultural Order Conditional Waiving Individual Waste Discharge Requirements for Discharges from Irrigated Lands"*

Dear Chairman Young:

The California Strawberry Commission (CSC) is created by state law to represent all the growers, shippers and processors of strawberry fruit in the State of California. The Central Coast is the most sustainable region in the world for the production of strawberries. The region's production represents about 53% of the fresh and 55% of the processed strawberry production in the United States. As a result, the relatively small strawberry ranches within the CCRWQCB jurisdiction, produced over $1.4 billion (farm gate) worth of strawberry fruit from 23,000 acres in 2009.

California strawberry farmers are committed to ongoing innovation, progress and best management practices to continue to preserve the Central Coast as the best place in the world to grow strawberries. To achieve this goal, environmental progress must be integrated with economic success. This fundamental tenant of environmental protection appears to have been lost in the *Preliminary Staff Recommendations for an Agricultural Order* released February 1, 2010.

The staff recommendations give too much emphasis to an acre-by-acre approach with many onerous and costly measures that offer little environmental benefit. These goals could be achieved more effectively through an area-wide approach. The CSC requests that the *Preliminary Agricultural Proposal* offer a new way to think about our shared goal of achieving environmental protection and economic success.

In addition to the concepts presented in the *Preliminary Agricultural Proposal,* the CSC offers the following comments that are particularly important to strawberry growers.

Groundwater Monitoring

The monitoring of groundwater to meet the different regulatory standards specified in the preliminary proposal requires that the grower, or a third party, develop a plan to assess a broad and complex set of conditions associated with ground water quality, trends in quality and impacts on beneficial uses, and then implement management practices to reduce pollutant loading to groundwater. The complexity of fulfilling these conditions on a ranch-by-ranch basis is expensive, requiring growers to meet standards that are, to the CSC's current knowledge, unattainable. For example, well sampling at every ranch is not necessary to produce the data needed to assess groundwater quality.

A properly designed groundwater sampling program would save growers millions of dollars annually and achieve the same results as the staff proposal.

Nitrates Beyond the Root Zone

A serious concern for the strawberry industry is how the CCRWQCB would implement a management plan for reaching the groundwater standard of 10 mg/L N. The staff proposal would require growers to achieve 90% or higher efficiency in the uptake of nitrogen fertilizer which is unrealistic. The CSC is not aware of any data worldwide that suggests the staff proposal is achievable. Consequently, this requirement would be crippling and perhaps outright destructive to conventional and organic strawberry production in the Central Coast.

Moreover, it does not appear that leaching automatically means contamination of the groundwater. Recent sampling data of ground water in the Monterey Bay and Salinas Valley Basins (USGS GAMA Program, 2005) found that 27 of the 30 sites sampled were well below the 10 mg/L standard. This suggests that an area-wide approach could protect the basins while allowing time for innovation in nutrient management practices to develop.

Salts

The water quality standard for salts (Cl and Na) in groundwater discharges will create serious problems for strawberry growers. Drip irrigation systems are highly efficient in reducing the amount of water used to produce a crop. All strawberry production fields use drip irrigation systems. These systems virtually eliminate tailwater discharges but also lead to the concentration of salts in the root zone. Strawberries are a highly salt-sensitive crop: salts reaching toxic levels must be leached from the root zone in order to produce a crop. Strawberry growers use irrigation water to flush salts from the root zone during both the

plant establishment period when overhead irrigation is used, and during the season when salts from irrigation water naturally concentrate to toxic levels due to evaporation and transpiration. Strawberries cannot be produced in the Central Coast unless growers are allowed to use irrigation to wash salts from the root zone.

Regulatory Incentives

Another concern for the strawberry industry is the proposed pathway for "low risk" crop designation which would qualify growers for a reduced level of monitoring and reporting. The current draft proposal identifies over 20 pesticides used by a majority of Central Coast strawberry growers with a high potential to degrade/pollute surface water. Due to the industry's use of drip irrigation and the lack of tailwater, the CSC has concluded that current uses of many of these pesticides would not pose a risk to surface water. Therefore, use of these pesticides should not automatically exclude growers from achieving a "low risk" designation. As written in the draft proposal, the use of any of these pesticides would prevent a grower from qualifying for a "low risk" designation. The CSC would like growers who implement Best Management Practices (BMPs) for pesticide use and other production practices to protect water quality to be able to qualify for a "low risk" designation.

E. Coli

If the CCRWQCB wishes to establish *E. coli* water quality objectives for non-animal based agriculture, they must be aware that the majority of *E. coli* associated with farming operations comes from natural sources such as birds, deer and feral pigs. It is highly unlikely that growers will be able to manage the behavior of wild animals that are the main contributors to *E. coli* loads associated with surface water discharges from strawberry ranches. Many growers use compost in their operations, and restrictions on the use of untreated compost are essential for protecting food safety in addition to water quality. Most compost used in agriculture is certified to meet minimum microbial standards that are protective of water quality in a process that is regulated by the State of California.

Training and Education

The CSC has an extensive and extremely successful education and training outreach program equipped to reach all of our grower-members. The CSC currently manages a voluntary food safety training and education program that has provided training to supervisors and food safety trainers for over 80% of the industry in California. There are no regulatory requirements for food safety training: the success of this program has been the result of the CSC establishing food safety as a top priority, and then working with the shippers, processors

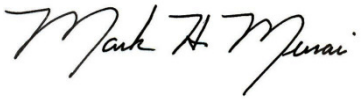
and growers of strawberries to ensure their participation in the program. This program involves the use of small sized classes to optimize a high level of participation and education, incorporating food safety educational tools developed specifically for strawberry production. A similar program could be developed to identify BMPs for maintaining high water quality standards, providing the education and training needed to ensure implementation by strawberry growers. Water quality improvements from a focused education and training program would be significant and the CSC could create a program where growers utilizing BMPs for water quality would be designated as "low-risk."

Conclusion

In summary, strawberry growers on the Central Coast will experience significant negative impacts if the CCRWQCB approves the changes proposed in the preliminary staff proposal. A monitoring program that requires regular ranch level samples as the basis for assessing water quality is an excessively expensive approach to assessing water quality. Strawberry growers must have the ability to supply sufficient nitrogen and to use irrigation water to wash salts from the root zone in order to produce a crop. Imposing the current proposal and standards would likely eliminate most commercial strawberry production in the Central Coast. A basin-wide approach with modifications described above and in the *Preliminary Agricultural Proposal* would improve water quality and allow strawberry growers to continue to produce strawberries in the Central Coast of California.

An adequate amount of time should be allowed at the May 12, 2010 workshop to ensure a thorough discussion of these issues. The CSC requests at least 15 minutes to present our concerns with the preliminary draft at the CCRWQCB workshop on May 12, 2010.

Sincerely,



Mark Murai
President

Independent Growers Association, Inc.

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Transmitted via Email

Central Coast Regional Water Quality Control Board
Chairman Jeffrey Young and Board Members
895 Aerovista Place, Suite 101
San Luis Obispo, Ca 93401-7906 1 April, 2010

Re: Preliminary Staff Recommendations for An Agricultural Order to Control Discharges from Irrigated Lands

Dear Chair Young and Board Members;

This letter is submitted on behalf of Independent Growers' Association (IGA), a non-profit organization whose membership includes many of the small, independent farmers situated primarily in the central and southern parts of the Salinas Valley. IGA's members have actively participated in the various planning processes of Monterey County over the years, including water quality issues, and believe that good planning can be the vehicle to meet the public's needs and serve the public interest.

The IGA worked with other agricultural organizations to support your Board and its efforts in developing and implementing the Agricultural Waiver Program in 2005. The development of the first Ag Waiver as adopted by the Region 3 Board and supported by the agricultural community was said to be a model for the State. Many were watching to see if it would work or if we would fail. It has worked, and we believe it will continue to have success.

To this end, we offer the following as what we are willing to support as that Alternative Waiver.

Agriculture Alternative Waiver Proposal:

At the request of the CCRWQCB Board, this Ag Waiver Proposal is submitted for revision of the Ag Waiver. Members of the Central Coast agricultural community recognize that the purpose of the waiver is to improve water quality. During presentations by agricultural representatives at CCRWQCB Board meetings in October and December, 2009, growers requested an opportunity to present to the CCRWQCB Board an alternative proposal for the new Ag Waiver prior to the formal commencement of the Ag Waiver renewal process. The CCRWQCB Board established a timeline for agriculture to submit a proposal by April 1, 2010, to be followed by a CCRWQCB Board workshop on May 12, 2010. The Ag Waiver Proposal set forth herein is the result of numerous area meetings with growers who all understood that the objective is to

improve water quality attributable to commercial irrigated agriculture, which constitute the largest industry and employer on the Central Coast.

The true goal of the Ag Waiver is to improve water quality. The State Water Code and the CCRWQCB Basin Plan provide the authority for CCRWQCB to impose regulations on dischargers to improve water quality. Farmers are equally concerned about water quality and the environment. However, there is neither authority nor need for CCRWQCB to impose arbitrary restrictions on commercial agriculture so long as farmers take necessary steps to demonstrate water quality improvement over a scientifically feasible timeline with intermediate milestones. The process of designing and adopting a new Ag Waiver can be simple and quick. Further collaboration between the CCRWQCB and agriculture will be necessary to develop a workable solution.

PROGRESS : Farmers throughout the Central Coast had a history of voluntary water quality improvements prior to first the waiver. Individual growers report that fertilizer inputs have been reduced by up to 60% in the past 15 years. Progressive change from furrow to sprinkler to drip irrigation has improved efficiency and reduced water runoff. Conservation practices were implemented to minimize erosion and loss of sediment. All of this was undertaken prior to the regulatory mandate of the first Ag Waiver.

In 1999 the Agriculture and Rural Lands Water Quality Protection Program was developed by the Monterey Bay National Marine Sanctuary. The MBNMS worked directly with volunteer farmers and local Farm Bureaus to establish watershed working groups and develop an educational program through the U.C. Cooperative Extension (UCCE) that was later turned into the UCCE Short Course. Through this outreach program in Monterey, San Luis Obispo, San Benito, Santa Cruz, San Mateo and Santa Clara county farmers voluntarily implemented innovative on-farm water and soil conservation practices. Many of the concepts developed in this voluntary program were later adopted by the CCRWQCB in the first Ag Waiver.

Prior to January, 2005, there was no specific regulation of agricultural water quality in the Central Coast. The implementation of the first Ag Waiver and the MRP created a monthly monitoring program for the first time to provide growers with an education on water quality. Since 2005, with the enrollment in the Ag Waiver, there has been extensive outreach and education focused on monitoring results and water quality practice implementation.

Central Coast Water Quality Preservation, Inc. (CCWQP) was established by growers in December, 2004 to conduct the Cooperative Monitoring Program (CMP) which commenced in January, 2005. IGA participated in the process to develop and establish CCWQP and the Ag and Monitoring Committees. Monthly monitoring is meaningful only after sufficient data have been assembled, analyzed and the results made available to the growers. CCWQP participated in UCCE Short Courses and other practice related outreach since 2005. However, only since 2007 has there been sufficient data to conduct outreach and education on the nature and scope of water quality impairments in agricultural areas of the Central Coast. CCWQP provided

regional, watershed, sub-watershed and individual outreach sessions throughout the region. To supplement the CMP, CCWQP conducted upstream monitoring on selected watersheds, and followed up with more outreach. Throughout this period, voluntary outreach and practice implementation programs continued through the work of a large network of providers about agricultural water quality impacts due to the CMP dataset. CCWQP also provided individual confidential on-farm sampling to work with growers who implemented new and sometimes innovative management practices. All of this work directly with growers had a positive impact on water quality in the Central Coast.

Water Quality Changes: According to the experts who have worked with the ag community throughout the Ag Waiver monitoring program(s), ten years of data is the time frame cited as an optimal minimum for trend analysis, given the level of variability typical of many water quality datasets. In a recent trend analysis of Central Coast data, significant water quality trends were detected at 9% of the sites. With a less robust dataset, failure to detect trends may be due to a true lack of trends, or it may be due to a lack of sufficient statistical power to detect trends that actually exist. A "power analysis" of the CMP dataset has not yet been conducted.

A preliminary seasonal Mann-Kendall trend analysis on nitrate, turbidity, and stream flow data from a subset of CMP sites has identified many significant downward trends in stream flow, and very few trends in nitrate or turbidity. Loading trends for nitrate and suspended sediment (turbidity) were not analyzed, but significant downward trends in flow were generally much larger than any upward trends in constituent concentration. Therefore, loading to downstream water bodies from CMP areas has likely declined substantially at any site experiencing significant declines in flow.

The very limited organophosphate (OP) time series that is available does not support a statistical trend analysis, but shows "across-the-board" declines in September concentrations of Chlorpyrifos at Santa Maria CMP sites and in Diazinon at Salinas CMP sites from 2006 to 2009. Due to the concurrent decline in stream flows, loads of these OP's also declined substantially. Current water quality data sets support only limited analysis of water quality change in agricultural areas of the Central Coast. Evidence of declining trends in stream flow during the growing season is more compelling, which suggests load reductions for many constituents to downstream areas. Therefore, near-term changes in agricultural watersheds should be expected to show more in stream flow and loading rate declines.

It is recognized that since 2004 some farmers have done little, while others have actively pursued their farm plans by investing heavily in management practices. We believe progress is steady, while often uneven. However, we encourage the Agricultural Waiver Proposal to include flexibility and not attempt to mandate specific practices or create tiers based upon irrigation practices to even out grower efforts. The Regional Board maintains authority to bring enforcement actions against recalcitrant growers and should be encouraged to do so where appropriate. Thus, we do not believe it necessary to propose restrictive requirements in lieu of the Regional Board using its enforcement authority.

Therefore, we would like to enjoin the Agricultural Order to control discharges from irrigated lands submitted by OSR Enterprises, March 31, 2010. A Copy of that Order is attached.

The Independent Growers Association will continue to work with other agricultural organizations in an effort to obtain unity and support for an alternative waiver proposal that protects, and promotes, the agricultural community and meets the requirements of the law.

We thank you for your consideration of our comments.

Sincerely,

Michael Griva
President

Cc: Board of Directors

OSR's Recommendations for an Agricultural Order to Control Discharges from Irrigated Lands

Part 1: WAIVER

1. The Regional Board waives the submittal of a report of a waste discharge and waste discharge requirement for discharges from irrigated land if the discharger complies with the conditional waiver described in this Order.
2. Dischargers shall take action to comply with the terms and conditions of the waiver adopted by this Order.

Part 2: WAIVER PROGRAM

A. Definitions

1. Irrigated lands – lands where water is applied from various sources through a variety of methods on widely varying terrain and soil types in differing climates on a multitude of crops. For the purpose of this Conditional Waiver, irrigated lands include, but are not limited to, land planted to row, vineyard, field and tree crops, commercial nurseries, nursery stock production, and greenhouse operations with soil floors.
2. Irrigation return flow – surface water which leaves the field following an application of irrigation water.
3. Tailwater – the runoff of irrigation water from the lower end of the field.
4. Stormwater runoff – the runoff of precipitation from the lower end of the field.
5. Discharge – the release of waters to Waters of the State.
6. Discharger – the owner and/or operator of irrigated lands from which there are discharges of water that could affect the quality of any Waters of the State.
7. Monitoring – refers to all types of monitoring undertaken in connection with determining water quality conditions and factors that may affect water quality conditions, including but not limited to, in-stream water quality monitoring undertaken in connection with agricultural activities to identify long and short term trends in water quality.
8. Farm Water Quality Management Plan (Farm Plan) – a document that contains the identification of practices by an operator and/or owner of irrigated land that are currently being used or will be implemented to address irrigation management. The Farm Plan will contain a sensible schedule for implementation of practices. Lists of water quality protection practices are available from several sources, including the University of California Farm Plan template. The Farm Plan shall remain in the possession of the operator and shall not become a public document. The Farm Plan is subject to reasonable inspection at the Farm Plan site by RWQCB officials to determine its adequacy and verify compliance with the requirements.

B. Enrollment Process

All applicants must submit the following information as part of their Notice of Intent (NOI) to enroll:

1. Completed application form, including location of the operation and identification of responsible parties (owners/operators)
2. Copy of map of operation (map should be the same one as submitted to the County Agricultural Commissioner for Pesticide Use reporting, or equivalent).
3. Completed management practice checklist/self assessment form
4. Certificates of attendance at Regional Board approved farm water quality education courses, if applicable.
5. Election for individual or cooperative monitoring.

C. Requirements

New Operators/Owners who have not enrolled:

1. Complete fifteen (15) hours of Regional Board approved farm water quality education by a reasonable enrollment deadline.
2. Complete a Farm Plan by a subsequent concurrent deadline.
3. Provide a biennial practice implementation checklist identifying currently implemented and proposed management practices identified in the Farm Plan.
4. Perform individual water quality monitoring or participate in cooperative water quality monitoring.

Existing enrolled Operators/Owners:

1. Complete at least five (5) hours of Regional Board approved water quality education during the term of the Waiver.
2. Revise the current Farm Plan within two (2) years of the adoption of the Waiver.
3. Provide a biennial practice implementation checklist identifying currently implemented and planned management practices identified in the Farm Plan.
4. Perform individual water quality monitoring or participate in cooperative water quality monitoring.

D. General Conditions for All Waiver Holders

1. Compliance with this order shall constitute compliance with the applicable Basin Plan provisions, including any prohibitions and water quality objectives governing protection of receiving waters from nonpoint source discharges.
2. Although the Regional Board expects water quality improvements during the term of this waiver, the Regional Board recognizes that water quality objectives may not be completely attained, possibly due to legacy issues, in all waters of the State in the Central Coast Region within the terms of this Order.

However, the conditions of the Waiver will require actions that will lead to achieving water quality objectives.

Part 3: RECOMMENDATIONS

1. Implementation of irrigation management practices should be the primary approach to water quality protection.
2. Irrigation management practices should be used to maximize the efficient use of water.
3. Crop nutrient requirements should be evaluated to maximize efficient use of nutrients.
4. Irrigation water nitrate and soil nitrate content should be incorporated into the nutrient decision making process.
5. Erosion control should be considered a part of storm water management and irrigation water management.
6. Integrated pest management techniques, such as pest population monitoring, should be incorporated into the pest control decision making process for the efficient use of pesticides.

Part 4: PROVISIONS

1. The operator and/or owner shall comply with an individual or cooperative monitoring and reporting program approved by the Regional Board.
2. A copy of the Conditional Waiver and Farm Water Quality Plan shall be kept at the operation for reference by operating personnel. Key operating and site management personnel shall be familiar with its contents.
3. The operator and/or owner shall take all reasonable steps to prevent any discharge in violation of this order.
4. The operator and/or owner shall furnish the Regional Board, within a reasonable time, non-privileged information that the board may request to determine compliance relevant to this Order. The results of water sampling performed by an operator for educational purposes are confidential and proprietary. The Regional Board needs to recognize that individual on farm sampling by the operator as an educational tool is a benefit for determining irrigation management practices. The Regional Board needs to encourage this adaptive management. Therefore, the Regional Board, its officers and its staff, waives the right to such data and agrees not to use such data in any enforcement proceeding.
5. Any person signing an NOI, monitoring report, or technical report will certify to the correctness of their contents to the best of their ability under penalty of perjury.
6. Violations of this Order may result in enforcement actions as authorized under applicable law.
7. This Order shall be issued for a five (5) year period.
8. The Regional Board directs the Executive Officer to provide regular updates to the Regional Board regarding the progress of the Order to maintain, improve and/or protect the Waters of the State. These updates may include Executive Officer Reports, staff reports, workshops, agenda items, and presentations, comments, details, and testimonials from enrolled participants.
9. The Regional Board shall receive a biennial report from the agricultural community at a noticed hearing that summarizes the on-going efforts by enrolled participants designed to understand, improve, and

document water quality. The economic impacts of these efforts shall be reviewed in relation to the overall health of agriculture in the Central Coast Region.

10. The Regional Board recognizes the nature of the agricultural community's business and will take that into account in the scheduling of meetings, business, and timelines so as not to conflict with the demands of the agricultural community.
11. This Order and Conditional Waiver shall become effective July 10, 2010 and expire July 10, 2015 unless rescinded, renewed, or extended by the Regional Board, or jointly terminated by its enrolled participants.

April 1, 2010

Mr. Jeffrey Young,
Chairman
Regional Water Quality Control Board
895 Aerovista
San Luis Obispo, CA 93446

Dear Chairman Young:

Thank you for the opportunity to comment on the draft Conditional Ag Waiver Order released by the Central Coast Regional Water Quality Control Board Staff (Staff) on February 1, 2010. The Central Coast Agricultural Water Quality Coalition (The Coalition) has been instrumental in assisting the agricultural community with voluntary, grower-driven, cost-effective water quality improvements for over ten years. We have continued to lead in water quality improvement projects through the economic downturn and to push for implementation of proactive projects. Consequently, The Coalition finds it has much to say about Staff's proposed Waiver.

The Coalition was involved in the success for the 2004 Conditional Ag Waiver. Not only was the Coalition involved in outreach, but, The Coalition was instrumental in establishing the framework for the Cooperative Monitoring Program and ensuring the initial program met timelines and milestones. These activities have created a vestment in the continued success of the program. And it is in light of our past involvement that we provide comments.

Prior to initiating a discussion of Staff's Proposed Waiver, The Coalition would like to review the intent of the Porter Cologne Water Quality Control Act. It states "The people of the State [which includes the Agricultural Community] have a primary interest in the conservation, control and utilization of the water resources of the state and that quality shall be protected for use and enjoyment…activities and factors which affect the quality of the waters of the state shall be regulated to attain the highest water quality which is reasonable, considering ALL

demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible".

Porter Cologne is the guiding principal by which the proposed Conditional Ag Waiver is measured. Does Staff's proposed Waiver take into account all values listed in Porter Cologne? Unfortunately, it does not. Rather, Staff's proposed Waiver focuses on water quality to the point of detriment to other stated values. Staff has written the proposed Waiver without consideration of its magnitude or the unintended consequences.

Water quality issues exist on the Central Coast. This is not in dispute. Nor is there a question about whether agricultural practices should be amended in order to further protect surface and ground water. Rather, points of contention concern the feasibility, reasonability and achievability of the Proposed Order. Staff and the regulated community disagree with the approach, pace and process by which water quality should be protected and how improvements to impaired water quality should be implemented.

The Coalition does not support Staff's proposed Conditional Ag Waiver. Instead, The Coalition supports the Alternative Coordinated Proposal. Agriculture's more measured approach will continue the positive change that was initiated under the 2004 Conditional AG Waiver and will bring about a phase approach which focuses on continuous improvement and adaptive management rather than overzealous regulation for the sake of regulation.

The comments below are intended to provide the Board with a critique of Staff's proposal and to ask questions on points that need clarification. They will address the Program Shortcomings, Monitoring Program, Data Analysis and Use, Need for Clarification, Technical Considerations, and Economics.

Proposal Shortcomings

1) **Achievability? Feasibility? Practicality?**

Compliance with Staff's proposed Waiver will be very costly and difficult to implement -for both the growers and the Regional Board! Water Quality Objectives for multiple constituents: Nitrates, TSS, Turbidity, Dissolved Oxygen, Selenium, and Boron often are potentially lower than levels found in relatively un-impacted waters on the Central Coast. The reporting requirements are extreme. Essentially, Staff is requiring growers to report ALL growing practices and to update Staff if there are any discrepancies between the Notice of intent to enroll and actual implementation. Agriculture is complex. Growers are constantly making adjustments in order to respond to weather, markets, input costs, regulation, and capital limitations. The Coalition is uncertain how this level of reporting will improve water quality.

2) **Data management requirements exceed Staff's capabilities.**

Staff is not capable of processing and analyzing the amount of information they are requesting. In the last six years, they have had repeated difficulties maintaining and utilizing the management practices database and correlating that to watershed level monitoring information. Plus, the proposed Waiver states that it regulates both landowners and operators. Staff has never identified ALL growers on the Central Coast and has not begun to identify landowners

3) **Data Reporting Requirements, as stated, will be impossible to comply with and impossible to enforce.**

There is the possibility that if the Regional Board were to adopt Staff's proposed Waiver, it will create a regulation that cannot be implemented, complied with or enforced. Consequently, RWQCB may be vulnerable to third party lawsuits by groups demanding enforcement.

4) **Proposed Time Schedule**

The Coalition disagrees with Staff's assertions in that the proposed timelines are reasonable. Staff further asserts that change will occur, one way or another. This is not in debate. It is the degree, pace and process by which Staff is requiring change that is objectionable. The magnitude and intrusiveness of what Staff has proposed will result in prolonged procedural disputes rather than actual water quality improvement.

Proposed timelines are not supported by recent studies of non-point source remediation. Studies show that there are time lags in water quality improvements which are predicated on 1) the time required for an installed management practice to produce an effect, 2) the time required for the effect to be delivered to a waterbody, 3) the time required for the waterbody to respond to the effect, and 4) the effectiveness of the monitoring program to measure the response. Approaches, to deal with the inevitable lag between implementation of management practices and water quality response, lie in appropriately characterizing the watershed, selecting monitoring sites, monitoring of the effectiveness of management measures, selecting appropriate indicators, and designing effective monitoring programs to detect water quality response (Meals, 2010).

Additionally, proposed timelines do not take into account the complexity of requested activities. For example, in 2009, a Coalition Watershed Coordinator and intern and a University of California Cooperative Extension (UCCE) Farm Advisor and technician assisted ten growers in the Santa Clara County (Pajaro Watershed) to improve irrigation efficiency and distribution uniformity. After one growing season, all growers did not reach an irrigation efficiency objective of 85%. By RWQCB counts, there are approximately 2,500 growers in the region. How many technical service providers would it take to meet Staff's proposed guidelines?

Staff's proposed timelines do not account for the limited nature and/or practicality of available practices and makes an implicit assumption that more technological fixes are available than exist. In actuality, there are no silver bullets. In the Santa Clara example given above, UCCE and The Coalition were working with growers while simultaneously developing standard

operating procedures (SOPs) for establishing irrigation efficiency and distribution uniformity in multiple cropping and irrigation systems. While these SOPs have been developed, it will take years of refinement to be useable by a wide array of public and private consultants and technical service providers. The current nature of this tool will prevent speedy compliance with the proposed Waiver requirements.

Non-Point Source impacts to water quality are difficult to define and they are equally difficult to remediate. These are not engineered systems which are subject to a formulaic approaches. Instead, non-point sources are generally dynamic and ever-changing large ecosystems that are conditioned by varying degrees of management. Non-point sources are difficult to study as variables cannot be controlled, and in reality, it is a discipline which is in the rudimentary stages of development. What we find it that it is only through a combination of partially effective practices that water quality objectives can be met. Staff's proposed timelines imply that fixes are ready for implementation, when, the fact is that each practice and combination of practices must be customized for each operation, farm, field, block, orchard, vineyard, nursery, and/or greenhouse.

5) <u>Technical Capacity</u>

Proposed time schedules do not take public and private technical capacity into consideration. The December, 2008, suspension of California State grant funds has had a devastating effect on available public and non-profit technical service providing entities. In the public sector, Cachuma, Coastal San Luis, Las Tablas, Monterey, and Loma Prieta Resource Conservation Districts are working with reduced staffs which consist of only one or two persons. UCCE personnel are struggling with state mandated furloughs and budget cuts. National Resource Conservation Service will not add staff, even though the present workload is overwhelming. Non-profits, such as The Coalition have had to cut back on staff and are reducing programs instead of gearing up to assist growers.

It is in the private sector that there might be some relief in terms of available technical services. California licensed Pest Control Advisors (PCAs) and/or Certified Crop Advisors (CCAs) might be motivated to become more involved with the water quality issue. However, before, relying on private industry, three points should be emphasized: 1) there is currently an expected shortage of both licensed PCAs and CCAs because of demographic distributions. For example, of the 3,100 licensed PCAs, almost 40 percent of its members are over 55. Thirty-five percent are 45 to 55. Only 17 percent are 44 or younger. Many are retiring and there are not replacement candidates graduating from current college programs (Cline, 2006). 2) Time will be required for private consultants to acquire necessary certificates or experience levels. 3) Small farms and minority growers may not have equal access to technical services as private industry may not be able to meet the specialized needs of these two farming sectors.

6) <u>Proposed Buffers</u>

Staff's proposed pesticide buffers are redundant with amended pesticide label language which will require buffers of varying sizes. Pesticide labels are enforced the by Department of Pesticide Regulation and the County Ag Commissioner's offices. The proposed riparian buffers

are egregious. They remove whole fields and farms from production. And the proposed Watershed Tiered buffers are confusing as written. The Coalition will refrain from commenting on these until there is further clarification.

7) <u>Riparian Habitat and Wetlands</u>

The Coalition has several questions regarding Staff's proposal to regulate Riparian Habitat.

1) The Coalition reviewed Porter Cologne and does not find direct authority for the State or Regional Boards to regulate riparian habitat. Any authority that Staff may assume is tenuous and taken from indirect reference to wildlife. Further, The Coalition finds it interesting that the State Board passed Resolution 2008-0026 which gave itself authority to regulate aquatic habitat and to create its own definition of wetlands. The Coalition is requesting more clarification about the process the State used to create policy which gives it more authority than is provided by legislative action.
2) What is the basis for the 1000 foot riparian buffer? Please provide a scientific rationale for this buffer size.
3) How can a buffer zone of this size NOT be considered a legal taking and therefore elicit all of the requirements dictated by eminent domain laws?
4) What are Staff's references for the statement "Exotic plant species exclude native riparian and wetland vegetation by out-competing native species for habitat"?
5) Additionally, exotic plants do not support the same diversity of wildlife native to riparian forests, often use large amounts of water, and can exist as monocultural stands of grass. Grass habitat is very different from the complex habitat structure provided by a diversity of riparian trees and shrubs, and results in habitat changes that affect the aquatic based food web." These statements assume some ecological ideal which one would expect to find in a naturally occurring riparian area. Since Staff will be mandating the establishment of buffer zones, vegetation will need to be planted that is easy to establish and maintain. Native vegetation is ideal; but is not always suited to a cultivated site. In light of these difficulties, native vegetation requirements may be unreasonable.
6) How would "normal circumstances" be defined in the proposed wetland definition
7) Has Staff and/or SWRCB truly ascertained the impact of putting the proposed wetland definition into effect?
8) There is the possibility that tile drained lands would be eliminated. However, the unintended consequences to lost business and tax revenue have not been calculated.
9) Has Staff considered the potential human health impacts from increased wetland areas as water insects, such as mosquitoes, vector diseases such as West Nile, Malaria, and Yellow fever?
10) There is much ambiguity surrounding the proposed aquatic and riparian habitat requirements. For example, what triggers a determination that an area is riparian? Will the determination be based on maps or based upon where certain riparian vegetation is growing or where vegetation will grow? If there is a vegetation list, it should be included in the proposal and not left to subjective interpretation by inspectors. If

riparian habitat cannot be managed, then, how will growers deal with continual encroachment on their land?

8) <u>Impacts to Endangered species</u>

The Coalition is concerned about proposed requirements to eliminate all irrigation water run-off within two years. Informal and personal communications with US Fish and Wildlife Service personnel estimate that 90% of local estuaries and lagoons derive their current freshwater sources from irrigation water run-off. In another personal communication with California Department of Fish and Game personnel, the prediction is that a 20% diversion would be devastating to aquatic and riparian species.

Regional Board Staff maintains that improved irrigation practices will eventually lead to greater recharge of local groundwater aquifers, which, in turn, will recharge coastal estuaries and lagoons. Theoretically, this is logical. However, rapid removal of freshwater sources is tantamount to a water diversions and endangered species such as the Marshy sandwort and Gambel's watercress may not survive the ensuing adjustment period. Consequently, The Coalition suggests that a phased approach would be more appropriate in light of the precarious nature of these endangered species.

Likewise, The Coalition is recommending that State and Federal agencies work with local stakeholders to create contingency plans for protection of aquatic species during this adjustment period. For example, at Oso Flaco Lake, California Department of Parks and Recreation may need to lease a well or dig a well in close proximity to the lake in order to ensure adequate freshwater supply.

9) <u>Ignores Liability Generated by Compliance</u>

All of the ramifications of the proposed Waiver are hard to imagine because of the breadth of what is being proposed. Below are examples of situations which could either increase liability or create a situation in which liability cannot be controlled.

Some growers who farm near towns or residences are being told that they will not be able to obtain liability insurance if they install catchment basins large enough to comply with Staff's proposed Conditional AG Waiver.

Consultants who certify nutrient plans will assume considerable liability as it is virtually impossible to guarantee against exceedances under all circumstances. Insurers might not be willing to assume this liability.

Growers will be mandated to ignore flooding potential which could result in loss of property, habitat and human life downstream.

Growers will be mandated to implement practices that potentially conflict with accepted food safety practices. It should be noted that there is the possibility that these practices will conflict with federal food safety regulations which have yet to be adopted.

10) Weights other beneficial uses as more important than agricultural use

The Coalition is concerned that emphasis placed on protection of aquatic species has created a "weighting" of beneficial uses such that other beneficial uses are considered more important than agriculture. Such an approach is not supported by the intent of legislation created Porter Cologne. The act was intended to equally consider ALL demands being made and to be made on waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible.

The Monitoring Program and Data

Staff complied with the deadline for submitting a draft Waiver by February 1, 2010. However Staff did not include a detailed draft monitoring and reporting program. Lack of detail made it difficult to comment and to calculate monitoring costs. Nevertheless, The Coalition is providing a discussion of the Monitoring Program which addresses: general comments, data analysis, poorly cited conclusions/assumptions, questions regarding implementation and a discussion of monitoring costs.

GENERAL COMMENTS:

1) 2004 Conditional Ag Waiver

In 2004, Staff purposely selected waters with known impairments and now they are extrapolating monitoring results from those waterbodies and implementing excessive requirements even in areas where water is not impaired.

The stated objectives of the first Waiver's Cooperative Monitoring Program were to:

- Assess the status of water quality and associated beneficial uses in agricultural areas
- Identify problem areas associated with agricultural activities, where Basin Plan objectives are not met or where beneficial uses are impaired
- Provide feedback to growers in problem areas
- Conduct focused monitoring to further characterize problem areas and to better understand sources of impairment
- Track changes in water quality and beneficial use support over time.

In retrospect, the first Waiver fully accomplished objectives 1 – 3.

2) Water Quality Characterization Is Missing from 2004 Data

However, Objective #4 was not realized. Staff-directed, followup monitoring efforts were not successful in characterizing impairment as they were inconsistent and unfocused. Staff

confirms this by stating that there are data gaps in timeframe and frequency of data collection (Section 4.1, page 13, Surface Water Quality Data and Information Gaps of the proposed Waiver). Subsequently, temporal, spatial and source characterizations were not produced during the first five years of data collection.

In light of stated data gaps, The Coalition disagrees with Staff's speculations that "most discharges are not in compliance". Five years of unqualified receiving water data is not sufficient to make these conclusions. The best that can be said is that receiving water are not meeting Water Quality Objectives. Further, it can be asserted there is a need for additional information to better characterize existing temporal, spatial and source (i.e. land use) data. Staff's default regarding additional data is to require grower monitoring and reporting.

3) **Trend Analysis Is Missing from 2004 Data**

Objective #5 in the 2004 was not achieved. The best that can be said about data from the 2004 Waiver is that a baseline was established; but there has not been enough water quality, sediment, or benthic invertebrate data collected to establish long-term trends.

4) **Staff's 2010 Conclusions Regarding Water Quality Impairments Ignore the Lag-Time between Implementation and Measurable Results**

There is a documented time-lag that occurs between NPS management practice implementation and measureable water quality improvements. This lag-time has only recently been articulated. "The main components of lag time include the time required for an installed practice to produce an effect, the time required for the effect to be delivered to the water resource, the time required for the water body to respond to the effect, and the effectiveness of the monitoring program to measure the response" (Meals, 2010). The authors of the time lag study state: "Approaches to deal with the inevitable lag between implementation of management practices and water quality response lie in appropriately characterizing the watershed, considering lag time in selection, siting, and monitoring of management measures, selection of appropriate indicators, and designing effective monitoring programs to detect water quality response". With this in mind, it is presumptive of Staff to abandon the previous implementation-driven approach which dominated the 2004 Waiver in lieu of control-and-command regulatory approach advocated in Staff's proposal.

Dr. Andrew Sharpley, University of Arkansas, confirmed that it can take several years to see nitrate changes in surface water as a result of land management practices. Watershed and land management practices are dynamic and subject to weather variations. Best management practices must be constantly assessed in light of changing conditions.

5) **Problem Definition Phase Continues in 2010**

The conclusion is obvious: the Ag Regulatory Program is still in the problem definition phase. Data collected clearly indicates impairments, but, since not all of the 2004 Waiver objectives were realized, the basis of Staff's proposed Waiver – that immediate measures need to be taken because of severe water quality impairments – is premature. The Coalition

recommends that the next Conditional Waiver continue the investigative and continuous improvement approach advocated in the 2004 Waiver.

DATA DEFICIENCIES

1) **Water Quality Objectives (WQOs)**

Staff has stated that the 2010 Waiver will establish numeric standards and Staff has been autocratic about what those numeric standards will be. During the 2009 Ag Waiver Panel, Staff was not open to discussions regarding numeric conditions except to reiterate that they are required. However, upon reading Porter Cologne, it is clear that Regional Boards have some discretion in setting Water Quality Objectives. *Porter Cologne, Section 13241, Water Quality Objectives* states …"Factors to be considered by a Regional board in establishing water quality objectives shall include, but not necessarily be limited to, all of the following:

- Past, present and probable future beneficial uses of water,
- Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto
- Economic consideration,
- The need for developing housing within the region,
- The need to develop and use recycled water.

Quite naturally, Agriculture is concerned about promulgating unachievable WQOs. These will needlessly subject dischargers to capricious regulation, enforcement and legal action. In addition, a standard which cannot be met is a disincentive.

Often, Staff cites the EPA as guiding numeric water quality objectives. However, EPA states the following: "*Our intent is to help the public act to improve water quality. We believe that setting attainable water quality goals is important in stimulating action to improve water quality. We do not believe that setting unattainable uses advances actions to improve water quality.*"

The Coalition recommends that Staff conduct open and honest dialog with stakeholders regarding development of numeric criteria. Furthermore, The Coalition encourages the Regional Board to extend the philosophy espoused by EPA concerning attainable Water Quality Objectives and establish as strategy by which objectives and beneficial uses are reviewed on a watershed basis to determine attainability and usefulness.

For example, watersheds on the Central Coast are diverse. Many are influenced by highly erosive soils. Thus, a single turbidity water quality objective that applies across all watersheds may not be as meaningful as watershed-based sediment numeric standards that consider native factors. What benefit is there to imposing an unachievable standard based upon non-representational watershed features? It would be more helpful to establish water quality objectives from representational reference points and baselines.

2) **Flow information**

In the Preliminary Draft Report, Staff discusses the lack of flow information as justification for imposing individual grower reporting (Section 4.1, page 13, Surface Water Quality Data and Information Gaps). This is perplexing. The Cooperative Monitoring Program and Central Coast Ambient Monitoring Program have both collected flow information. What information is lacking? And why are those data deficiencies a justification for imposing individual grower monitoring requirements? The rationale is unclear.

Conversely, Staff state on the wiki site that they have utilized collected flow information to model daily loading of pollutants, particularly nitrates, to the ocean. How can Staff make the statement above that there is insufficient flow information, and then, calculate daily loading of constituents to the ocean? Where did they get daily flow information? The Coalition is truly confused about this treatment of flow data.

Ag has been supportive of collecting flow information because it is an essential component of load calculations and Ag has repeatedly requested that loads be calculated for all CMP routine monitoring sites. This has been an ongoing discussion with RWQCB Staff since the inception of the CMP. Growers understand the issue of concentration versus load very well. They deal with this issue every day as they calculate fertilizer and pesticide inputs. They know that the concentration of solutes increases with a decreasing amount of solution. Growers fear that concentration based water quality standards will inaccurately reflect actual water quality.

Load calculations are important to Ag for the following three reasons: 1) Outreach of monitoring results is enhanced by using loading information rather than concentrations. Growers think in pounds of input and can use loads to better correlate water quality data to their own operations, 2) Preliminary load calculations done by the Cooperative Monitoring Program indicate that concentrations and loads do not always correlate and often have an inverse relationship. Concentrations can be high when loads are low or vice versa. Therefore, concentration based water quality objectives may give a false positive for exceedances or for the degree of exceedances. 3) Most importantly, concentration based water quality objectives create a "lose-lose" situation for growers. As growers comply with mandates to eliminate surface water discharges, less water will move into receiving waters. With limited water quantity, it is probable that concentrations will actually increase and create the *appearance* that growers are not addressing water quality issues. Perhaps, it will appear that water quality is deteriorating, when, in fact, loads have been substantially decreased. There is the possibility that today's baselines may already be victim to the concentration versus load dilemma. Data exists that flows have decreased; but nevertheless, Staff claim that Page 11, that "Nitrate concentrations in areas that are most heavily impacted are not improving significantly or in any widespread manner and in a number of sites in the lower Salinas and Santa Maria watersheds appear to be getting worse in the last few years".

3) Groundwater

Staff notes that over 70% of Central Coast land is in agriculture. This is significant as unpaved, open space is critical for groundwater recharge. Yet, Staff has conveniently ignored the positive role that agriculture plays in maintaining groundwater levels. Groundwater is

extremely important on the Central Coast. Over 90% of all irrigation water on the Central Coast is pumped from groundwater. Hence, Ag has a vested interest in protecting this resource and in protecting agricultural water beneficial use.

As with surface water impairments, the disagreement is not over whether groundwater should be protected, but, with the feasibility, reasonability and achievability of the Proposed Waiver. Staff and the regulated community disagree with the approach, pace and process by which groundwater should be protected and how improvements should be implemented.

Proposed monitoring requirements are redundant with existing monitoring programs conducted by the number of agencies already collecting groundwater information:

- Santa Clara Valley Water District,
- Cachuma Water Management Operations,
- Goleta Water District,
- Santa Barbara County Water District, Montecito Water District,
- Carpenteria Water District,
- Cal-Fed,
- Santa Barbara County Water Agency,
- Monterey County Water Resources Agency,
- Groundwater Ambient Monitoring Assessment,
- United States Geological Survey,
- California Department of Pesticide Regulation,
- University of Davis Nitrate Assessment efforts
- Various academic groundwater research projects

  - *Data-mining of Archived and Existing Groundwater Data*

Staff makes a case for more groundwater information, but is ignoring the presence of years of historical groundwater data that exist on the Central Coast that could be data-mined to establish contaminant trends. This would be particularly helpful in regards to nitrate groundwater loading.

Both Santa Barbara and Monterey Counties possess extensive archives of groundwater information that could be data-mined. For example, the 2005 Santa Barbara Groundwater Report states "There are historical records on many more sites than are currently being measured". And The 2005 Santa Maria Groundwater Basin Report details archived historical data:

> The [Santa Maria] Basin is best described by Worts (1947,1951), Miller and Evanson (1966), SBCWA (1977) and Naftaly (1994). As one of the largest agricultural and historically important oil producing coastal valleys of California, this basin has been studied extensively. Modern exploration began in 1888 when the State mineralogist arrived in the area for the purpose of geological mapping in conjunction with the University of California Geology Program and the USGS. In 1903 development of the area rapidly intensified for oil, and in 1907 the first comprehensive report on the area

was published, USGS Bulletin 322 which focused on the geology as well as some mention of water resources…[in] 1931 when Lippincott established baseline hydrologic conditions for consideration of federal and state funding towards a project to curb runoff problems on wet years and establishing a need for water conservation practices…The USGS did a report in 1976 focusing of water quality of the basin, specifically increasing nitrogen levels. This report listed the calculated average annual overdraft to be 10,000 AF.

- *Legacy Loading of Nitrate*

There is an inadequate analysis of past land uses that could contribute to current nitrate impairments. The assumption is that current land uses and farming practices are the sole cause of groundwater impairments. Considering the slow and variable rate of groundwater percolation, this is a major flaw in RWQCB Staff analysis.

Identifying the sources of nitrate and understanding the chronology and processes affecting nitrate contamination of groundwater are needed to develop effective management practices to prevent further degradation of water quality. Therefore, it is critical to determine "Legacy Loading" of nitrates in groundwater from now-defunct dairy operations in the Santa Maria and Salinas Watersheds since these coincide with the most chronic and severe contamination. In Santa Maria, dairy operations began in the early 1800's (Robertson, 2008), and in Salinas, the dairy industry became established in the 1860's (Ryan, 2010). Dairies were common in both watersheds until the mid 1900's.

Nitrate inputs from cattle urine and fecal excrement lead to soil and shallow groundwater contamination. Recent studies of the impacts of dairy operations throughout the world document the amount of nitrate loading resulting from commercial dairies.

In Florida, it was reported that a 1399 pound (extrapolated from data in kilograms) dairy cow would contribute 0.56 pounds of nitrogen per day (Katz). In California, corral and dairy pond nitrogen loading is reported to be 700-800/lbs/acre/year (Harter). In New Mexico, contributions varied depending on herd size (Meister, 1999):

Number of Cows	Nitrate	Ammonia	TKN	Chloride	TDS
1,000	11.2	.46	1.55	598	2,217
1,200	15.2	.73	1.77	1,266	4,097
1,500	7.8	.17	1.98	1,118	3,487
2,100	49.4	.52	1.44	1,206	3,837
3,600	25.1	.52	1.51	1,133	3,393
F-tests	32.1	6.7	.93	27.3	35.2
p-values	.0000	.0000	.4480	.0000	.0000

Any of these data extrapolated over 50 to 100 years would demonstrate significant nitrate loading to shallow groundwater.

Historical groundwater contamination will not be attenuated by imposing management practices on today's growers. This is not to say that today's growers should not be protective of groundwater in order to prevent future impairments.

- *Groundwater/Surface Water Interconnections*

The general assumption is that surface water leachate contaminates groundwater. However, the role that groundwater plays in influencing surface water is poorly understood on the Central Coast. Shallow contaminated groundwater aquifers may contaminate surface water where groundwater upwelling occurs.

For example, on Orcutt Solomon Creek, the water table is as high as 3 feet from the soil surface at the lower end of the watershed. Monitoring data show a doubling of flows between the monitoring site located at Highway 1 and the monitoring site located at the bottom of the watershed. The significance of this data is that at least half of the surface water in the creek is generated by this reach and this difference in flow cannot be explained by surface or subsurface water discharges. In 2009, Central Coast Water Quality Preservation conducted continuous flow studies of routine monitoring sites and found evidence that indicate this might be the case.

> "It is possible that sites that have relatively stable discharge patterns, e.g. San Juan (after April 22, 2008), Orcutt-Solomon, and Green Valley (beginning in June 2008), reflect high water table conditions. For these creeks there appears to be a base flow muting the daily variation in flows which may result from the creek gaining water from the high water table …" (Greene, 2008) .

This does not support conclusions made by Staff in Attachment 1, Page 6, that agricultural discharges are the primary source of elevated flow, nitrate, and sediment.

Upwelling of historically contaminated groundwater may skew surface water monitoring data to reflect higher levels of nitrate contamination than can be directly attributed to current agricultural discharges. More effort needs to be made to understand these dynamics so that monitoring data can be properly qualified and appropriate and effective management practices can be implemented. Grower surface and/or groundwater monitoring and sampling will not suffice: it must be an especially commissioned study to determine the source of contamination in sites where the effects of upwelling are suspected.

4) Toxicity

- *The term "Toxicity" Is Used without Sufficient Qualification*

Toxicity is all around us. Seemingly innocuous stuff can be toxic. For example, copper bracelets, vitamins, aluminum, slime mold, plums, redroot pig weed, heliotrope, walnuts, and raisins can be toxic to humans. Beet pulp can be toxic to goats. Skunk spray can be toxic to puppies. Tulips, chocolate, hops, amaryllis and garlic can be toxic to dogs. Lavender, oregano and vitamin can be toxic to cats. It is critical to recognize that a compound or molecule is not simply and inherently toxic; but that toxicity is a matter of timing, dose and exposure. This

information is provided as background context. It is not intended to minimize water quality concerns.

In order to adequately address toxicity, complex and dynamic aquatic ecosystems need to be understood. From an analytical perspective, there are a variety of methods available. Water chemistry testing provides precision; but tends to address constituents singly and does not provide background information against which to assess the results. Typically, this is an expensive approach.

Another methodology is to look at the suitability of water or sediment and to utilize a biologic or bio-assay approach. This is toxicity testing. For the water column, this involves placing a group of organisms in an environmental water sample and observing how many die or become sick as compared to the same organisms in a laboratory water sample. Toxicity testing provides useful but difficult-to-interpret data. Conditions in a laboratory sample are quite different from field conditions, and at the end of the test you only know that the animal died - you don't know what killed it.

For sediment, the biologic approach is to measure the diversity of benthic invertebrates (i.e. aquatic insects, insect larvae, crustaceans, and other smaller animals) populations found in water. We know that different species can tolerate different levels of pollution, and can use this knowledge to measure water quality. Like water column toxicity testing, this method doesn't tell you why animals are present or absent, but it can help you identify what problems to investigate.

Toxicity testing results are actually a statistical expression and are not absolute. They are simply an indicator of the potentiality that a particular toxicant exists and is toxic in the environmental water sample. The indicator results, then, must be verified through a more precise analytical method such as Toxicity indicator Evaluations (TIE) or chemical analyses.

For the purposes of clarity, The Coalition recommends that Staff use the term “toxicity” with more precision. The term should be qualified as to constituent (e.g. nitrate, or organophosphate or pyrethroid pesticides) and organism of concern. To use the term “toxicity” without qualification could be perceived as misleading or inflammatory.

- Organophosphate pesticides were used in urban settings prior to 2005.

Multiple study references on the CCCAMP wiki which are used to verify the presence of organophosphate pesticides occurred prior to cancellation of urban registrations in 2005. These studies often incorrectly attribute all organophosphate toxicity to agricultural uses. This is important because cancellation of these labels coincides with the initiation of the CMP.

5) <u>Use of Statistics and Trends</u>

Staff consistently states that 60 percent of water quality impairments on the 303(d) list are from Agriculture (Section 4.1, Page 11, Attachment 3). However, 303(d) list source attributions are based on subjective field observations of sampling crews. Visual assessments of this nature

are not measureable; and therefore, such percentages, as presented, should be qualified, or eliminated altogether. They are represented as fact when, *in fact,* they are biased by the samplers' own perspectives. Sampling crews may or may not have sufficient knowledge of land uses and watersheds to be able to make an educated guesses as to potential sources of impairment.

6) **Peer Review**

The Coalition finds logic jumps and assumptions throughout Staff's proposal. Since this regulation will have such broad economic impact. We recommend that RWQCB subject the prospective Conditional Ag Waiver Order to a multi-person technical peer review prior to Board adoption. Note: the use of a single technical expert who has authored many of the references used does not constitute a peer review.

STAFF DOES NOT PROVIDE SUFFICIENT DOCUMENTATION AND REQUESTS FOR CLARIFICATION:

In Staff's proposal, there were multiple allusions to fact that were not substantiated by fact or properly cited. Additionally, The Coalition noted many points that needed clarifying. Consequently, it seemed easier to go through the proposal point by point and that review is presented below with questions and comments for Staff.

Proposed Draft Report:

- Section 1.1, page 4. "Thousands of people are drinking water". Please provide a citation.
- Section 1.2, page 5. "Excessive nitrate concentration in drinking water is a significant public health issue resulting in risk to infants for methemoglobinemia or "blue baby syndrome: and adverse health effects (i.e. increased risk of Non-Hodgkin's diabetes, Parkinson's disease, Alzheimers, endrocrine disruption, cancer of the organs) among adults ." Please provide a citation.
- Section 1.2, page 5. "In a Monterey County Study…" Please specify which study?
- Section 1.2, page 5. Staff "estimates several additional thousands of people are drinking from shallow private domestic wells"? Please provide citations..
- Page 11. where is the citation for the comment "Nitrate concentrations in areas that are most heavily impacted are not improving significantly or in any widespread manner and in a number of sites in the lower Salinas and Santa Maria watersheds appear to be getting worse in the last few years"?
- Section 4.1, page 11. Where is the evidence that there is severe water quality impairment in MOST areas of the region? The Cooperative Monitoring Data does not support this statement. In fact, most of the region's water has only occasional or periodic water quality issues.
- Section 4.1, page 12. A citation is needed to support the statement "Researchers collaborating with CCAMP have shown that these toxic discharges can cause toxic effects in river systems that damage benthic invertebrate community". Really? Please provide substantiation.
- Section 4.1, page 12. The discussion of bioassessment data draws conclusions which are not properly cited. Please provide a citation.
- Section 4.1, page 12. The discussion of the Marine Protected Areas is not sufficient to indicate surface water impairment. If there is a risk, it should be stated and properly cited.

- Section 4.1, page 12. Pyrethroid use information should be presented in enough detail to determine which pyrethroid analytes are agricultural and which urban. This can be done with a strong degree of confidence as few pyrethroid products are registered for both agricultural and urban uses. Cite Dr. Don Weston at UC Berkley.
- Section 4.1. Surface Water Quality and Information Gaps, page 13. Presents a logic gap. Collecting water quality data does not determine if marine life is harmed; it tells you the quality of the water. The harmful effects are determined by comparing the known water quality to a set of biological determinants to assess health impacts.
- Section 4.1. Surface Water Quality Data and Information Gaps, page 1. There is an implication that AG will be the funding source of additional marine monitoring. Is this the intent?
- Section 4.2. Groundwater Quality Impairment, page 13. Please quantify the degree to which the Central Coast is dependent on groundwater resources.
- Section 4.2, Indicators of Groundwater Quality Impairment, Page 13. What "limited" data indicate that hundreds to thousands of domestic wells exceed nitrate drinking water standards?
- Section 4.2, Groundwater Quality Impairment, page 15. What specific and documented health impairments have been reported by communities relying on contaminated groundwater?
- Section 4.2, Groundwater Quality Data and Information Gaps, page 15. As stated below, Staff does not address historical impairments from the presence of 50-100 years of dairies.
- Section 4.2, Groundwater Quality Data and Information Gaps, page 15. Staff does not address ignoring almost 100 years of archived data in Santa Barbara and Santa Clara counties.
- Section 4.2. Groundwater Quality Data and Information Gaps, page 15. Staff does not mention the recharge of the Pajaro River Groundwater with imported State water and the impact that has on groundwater quality.
- Section 4.3, page 15. The 2004 Conditional Waiver states that Aquatic life is a beneficial use that should be protected in all waterbodies. However, Page 6 of the 2004 Order further qualifies that [toxicity and benthic invertebrate] data would be collected, over the life of the 2004 Waiver, to make an assessment of aquatic life habitat. It should be noted that data have not been collected long enough to establish a solid trend. It is critical to note these are a multi-use watersheds where urban constituents may be a contributing factor. Any assessment, using this dataset, at this time, is preliminary. What additional data is Staff using as a basis for its conclusions?
- Section 4.3, Indicators of Aquatic Habitat Degradation, page 16. Where is the justification for the statement "agriculture continues to degrade the waters of the State? What is your basis for this statement?
- Section 4.3, Indicators of Aquatic Habitat Degradation, page 16. Where is the data for the conclusions that watershed functions, as listed, have been disrupted? Please provide citations.
- Section 4.3, Indicators of Aquatic Habitat Degradation, page 16. The Coalition agrees with this statement. Data collected "indicate", but, are not conclusive at this time.
- Section 4.3, Indicators of Aquatic Habitat Degradation, page 16. Staff does not provide suggested shade or temperature parameters. Therefore, it is not possible to assess how reasonable their expectations are. The Coalition is concerned about the reasonableness of

Staff's expectations in light of the fact that the Salinas, Santa Maria and Santa Ynez Rivers are broad, alluvial plains which possess shallow, artificially controlled streamflows and mixed uses which include flood control. The Coalition questions how alluvial rivers such as the Santa Maria and/or Salinas will NOT have stream bottoms covered with sediment.

- Section 4.3, Indicators of Aquatic Habitat Degradation, page 16. How do farmers operate without tilling soil?
- Section 4.3, Indicators of Aquatic Habitat Degradation, page 17. Staff's statements of the Food Safety issue are cursory and misrepresent the issue. This is an example of Staff "cherry-picking" data and information to support a position. This section is inadequately addressed considering the magnitude and complexity of this issue.
- Section 4.3, Aquatic Habitat and Information Gaps, page 17. What is Staff trying to say with this paragraph? Is Staff implying that more information is needed in order to ascertain where and to what degree aquatic habitat should exist and what amount of restoration is needed?
- Section 4.4 Agricultural Discharge Water Quality, page 17. Staff should provide citations for such conclusions such as "Agricultural discharges are the sole or primary source of pollution in impaired waterbodies. Even in areas where agricultural is not the only source of pollution, it is a primary contributor".
- Section 4.4, Agricultural Discharge Water Quality, page 17-18. Please provide the complete report title name or a proper citation for the United Nations and University of California, Davis, studies which are presented. Likewise, provide a citation for the Pajaro Valley Watershed data that are presented.
- Section 5.2, Preliminary Draft Agricultural Order, page 20. Who determines what are effective management practices (related to irrigation, nutrient, pesticide and sediment management) that will most likely yield the greatest amount of water quality protection? If the answer is Staff, please cite qualifications (not authority) to make such determinations.
- Section 5.2, Preliminary Draft Agricultural Order, page 20. What unique conditions? Provide specificity.
- Section 5.3, Preliminary Draft Monitoring Reporting Requirements, page 21. Please cite authority to regulate terrestrial riparian habitat since Porter Cologne does not provide that authority directly.

Attachment 1. Section I.

- Section 1.1, Nitrate Pollution, Page 8. Please specify Staff's basis for determining urban contributions.
- Section 1.2, Toxicity and Pesticides. Staff does not sample "toxicity. Rather they sampled in order to conduct a toxicity test. The results of the toxicity test do not demonstrate toxicity, rather, the results indicate the probability that toxicity exists. Staff cannot state that toxicity exists until there has been toxicity testing verification. Please rephrase this section to accurately portray toxicity testing results.
- Section 1.2, Toxicity, Page 10. Staff selectively cites Don Weston's research. His other studies show that urban pesticide loading is as great or greater a contribution to water quality impairments as agricultural pesticide loading (Weston, 2010). A more balanced presentation of data is suggested.

- Section 1.2, Water Quality Trends, Page 12. Last sentence. What is Staff saying here? Please rephrase this section.
- Section 1.2, Water Quality Trends, Page 13. Staff should provide references or citations for conclusions that nitrate concentrations are getting worse.
- Section 1.2, Water Quality Trends, Page 13. Sediment toxicity tests are conducted once per year. The first 25 waterbodies were testing in 2005. The next 25 waterbodies began tests in 2006. Can a trend really be detected from 4 or 5 data points? Staff should qualify these conclusions.
- Section 1.5, Habitat and Stream Biota, Page 14. Benthic invertebrate data are interesting and should be informative when enough data are collected to establish a trend. Conclusions based on comparisons between dissimilar sites are not helpful at problem solving as biology dictates that biota will vary under diverse ambient conditions. A site located on a rocky mountain stream in an undeveloped forest and a site located on the lower end of an alluvial plain which is subject to multiple-uses, including intensive agriculture, are simply not comparable. Data would be more significant if comparisons were limited to watersheds of similar geomorphology, topography and land use.
- Section 1.7, Risk to Marine Protected Areas, Page 17. The Coalition is concerned with the use of qualitative (i.e. subjective) data to drive regulation.
- Section 1.7, Risk to Marine Protected Areas, Page 17. Staff should provide citations for research that indicates that nutrient discharges from rivers may be important drivers of toxic plankton. Monterey Bay Aquarium Research Institute data show a tentative relationship that might indicate a connection between Monterey Bay algal blooms. However, MBARI researchers caution that much work remains to be done before a conclusion can be made to this effect. (Ryan, 2010).

Attachment 1, Section II, Groundwater Quality. (Note: this section was much better written than previous sections.

- Page 20. Please add the following item to the list of salt impacts: 4) Historical nitrate loading from now-defunct dairy operations. See explanation and citations above.
- Page 21. What is the basis of conclusions that Santa Maria, Salinas, and Gilroy-Hollister basins are vulnerable and what are their vulnerabilities? Please provide citations.

Attachment 1, Section III, Aquatic Habitat

- Section 3.0, Importance of Wetland and Riparian Areas, page 25. Staff should note that Central Coast RWQCB vision goals are NOT regulations. They serve as internal guidance to the Central Coast Region. While they have been adopted into the Basin Plan, they are NOT actionable numeric objectives.
- Section 3.0, Importance of Wetland and Riparian Areas, page 26. Please provide more information about Resolution 2008-0026? What was the legislative authority to create a new definition of "wetland"?
- Section 3.0, Current Conditions, Page 26. Staff's presentation of the complex food safety issue is poorly presented and poorly cited. It is suggested that they develop a more balanced and rational response to the issue.

- Section3.0, Current Conditions, Page 26. The photos are not comparable. They are hardly justification for regulation.
- Section3.0, Current Conditions, Page 26. It is not appropriate to quote Gourmet Magazine on the Food Safety issue when there are so many credible sources of information available.

Attachment 3, Preliminary Draft Agricultural Order no. R3-2010-00xx. Comments and Questions.

- Item #37. Section 13141. Staff should amend this section to include language from Section 13141 which, under the California Water Plan, requires any agricultural water quality control program to consider an estimate of the total cost of such as program, together with an identification of potential sources of financing.
- #38. This item does not apply for this draft Waiver as Staff did not provide a draft Monitoring Reporting Program Order. This was a deficiency which impeded Agriculture's efforts to provide an adequate Alternative Proposal.
- #40. Implementation of the NPS policy is flexible. Staff has imposed much more stringent requirements than are necessitated to comply with this policy.
- #42. Staff should review the Anti-degradation policy to ensure that it meets the three tests that should be applied. There is a Public Interest Balancing requirement that is not mentioned.
- #45. Staff states "the CMP did not attempt to identify the individual farm operations". This implies a deficiency on the part of CMP. Realistically, CMP was not *required* to identify farming operations.
- #45. Staff implies that access to on-farm discharge monitoring, reporting and verification of water quality improvement is necessary for public transparency. The public does not need access to all aspects of business operations in order to transparently protect its interest.
- #47. Staff did not review *all* data as evidenced by the number of conclusions which lack proper citations.
- #49. Please explain how this proposed Waiver differs from a WDR?
- #50 e. Please explain why fashioning the Conditional Waiver to be similar to the conditions of a municipal stormwater NPDES permit is in the public interest? Why is it in the public interest to impose a point source regulatory scheme on a non-point source?
- #50 g. Staff's proposed Waiver lacks sufficient detail to be able to make the claim that the Order provides for an efficient and effective use of Central Coast Water Board resources.
- #50 h. Please provide more detail about how Staff perceives this as a flexible and reasonable regulation. Where is the flexibility? And where is the reasonableness?
- #56 and 59. Impairments are presented as if they occur in all watersheds 100% of the time. Please rephrase to more accurately reflect frequency of impairments.
- #58. Please provide a citation for these conclusions.
- #60. Please provide a citation for the conclusion that flow reductions are due to drought.
- #61. Staff should address how they intend to implement a concentration based regulatory program when that mandated actions inadvertently result in WQO exceedances.
- #62. Please provide a citation for Staff's conclusions.
- #63, 70. Staff has alluded to impacts to Salmonid spp. in all proposed documents. Please provide citations. Also, please provide more information about salmonid life cycles. Are

salmonids vulnerable throughout the year or is there a seasonal aspect? And could seasonality be addressed in the Waiver?

- #64 and 69. Pyrethroid pesticides are also registered for urban use.
- #64. Please provide information on active ingredient use rates. Are these calculated by pounds of active ingredient or pounds of product?
- #65. Please provide citations for these conclusions.
- #66. Please provide citations for studies that conclude toxicity is limited to organophosphate pesticides.
- #67. Please define an agricultural drain.
- #77. Please provide citations for the studies mentioned.
- #79. Please provide citations for the limited data that are available and for the estimate that "thousands" of rural residents drink water from impaired sources.
- #80. Please provide citations.
- #81. Please discuss the impact of Pajaro River Water Basin groundwater recharge project that uses saline California Water Project.
- #83. Please provide citations.
- #84. Please provide citations.
- #85. Please provide citations for the San Jerardo groundwater information.
- #87. Please provide citations.
- #88. Please provide citations for San Jerardo groundwater impairment and treatment reports and studies and the Morro Bay and Chorro Creek studies.
- #90. Please provide citations to support these conclusions.
- #93. Is Staff certain that Monterey County fertilizer sales did not include urban uses?
- #93. A study done in 1990 is now 20 years old. There have been many advances in irrigation and nutrient management practices in this period of time. Also, there have been many changes to field cultural practices and marketing processes. It is recommended that Staff find more recent data that is representative of current Central Coast Agricultural practices.
- #94. Please provide a citation for data to support these conclusions.
- #95, 96, 97 98, 99. Where does Staff derive the explicit authority to regulate riparian habitat?
- #97. What is the definition of wetland under the California Wetlands Conservation Policy and how will Regional Board's proposed definition override this policy?
- #102. Is this the definition of aquatic habitat that will apply to this Waiver?
- #103. Please provide the study and citation that determines how much vegetated management practices have actually been removed as a result of the Food Safety issue**.**
- #105. This section is factually incorrect. Please rewrite and provide citations.
- #106. What is a riparian forest? In the arid and semi-arid regions of the western U.S, native riparian habitat typically is not heavily forested unless willow stands are considered a forest.
- # 108. This section should be amended to reflect Central Coast realities. These statements would apply to areas where land values are marginal and growers can afford to set aside land through USDA government programs such as CREP and CRP.
- #109. Please provide a citation.

- #111. Please provide more detail as to how Staff's proposed Waiver addresses issues on a watershed basis. The proposed Waiver seems to emphasize individual monitoring and problem solving.
- #112. Please provide information about what systems improvements Staff has incorporated that will enable them to track mandated reporting information.
- #113. Two questions are reiterated: what is the difference between what is being proposed and a WDR? And why does Staff believe it necessary to impose a point-source type of regulatory scheme on a non point source?
- #114. Has Staff ascertained whether ANY growers on the Central Coast could comply with this definition of Low Threat Discharger? What is the use of an incentive that provides no inducement?
- #115. Who determines proper management practices?
- #117. How does Staff propose to handle proprietary information that might be contained in a Farm Plan that has been submitted to RWQCB upon notice by the Executive Officer?
- #118. Please provide citations for the last sentence of this paragraph.
- #120. Please provide citations for the research described.
- #121. Please provide citations for research described.
- #122. Please provide citations for agricultural studies described.
- #123. Please provide citations for agricultural studies and practices described.
- #124. Please provide citations.
- #125. Please provide citations.
- #126. Please provide citations.
- #128. Please provide citations.
- #129. Please provide citations.
- #130. Does Staff know if pesticide use was calculated in pounds of product or pounds of active ingredient?

Attachment A.

- 2. How is this definition of aquatic habitat enforceable?
- 12. What is the basis for the use of a toxicity test to establish exceedances? How can exceedances be established based upon a probability or an indicator of potentiality?
- 16. Please provide a citation for this definition of integrated pest management.
- 24. The criteria for a low threat discharger are extremely problematic; and therefore are NOT an incentive. For example,
    - C. Who determines "effective IPM"?
    - C. No grower on the Central Coast can farm without at least one of these pesticides. Organic pesticides are listed.
    - C. Pesticide lists found *elsewhere?* Is this enforceable?
    - E. What is required to demonstrate effective minimization of stormwater erosion? How is this enforceable?
- 27. Expand non-point sources to include rural residential properties, and natural processes such as sedimentation and eutrophication.

- 34. Did Staff bother to determine what criteria were used by the University of California, ANR to create Publication 8161? Was risk based on timing, dose, application rate, formulation type, location of application, potential to move through groundwater, aerial deposition, soil types, proximity to surface water, seasonality, rainfall, etc?
- 41. How is this definition enforceable?
- 41. Please clarify. If there is not existing riparian vegetation, does the riparian buffer apply?
- 42. How is this definition enforceable?
- 50. Please provide a citation for this definition of waste.
- Tables 1A and 1B. Staff has discretion in establishing water quality objectives. See discussion of Water Quality Objectives above.

Attachment B.

- 6. How enforceable is this?
- 10. The Waiver needs to provide criteria for what is considered public information and what is not as some information contained in the Farm Plan is considered proprietary and confidential information.
- 13. The Coalition was involved with writing the QAPP for the 2004 Conditional Waiver. This is not an achievable deadline.
- 14. These terms are ambiguous. Growers should submit plans and do monitoring by what unit: operation, farm, ranch, field, block, or crop?
- 16. Who determines collective process? What are the criteria for this term?
- 17. This term should be amended to read, "consistent with due process procedures established in Porter Cologne"
- 20. How can Staff reconcile this term with the mandate to eliminate irrigation run-off which supplied freshwater to coastal estuaries and lagoons? Personal discussions with US Fish and Wildlife personnel estimate that as much as 90% of freshwater supplies to coastal lakes, such as Oso Flaco, are from irrigation run-off. Further, personal communications with Department of Fish and Game personnel indicate that as little as a 20% decrease in freshwater flow will be devastating to aquatic and riparian endangered species.
- 30. Please explain the rationale behind this prohibition.
- 31. How can farming occur without creating "bare dirt" areas?
- 32 h. 60 days is not enough time to inform growers of new regulatory requirements.
- 42. If independent growers are required to report data to RWQCB, has Staff considered how they will handle issues involved with electronic submission?
- 44. This term has the potential to conflict with 30 above.
- 46. Has Staff considered the enormity of what is being mandated in items #46, d-j? This will require the installation of water meters and hiring consultants.
- 47. Did Staff considered technical capacity limitations when they crafted this item?
- 50. Please provide a rationale for the basis of this proposed timeline.
- 52. Could Staff please provide a strategy for removing sediment from a lined sediment basin without puncturing the lining?
- 53. Please provide a rationale for the basis of this proposed timeline.

- 54. Please note that the best practicable treatment of OP pesticides has been prohibited by this proposed Waiver.
- 54 a-k. Could Staff please explain how the collection of this information enhances water quality improvements?
- 57. Could Staff please explain a rationale for the proposed timeline?
- 57. Could Staff please confirm that the tributary rule has been adopted into the Central Coast Basin Plan?
- 58. Could Staff please explain a rationale behind this proposed timeline?
- 60. Could Staff please explain how a grower will report this information? Is it reported by operation, farm, field, ranch, block or crop?
- 61. Salt management is a basic agronomic activity. How can Staff truly justify mandating that growers destroy productive by retaining salts in the root zones?
- 62. Could Staff please provide a citation for this practice and justify proposing this practice?
- 64. Could Staff please provide a rationale for this timeframe?
- 67-71. Could Staff please justify these terms?
- 72. Could Staff please provide a rationale for this timeframe?
- 78. Could Staff please explain how to manage aquatic habitat in an ephemeral or intermittent stream.
- 78 c-e. Could Staff please provide justification for these proposed conditions? No clearing of beneficial vegetation for food safety reasons? No clear cutting or creating bare dirt areas? No channel clearing except for agriculture ditches? Could Staff define "agriculture ditch"?
- 81. Can Staff provide an explanation of this condition? It seems ambiguous and not well planned?
- 82. Can Staff please explain how this condition will apply to farm ponds?

MONITORING PROGRAM IMPLEMENTATION IS UNCLEAR

- Section 5.3, Preliminary Draft Monitoring Reporting Requirements, page 22. Please provide details on the various monitoring options Staff considered?
- Section 5.3, Preliminary Draft Monitoring Reporting Requirements, page 22. Please provide clarification on the following:
  - How does this monitoring program address ALL surface water and groundwater? Is this monitoring program expanded to other uses beyond agriculture? Please provide more detail.
  - Dischargers are already identified through enrollment with the Waiver, how does this monitoring program provide "complete identification"?
  - How does this monitoring program allow for immediate management of known discharges?
  - Did Staff do an economic analysis of the monitoring and compliance costs associated with this proposal. If so, please provide that. If not, please conduct one as per Porter Cologne Section 13141.

- Section 5.3, Preliminary Draft Monitoring Requirements, Individual Discharge Characterization Monitoring, page 22. Please provide a definition of "operation". The use of this terminology is fuzzy and it is difficult for agriculture to know exactly what you expect to be monitored.
- Section 5.3, Preliminary Draft Monitoring Requirements, Individual Discharge Characterization Monitoring, page 22. The definition for "discharge" as per the 2004 Conditional Ag Waiver is "a release of a waste to waters of the State, either directly to surface waters or through percolation to groundwater". Under this definition, please explain how pond water or ponded furrows could be considered a non-stormwater discharge since they occur on the private land and are not in "waters of the State"?
- Section 5.3, Preliminary Draft Monitoring Requirements, Individual Discharge Characterization Monitoring, page 22. If a grower does not have irrigation, stormwater discharges or groundwater discharges, he is not a discharger, right? What, then, are his monitoring requirements under the proposed Waiver?
- Section 5.3, Preliminary Draft Individual Characterization and Individual Discharge Monitoring Requirements, page 23. What is the difference between proposed Individual Monitoring requirements and an individual Waste Discharge Requirement?
- Section 5.3, Preliminary Draft Monitoring Requirements, Individual Discharge Monitoring, page 23. What is "significant" loading? Please provide a definition.
- Section 5.3, Watershed Monitoring Program, page 23. What is "regular" monitoring? Please provide a definition.
- Section 5.3, Watershed Monitoring Program, page 23. Please provide specifics as to proposed watershed level stormwater monitoring.
- Section 5.3, Watershed Monitoring Program, page 23. What are the criteria for evoking the Executive Officer's authority to require changes to the sites or waste constituents, or other aspects of the watershed monitoring program? What triggers the need for better characterization, identifying sources of pollution, or better characterizing stream water quality?

MONITORING COSTS

It should be noted that growers, to date, have not fully realized the costs of the existing Waiver program as grant funds have been able available to subsidize the program through 2010.

Since Staff did not provide a draft Monitoring Reporting Proposal Order, it was difficult to ascertain monitoring costs. Estimates include Surface Water and Groundwater CMP monitoring, Individual grower monitoring, Analysis, Data reporting and management , and Plan generation.

Management Practices

Throughout Staff's proposal there are references to "effective" or "reasonable" or "proper "practices. The Coalition wonders who determines what is effective, reasonable or proper.

Below, The Coalition will provide a few comments regarding specific management practices and research needs. This is far from comprehensive review as management practices will most likely be addressed by technical service providers and researchers.

1) **Pesticides**
   - *Historical Background*

Toxicity is a complex issue which requires a multi-faceted approach. Data analysis is important; but, it cannot take place in a vacuum. There are dynamics which extend beyond the cause and effect of use and discharge. Addressing exceedances of pesticide water quality requires an examination of the physical characteristics of the pesticide in question, use patterns, pesticide label restrictions, pesticide registration processes, marketing factors, and the availability of pesticide mitigations.

Unfortunately, for many years, EPA had a regulatory scheme that forced pesticide registrants to concentrate registration efforts on large commodity crops such as corn, soybeans, small grains, rice and cotton. The consequence is that Central Coast specialty crops such as leafy greens, strawberries, herbs, brassicas (i.e. Cole crops), grapes, and avocados were not priorities for registration of newer, environmentally friendly pesticides. This is slowly changing. EPA now has less discriminatory registration processes. IR4, which is a federal, albeit underfunded agency, has had success with minor crop registrations. And lastly, some organic management practices and pest management tools have been adopted in conventional production. However, the operative word, here, is "slow". It takes time to reflect these changes at the marketplace level.

Unfortunately, institutional changes have not begun to address pest management tools for control of soil insects in cool season vegetables. Presently, organophosphate pesticides are the only effective pesticides registered. There are a couple of pyrethroid pesticides registered; but, they are fairly inert in soil and because of their hydrophobic nature they adsorb very quickly which diminishes efficacy. There is concern that regulatory efforts to curtail OP discharges will outpace technology and a replacement will not be available by the time these tools are restricted. Without control of soil insects, as much as 30-40% of a broccoli or lettuce crop can be lost to damage from cabbage maggot, symphylans, springtails, and wireworms. A grower is unlikely to be able to sustain such losses for over time.

It is important to note that there are many extra-regulatory and ongoing efforts to address environmental impacts of targeted pesticides such as organophosphates and pyrethroids.

For example, since 2004, technical advances in pyrethroid analytical methodologies have been substantially improved and accuracy is now much more reliable. Pyrethroid analytical data generated prior to 2002 can be somewhat suspect as the hydrophobic nature of pyrethroids created analytical challenges.

   - *Mitigations*

An effective mitigation exists for OP pesticides. This is an enzymatic hydrolytic product that results in greater than 90% reduction of resident OP pesticides in surface water discharges. The project, Landguard, in combination with water holding basins has effectively reduced OP pesticides to below proposed water quality objectives. The Coalition urges RWQCB to be open to flexible and creative application techniques for use of this and other enzymatic products.

- *Research*

It is critical to continue to look at new methodologies in order to retain as many pest management tools as possible. The future will demand ever higher demands on food production.

Additional Mitigations that need to be developed in order to reduce the amount of problematic pesticide entering water ways are: Baits, Seed Treatments, and Pheromones.

CSIRO, the patent holder for OP enzymatic breakdown products is currently appraising the efficacy of pyrethroid pesticide enzymatic products.

Another interesting technical development, is a Saftener molecule that has been designed to block a systeine residue in the acetylcholinesterase active site in humans. This creates a human-safe product. On the other hand, if this same site could be selectively "turned-off" in pests, it might be a way to closely target selected species.

Currently, there are multiple research efforts to explore mitigations and ways to reduce the amount of pesticide moving off-site. The following entities are involved in such research efforts: EPA, DPR, USDA and SARE, The Pyrethroid Working Group, Dow Agrosciences, Mahkteshim CSIRO , UCCE, and groups such as The Central Coast Agricultural Water Quality Coalition.

- *Impacts of Extra-regulatory Initiatives*

Registrants and distributors and manufacturers are making marketing decisions about the viability of pesticide markets. For example, it is believed that granular formulations may be a major contributor to OP pesticide run-off. Diazinon granules are registered for use in lettuce and chlorpyrifos granules are registered for use on broccoli. In 2009, the production of diazinon granules was halted by the sole manufacturer in the United States. It is anticipated that the diazinon granule supply for lettuce market should be depleted sometime in 2011. Hence, diazinon usage, and associated diazinon toxicity should drop dramatically in the Salinas Valley independent of direct regulation. Unfortunately, at present, there are no replacement pesticides or other viable pest management approaches. The indirect result could be an increase in pests and the subsequent use of other pest management tools.

The reality is, pesticide attenuation may possibly be more directly impacted from factors other than regulation It is unfortunate that Regional Board Staff is not more aware of the interchange and interconnections between use, regulation and markets forces.

2) **Sediment**

Sediment management is complicated and many "fixes" are expensive. However, one mitigation tool is inexpensive and quite effective. Field research of polyacrylamide (PAM) has shown it to be very effective at removing sediment from surface water when applied during irrigation or to sediment basins. Formulations and application techniques are still being developed and there will be a time lag before there is widespread adoption.

Often vegetated buffer strips and systems are hailed as the panacea for sediment management. However, research conducted by Michael Cahn an Brian Anderson demonstrated that vegetated ditches are effective only if properly designed for each specific site. Micheal Dosskey, USDA Forest Service, National Agroforestry Center studied the interaction of filtering capacity and terrain features in watersheds. His studies indicate that there is benefit in identifying critical points in a watershed where filtering functions of vegetated systems and terrain characteristics combine to improve sediment management effectiveness and reduce overall sediment control costs.

3) **Nutrient and Irrigation Management**

An important question relative to Staff's proposed Waiver is who determines what is "excessive use" or "over-application" of fertilizer? A common response might be to recommend UCCE guidelines. However, this may not always be useful. Some crops do not have guidelines. Other crops, such as strawberries, have fertility guidelines which vary by order of magnitude to compensate for regional and crop varietal variations. Other crops have guidelines which were developed more than a decade ago and do not take into account development of more intensive production practices.

- *Salt management*

Staff's proposal emphasizes salt management. However, it is important to note that proposed management requirements conflict with agronomic salt management practices. Perpetual prevention of water from moving below the root zone is tantamount to "salting the earth" which will render highly valuable farmland nonproductive.

In short, saline irrigation water contains salts. While salinity can improve soil structure, it can also negatively affect plant growth and crop yields. Sodicity refers specifically to the amount of sodium present in irrigation water. Irrigating with water that has excess amounts of sodium can adversely impact soil structure, making plant growth difficult. Highly saline and sodic water qualities can cause problems for irrigation, depending on the type and amount of salts

present, the soil type being irrigated, the specific plant species and growth stage, and the amount of water able to pass through the root zone.

Excess salts in the root zone hinder plant roots from withdrawing water from surrounding soil. This lowers the amount of water available to the plant, regardless of the amount of water actually in the root zone. In the presence of saline soils, plants cannot internally manifest enough osmotic pressure to enable them to take up sufficient water (Pearson, 2003).

In fact, increasing salt levels in the root zones may necessitate growers having to irrigate MORE to compensate for crop water stress.

Economics Impact of Staff's Proposed Ag Waiver

In order to comprehend the full impact of the proposed Waiver, it is important to compare 2004 Waiver requirements to Staff's 2010 Proposed Waiver.

- *2004 Requirements*
  1) File a notice of intent to enroll (included a map and a management practice checklist)
  2) Complete 15 hours of continuing education
  3) Create a Farm Water Management Plan
  4) Monitor
  5) Implement Management Practices

- *2010 Requirements*
  1) File an augmented Notice of Intent to enroll
  2) Update the Farm Water Quality Management Plan
  3) Create a nutrient Budget
  4) Pay a certified consultant to sign off on the Nutrient Budget
  5) Map and photo document riparian buffers
  6) Create and implement an Erosion Control/Sediment Management Plan
  7) Create and implement a Groundwater Management Plan
  8) Upgrade Irrigation Systems to meet prescribed Irrigation Efficiency and Distribution Uniformity requirements
  9) Maintain Records of irrigation scheduling, fertilizer applications and integrated pest management (e.g. scouting and pest management thresholds)
  10) Comply with 50", 100" and 150" pesticides application buffers for respective ground, airblast and aerial applications.
  11) Install 1000 foot riparian buffers
  12) Plug abandoned groundwater wells
  13) Sample, analyze and report farm-level surface and groundwater through individual farm water characterization and individual monitoring requirements
  14) Continue to financially support the Cooperative Monitoring Program

15) Participate in mandated followup monitoring projects (Note: there is no cap on what the Executive Officer may mandate).
16) Install tailwater or catchment or sediment basins
17) Cooperate in inspections and enforcement

Needless to say, as requirements increase by orders of magnitude, so do costs increase. Staff may be ignoring explicit Porter Cologne mandates that implementation of any agricultural water quality control program, an estimate of the total cost of such a program, together with an identification of potential sources of financing, shall be indicated in any regional water quality control plan" (Porter Cologne 13141).

Staff decree in Section 1.6, Page 8 that the Waiver "…will require changes in farming practices, will impose increasing costs to individual farmers and the agricultural industry at a time of competing demands on farm income, regulatory compliance efforts, and food safety challenges and may impact the local economy". This is Staff's nod to an economic analysis.

The Coalition is in the process of fully assessing the costs of this proposal to the public. For the purposes of this letter, cost estimates are preliminary because of time constraints. The Coalition used Agricultural Census Statistics, County Ag Commissioner Crop Reports, on-line city/county census data and interviews with individual growers to estimate the cost of Staff's proposed Waiver by acre for key commodities, the cost to key commodity groups and the costs on a region-wide basis.

Cool Season Vegetable compliance costs ranged from $250.00 to $916.17 per acre. Costs were influenced by economies of scale; for example, the minimum costs represent roughly 6% of total production revenue for the grower associated with those costs. Factors which influenced the maximum cost per acre were: 1) production losses and retained expenses associated with pesticide, riparian and tiered watershed buffers 2) production losses because water quality mandates interfere with or conflict with good agronomic or food safety practices, and 3) land management activities such as plugging an abandoned groundwater well or installing a water catchment basins.

Vineyard compliance costs ranged from $354.33 to $455.33/acre. Costs were influenced by the same factors.

The avocado grower interviewed had much higher per acre compliance costs. They ranged from $2,007.74 to $2,225.30/acre. These costs were fueled by the loss of orchard due to the a planted riparian buffer. His estimated buffer was 50 ft. long X 1000 ft. buffer X 2 (the creek runs through his property). He estimated that the buffer costs were $10,000/acre. More growers will be interviewed.

The Coalition multiplied per acre compliance costs times the total number of acres in the region for each of commodity to determine total compliance costs per commodity. Losses are presented as ranges for these three commodities.

- cool season vegetables = $ 48,104,625.00 - 176,288,057.14 *
- grapes = $ 36,261,069.21 - 5,573,736.21
- avocados = $ 24,671,109.12 – 7,344,486.40
- Total = $ 209,036,803.33 – 249,206,279.75

*adjustments made as county crop reports are reported in harvested acres

Other economic information that should be of interest to the Regional Board is the median gross sales revenue per farm. This provides an indication of the ability of 50% of the poorest growers to absorb compliance costs in each county.

- Monterey $25,000-39,999
- Santa Cruz $10,000-19,999
- Santa Clara $ 2,500- 4,999
- San Benito $ 5,000- 9,999
- SLO $ 25,000-39,999
- Santa Barbara $10,000-19,999

Unfortunately, median farm size information was not readily accessible except for Santa Barbara County. The median farm size there is 10-49 acres. Median Sales revenue divided by median farm size shows that median sales revenue per acre ranges from $20.41 – 1999.90/acre. Do the math for any of the commodity groups discussed above and the cost of the proposed Conditional Ag Waiver will completely absorb the gross sales revenue for more than 50% of the growers in Santa Barbara County!

Also, The Coalition did not readily find job information related to agriculture except in Monterey County. There, 21% of jobs or 38,000 people depend directly on agricultural for employment. Fifty-four percent or 45,000 persons depend indirectly on agriculture.

It should be noted that after reviewing Staff's proposed Waiver, The Coalition believes that cool season vegetables, strawberries, potted plant nurseries and warm season vegetables will not be able to sustain the economic or production and quality impacts of the Conditional Waiver. These crops represent 75.80% of the value of all crops grown on the Central Coast.

As stated, these economic data need further refinement; but, we hope to be able to calculate the cost of lost tax revenue. Nevertheless, whether the data are precise or not, the message is clear, preliminary results show that compliance costs to the Central Coast business impacts will be devastating to Central Coast agriculture and the economy.

Two other aspects of economic impact to the public sector should be considered:

1. *Duplicative regulation*

Supposedly, according to the Administrative Law Act, there are no California regulations prohibiting the proliferation of duplicative regulations. However, such duplication is poor

governance and emblematic of why the State of California cannot balance its budget. Staff's proposal is highly duplicative of other regulation:

- Agricultural rubbish, refuse, irrigation tubing, or other solid waste are regulated by County ordinances and by the State Waste Authority Board
- Aquatic species are regulated by California Department of Fish and Game, US Fish and Wildlife Service, National Oceanic and Atmospheric Agency/National Marine Fisheries Services and US Environmental Protection Agency.
- Pesticides are regulated by California Department of Pesticide Regulation and the US Environmental Protection Agency. In addition, there are numerous pending legal actions which may have an impact on restricting targeted pesticides.

2. *Conflicting regulation*

Likewise, according to the Administrative Law Act, there are no California regulations prohibiting the proliferation of conflicting regulations, albeit, this is consideration for an expedited CEQA process. Staff's proposal is rife with conflicting regulations.

- Pesticide buffers are regulated by the USEPA and DPR through pesticide registration, DPR's surface water regulations, and pending legal actions.
- Growers are mandated to eliminate surface water run-off which is largely responsible for the freshwater supply to Coastal estuaries and lagoons.
- Pending federal food safety regulation may dictate that growers remove all sources of potential food safety risks such as wildlife habitat while Staff's proposal mandates that the install vegetated buffers and riparian habitat.
- Local land ordinances prohibit grading the quantity of soil necessary to create the water catchment basins necessary to comply with Staff's proposal.
- Staff's proposal conflicts with itself! On one hand it requires growers to eliminate pesticide discharges and on the other it prohibits the use of enzymatic pesticide mitigations. It was demonstrated by Central Coast growers in 2009 confidential studies that the only way to achieve proposed chlorpyrifos water quality objectives was to combine partially effective management practices, such as catchment basins, with the enzymatic breakdown product, Landguard.

It should be noted that Section 13145 of Porter Cologne states that Board actions must take into effect its actions on any other general or coordinated governmental plan looking toward the development, utilization or conservation of waters of the state.

Conclusion

In conclusion, The Coalition does not support Staff's proposed Waiver. The timelines, the overreaching nature and the costs cannot be borne by the agricultural community or the public on the Central Coast.

To wit, The Coalition believes that RWQCB Staff's proposed Waiver violates public interest. If it is adopted it:

1) Will be a de facto prohibition against farming and will cause inestimable harm to the Central Coast economy resulting in losses of jobs and public funds necessary to maintain basic public infrastructure;

2) Violate Porter Cologne requirements of economic considerations for agricultural regulations;
3) Unfairly target certain growing groups and communities;
4) Ignore the technical capacity of public and private sectors which will create an inequitable financial burden for non-English speaking growers and small family farms as they will not have equal access to technical assistance;
5) Will require mass-reporting of information that will exceed RWQCB Staff's abilities to analyze and act on data;
6) Will jeopardize grower trade secrets and proprietary operating information made public through reporting requirements;
7) Will require growers to intentionally "salt" the earth and render high value farmland nonproductive;
8) Will jeopardize aquatic and riparian endemic endangered species by mandating freshwater diversions more rapidly than short-term groundwater can recharge coastal estuaries and lagoons;

The Coalition encourages the Regional Board to take a more reasoned and less reactive response to the successes and deficiencies of the first Waiver. Please consider the Alternative Proposal presented by the Agricultural Community.

Thank you again, for the opportunity to provide written comment regarding the matter of the renewal of the Conditional Ag Waiver. The Coalition is available to discuss any matter as set forth herein.

Most Sincerely,

Kay Mercer
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cc:
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References

2005 Santa Barbara County Groundwater Report, Santa Barbara County Public Works Water Resources Department *Water Agency Division* March 28, 2006. http://www.countyofsb.org/pwd/water/downloads/Exec%20SummIntroandConclusions05.pdf

Anderson, B, et al. Effectiveness of Pesticide Removal Using On-farm Vegetated Treatment Systems and Landguard-op-a. Presentation. American Chemical Society, ARO131. March, 2010. Anderson@ucdavis.edu

Cahn, M.D and Farrar, B.F. Evaluation of Mitigation Practices for Reducing Chlorpyrifos in Irrigation Run-off from Vegetable Fields. Presentation. American Chemical Society. AGRO 132. March 2010. mdcahn@ucdavis.edu

Cline, Harry, Pest Control Adviser Workforce Aging, Dwindling. Farm Press, Octorber 31, 2006. http://westernfarmpress.com/news/103106-control-advisor/

Dosskey, Mike. Vegetative Buffers and Targeting in Watersheds. Presentation. From Dust Bowl to Mud Bowl: sedimentation, Conservation Measures and the Future of Reservoirs. September, 2009. Mdosskey@fs.fed.us

Greene, S. Schmidt, K. *in collaboration with Young, A. and LosHuertos, Marc.* Central Coast INTERIM FOLLOW-UP WATER QUALITY MONITORING REPORT: CONTINUOUS MONITORING OF FLOWS, Central Coast Region Conditional Waive, Cooperative Monitoring Program, Central Coast Water Quality Preservation, Inc. August 5, 2008.

Katz, Brian G.H. David Hornsby, Johnkarl F. Bohlke, and Michael F. Mokray. Sources and Chronology of Nitrate Contamination in Spring Waters, Suwannee River Basin, Florida. Geological Survey, Water-Resources Investigations Report 99-4252 (1999) Prepared in cooperation with the Suwanne River Water Management District. http://fl.water.usgs.gov/PDF_files/wri99_4252_katz.pdf

Meals, Donald W, Dressing, Steven A, Davenport, Thomas E. Lag Time in Water Quality Response to Best Management Practices: A Review J. Environ. Qual. 39:85–96 (2010).

Mercer, K.L. "Challenges of creating a change continuum in the agricultural community: From resistance to adoption of environmental mitigations on the Central Coast of California" Presentation. American Chemical Society. AGRO 65 (March, 2010).

Meister, Edward A. Dairy Feedlot Contributions to Groundwater Contamination - A Preliminary Study in New Mexico *The Free Library*. (1999). http://www.thefreelibrary.com/Dairy Feedlot Contributions to Groundwater Contamination - A...-a055884900

Adapted by Krista E. Pearson from a paper by Nikos J. Warrence, Krista E. Pearson, and James W. Bauder. The Basics of Salinity and Sodicity Effects on Soil Physical Properties. Information Highlight for the General Public. (2003). http://waterquality.montana.edu/docs/methane/basics_highlight.shtml

Robertson, Brooke, Living History, Sun Santa Maria Valley's Weekly Newspaper, (June 12, 2006). http://archive.santamariasun.com/index.php?p=showarticle&id=3798

Ryan, John , MBARI. Potential Influences of Episodic Land Drainage on Harmful Algal bloom (HAB) Ecology in Monterey Bay. Presentation, Watersheds, Water Quality and a Changing Climate. October 23, 2009.

Ryan MaryEllen, Gary S. Breschini, Ph.D, An Overview of Monterey County Agriculture, Monterey County Historical Society, (2009). http://www.mchsmuseum.com/agoverview.html

Sharpley, A. Nutrient Loading in Stream and Eutrophication of Reservoirs. Presentation. From Dust Bowl to Mud Bowl: Sedimentation, Conservation Measures and the Future of Reservoirs. September, 2009. Sharpley@uark.edu.

Silva, R. G.; Cameron, K. C.; Di, H. J.; Hendry, T. A Lysimeter Study of the Impact of Cow Urine, Dairy Shed Effluent, and Nitrogen Fertilizer on Nitrate Leaching *The Free Library*. (1999). http://www.thefreelibrary.com/A lysimeter study of the impact of cow urine, dairy shed effluent,...-a054342691

Weston, Donald, P. Lydy Michael, Urban and Agricultural Sources of Pyrethroid Insecticides to the Sacramento-San Joaquin Delta of California, *Environmental Science & Technology*, February, 2010, *44* (5), pp 1833-1840.

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SUMMARY OF PERTINENT PRELIMINARY STAFF RECOMMENDATIONS SUBMITTED BY THE REGIONAL WATER QUALITY CONTROL BOARD (Revised April 1, 2010)

The Regional Water Quality Control Board staff released on February 1, 2010, Preliminary Recommendations for the Conditional Waiver of Discharges from Irrigated Agricultural Lands. These new requirements, if adopted by the Board, could become effective as early as July 10, 2010. The Draft Order (R3-2010-00XX) is 77 pages, containing 141 general findings; 56 definition tables and standards, and 85 terms and conditions which must be complied with to obtain coverage under the Waiver. The Monitoring and Reporting requirements will be set forth per MRP Order (R3-2010-00XX) not yet released. The major components of the Draft Waiver are set forth below.

1. All landowners and/or operators will be required to file an updated **2010 notice of intent** and **enrollment fee** to the RWQCB within 60 days of the adoption of the new order. A new **acreage update form** must be submitted **annually** by the operator within 60 days of acquiring control of a new ranch. The notice of intent must contain the following: a) each ranch location by means of a **detailed map** showing points where water is **discharged, wells, tile drains**, streams or riparian or **wetland habitat areas**; b) crops grown and irrigation system; c) **nitrate concentrations in well water** or tail water; d) chemicals used; e) management practices implemented; f) backflow prevention on wells; g) a signed statement under penalty of perjury that the information is correct.

2. Farmers will be required to submit a new and revised **Farm Water Quality Management Plan** that must be **updated annually**, to the Regional Water Quality Control Board. Such plans must be submitted to the RWQCB upon request and become a **public document**. The Farm Plan must identify management practices and a schedule for implementation for the following areas: 1) Irrigation Management; 2) Pesticide Management; 3) Nutrient Management; 4) Salinity Management; 5) Sediment and Erosion Control; and 6) Riparian Habitat Protection.

3. The farm plan requires a **nutrient management element** be prepared and approved by a **certified crop advisor (CCA)**. The Plan must include monthly records of fertilizer applications per crop, nitrate concentrations in well water and Nutrient budgeting or trapping.

4. The farm plan requires that farmers map and photo document existing **perennial**, **intermittent** or **ephemeral streams** or **riparian or wetland area habitat** and implement mandatory **buffers of 50, 75 & 100 feet** from the stream bank for riparian habitat within **4**

years of adoption. As an alternative to habitat buffers, farmers can prepare a **Riparian Function Protection Restoration Plan**, certified by **a registered engineer or geologist** that restores aquatic life and wildlife support. The plan must prevent the clearing of beneficial vegetation **for food safety purposes,** the clear cutting or creation of bare dirt areas, the operation of **equipment near aquatic habitat**, and **channel clearing for flood control**, except for agricultural ditches.

5. **An erosion control and sedimentation and storm water management element** must be included in the farm plan to minimize discharge, to meet water quality standards. Such management practices include maintaining crop residue or vegetation cover on the soil.

6. The Waiver **prohibits** the removal of riparian vegetation for **channel clearing**, except for agricultural ditches, **hydro-modification** and the clearing of beneficial vegetation to **reduce the risk of pathogens such as the 0157 H7 bacteria.**

7. The Waiver prohibits **ground applications of 128 pesticides, fungicide and fumigants** registered for use by the **Department of Pesticide Regulation** within **50 feet,** and **aerial applications** within **150 feet,** of any **surface water body**. Tailwater must not contain concentrations greater than 0.25ug/L of **Chlorpyrifos**, and 0.14ug/L of **Diazanon.**

8. Irrigation systems must be operated to **distribution uniformity** of .70 furrow; .75 hand move sprinkler and .85 for drip.

9. Operators of **Commercial Nurseries and Greenhouses** must keep **rainwater separate from irrigation runoff** and **prevent rainwater from coming into contact with containerized plants.**

10. Overflows from **standing pipes,** or spills from gravity flow systems must be eliminated. Within **6 months of adoption** farmers must report and **photo document the location and construction** of **groundwater wells.**

11. All **foliar fertilizer applications** must cease a minimum of **72 hours** before any forecasted **rain** and up to **72 hours after** the occurrence. The **excessive use** or **over-application** of fertilizers in excess of crop needs is **prohibited.**

12. **Leaching** to control salt must **not** be performed to **wash nitrate based salts from the soil profile**.

13. A **Pesticide Management Plan** must include for each crop and pest to be treated **scouting records** to show levels of pests, natural enemies, pest prediction records, and a **UC Integrated Pest Management Program** which must be updated annually.

14. Farmers must report **the location of all groundwater well locations** and must monitor and report depth to water and **sample groundwater from wells** quarterly for the first year and annually thereafter for nitrates and TDS.

15. Within **2 years** from adoption all growers as a group must submit **a conceptual plan for groundwater monitoring**.

16. Within **2 years** from adoption farmers in close proximity (within 1000 feet) or who discharge to a tributary **of the 704 "Impaired Waterbodies"** (which represents 86% of all waterbodies within the Region) **must eliminate all irrigation runoff leaving their property** or provide water quality data through individual on the farm monitoring that irrigation runoff meets all toxicity standards. All waters **must be free** of substances which produce physiological response in humans, plants, and animal life including laboratory invertebrates (**water fleas**).

17. Within **3 years** from adoption, those same farmers must eliminate all irrigation from their farming operation or in the alternative, provide data to show runoff has been treated or controlled to meet **sediment and turbidity standards**. (Turbidity 5 NTO when less than 25 NTU in receiving water; 20% when 25 to 50 NTU; 10 NTU when 30 to 100 NTU; 10% when greater than 100 NTU).

18. Within **4 years** from adoption those same farmers must provide data that runoff achieves standards for **nutrients and salt water quality**. **A Biostimulatory limit** of 1 mg/L nitrates (which is ten times lower than drinking water standards of 10 mg/L as N.) is necessary to protect aquatic life from biostimulation.

19. Within **6 years** from adoption **all farmers** must implement controls so **nitrate and salt discharges to groundwater** meet ground water quality standards of 1-10mg/L as N by implementing management practices or by **treatment.**

20. Growers must continue to participate and fund the **Watershed Level Cooperative Monitoring Program**, which will be expanded to include monthly testing for total nitrogen, color, algal description and fecal coli form chloride, sodium, boron, sulfate, all alkalinity and bio-assessment.

21. Farmers that **operate Tile Drains** must report that use, and include in their Farm Plan **management measures** and coordinate such measure with other tile drain dischargers.

22. **Farms that cannot eliminate tail water** will have to **conduct individual on farm reported monitoring**. A **quality assurance plan** (QAP) must be submitted within **3 months** of order adoption; start implementing monitoring within **6 months** and start submitting reports to RWQCB **3 months** later. A third party entity can conduct this monitoring but **all sampling data must be reported to the RWQCB.** The Monitoring results must be **certified by a state registered engineer or geologist.** The Executive Officer may postpone individual monitoring where discharges within a watershed collectively are making progress toward meeting the timelines of compliance.

23. A "**low risk" discharger** will be the **lowest priority** for any regulatory action and will **not be subject to individual water quality monitoring and reporting** required in the order. Vineyard operations certified by the Central Coast Vineyard Team (CCVT) as sustainable in

practice (SIP) will be classified as low risk. For all other agricultural operations, the farmer must demonstrate effective implementation of the following practices:

a. Eliminates all **tail water;**
b. Does not farm adjacent to or **in close proximity** (within **1000 feet**) to an impaired surface water body identified on the Impaired Waters List;
c. Uses **integrated pest management techniques** and does not use pesticides **identified in Attachment A** (or otherwise identified in pesticide use regulation) as having a high potential to degrade/pollute surface water;
d. Implements a **nutrient management** plan certified by a XXX {Note: *Appropriate professional certification, such as Certified Crop Advisor (CCA) or other certification with similar expertise and experience*} to be protective of water quality (e.g. will not contribute to an exceedance of water quality standards); and
e. Implements **storm water control measures** to minimize erosion and sediment deposition using best practicable treatment or control.

March 30, 2010

Kenneth H. MacIntyre
Owner
MacFarms
1277 Little Morro Creek Road
Morro Bay, CA 93442

Ms. Angela Schroeter
Agricultural Regulatory Program Manager
Mr. Howard Kolb
Agricultural Order Project Lead Staff
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906

Re: CCRWQCB Request for Public Comments on Preliminary Draft Agricultural Order dated February 1, 2010

Ms. Schroeter and Mr. Kolb:

I am the owner of MacFarms, which has been located in Morro Bay since October 2000. My wife and I and are growers of hass avocados and maintain 10 acres located in Region 3.

I have been following the progress of this Board's renewal of the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands ("Ag Order") and am concerned with the Staff's draft Ag Order. The draft Ag Order contains many undefined and potentially highly impractical requirements for all agricultural operations. Of particular concern to my operation is regulating non-storm water discharge that must have no toxicity, drinking water standards for nitrates, low turbidity, and temperatures below 68 degrees F; keeping rainwater and/or stormwater separated from wastewater and irrigation runoff; additional surface water sampling; inclusion of groundwater sampling; installations of pesticide and riparian buffers; the revised Farm Water Quality Management Plan and the nutrient management element of the Farm Plan.

This is very concerning to us because our small operation simply cannot afford the additional costs associated with your unrealistic and impractical proposed requirements. We already implement numerous best management practices such as: reduce runoff, apply pesticides in compliance with label requirements and requirements set by my Ag Commissioner, have practices in place to control erosion, sediment, and nutrients. Water is costly and a precious resource, and we have implemented a variety of practices to reduce the amount we use and limit/prevent discharges such as micro sprinklers and drip irrigation.

I urge the Board to listen to grower's feedback and suggestions, including mine, and incorporate all of this feedback into the draft Ag Order. Any future Ag Order must be designed with achievable objectives and must be a transparent and collaborative process that utilizes agricultural stakeholders. Loss of grower cooperation will be counterproductive to improving water quality.

Respectfully submitted,

Kenneth H. MacIntyre
Owner, MacFarms

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March 30, 2010

Chairman Jeffrey Young
Central Coast Regional Water Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906

RE: Comments to RWQCB Preliminary Recommendations for Renewal of Agricultural Waiver

Dear Chairman Young:

My name is Jeff Lundberg, I am the General Manager and the only one of two brothers and a sister that is involved with a family farming business called Babe' Farms, Inc. My mother and I employ over one hundred and forty employees to date. A number of these employees have been employed with us since the companies humble beginnings in 1986. We are a grower, processor and shipper of specialty produce in the Santa Maria Valley. Our average annual expenses within this state and community average in the tens of millions of dollars. I am writing this letter to express my opinion against the new preliminary recommendations for renewal of the Ag Water Waiver.

Farming on the Central Coast in California is hard enough and does not look to be getting any easier. California is and always has been one of the most difficult locations to have a successful business. With the excessive regulatory agencies, food safety and tax burdens from all levels of government, it is not easy to run a successful business in this state. My industry has no set margin or guaranteed market. We rely completely on supply and demand of a very perishable product. These above points and the fact that other countries and states bordering California do not have to adhere to the same standards do make it hard to be competitive.

The economic impact and inability to adhere to the latest version of the Ag Water Waiver has prompted me to write this letter. Eliminating all tail water in any amount of time, removing 100 feet of crop land to create riparian habitat next to streams, all of these are impossible to achieve given this current economic climate. Land owners will not forgive rent on the thousands of acres that will now be unable to be farmed. The restrictions on ground and aerial application of pesticides, the restricting of fertilizer applications to 3 days before and after it rains, all of these can not be achieved and remain competitive in the industry. Food safety procedures that we have been strictly following and

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documenting, directly contradict many of these new restrictions such as the cleaning of channels and vegetation. The end level of some of the tail water final values that your staff is trying to attain is impossible to achieve even before we as farmers apply it to our farm fields let alone after it is tail water.

I strongly suggest that you have the staff reconsider these excessive, over regulatory actions and please let the Ag-Community be involved in developing alternative proposals and please reconsider initiating review of staffs proposal. Let us as farmers be partners in the process of developing regulations.

Sincerely,

Jeff S. Lundberg

Jeff Lundberg
Vice President Operations Production

CC: Vice Chairman Russell Jeffries
John Hayashi
David Hodgin
Monica Hunter
Tom O'Malley
Gary Shallcross
Roger Briggs, Executive Office
Angela Schroeter, Senior EG

Hearst Ranch
P.O. Box 66
San Simeon, CA 93452
(805) 927-4610

Ms. Angela Schroeter, Senior Engineering Geologist
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

Dear Ms. Schroeter:

Thank you for the opportunity to comment on the 2010 Draft Irrigated Agricultural Order. We support the recommendations made by the agricultural community during the March 22 Farm Bureau meeting in Cambria, particularly the request by some farmers to maintain the status quo of the current Conditional Waiver for low-risk growers.

Comments from your staff that we have very serious water quality problems in this region, and sensational statements that our water is some of the worst in the state; do not apply to the North Coast of San Luis Obispo County. In fact, the creeks and tributaries in our area are some of the cleanest in California. We would argue that the quality of our water should not be compared in any way to the problems you are finding in the agricultural areas of the Salinas Valley or the Santa Maria Valley.

We support a tiered approach for low-risk discharge, with the inclusion of an "exempt" category, and the continuance of self-certification for low-risk growers. We do not support the "shotgun" approach you have taken, and we suggest that you apply your limited resources to the places where real problems exist.

In addition, we provide the following comments in an effort to reduce the impacts of the draft order on agriculture:

- As standard general practice continue to maintain farm plans on site, rather than submitting them to the Regional Boards.
- Realistic cost estimates should be calculated and provided to the public.
- Natural causes of sedimentation and runoff caused by weather and the unstable geology of our area should be factored into the monitoring process, specifically related to the natural meandering of streams, storm events, landslides, earthquakes, etc. Paying special attention to having flexibility with regard to seasonal weather events.
- Elements and minerals found naturally in our environment should also be factored in with a flexible allowance during monitoring.
- There are additional dischargers, other than agriculture, which contribute significant amounts of pollutants which contribute to our local watersheds and

should also be part of the data collection and monitoring process.

As our county Supervisor Bruce Gibson said March 22, the conditional waiver is "doing its job here." Instead of reinventing the wheel, we suggest that you continue the conditional waiver program, offer additional certification and education opportunities for growers, and provide a tiered approach for exempt and low-risk agricultural producers.

Sincerely,

Cliff Garrison
Ranch Operations Manager
Hearst Ranch

March 30, 2010

Ms. Angela Schroeter, Senior Engineering Geologist
Ms. Lisa McCann, Environmental Program Manager
Region Three of the Water Quality Control Board
895 Aerovista Place, Suite 101 San Luis Obispo, California 93401

Dear Board Members,
I am writing to advise you that I have very serious concerns with the Draft Agricultural Order dated February 1, 2010.
The Draft Order lumps Santa Rosa Watershed in with the Salinas, Pajaro and Santa Maria watersheds. Perhaps they need more regulating, we do not. The 75 foot requirement for riparian buffers that is specific to our watershed is excessive and shall quash the agricultural productiveness of our small farms. If your goal is to destroy the family farm, you are well on your way.
Allowing public access to agricultural irrigation information and placing in their purview the ability to determine that the program is achieving its' stated purpose and/or whether additional or different MPs or other actions may be required is simply ludicrous. There is enough uninformed hysteria and frivolous litigation amongst the great unwashed. Please do not add to it.
California is geographically diverse and agriculturally diverse. I suggest that the Draft Order needs to be tailored for each watershed in every region and not a great lumping list of standard requirements for the State. I look forward to reviewing the necessary changes in your next submittal.

Sincerely,

Barbara Walter
7780 Santa Rosa Creek Road
Cambria, California

March 30, 2010

Ms. Angela Schroeter, Senior Engineering Geologist
Ms. Lisa McCann, Environmental Program Manager
Region Three of the Water Quality Control Board
895 Aerovista Place, Suite 101 San Luis Obispo, California 93401

Dear Board Members,

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Sincerely,

Dawn Dunlap

8338 Santa Rosa Creek Road
Cambria, California

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March 31, 2010

Jeffrey S. Young, Chairperson
Roger Briggs, Executive Officer
California Regional Water Quality Control Board
Central Coast Region
895 Aerovista Place, Suite 101
San Luis Obispo, CA. 93401-7906

Re: Central Coast Ag Waiver, Staff Proposal
Ocean Mist and RC Farms Response

Dear Mr. Young and Mr. Briggs:

I. Introduction

Ocean Mist and RC Farms operations submit the following comments to the Central Coast Regional Board concerning draft amendments to the agricultural waiver ("ag waiver") proposed by Central Coast Regional Board ("Regional Board") staff. The farming operations identified above have actively participated in efforts to improve water quality in the region during the course of the existing ag waiver. They have participated in group monitoring programs as well as on-the-farm management practices to improve water quality and, more recently, in the collaborative effort to develop reasonable and practical amendments to the ag waiver. These efforts have led to the development of reasonable and practical general amendments to the ag waiver known as the "ag alternative" which has been submitted to staff. However, the comments presented here are in direct response to proposed staff amendments and question the existence of regulatory authority necessary for imposition of several of the staff proposals.

Not only have these farm operations actively participated in the development of the existing ag waiver, they have also voluntarily developed and implemented additional water quality management practices not required under the waiver. As additional monitoring data becomes available, and monitoring points are adjusted to focus better on specific local water quality concerns, these farming operations stand willing to adopt additional reasonable management practices to address exceedances of water quality objectives in the local area. Notwithstanding this commitment to actively address water quality issues throughout their operations, the staff draft as proposed totally abandons the principals of the existing waiver in favor of an oppressive regulatory program that over burdens the farm operations, and, quite possibly even threatens the continued existence of the farming operations. Many of the proposed waiver's features are beyond the jurisdiction of the Central Coast Regional Board, and are violative of the principles of reasonableness and due process which are express cornerstones of the Porter-Cologne Water Quality Act and other controlling statutes. Many of the staff proposals constitute a de facto prohibition of farming and, therefore, are beyond all statutory authority, and are arbitrary and capricious.

The problems with these provisions will be further identified below. We advance these comments not in the nature of "sword rattling" or as a threat of litigation, but to point out that many components of

the staff's draft must be abandoned or significantly modified to reflect the Board's statutory authority and to address practical limitations to implementation.

The farming operations stand ready to work closely with the staff and members of the Central Coast Regional Board to develop reasonable amendments to the existing ag waiver.

II. Issues of Concern

1. Waivers Must be Moderate. The California Water Code generally requires a regulatory approach to exercise the Porter-Cologne water quality authority. However, section 13269 of the Water Code sets forth the waiver provisions and is intended to allow a program designed to streamline the regulatory approach to (a) relieve complications associated with administering tens of thousands of individual WDRs by the Regional Board and (b) relieve farmers from having to engage in a full WDR process. The Regional Board staff, however, have designed such an onerous regulatory program that it compels a program which is far more onerous than a traditional individual WDR. The staff waiver itself points out that the Regional Board cannot administer individual WDRs, therefore it is self-defeating to advance a regulatory program that farms cannot operate under and which makes the individualized WDRs more attractive. Finding #49 in the staff draft (page 10) declares that the waiver process is desirable over WDRs "in order to simplify and streamline the regulatory process. It is not an efficient use of resources to adopt individual WDR for all dischargers." Therefore, this extreme and oppressive proposal, addressed further below, must be wholly reformed.

2. Waivers Must be Reasonable. The Porter-Cologne statutes advance the notion that the Regional Board can only require reasonable steps to achieve water quality objectives. The staff draft seems to selectively omit the reasonableness concept from the staff proposal. Reasonableness embraces the notion of feasibility, achievability, and reasonable timelines, and also envisions the preservation of agriculture production, which is one of the highest beneficial uses of water.

California Water Code section 13241 expressly states that the Regional Board shall establish water quality objectives as in its judgment will ensure "the reasonable" protection of beneficial uses. The Code goes further to express that "it is recognized that the quality of water will be changed as a result of use "without unreasonably affecting beneficial uses." These principles appear to have been abandoned by staff in their proposed amendment.

In the Central Valley where that Regional Board is presently renewing its waiver, the staff notice of proposed amendments includes the following explanatory language which captures the necessary balance of costs versus benefits.

> "Water Board staff are also mindful that there is a balancing of costs associated with a new regulatory program. A more stringent regulatory program may increase the likelihood of improving and protecting water quality, but the cost of compliance for dischargers and the State to oversee the program can be overly burdensome. The California Water Code requires that costs be considered when developing programs for agriculture.

> Given that agricultural operations are price takers in the market and cannot directly pass on their costs to consumers, these costs become especially important. Conversely, a regulatory program that is lax or allows too much time for compliance can lead to an exacerbation of water quality problems and prolonged impacts on beneficial uses."

This entire concept is lost in the proposed Central Coast staff waiver.

3. **The Regional Boards Cannot Convert Farm Plans to Permits to Farm.** It is totally unacceptable that the Regional staff proposes to amend the waiver to become virtually a permit to farm. They propose to convert what is presently a private farm plan designed to address specific farm site issues related to ag water discharges and make farm plans enforceable public permits to farm. The waiver would require over six sub-permit sections dealing with: a) irrigation practices, b) pest control practices, c) nutrient control practices, d) salt controls, e) sediment toxicity controls, and f) aquatic species preservation practices. Within each of these permit subsections the restrictive elements are not only extreme and impractical, but go well beyond the Regional Board's jurisdiction and province.

As an example, the irrigation control plan requires the amount of water needed for each crop, the amount delivered, the irrigation schedule, and prohibits any water to percolate below the root zone (notwithstanding the fact that this is required agronomically to effectively grow most crops on most soils). The plan also suggests the Regional Board will police irrigation water use against certain governmentally contrived irrigation efficiency standards. This is well beyond the Board's authority and utterly arbitrary and capricious.

Another shocking regulatory overreach is the farm plan permit for pest control/toxicity. This pest control/toxicity plan would require the location of each crop, require pest population counts, dictate certain thresholds for pest control treatment, dictate IPM checklists and, interestingly, prohibit the use of products designed to breakdown pesticides and eliminate toxicity.

A third example of an impractical and overreaching sub-permit section is the proposed nutrient management permit element. It would require a limit on the amount of nutrients that can be applied to supply the crop's demands, limit the amount of water applied, limit the frequency and total applied fertilization, would deduct from the fertilizer allowance the nutrients in the irrigation water, and would control the timing and amount of fertilizer which can be applied. These oppressive requirements and restrictions are without jurisdictional basis, do not reflect the diversity in Central Coast agriculture, do not pass agronomic standards and are not issues effectively dealt with by the Regional Board.

These permit requirements are directly contrary to the authority limits of the Regional Boards, and would act to supersede the jurisdictional authority of other agencies such as Cal EPA, Department of Pesticide Regulation and California Department of Food and Agriculture.

4. **Waivers Must Consider Reasonable Costs and Timelines.** The staff draft is oppressively broad and restrictive, demanding incredible management detail in many areas (as set forth above), which includes both trade secret information and data which is irrelevant to water quality. The

Water Code at section 13267 points out that the "burden, including costs of the reports, shall bear a reasonable relationship to the need and benefits." That principle is wholly ignored by the staff draft. The staff proposal ignores reasonableness, costs or reasonable timelines. Water Code section 13241(d) expressly compels the Regional Board to evaluate economics in its proposals. Water Code section 13242 demands that regulatory programs have reasonable time schedules for implementation.

5. **Waivers Must Protect Trade Secrets.** The Regional Board staff attempts to be the farming "police" by requiring all detailed farm management information. Much of this detail is actually proprietary trade secret information. The fresh produce segment of agriculture deals in a very competitive environment. Most produce is marketed with branded labels and marketing strategies, as well as production strategies, are competitive, important and closely guarded. The CWC § 13267(b)(2) expressly states and recognizes the importance of trade secrets and calls for such information not to be made public.

6. **Waivers Must be Flexible and Practical.** It is imperative that the waiver acknowledge and allow flexibility to deal with the significant variables that exist in the Central Coast Region agricultural production areas (i.e., soil type, topography, irrigation systems, source water, crops, drainage systems, pests). Many proposed practices cannot be employed universally. Accordingly, the restrictive regulatory program that has been advanced will not achieve the desired goals, and will be needlessly oppressive. The Boards cannot control agriculture's inside-the-farm operation.

7. **Farms are Only Responsible for Their Contributions.** The Ocean Mist and RC Farms operations have similar objectives as those of the Regional Board with respect to minimizing ag's effect on waters of the state. Over time, they can reasonably address the inputs their farm operations contribute, but farm operations cannot be responsible for the quality of their source water or cleaning up waters after it leaves the farm as those waters have been impacted by other parties. This point needs to be made expressly clear in the waiver.

This concept is fully embraced in the Water Code as § 13241(b) expressly states that the Board shall consider "the quality of the water available." The source waters used by these farms have water quality issues which they operate around, but they cannot be responsible for cleaning it all up at the point of discharge. The farms can only deal with their inputs. This statutory concept needs to be expressly acknowledged in the waiver.

8. **The Boards Cannot Control Agriculture's Inside-the-Farm Operation.** The Regional Board's legal jurisdictional boundary starts at the point where there is a potential discharge of waste to waters of the state. The staff draft violates that boundary. This long adhered to principal is that the Water Boards can only regulate the quality of water that is discharged. Said differently, the Regional Board can demand certain reasonable practices to achieve water quality objectives in a reasonable time at the point of discharge. The Regional Board cannot go into the farm operation and start telling the farms how to operate (i.e., how to irrigate, what crop to grow, how to fertilize, how to protect from pests) any more than they can tell Chevron how to run a refinery or Campbell Soup how to run a tomato processing plant. In its draft, the Regional Board staff appears to have incorporated notions of getting involved in

each of the myriad management activities of a farm regarding irrigation, pesticides, and nutrients (as addressed above in point #3). This is entirely beyond the Board's authority.

9. The Regional Boards Have Limited Jurisdiction. The Regional Boards are also required to coordinate actions with other state agencies. Pesticides are rigorously and exclusively regulated by the California Department of Pesticide Regulation ("DPR"), a sister agency at Cal EPA. DPR has historically controlled pesticides relative to water quality. They do this at the registration level, and the county permit level. They also license pest control advisors and pest control operators and applicators, and enforce regulations on pesticide use and as to groundwater pest management zones. They have recently mandated label changes to chlorpyrifos and diazinon and have promulgated dormant spray regulations all entirely focused on water quality. They have several pesticides in re-evaluation relative to water quality and are presently developing comprehensive regulations dealing directly with the protection of surface and groundwater from pesticides. The Regional Board is not the "pesticide agency" and should be coordinating with other agencies, rather than attempting this jurisdictional end-run.

Similarly, the California Department of Food and Agriculture has state statutory authority over fertilizers and similar coordination must occur with that lead agency in respect to fertilizers. The staff draft improperly attempts to become the farming and fertilizer regulatory agency.

10. Where Does Percolating Irrigation Water Reach Waters of the State. There remains an open question as to where the Regional Board's authority commences as to groundwater. The state's authority is very limited regarding groundwater. The statutory jurisdictional limit is where the discharge of waste reaches waters of the state. The point of discharge is not clear as to groundwater. Based upon statutory authority, this would appear to be where water first intersects with an aquifer or underground stream. Can the Regional Board advance some guidance and authority on this question expressly as to irrigation water percolation?

11. Use of Recycled Water. Recycled water has reached widespread acclaim from municipal users, regulators, environmentalists, and those interested in water conservation and reuse. For purposes of this discussion, agriculture has taken low quality municipal discharges that would otherwise have gone directly in to the ocean and have used them for irrigation and improved the quality of the water as it returns to the environment. Consequently, not only are we 1) conserving water, 2) reusing water, and 3) taking problem discharges from municipalities, but we are discharging far cleaner water than what would have been discharged by the municipalities. It is for those reasons that these programs have reached widespread acclaim.

a. The Regional staff proposal would effectively mandate the termination of this recycled water use program. The proposal would more broadly require the termination of the use of tile drains, which are a widely-used means by which waters that can be problematic in the crop root zone to be eliminated so as to allow the farming of such lands whatsoever. This staff proposal would, by its extreme measures, terminate the recycled irrigation program and would also render significant portions of the region to be agriculturally abandoned.

California Water Code section 13241(f) expressly encourages the use of recycled water. This staff waiver would put this acclaimed re-use program in jeopardy.

12. Tile Drains are Imperative to Agriculture. The Regional staff proposal would mandate the termination of the use of tile drains. Tile drains are widely used to remove excessive and problem water from the crop root zone. The drains have been relied on by California agriculture for decades and have been responsible to make otherwise unproductive areas productive. Eliminating the use of the tile drains would limit the productivity of land where they are used and likely require significant land to be taken out of production altogether. The Regional Board's authority covers the issue of water quality not irrigation infrastructure improvements.

13. Private Property Rights. The California Water Code is very clear, and the other Regional Boards and the State Board have consistently acted in a manner that respects private property rights. The staff draft wrongfully and unlawfully advances at least two components that violate private property rights.

a. First, the proposed waiver suggests that compliance with the waiver provisions require a grower to allow Regional Board staff to enter upon his private property. The Water Code does not condition waiver compliance of a landowner upon the grant of authority for trespass by Regional Board staff. Any such requirement is in violation of state law because lawful entry upon private property requires either permission or a warrant. Clearly, these terms and conditions need to be removed from the waiver.

b. The waiver also suggests that the third party monitoring group may be required to monitor at locations where trespass would be required. This, again, suggests a stark departure from California law and is wholly inconsistent with State and Regional Board authority. Any such requirement needs to be removed from the waiver.

California Water Code section 13267(c) expressly limits all regulatory access to be either by permission or by warrant.

14. The Regional Board Cannot Control What a Farmer Grows Where. The Regional Board staff proposal attempts to exercise land use authority and crop control authority by mandating what growers must grow in certain locations of their fields. The Regional Board has no authority to require certain vegetation to be planted in certain areas, or to compel the removal of certain vegetation.

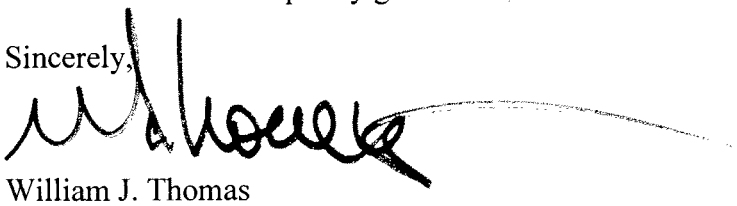
There is no question that regulatory efforts can occasionally result in unintended consequences, and it sometimes takes a year or two for things to come into balance. Some buyers in the produce industry sought to control how produce growers grow their commodities and in reaction to the leafy green issue required in some locations a "clean farm" order of management. This is not something that production agriculture has brought on itself. As of late, this situation seems to be coming back into balance recently. There may, however, be some legitimate water quality issues resulting from this situation, but they appear temporary in nature. However, this does not give the Regional Board

jurisdiction to become a land use agency. Other regulators such as Fish and Game, Fish and Wildlife Service, County Planning Commissions, Department of Food and Agriculture, all have some responsibilities in this area. These agencies would be attentive to water quality issues advanced by the Regional Board, however, nothing has changed the jurisdictional limitations of the Porter-Cologne statutes to make the Regional Boards the agricultural or plant and wildlife agency, or to give them authority over production or land use.

Conclusion:

The points addressed above make the staff draft a non-starter. Said differently, it would compel appeal, litigation, or a non-compliance reaction from the farm community. The amendments are a significant departure from the existing regulatory program and raises such far reaching and new concepts that an entire CEQA review would be triggered. This 14-point list is somewhat long because the staff draft has incorporated many new and extreme regulatory components. While the farm operations are pointing out these "hard points," the Regional Board should not lose sight of the fact that they are very committed to improving water quality, will actively participate in third party monitoring, and stand ready to coordinate with the Regional Board staff relative to additional monitoring obligations. In addition, they are ready to discuss the nature of what has to be sampled and where, the urgency of reports of exceedances being supplied to the Regional Board, and the possibility of additional monitoring strategies. The ag alternative also outlines certain additional reports. These would be reasonable steps to move the waiver forward over the next few years to target problem areas, determine the source of pollution and to develop reasonable and practical solutions that will achieve water quality goals.

Sincerely,



William J. Thomas
for BEST BEST & KRIEGER LLP

WJT:lmg

cc: Board Members
John Hayashi, David Hodgin, Monica Hunter,
Russell Jeffries, Gary Shallcross, Tom O'Malley
Angela Schroeter
Lisa McCann
Ocean Mist
RC Farms

Angela Schroeter, Manager
Agricultural Regulatory Program
Regional Quality Control Board
895 Aerovista Place, Ste101
San Luis Obispo, CA. 93401-7906

March 31,2010

Dear Ms.Schroeter,

Agriculture needs agencies that promote conditions which will make it possible for our industry to earn a fair return in a manner which will preserve freedom and opportunity. It takes a larger effort to put food on the table than most people realize.

The new discharge order does not ensure our ability to feed, clothe, shelter and enhance the quality of life through agriculture and create an environment that encourages or recognizes activities on farms and ranches that enhance environment and water quality.

Instead, the new discharge order gives little reference to water quality improvements through farm management techniques put into practice over the past five years.

Please consider that farm production costs will sky rocket under the new order and mirrors a pattern the board followed in the central valley that failed. Any plan that places further demands on farmers accompanied with substantial production costs without offset measures is doomed to fail.

The California Farm Bureau Federation's proposal has more workable measures that will achieve water quality goals while allowing more flexibility for farmers and ranchers. Please consider these alternative measures that have been proven to work for both the environment and agriculture.

Respectfully,
Nancy Kawaguchi
Kawaguchi Farms

LUIS A.
SCATTINI & SONS

P.O. Box 1159, Castroville, CA 95012-1159

March 31, 2010

Chairman Jeffrey Young
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906

Dear Chairman Young,

My name is Michael Scattini. I am a fourth generation farmer. My family and I grow a variety of vegetable crops on approximately 2,000 acres from the coast near Castroville to south of Salinas. We employ hundreds of people annually and provide the nation with fresh, affordable and safe vegetables.

I am writing this letter to convey our concerns regarding the proposed 2010 Draft Ag Waiver "Waiver". From our perspective, the negative impacts of implementing the Waiver as it is currently written have the potential to devastate not only our business, but the entire agricultural industry throughout Region 3. This proposed regulation is by far the most threatening regulation my family has had to confront in it's almost 90 years of farming.

At a time when we are already pushed to our limits by new regulation compliance mandates from the FDA for food safety, California Air Quality Board for diesel engine retrofit/replacements, federal healthcare provisions, Water Resources costly projects in the Salinas Valley and copious labor regulations, we would hope that your agency could see that a breaking point is near. The costs associated with compliance will surely drive many farmers out of business.

Local industry trade organizations are working together to address the Waiver point by point. I would like to make some observations of my own.

In the northern region, where the predominant water supply is from the Castroville Seawater Intrusion Project, water is high in salts. Under the Waiver, we would be required to clean the water supplied by the project before it could leave our ranches, whether that is by percolation or through tile drain discharge. A more economical solution for us would be to turn off the CSIP water and start with cleaner water from our wells. If we chose that option, the advances we've made in holding seawater intrusion at bay would surely be lost along with the millions of dollars invested in the "state of the art" project. This obviously creates more problems than it solves in terms of water quality.

The use of tile drains is critical in the northern districts. Without it soil saturation and increased sediment runoff would indisputably lead to crop failure. If we cannot get tractors in the fields to

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May 12, 2010 Workshop
Preliminary Draft Agricultural Order

control weeds, we will be forced to increase our use of chemical sprays. The quality of storm water runoff would be degraded from what it is today. The proposed solution for water filtration for drain tile systems is to construct huge catch basins that allow the water to evaporate over time. The costs to build and operate these structures would be prohibitive in a number of ways. The construction cost of the structures, the massive loss of productive land devoted to the basins as well as the food safety issues created by open water basins. These structures, if a farmer could afford to construct them, would surely attract all manner of wildlife including frogs, rodents, birds and deer. This "solution" flies in the face of everything we've been doing to comply with food safety regulations.

Additionally, I am very concerned that District 3 has been singled out from all the other districts in the state and asked to meet a much higher standard. This not only speaks to the fairness of the process, but also would create a competitive edge for the farmers in other areas if implemented.

Many landlords, including four generation of my family, have reinvested the proceeds from farming back into the land in order to make it some of the most productive farmland in the world. We have been good stewards of the land and believe that those investments increased not only the productivity, but also decreased dramatically the impacts of farming on the environment. Our collective investments in drain tile, drip irrigation and integrated pest management systems, have markedly improved the quality of water discharges. These improvements over the past 20 years seem to have no weight in this process.

We understand that there is more to be done, but the Waiver is too much too fast. It puts our family and our industry at risk. It risks reduced productive land => reduced land values => reduced property taxes. Which creates less crops grown => higher unemployment => increased social burdens. There is a balance.

At a time when unemployment has skyrocketed, businesses are fleeing the state and billions are being given away in corporate bailouts, this is hardly the time to pile on impractical regulations on an industry that is barely staying afloat on its own.

I would like to ask that you not approve staff's proposed Waiver and that you direct staff to work with farmers and not against us.

Respectfully,

Michael R. Scattini

Michael R. Scattini
Partner
LUIS A. SCATTINI & SONS, LP

From: <bar5e@sbcglobal.net>
To: <aschroeter@waterboards.ca.gov>
Date: 3/31/2010 11:08 PM
Subject: CCRWQCB Request for Public Comments on Preliminary Draft Agricultural Order dated February 1, 2010

Charles Evans
1120 Bonnie View Rd
Hollister, CA 95023-5112

April 1, 2010

Angela Schroeter
Agricultural Regulatory Program Manager
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Ste 101
San Luis Obispo, CA 93401-7906

Dear Ms Schroeter:

I have been following the progress of this Board's renewal of the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands ("Ag Order") and am concerned with Staff's draft Ag Order.

We are the owners of C and D Enterprises, which is a start up farming operation located in Cambria, San Luis Obispo county. Our family has been in agriculture in this area since the late 1800's. We plan to grow fruit and vegetable produce. We will be cultivating about 30 acres located in Region 3.

The draft Ag Order contains many undefined and potentially highly impractical requirements for all agricultural operations. I am afraid this will have a negative impact on the farmers and ranchers who produce the food, fiber and flowers that bring jobs and a strong economy to the Central Coast.

Of particular concern to my operation is the strict rules that may put us out of business before we start. By limiting where we can plant in relation to runoff will severely reduce the amount of usable acres, which may force us to be removed from the Williamson act. The regulations that people come up with are more for putting the growers out of business instead of keeping us in business. The people that are making these plans should earnestly seek the opinions and solutions of whom these plans may affect.

The Santa Rosa Creek watershed is one of the healthiest watersheds in the State of California. Yet this Ag Order, as it stands, could potentially put families who have cared about their land for generations out of a living.

Our operation plans to implement management practices to conserve water and soil resources as well as making management decisions based on sustainable agricultural practices.

The Central Coast was built on families and agriculture. By implementing an order of this nature, you destroy the very essence of SLO County. If the future is not in farming, then it is in industry, or housing. We will be turned into another metropolitan area. How will that impact our water? Where will we get our food? How much will we have to pay for it?

Water is a precious and costly resource, thus I urge the Board to listen to the growers' feedback and suggestions. Any future Ag Order must be designed with achievable objectives, and must be a transparent and collaborative process that utilizes agricultural stakeholders.

Sincerely,

Charles Evans
831-636-9174

Villa Pacifica Ranch

STATE OF CALIFORNIA
CENTRAL COAST WATER BOARD
Received
MAR 2 6 2010
895 Aerovista Place, Ste. 101
San Luis Obispo, CA 93401-7906

March 23, 2010

H. Kolb
SCANNED
MAR 2 9 2010

Mr. Michael Thomas
M. Lisa McCann
Region 3 Water Quality Control Board
San Luis Obispo, CA 93430

Dear Michael

I love my farm. I have been here, a steward of the land since 1978. At my age now, I know many people who can't wait to retire because they do not enjoy their job. Since 1969 when I participated in Woodstock I knew I wanted to be a farmer and I still Love my work. My sons work here with me and desire to some day take over control of our operation.

I have many concerns with the proposed changes to the "Ag Wavier." I enjoy my freedoms and fear these increased regulations will adversely affect my costs. Water and soil testing, losing ground to buffer zones and increased paper work are some concerns. But after spending last Sunday reading over many of your documents I see there are increasing problems in our food production systems. I noticed in Attachment 2 that you proposed to eliminate education of water quality. I think we should have more education and discussions on both ends. There are things I can learn to better tend my land and there are things the water staff can learn from farmers. Some of it outside on the farm. Also many farmers I have spoken with believe the staff is not aware of what it takes to make a living on a farm. We deal with many different agencies that sometimes have conflicting regulations. These are governmental outfits and should be in a position to support agriculture, without the food we farmers grow there would be no California. Clean water is one of my most important resources, I am willing to make some changes in my operation if needed but more time may be required. My ranch has heavy clay soil, currently the nitrate level in the well water is 1.3 mg/L, so that is not a problem. I planted a couple hundred eucalyptus trees above and below my wells 35 years ago,Do they help remove nitrate form the groundwater? I also built 3 dikes in the creek in 1978 which have grown into great habits for wildlife. In 1978 and 1980 it was easy to get the permits from the fish and game I also did the work without government grants, I paid for the work. Recently I had water samples run at Creek Environment Laboratories in San Luis Obispo. I spent $165 but the results were hard for me to intrepid. I spoke with them, they are aware of what you are planning. I think you should work with them and other labs to develop the tests we need with explanations of the data and try to keep the costs down.

Cayucos farming is different than Salinas or Santa Maria. Our soils, fauna, climate and rainfall are very different. If those are some of the problem areas they should be treated differently. **You could adjust the rules to apply to heavy production areas more so than farms that produce 1 crop per year.** The main farming in Salinas and Santa Maria produces 2 or 3 crops per year. There are many economical reasons and reifications that would need to be addressed. 3 crops means more work (jobs, funds for other companies: cartons, fuel, repairs). With increased restrictions on farmers, will the tax assessor lower the assessed value of the property which means lower moneys for State and Local governments (schools)? Producing 3 crops per year intensifies all impacts on the environment.

Another concern with the buffer zone is maintenance. If left alone will it become a fire hazard? Will we be required to irrigate the zone to have it ready for an early rain season. A first of the season 4 inch rain in October? I grow Citrus. Weedy areas provide a habit for snails. Snails can cause major damage to fruit and can require a lot of pesticide to control , if the soil is bare the snails habit is eliminated.

One more for the road! Farmers grow produce for the consumer. Folks want large, pretty produce at a low price and that requires inputs such as fertilizer and pesticides. If the farmer is to use less chemicals then buyers need to be told that if our food is smaller and somewhat scared , bug eaten or moldy it is because we are doing more to protect the critters of the environment.

So as Janis Joplin told us that August night "That's all folks"

Jim Miller

Group 4 - F10
May 12, 2010 Workshop
Preliminary Draft Agricultural Order

P.O. Box 615 ⋄ Cayucos, California 93430 ⋄ (805) 995-1168

Just a Note
Advice from UC Riverside to leach

Cutting Edge Technologies for Avocado Production

June 2009

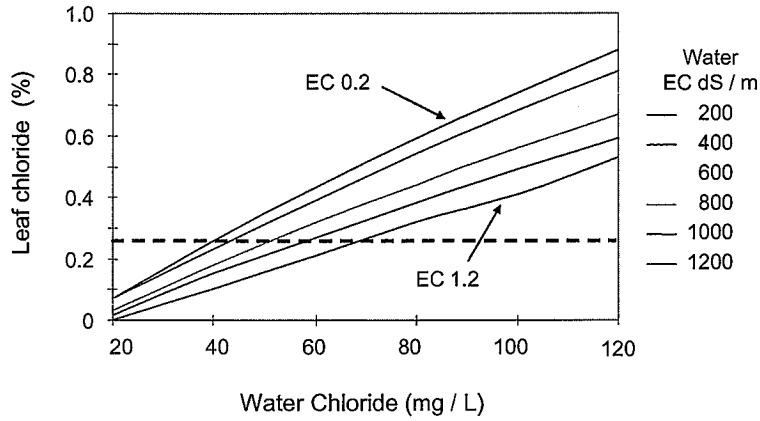
David Crowley, Professor of Environmental Microbiology
University of California, Riverside, CA 92521
crowley@ucr.edu

Avocado growers are faced with constant challenges in maintaining a productive orchard in which soil, water, and fertilizer resources must be skillfully managed. With its shallow root system, high sensitivity to soil salinity, and susceptibility to Phytophthora root rot, avocados are one of the more difficult tree fruit crops. Often our orchards are located on difficult soils and rocky hillsides, and growers have to rely on irrigation water that is too salty or that contains too much chloride. One of the greatest challenges ahead will be to deal with increasingly scarce and poor quality water sources. To this end, individual growers will have to tailor their best management practices to accommodate their own orchard conditions (Table 1). Using an artificial intelligence approach to model complex environmental data, we are now developing an interactive online tool that will enable a grower to predict their fruit yields and leaf foliar element contents at different irrigation chloride and salinity levels. This interactive nature of the model will allow input from the grower using a slide bar to set different variables, and predict leaf chloride and fruit yields for specific soil types and irrigation water chemistries.

Table 1. Cutting edge future technologies will rely increasingly on optimizing soil biology process to improve soil quality and suppress disease. Computer assisted decision support tools are rapidly becoming available to provide guidance for irrigation timing, Future technology will provide additional biological and computer tools for salinity management.

Problem	Standard Practice	Future Technology Innovations
Poor soil physical and chemical properties (aeration, bulk density, poor structure, water infiltration)	Incorporate composts Application of mulches Addition of gypsum	Addition of biochar (charcoal amendments) Biostimulation of microbial activity, soil inoculants
Nutrient management	Programmed fertilizer application Use of organic amendments to increase CEC and provide plant nutrients.	Fertigation Phenology timing and computer models Online fertilizer calculators
Irrigation management	Visual assessment Tensiometers	Electronic soil water monitors, Automated controllers, CIMIS
Salinity	Leaching Rootstock selection	Separating out chloride and salinity interactions Computer models of factors controlling Cl uptake. Improved real time salinity monitoring for optimizing irrigation /leaching schedule.
Root rot	Mulch and gypsum Phosphonates Rootstock selection	Biocontrol Marker Gene Selection

Figure 2. Predicted leaf chloride content associated with different irrigation water chemistries. Note chloride is more toxic in low EC waters as compared to the same concentration in high EC water. Data modeled for Hass on Toro Canyon using ANN modeling of the 2008 CAC Salinity project dataset.



Leaching: http://www.ars.usda.gov/SP2UserFiles/Place/53102000/pdf_pubs/P2143.pdf
Leaching is essential to remove salts that have accumulated in the root zone. Accumulated salts reduce water availability to the plant, and cause ion toxicities from chloride and sodium that inhibit root growth. Calculations for the leaching requirement from the 1970s indicate that a 40% leaching fraction should be used. More recent studies indicate this is too high. The best management practice to guide soil leaching is the use of a salinity pen for real time onsite monitoring of salt accumulation in the soil.

TDS/Conductivity/Salinity Pen

If using irrigation water to prepare extract.

Collect Soil Cores
0-6", 6-12", 12-18"

Prepare 2:1 Water:Soil Extracts
Irrigation Water

Measure EC of irrigation water and
EC of Irrigation water + soil (2:1)

Calculation: (EC of irrigation water + soil)
- EC of irrigation water)

If difference > 0.35 dS/m, then time to leach.

Christensen & Giannini

GROWERS OF TOP QUALITY VEGETABLES

March 30, 2010

The Honorable Roger Briggs
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906

Re: Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands

Dear Executive Director Briggs,
I am the manager of Christensen & Giannini which has been located in Monterey County since the 1970's. We are growers of fresh vegetables; provide jobs to 50 employees and over 100 farm labor contractor employees. We cultivate over 3500 acres of farm land located in Region 3. I am also a Director with the Monterey County Farm Bureau Board and Co-Chair its Water Committee.

I have been following the progress of this Staff's renewal of the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands ("Ag Order") and am concerned with Staff's draft Ag Order.

As an involved outsider I am troubled by the change in attitude and direction of the Region 3 management. In December of 2008 management changed the staff personnel that the agricultural community had been successfully working with. From 2005 to December of 2008 Region 3 had been one of the most successful regions in California in terms of Agriculture, Environmental and Regulatory collaboration in water quality improvements. What happened in December of 2008? Something changed. The collaborative effort developing the next Ag Waiver fell apart. There was a change in Region 3 staff. The new staff came with an attitude of hostility towards agriculture and an unwillingness to learn about agriculture and the science behind our best management practices. I have to wonder if there was a hidden agenda. It seems that the new staff had already written a new Ag waiver and did not need, or want, to work in partnership with the Agricultural community.

The draft Ag Order will negatively impact my ability to continue producing fresh vegetables. The draft Ag Order contains many undefined and potentially highly impractical requirements for all agricultural operations.

1588 Moffett Street, Suite B, Salinas, CA 93905
(831) 449-2494 (Telephone) / (831) 449-4951 (Fax)

Of particular concern to my operation that I would like to address in the section below is **Nutrient Management.**

- The proposed Ag Order prohibits the practice of leaching to wash nitrate based salts from the soil profile. This is of particular concern because without the ability to leach salts out of the soil profile we will lose some of the most productive farm land in the world. Leaching salts out of the soil profile is a best management practice sited by the USDA NRCS and Universities across the world. How is it that the Region 3 Staff could contradict a practice used by scientist?

- The Ag Order calls for nitrate and salt discharges to groundwater to meet water quality standards. It is highly unlikely that farming will be able to continue with such a rigorous and impractical regulation in place. Growers have made significant progress in managing nitrate leaching. It is impossible to assume that they can fully reduce nitrate leaching to these water quality standards. In many cases the irrigation water being used exceeds the current water quality standards for nitrates. Our practices are reducing the Nitrate levels of this water once it leaves the field as tailwater.

- The proposed Ag Order prohibits foliar applications around rain events. Growers already use fertilizers judiciously and make conscientious decisions regarding the application of fertilizer. This is an irrational rule. It is impossible for a grower to predict rain events and maintain the necessary nutrient levels that crops need.

- The proposed Ag Order requires all growers to submit their fertilizer rates and application schedule. The Region 3 Staff may not feel that these types of records are proprietary in nature, but they are. Growers have worked with nutrient management specialist to develop and perfect their fertilizer rates and blends. This information cannot be made to the public.

- Growers and their nutrient management consultants are working well within the scope of scientific knowledge based on crop needs and soil types when making crop fertility decisions. It is unreasonable for Region 3 staff to dictate what a grower can and cannot do in terms of best on farm management decisions.

Of particular concern to my operation that I would like to address in the section below is **Pesticide Management.**

- The proposed Ag Order would create duplicative regulation since the Department of Pesticide Regulation (DPR) and Environmental Protection Agency (EPA) have current and pending restrictions addressing pesticide drift and runoff to protect surface water. Adding another layer of bureaucracy does not make sense. Pesticide use regulations should only be managed by the DPR and EPA.

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- Pesticide manufactures are creating softer chemistries for use as older pesticide chemistries are phased out. Many of the chemicals now registered for use are organic based and designed to achieve sustainability.
- California is already the most regulated State in the U.S. in terms of pesticide use. State License Pest Control Advisors (PCA) are utilized by growers to make pesticide recommendations. PCAs use Integrated Pest Management Guidelines developed by UC Davis when making decisions on when to spray and what chemical to use. It is irresponsible of the Region 3 Staff to think they could better determine how pesticides should be used.

Of particular concern to my operation that I would like to address in the section below is **Irrigation Management.**

- I am concerned that the current proposed Ag Order would prohibit growers from making practical and effective management decisions for their ranch. Christensen & Giannini has worked with the NRCS and implemented many practices over the years to reduce tailwater releases off of the ranches. Such practices include tailwater collection ponds, check damns, land leveling, and winter cover cropping. Over the last several years we have been successful in greatly reducing the amount of tailwater leaving our property.

- The proposed Ag Order stipulates that growers must eliminate all sediment, above water quality standards, from irrigation tailwater discharged from the property **or** eliminate all tailwater discharge completely with in three years. This type of hasty regulation is unfeasible for growers to attain. Over the last several years we have been able to greatly reduce sediment and tailwater coming off of our fields with the use of drip tape. We are constantly striving to expand our use of drip tape and feel that this will be a key practice for *our* operation in reducing tailwater. The implementation of drip tape comes at a financial cost. This is not a practice that will work for all growers; there is a wide variety of soil types and crops grown in this region and not all respond well to drip irrigation. To achieve the elimination of all tailwater in three years is financially impossible and it is not reasonable.

- We have worked with the UC Farm Advisors in our area to better understand the relationship between irrigation and nutrient management. The industry is already making great strides in reducing irrigation and nitrogen use to save money as well as reduce tailwater and nitrogen leaching. We have also worked with Fresh Express on their trials to reduce irrigation and nitrogen use in lettuce. These types of trial are invaluable for the agricultural industry. These trails demonstrate improved techniques for managing inputs and are backed by good science.

Of particular concern to my operation that I would like to address in the section below is **Water Quality Standards and Monitoring.**

- Under the proposed Ag Order there are requirements to monitor constituents in the water that are not typically found in Agriculture, such as heavy metals and mercury. This is very concerning to me because there is no rational given for this type of monitoring requirement and this would pose an unnecessary burden on the Agriculture community. These are constituents that Agriculture has no control over. It is irresponsible of the Region 3 Staff to require such monitoring.

- The proposed Ag Order has set numerical standards that are unattainable in a 4 year period. It mandates that growers must implement practices to eliminate nutrients and salts to meet water quality standards in irrigation runoff. The agriculture community has made progress towards water quality improvements over the last 5 years of the Ag Waiver. No one, including technical advisors, can say that we will be able to meet these proposed standards. The amount of tailwater runoff released into waterways has been reduced significantly. In many cases our tailwater nitrate levels are lower than the nitrate levels of the groundwater we are using for irrigation because of the practices growers already have in place. It is unreasonable for the Region 3 Staff to mandate growers meet such strict standards within the next 4 years.

- The proposed Ag Order wants nitrate and salt discharges to groundwater to meet water quality standards (drinking water standard) within six years and requires all growers (collectively) to submit a plan for groundwater monitoring (nitrate monitoring). The Monterey County Water Resource Agency (MCWRA) has been researching nitrates in ground water and working closely with the Agriculture community for many years. It is possible that we are seeing a reduction in the nitrate levels in ground water as we become better at managing our nitrate inputs. The continued partnership with MCWRA and the UC Extension Farm Advisors are key components to successful and measureable improvements in water quality. MCWRA has acknowledged that it may take up to 50 years to significantly reduce nitrate levels in ground water since it has taken over 50 years for current levels to reach this point.

- The proposed Ag Order strips away a grower's right to conduct confidential, voluntary on farm sampling by making it reportable and therefore public record. This is unacceptable. I am in support of voluntary, confidential sampling to help growers make informed and science-based determinations regarding which practices are effective to improve water quality.

Of particular concern to my operation that I would like to address in this section is **References to the Porter Cologne Act.**

- It is the Porter Cologne Act that gives State and Regional agencies the authority to regulate waters. I feel that the Region 3 Staff is overreaching and stretching the intent of the Porter Cologne Act.

- Section 13000 declares that water quality shall be regulated to the highest reasonable standards taking in to consideration all the demands being made to and on the waters

and the total values involved. The Region 3 Staff has not taken into consideration the detrimental economic impact that this Ag Order would have on the farming community of the Central Coast.

- Section 13141 calls for an estimate of costs of a regulatory program and identification of financing for such a program shall be included in any regional water quality control plan. The Regional Water Quality Control Board provided funding during the first Ag Waiver. I am concerned that this proposed Ag Order and its reporting requirements will discourage use of public funds for confidential sampling and trials that will have the ability to truly improve water quality.

- Section 13241 outlines factors to consider when establishing water quality objectives such as environmental characteristics of the hydrographic unit. The Region 3 Staff has not fully considered this in terms of ground water. The Region 3 Staff has written in the Ag Order language to regulate ground water. Ground water movement and quality is not fully understood by this staff. They are looking to regulated ground water in such a way that is impossible for growers to comply with.

- Section 13241 also calls for consideration of economics. Economic studies done by Agriculture Associations show that the proposed Ag Order could cost growers upwards of $250 per acre. There is absolutely no way farming could continue with that type of economic burden. With the loss of farming on the Central Coast there would be a significant loss of jobs and revenue to State and Local governments; not to mention the loss of reliable locally grown fruits and vegetables.

In closing I would like to stress that farmers on the Central Coast (and across the U.S.) are using the best scientific tools and information available to farm in the most sustainable way possible. We are doing all that we can within our knowledge and economic feasibility to continue to be good stewards of the land that we have farmed on for several generations. We would like to continue to farm and to pass this on to the next generation. The proposed Ag Oder as it stands would be devastating for the agricultural community and would succeed in shutting down many farm operations.

Sincerely,

Dirk Giannini

Dirk Giannini

Christensen & Giannini
Manager

1588 Moffett Street, Suite B, Salinas, CA 93905
(831) 449-2494 (Telephone) / (831) 449-4951 (Fax)

CC: Governor Arnold Schwarzenegger
Secretary A.G. Kawamura
California State Water Resources Control Board Members (Individually)
California State Water Resources Control Board Executive Director Dorothy Rice
California State Water Resources Control Staff Member Johnny Gonzales
Central Coast Regional Water Quality Control Board Members (Individually)
Central Coast Regional Water Quality Control Senior EG Angela Schroeter
Monterey County Board of Supervisors
Senator Abel Maldonado (District 15)
Senator Jeff Denham (District 12)
Senator Elaine Alquist (District 13)
Senator Joe Simitian (District 11)
Senator Ellen Corbett (District 10)
Assembly Member Anna Caballero (District 28)
Assembly Member Bill Monning (District 27)
Senator Barbara Boxer
Senator Dianne Feinstein
Congressman Sam Farr (District 17)
Congresswoman Anna Eschoo (District 14)
Congressman Jerry McNerney (District 11)
Congressman Mike Honda (District 15)

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STATE OF CALIFORNIA
CENTRAL COAST WATER BOARD
Received
APR 1 2010
895 Aerovista Place, Ste. 101
San Luis Obispo, CA 93401-7906

March 27, 2010

Chairman Jeffrey Young
Central Coast Regional Water Quality Control Board
895 Aerovista Place , Suite 101
San Luis Obispo , Ca. 93401 – 7906

Dear Chairman Young ,

The Acquistapace Family has been farming in the Santa Maria Valley for over 50 years. We currently farm over 900 acres of land producing approximately 2200 acres of vegetable crops . We grow broccoli , cauliflower , iceberg , and romaine lettuce. We employ 150 people and spend $14,000,000 each year in the Santa Maria Valley growing our vegetable crops .

This letter is written to summarize the economic impact of the recommendations made by your staff . It is best summarized by stating that they will put us out of business. Your following proposals are only a few of the recommendations that will be devastating to us . We ask that you work together with agriculture for the benefit of all .

1. Elimination of tile water : We currently farm 57 acres of land that is tiled . During 2002 , we put in 18 acres of tile because the water table had increased and was 10 inches below the surface . The land produced only 250 cartons per acre of iceberg lettuce . After tile , the water table is now at 48 inches and the land is now producing 900 cartons acre . Without tile , this land would not be farmable . The loss would be approximately $100,000 per year .

2. Elimination of leaching salts from the soil : During 2009 , our soil salinity level increased to an ECe of 4.5 after the first crop . This salinity level will reduce lettuce yields by 40 % and the quality of the lettuce may make it unharvestable. If we were not able to leach the soil , our income would be reduced by approximately $750,000 per year .

3. Application restrictions for pesticides : We currently maintain 20 foot buffers between crops and water bodies . With careful application , we believe this distance is sufficient . If the restrictions were adopted , we would lose approximately 8 acres of farm land .

4. Nutrient management by a Certified Crop Advisor : We have spent many years developing our fertilizer program . We have put in many trials and experiments. We use the results of soil , tissue , and water testing to make sure our program is

accurate . A Certified Crop Advisor would not have experience on our land and we do not need additional expenses . We are motivated and forced by economics to use the most efficient fertilizer program .

Without discussing the affects of your staff's proposals on tailwater , groundwater , monitoring , clearing of channels , riparian habitats , and groundwater , we are already out of business .

The challenges of farming continue to increase each year . The challenges are not from growing the crops , but from the increased burdens from all levels of an unfair regulating and taxing government. As we continue to face more foreign competition , we need a fair and just Central Coast Regional Water Quality Control Board . We support cooperation for improving water quality and support the Ag Waiver presented by the California Farm Bureau and the Santa Barbara and San Luis Obispo Counties Grower Shipper Association.

Sincerely ,

Jim Acquistapace
Acquistapace Farms , Inc.
1635 N Blosser Road
Santa Maria , Ca. 93458

Cc: Vice Chairman Russell Jeffries
John Hayashi
David Hodgin
Monica Hunter
Tom O'Malley
Gary Shallcross
Roger Briggs , Executive Officer
Angela Schroeter , Senior EG

3/31/10

Chairman Jeffrey Young

Central Coast Regional Water Quality Control Board

895 Aerovista Place, Suite 101

San Luis Obispo, CA 93401-7906

Dear Chairman Young,

My name is Tom Bengard. My family members and I are owners of a vegetable growing and shipping business in the Salinas Valley. We farm roughly 4100 acres of ground located mainly from Salinas south to Chular. I am writing you this letter to tell you that the 2010 draft ag waiver, if passed as it is currently written, will adversely impact our business and may make it almost impossible to farm some of our ranches in an economically viable manner.

There are many concerns I have with the requirements proposed in the draft ag waiver. The proposal that requires growers to develop and document a plan to asses a complex set of conditions associated with ground and surface water quality will require a huge amount of time and money to complete. Trying to fulfill these conditions on a farm-by-farm basis would be expensive and repetitive. It would also require growers to meet standards that are in all likelihood unattainable. The draft waiver seems to put all its focus on regulation without considering the feasibility of improvements in water quality. It also fails to consider the economic burden of the regulations it proposes. The business of farming is already very competitive and often runs on very thin profit margins. The added costs that would be imposed by the requirements in the draft waiver would very likely make it almost impossible to farm profitably.

I feel that agriculture has made many improvements in water quality since the passage of the first ag waiver in 2004. It seems like we have been given almost no credit for those improvements. The best way to continue to improve water quality would be for the CCRWQCB and ag to work cooperatively to develop a workable long term solution that is based on sound scientific data. Proposed solutions should also not be overly burdensome economically on farming operations. I hope you will give ample consideration to agriculture's proposal for revision to the current draft ag waiver.

Sincerely,

Tom A. Bengard

Bengard Ranch, LLC

P.O. Box 80090

Salinas, CA 93912

April 1, 2010

Board Members and Staff
c/o Angela Schroeter
Central Coast Water Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906

Re: Letter of Support for Comments Submitted by Deutsche Bank National Trust Company Regarding Preliminary Draft Report and Order For Regulation of Agricultural Discharges

Dear Board Members and Staff:

I am a tenant of property owned by the Deutsche Bank National Trust Company as trustee for the Eugene Rene LeRoy Trust (the "Trust"). By this letter I hereby express my support for the comment letter submitted by the Trust on April 1, 2010, regarding the Preliminary Report and Preliminary Draft Order for the Regulation of Discharges from Irrigated Lands (published by Board staff on February 1st, 2010).

Sincerely,

Craig Reade

Betteravia Farms / Bonipak Produce

CAROL E. ALLEN, CPA
P.O. BOX 298
GUADALUPE, CA 93434
805-343-0903
ALLEN@CDLLP.COM

STATE OF CALIFORNIA
CENTRAL COAST WATER BOARD
Received
APR 1 2010
895 Aerovista Place, Ste. 101
San Luis Obispo, CA 93401-7906

March 30, 2010

Chairman Jeffery Young
Central Coast Regional Water Quality Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7901

Dear Chairman Young:

I am a partner in the Lanini Family Rancho, LLC which rents 100 acres of Santa Maria farmland to Acquistapace Farms and I am highly concerned about the future of our local farmers to continue to be viable going concerns in an environment where regulations have become so restrictive to drive many of our small farming businesses to go out of business. I read a summary of your staff's recommendations for the renewal of the Agricultural Waiver. The recommendations related to record keeping, buffers for pesticide applications, leaching of salts, elimination of tile and tail water, excessive monitoring, riparian vegetation, and groundwater. I respectively request that you consider the proposals made by the California Farm Bureau and the Santa Barbara and San Luis Obispo Counties Grower Shipper Association.

I worked as an Assistant Controller for Texeira Farms, Inc. in 2000. The farming industry and the use of pesticides are already highly regulated and in my experience farmers are very careful to comply with regulations and laws that are already on the books. It was my understanding that if there was noncompliance the fines would be stringent as well.

I am also concerned that the continued concerns the farmers have regarding water issues and other environmental regulations actually has an adverse affect regarding true environmental improvements farmers could be making to their property instead of paying professionals to understand, interpret or lobby for or against a new law. For example, when the ground water in the Santa Maria Valley was finally resolved, Texeira Farms, Inc. was able to make a large capital outlay by putting in solar panels to minimize their electricity usage. They could not do this during the 1990's because of the impending legal water issues. I would presume to say that constant uncertainty would lead to unwillingness for farmers to make large capital outlays.

In addition, I am concerned that if our local farmers go out of business that we will no longer be getting our produce that is grown in the United States where we do have strong pesticide regulations. The regulatory board and the farmers have worked hand and hand in the past to produce good quality food. I worry about how food is going to be grown for my children and grandchildren.

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As a board working for the community, it is in our best interest to work with our farmers than work against them as they provide precious jobs, food and they enhance the local economy.

These recommendations, as they are currently written, will cause undue physical and financial hardships to farmers. The recommendations, if adopted, may cause many to go out of business.

Thank you,

Carol E. Allen

Sincerely,
Carol Allen, CPA

Cc:
Vice Chairman Russell Jeffries
John Hayashi
David Hodgin
Monica Hunter
Tom O'Malley
Gary Shallcross
Roger Briggs, Executive Officer
Angela Schroeter, Senior EG