



California Regional Water Quality Control Board Central Coast Region



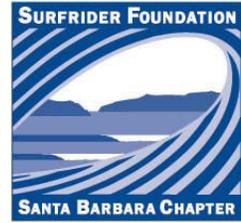
Linda S. Adams.
*Secretary for
Environmental Protection*

895 Aerovista Place, Suite 101, San Luis Obispo, California 93401-7906
(805) 549-3147 • Fax (805) 543-0397
<http://www.waterboards.ca.gov/centralcoast>

Arnold Schwarzenegger
Governor

Agricultural Order Renewal
Public Comments and Alternatives to
02/01/2010 Preliminary Draft Staff Recommendations
Group 5: Comment Letters

Comment ID	Affiliation	Date Received
U1	Environmental Defense Center, Monterey Coastkeeper, Ocean Conservancy, Santa Barbara Channelkeeper, SurfRider	4/1/2010
U2	Desal Response Group	4/1/2010
U3	Environmental Justice Coalition for Water	4/1/2010
U6	San Luis Obispo Coastkeeper	4/1/2010
U7	Santa Lucia Chapter of the Sierra Club	3/26/2010
U8	California Rural Legal Assistance, Inc.	4/1/2010
U9	Fort Ord Environmental Justice Network, Inc.	4/1/2010
U10	California Rural Legal Assistance Foundation, Inc.	4/1/2010
U11	Watershed Institute CSU Monterey Bay	4/1/2010
U12	Wild Farm Alliance	4/1/2010
L1	Pat Murray	3/29/2010
L2	Vincent T. Martinez	3/30/2010
L3	Laura Mills	3/30/2010
L4	Kathrine Durlay	3/31/2010
L5	Jim Boster	3/31/2010
L6	Ellen Trescott/ Deutsche Bank National Trust	4/1/2010



April 1, 2010

Regional Water Quality Control Board
Central Coast Region
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

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

Dear Board Members:

We offer these comments on the Draft Order implementing the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands (Draft Order). The Environmental Defense Center (EDC), Monterey Coastkeeper (MCK), Ocean Conservancy and Santa Barbara Channelkeeper (SBCK) support a conditional waiver program that contains robust regulatory provisions to ensure that our waters are protected from agricultural discharges. In general, we are very supportive of the direction that staff has taken. We offer additional suggestions to make the Draft Order even more protective of water quality, drinking water standards, associated public trust resources and the wider range of beneficial uses.

EDC is a non-profit public interest law firm that represents community organizations in environmental matters affecting California's south central coast. EDC protects and enhances the environment through education, advocacy and legal action.

MCK protects the water, watersheds and coastal ocean for the benefit of wildlife and human populations alike. MCK serves Monterey and Santa Cruz counties including the northern Salinas and Pajaro river basins. Monterey Coastkeeper is a program of The Otter Project.

Through science-based advocacy, research and public education, Ocean Conservancy informs, inspires and empowers people to speak and act for the oceans. Ocean Conservancy is headquartered in Washington, DC, and has offices in Florida, the Gulf of Mexico and the Pacific, including Alaska, with support from more than half a million members and volunteers.

Environmental Defense Center
906 Garden Street
Santa Barbara, CA 93101

Monterey Coastkeeper
475 Washington St., Suite A
Monterey, CA 93940

Santa Barbara Channelkeeper
714 Bond Avenue
Santa Barbara, CA 93103

Group 5 - U1
May 12, 2010 Workshop
Preliminary Draft Agricultural Order

SBCK is a non-profit environmental organization dedicated to protecting and restoring the Santa Barbara Channel and its watersheds through citizen action, education, field work and enforcement. Channelkeeper has nearly ten years of experience in conducting citizen water quality monitoring activities in agricultural watersheds.

EDC, the Ocean Conservancy and SBCK participated in the original stakeholder process which informed the existing Ag Order, and EDC, MCK and SBCK participated in the 2009 stakeholder process convened by staff to discuss the next iteration of the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands. We have also engaged other Central Coast public interest organizations in this process, including organizations that focus on water quality and related issues.

I. The 2008-2009 Stakeholder Process

Staff convened the Agricultural Advisory Panel monthly for more than a year, with fifteen individuals and organizations representing agricultural interests, a representative of the Monterey Bay National Marine Sanctuary, a representative from UC Davis, and representatives from four environmental organizations. Panel representatives were repeatedly encouraged to communicate with their constituent groups, and the newsletters published by Water Quality Preservation, Inc. and the various Farm Bureaus indicate that this outreach charge was taken seriously.

Although the Agriculture Advisory Panel did not reach consensus on a new Conditional Waiver, the Draft Order contains many of the elements discussed during 2009, including:

- A focus on dischargers with tailwater;
- A focus on dischargers in sub-watersheds with impairments;
- A common understanding of the value of individual monitoring (although there was no consensus on reporting of individual monitoring);
- Agreement that toxicity was more easily addressed than nitrate pollution;
- Agreement that nitrate groundwater pollution was a pervasive problem that would take more time to address;
- Agreement that growers did not want “one size fits all” management practices dictated to them; and
- Agreement that the RWQCB should actively enforce the Order.

II. The Existing Conditional Waiver

The Agricultural Advisory Panel reviewed the existing waiver on numerous occasions. Several themes consistently emerged.

Enforcement

A serious problem under the existing Conditional Waiver is a lack of adequate enforcement on both enrolled and non-enrolled growers. Currently, there exists no database of growers and the actual plots they farm.

The current program requires that Best Management Practices (BMPs) be implemented on-site to minimize the quantity and improve the quality of agricultural discharges. BMP implementation, however, varies from site to site by necessity depending on site-specific concerns. As a result, without defined water quality standards for discharges to surface and groundwater, it is impossible to determine whether or not agricultural operations are contributing to exceedances of basin plan objectives in surface water bodies.

The current program lacks standards and mechanisms pertaining to stormwater discharges. Crops such as strawberries are especially problematic, as ground is covered with impervious plastic during the rainy season which increases water volumes and velocities running through furrows and ditches – especially on steeper slopes. Grapes are also difficult as rows are planted with little regard to slope.

There is particularly a gap in the current program when it comes to stormwater discharges from fallow agricultural fields. BMPs are frequently not implemented when agricultural fields are not in operation. From a stormwater quality perspective, fallow agricultural fields present a similar risk to surface water quality as would a large construction site.

The existing Conditional Waiver expresses no vision for maintenance of vegetated buffer areas between farm fields and aquatic habits. With the current focus on ‘food safety’ there are documented cases of removal of riparian vegetation. The riparian corridor along our creeks and rivers is the ultimate vegetated buffer before runoff enters our open waters. These riparian areas offer many public benefits including improvement of water quality.

Water Quality Monitoring

While the Cooperative Monitoring Program (CMP) has produced useful data, a critical weakness in the existing Conditional Waiver is a lack of individual discharge monitoring. Ambient data produced through the CMP does allow the Regional Board and stakeholders to identify general long-term water quality trends; however the data does not allow us to identify specific sources.

Some methodologies are flawed. For example, the CMP currently collects dissolved oxygen measurements in the middle of the day. Due to diurnal fluctuations in dissolved oxygen, measurements collected in the middle of the day do not accurately diagnose potential anoxic conditions and are actually misleading. In order for such measurements to be valid they must occur during periods when dissolved oxygen can be expected to be at a minimum,

usually before dawn. Ideally, such measurements would be collected continuously throughout the day to capture the extent of diurnal fluctuation.

There is a widespread gap in the availability of groundwater quality data throughout the region. Groundwater is directly linked to surface water quality through surface-to-groundwater interactions and through tail water discharges. Without groundwater data, the Regional Board and stakeholders are unable to evaluate whether the current program is improving groundwater quality over time. Without groundwater data, it is also impossible for growers to make certain informed decisions regarding nutrient management.

Reporting

Water quality data that is received by Central Coast Region staff is not always complete or available in a useful format. Part of this problem stems from a lack of on-farm data. The information also has not been made generally available to the public.

Enrollment

While enrollment numbers are high, there are significant numbers of growers and operations that are not enrolled in the existing Conditional Waiver. For the program to be ultimately successful there must be a higher rate of participation. It is far too easy for a small number of bad actors to spoil an otherwise productive regulatory program. It is inaccurate to state that any percentage of the dischargers or any percentage of the land is enrolled. The reality is that we don't really know. Without better data, it is impossible to identify the gaps.

III. Water Quality Response to the Existing Conditional Waiver

Results from both the Cooperative Monitoring Program and CCAMP water quality testing are contained in the February 1, 2010 report, "Preliminary Draft Report on Water Quality Conditions in the Central Coast Region Related to Agricultural Discharges." These findings indicate:

- In the Central Coast Region, thousands of people are drinking water contaminated with unsafe levels of nitrate or are drinking replacement water to avoid drinking contaminated water. The cost to society for treating and/or avoiding polluted drinking water is estimated to be in the hundreds of millions of dollars.
- Some positive reductions in nitrate pollution are occurring in the Santa Barbara region; improvement is possible.
- Endemic aquatic organisms in large stretches of rivers in the region's major watersheds have been severely impaired or completely destroyed by severe toxicity from pesticides.
- Agricultural water quality impairments are widespread. For example, the 2008 Clean Water Act Section 303(d) List of Impaired Waterbodies for the Central Coast Region (Impaired Waters List) identified surface water impairments for approximately 167 water quality limited segments related to a variety of pollutants (for example, salts,

nutrients, pesticides/toxicity, and sediment/turbidity). Sixty percent of the surface water listings identified agriculture as one of the potential sources of water quality impairment.

- Nitrate concentrations in areas that are most heavily impacted are not improving in a significant or widespread manner and a number of sites in the lower Salinas and Santa Maria watersheds appear to have become more polluted over the past five years.

The Preliminary Draft Report on Water Quality Conditions finds that there is enough high quality data to make the above findings with statistical certainty. In short, we believe that conditions have not improved generally, and conditions in bad areas are becoming worse. We acknowledge that some areas – notably areas with less intense row crop agriculture – are showing some signs of water quality improvement.

IV. The Draft Order Improves Upon the Existing Conditional Waiver

In the Draft Order, water quality standards are enumerated for discharges to surface water and groundwater, including stormwater. This should clarify for some growers that the Conditional Waiver does in fact regulate discharges to surface and groundwater.

Timelines for compliance are explicit and liberal.

- Elimination of tailwater within two years if near impaired waterbody. Growers have been informed by their peers that elimination of tailwater was an essential practice and irrigation management and use of tailwater ponds is standard procedure for most growers.
- Elimination of toxicity within three years. Toxic discharge is illegal, and modern pesticides degrade quickly.
- Eliminate sediment runoff within three years. Reducing soil loss and erosion is a common and accepted practice.
- Eliminate nitrate and salt in runoff above water quality standards within four years.
- Eliminate discharge of nitrate and salt to groundwater above water quality standards within six years.

We agree with the new emphasis on clear standards and timelines, as opposed to an emphasis on training and education. The CCRWQCB is a regulatory agency; there are multiple agencies and organizations – such as the NRCS and UC Davis – offering practical advice to growers. The CCRWQCB should set standards and targets and let the growers decide how to meet them.

We very much appreciate the staff recommendation to include riparian protection, setbacks and vegetated buffers in the new Conditional Waiver. Riparian areas are literally the ultimate buffer and water quality treatment before farm runoff reaches our creeks and streams.

In areas with high levels of contaminants in groundwater where growers continue to discharge waste, the staff draft recognizes the authority of Water Code Section 13304 that states the RWQCB can require clean up, remediation or abatement. Pollution of groundwater by agriculture represents a transfer of costs from agricultural to urban users who share the groundwater. The Draft Order recognizes both the seriousness of the problem and the length of time needed to see improvement. The Draft Order requires growers to discharge below the drinking water standard within six years, and also recognizes that the drinking water standard is not entirely protective of aquatic life. The staff approach is reasonable and balanced.

The Draft Order includes new provisions that require “Individual Discharge Characterization Monitoring” and provisions related to groundwater monitoring. This recommendation is consistent with the Agricultural Panel recommendation that “every grower should know what is in their water.”

V. The Draft Order Should Be Even More Protective Of Water Quality And Associated Public Trust Resources

The citizens of the Central Coast deserve clean water, and the Regional Water Board is required by mandate to draft an Order that is protective of water quality and associated public trust resources.

[T]he health, safety and welfare of the people of the state requires that there be a statewide program for the control of the quality of all the waters of the state [and] the state must be prepared to exercise its full power and jurisdiction to protect the quality of waters in the state from degradation

[T]he state board and each regional board shall be the principle state agencies with primary responsibility for the coordination and control of water quality.

(Cal. Water Code § 13000, 13001.)

In particular, the Regional Water Board regulates both point and non-point sources of water pollution. “Any person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state” must file a report of the discharge to the Regional Water Board. (Cal. Water Code § 13260.) The Regional Water Board must then “prescribe requirements as to the nature of any proposed discharge [or] existing discharge.” The requirements shall take into consideration “beneficial uses to be protected,” “water quality objectives reasonably required for that purpose,” “other waste discharges,” and “the need to prevent nuisance.” (Cal. Water Code § 13263.)

Beneficial uses are described by the Central Coast Region Basin Plan and include: agricultural supply, cold fresh water habitat, preservation of biological habitats of special significance and migration of aquatic organisms. Surface water bodies that do not have

designated beneficial uses are protected for both “municipal and domestic water supply” and “protection of both recreation and aquatic life.”

Section 13269 provides that the requirements of Sections 13260 and 13263 “may be waived by the state board or a regional board as to a specific discharge or type of discharge if [it is determined] that the waiver is consistent with any applicable state or regional water quality control plan and is in the public interest.” According to Subsection 13269(a)(2), waivers may not exceed five years in duration and must be conditional. Conditions include “the performance of individual, group, or watershed based monitoring Monitoring results shall be made available to the public.”

Components that are new to the Draft Order include greater protections for aquatic/riparian habitats and requirements for individual monitoring. These conditions are necessary for the Draft Order to be consistent with the Central Coast Region Basin Plan and for the Order to be “in the public interest.”

Generally, stormwater protections should be much stronger. There is little difference between a massive construction site with earth laid bare and a fallow field. Mandatory best practices should be prescribed including: (1) cover cropping during fallow months; and (2) on slopes, rows should be laid out to reduce erosion and runoff velocities.

Many stakeholders agree that the Conditional Waiver should be better enforced. A second document should accompany this Order, realistically detailing staff’s plan to identify irrigated properties under production and how the owners or growers will be brought into compliance. The Enforcement Plan should detail how many farms will be inspected or audited each year, how quickly monitoring results will be made available to the public, how staff will handle the sheer volume of paperwork created from operations that are rotated annually, etc. The Enforcement Plan should have transparent, measurable goals.

Entities that guide and/or represent the Conditional Waiver should be inclusive and transparent. For example, the Agricultural Monitoring Committee should be opened to non-industry stakeholders, such as conservation organizations and scientists, in order to preserve the integrity of the Order and ensure its success.

In addition, the following changes should be made to the Staff Recommendations for the Agricultural Order:

- Attachment 3, Pages 23 and 34: Erosion and Sedimentation. We commend the SIP program for the advances it has made in reducing irrigation demands and pesticide use, and we anticipate that other commodity groups will follow SIP’s lead. However, we are not aware of any SIP requirement to reduce erosion and sediment in stormwater. Vineyards can be found on steep terrain and can have rows aligned in a way that increases stormwater runoff velocities. Knowing that some commodity groups are likely to seek similar “low-risk” designations and exemptions, we would suggest that the definition of low-risk be amended to include storm water protections

including alignment of rows to minimize runoff velocities and use of cover crops to hold soils in place.

- Attachment 3, Page 34: “Sampling.” We are concerned that within the definition of monitoring the word “sampling” is occasionally used. It is our understanding that sampling results do not necessarily need to be reported while “monitoring” results must be reported and disclosed. Generally, all monitoring should be disclosed (except individual reporting postponed under Section 16). The term “monitoring” should be used consistently.
- Attachment 3, Page 39: “Waters of the State.” We believe there would be value added to bringing consistency to the many definitions of streams and waterways. For example, the National Marine Fisheries Service (http://www.nmfs.noaa.gov/pr/pdfs/pesticide_biop.pdf, page 393) definition of salmonid habitat contains helpful elements that should be incorporated into the Conditional Waiver: “[F]reshwater habitats include intermittent streams and other temporally connected habitats to salmonid-bearing waters. Freshwater habitats also include all known types of off-channel habitats as well as drainages, ditches, and other manmade conveyances.” (Emphasis added).
- Attachment 3, Page 54: “Collective Progress.” The proposed Terms and Conditions (Attachment B), Part A, Section 16 states that, “The Executive Officer may postpone individual reporting of Individual Discharge Monitoring data . . . in cases where all Discharges in a watershed or sub-watershed are achieving collective progress towards compliance and meeting milestones per the defined time schedule.” Regional Board staff needs to specifically define what criteria will be used to determine whether “collective progress” is being achieved.
- Attachment 3, Page 63: Pesticide Runoff/Toxicity. The two year timeline is too liberal. The pesticides known to be causing toxicity impairments degrade in weeks or a few months. We believe that with good pesticide practices, toxicity can be eliminated very quickly. In accordance with law, discharge of toxic substances should be prohibited.
- Attachment 3, Page 68: Nurseries. We agree with others who have already pointed out that the current text should be edited to allow rainwater to fall on containerized plants. We are confident this obvious oversight will be corrected.
- Attachment 3, Page 69 at Section 77: Public Disclosure. Similar to our comment on monitoring, we are concerned that “sampling” may not require public disclosure. We suggest that either the term monitoring be used or the phrase “public disclosure” be incorporated into this section.
- Attachment 3, Surface Water Quality Objectives, Page 43. We are concerned that water quality objectives for biostimulatory substances to protect all surface waters do

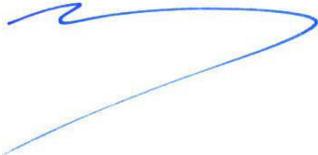
not apply to agricultural discharges but only to receiving waters as indicated by the lack of a double asterisk (**) in table 1A. While the 10 mg/L NO₃-N objective does apply to discharges, we believe it is extremely likely most existing beneficial use impairments related to nitrate concentrations will continue under this scenario. In place of a strict numeric discharge limit of 1 mg/L NO₃-N to allow for situations in which the volume of tail water has been reduced to a minimal level so that discharges 1>10 mg/L do not impact beneficial uses of receiving waters, we recommend that the Regional Board develop a stream-flow weighted discharge objective.

- Attachment 3, Surface Water Quality Objectives, Page 42. We are similarly concerned that water quality objectives for potentially toxic substances including organic chemicals, chromium, cadmium, copper, lead, mercury, nickel, and zinc do not apply to agricultural discharges but only to receiving waters. We find it difficult to imagine a scenario where discharges exceeding objectives for these parameters would not be impairing or potentially impairing beneficial uses, therefore requiring elimination, treatment, or control per the language in Attachment 1, Page 23.
- Attachment 4, Page 1: E. Coli Data. The Regional Board should take care to ensure that E. coli data collected by the growers is reported as E. coli data, and not “Fecal Coliform” data. The two parameters are not synonymous and should not be used interchangeably. Further, E. coli data submitted to the regional board to fulfill Attachment 4 monitoring requirements should not be compared to Basin Plan objectives for Fecal Coliform (listed in Attachment 3) to determine compliance. This inappropriate and misleading comparison has been commonly made by the Regional Board, permittees, and dischargers, and the Board should take this opportunity to provide clarity and consistency to one of its regulatory programs.
- Attachment 4, Page 1: Dissolved Oxygen Data. The Board needs to insert an additional timing condition to the requirement to collect dissolved oxygen data. Due to diurnal fluctuations in dissolved oxygen, measurements collected in the middle of the day do not accurately diagnose potential anoxic conditions and are actually misleading. In order for such measurements to be valid they must occur during periods when dissolved oxygen can be expected to be at a minimum, usually before dawn. Since nutrient impairments are one of the major issues facing water bodies throughout our region, the monitoring program needs to collect information that will determine whether or not eutrophication from nutrient enrichment is occurring. This is a major flaw in the current monitoring program that needs to be corrected by this updated Order.

Conclusion

We appreciate this opportunity to comment on the Draft Order. If you have any questions, please do not hesitate to contact any of our organizations.

Sincerely,



Nathan G. Alley
Staff Attorney
Environmental Defense Center



Steve Shimek
Executive Director
Monterey Coastkeeper



Kaitilin Gaffney
Director, Pacific Ecosystem Protection
Ocean Conservancy



Ben Pitterle
Director of Watershed Programs
Santa Barbara Channelkeeper

/s/

Sandy Lejeune
Chair
Surfrider Foundation, Santa Barbara Chapter



April 1, 2010

Angela Schroeter/ Howard Kolb
Central Coast Regional Water Quality Control Board
E-mail: aschroeter@waterboards.ca.gov, hkolb@waterboards.ca.gov

Subject: **SUPPORT** for the Central Coast Regional Board's Preliminary Draft Recommendations for an Updated Agricultural Order

Dear Regional Water Quality Control Board Members:

Thank you for the opportunity to provide public comments on the Central Coast's Preliminary Draft Recommendations for an Updated Agricultural Order. On behalf of the Desal Response Group, we applaud your prioritization of this critical program that can protect and restore the quality of the Central Coast region's water. According to the Draft Report, "agricultural discharges (primarily due to contaminated irrigation runoff and percolation to groundwater) are a major cause of water quality impairment" in the region (pg 4).

Groundwater contamination from nitrates severely impacts domestic drinking water supplies in the Central Coast Region. Domestic wells (wells supplying one to a few households) are typically shallower than public supply wells. Based on the limited data available, the number of domestic wells that exceed the nitrate drinking water standard is likely in the range of hundreds to thousands in the Central Coast Region.

In Monterey County, 25 percent of 352 wells sampled (88 wells) had concentrations above the nitrate drinking water standard in the northern Salinas Valley. In portions of the Salinas Valley, up to approximately 50 percent of surveyed wells had concentrations above the nitrate drinking water standard, with average concentrations nearly double the drinking water standard and the highest concentration of nitrate approximately nine times the drinking water standard. Nitrate exceedences in the Gilroy-Hollister and Pajaro groundwater basins are similar, as reported by local agencies/districts for those basins.

We agree with the Draft Report's analysis that the "current Conditional Waiver lacks clarity and focus on water quality requirements and does not include adequate compliance and verification monitoring... at a minimum, agricultural discharges continue to severely impact water quality in most receiving waters" (pg 19). We strongly support the Board's initiative to create an Updated Agricultural Order, and urge that the Board take **timely action** to prevent further degradation of the Region's water and to restore the water from the pollution that has already occurred. **Specifically**, we strongly support the Water Board's intent to directly address the discharges of

waste from irrigated lands, **including providing compliance schedules to reduce nutrient discharges to surface waters and groundwater**, reducing toxic discharges of agricultural pesticides to surface waters and groundwater; reducing sediment discharges from agricultural lands and protecting aquatic habitat.

The Draft Report states that the Board *may require* Dischargers to conduct sampling of private domestic wells in or near agricultural areas with high nitrates in groundwater, submit technical reports and also *may require* Dischargers to provide alternative water supplies or replacement water service to affected public water suppliers or private well owners. **We strongly support the Staff's recommendation in this regard and, in fact, urge you to require this and mandate it in your final report**, so that we may begin to provide disadvantaged communities currently without safe drinking water access to this basic resource.

We strongly support the Staff's recommendation to include mandatory Best Management Practices (BMPs) in irrigation management, pesticide runoff, toxicity elimination, and nutrient and salt management.

We strongly support the Staff's recommendation to put in place stringent monitoring and reporting systems for individual discharges, and specific monitoring systems to evaluate groundwater quality and protection in agricultural areas. Without being able to locate nutrient loading, it is not possible to effectively reduce contamination. Localized monitoring is essential.

We also strongly encourage the Water Board to put in place non-compliance fines in cases when agricultural dischargers violate these conditions. As we have seen in the past Conditional Waiver, voluntary mechanisms to control agricultural discharges are not sufficient. The Water Board must use its' regulatory authority to regulate discharge, and this includes application of non-compliance fees.

Lack of surface and groundwater protections have gone on too long at the expense of community and watershed health. Hence, we applaud your initial efforts strongly urge you to take timely action to put in place stringent requirements for irrigated agriculture discharges so that California's water is truly protected protected and restored.

With Sincere Thanks,



Conner Everts
Co- Chair of Desal Response Group
2515 Wilshire Blvd
Santa Monica, CA 90403
E-mail: connere@west.net



To,
Angela Schroeter/ Howard Kolb
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA. 93401-7906
Submitted via E-mail: aschroeter@waterboards.ca.gov, hkolb@waterboards.ca.gov

Subject: SUPPORT for the Central Coast Regional Water Quality Control Board's Preliminary Draft Recommendations for an Updated Agricultural Order

Dear Regional Water Quality Control Board Members,

Thank you for the opportunity to provide public comments on the Central Coast Water Board's Preliminary Draft Recommendations for an Updated Agricultural Order. On behalf of the Environmental Justice Coalition for Water, we applaud your prioritization of this critical program that can protect and restore the quality of the Central Coast's precious water resources.

The Environmental Justice Coalition for Water (EJCW) is a statewide coalition of more than 70 community-based and non-profit organizations working to achieve water justice in California. Water justice is the ability of all communities to access safe, affordable water resources for all beneficial uses. Most pertinent to the Board's efforts, we work with disadvantaged communities struggling to gain access to water for basic human needs like drinking, bathing, and cooking. These communities are often forced to drink contaminated groundwater, or to pay high rates for alternate water because their drinking water is non-potable. Implementation of the preliminary staff report would provide these communities with another tool to help them to achieve access.

EJCW applauds the Regional Board's efforts and we urge you to expedite the implementation, especially of those measures that will do the most to assist communities currently without access to safe, affordable water.

We will also attend the May 12, 2010 workshop in San Luis Obispo along with community members and we request you for 15 minutes of time to speak to the Board to support the Staff recommendations.

Group 5 - U3
May 12, 2010 Workshop
Preliminary Draft Agricultural Order

Agricultural Discharges and Contaminated Groundwater

The staff report reflects a refreshing focus on actual outcomes as opposed to regulation for the sake of it. We applaud the staff approach that re-focuses attention on how/whether the regulatory regime is actually producing the desired outcomes, in this case, an improvement in both ground and surface water quality.

After decades without regulation, groundwater contamination from nitrates severely impacts domestic drinking water supplies in the Central Coast Region. As referenced in the staff report, a Monterey County report concluded that about 50% of the surveyed public supply wells had concentrations well above the state limit for nitrates. In addition, according to the staff report local water agencies in the Gilroy/Hollister and Pajaro Valley areas similarly report public supply wells violating the nitrate standard.

Although there is no consistent data source, it is reasonable to assume that the incidence of contamination in domestic wells (wells supplying one to a few households) will be even higher since these typically draw from shallower aquifers than public supply wells. Based on the limited data available, the number of domestic wells that exceed the nitrate drinking water standard is likely in the range of hundreds to thousands in the Central Coast Region.

For small, disadvantaged communities, the costs of drilling a new well or paying for expensive treatment is beyond their capacity and they can be left entirely without safe drinking water. Even for those communities lucky enough to get state or federal grant dollars to drill a new well, this is only a temporary solution. As the nitrates travel throughout the aquifer their new well is likely to become nitrate-contaminated over time. For those who receive assistance to install a treatment system, the operations and maintenance costs are an undue burden for community members.

Protecting and restoring water quality and supporting agricultural benefits are both essential to the region and must go hand-in-hand. Water can be protected and restored while Central Coast farms thrive, but one cannot continue to thrive at the expense of the other. A large number of residents in the Salinas Valley, for instance, who are forced to drink contaminated water, are farmworkers themselves. They work to feed the nation and the world while they are forced to serve their families with nitrate-laced water. The entire region, including agriculture, will benefit from the provision of safe, affordable water to all residents. The staff recommendations provide the necessary tools to make this happen.

Support for the Staff Recommendations

We strongly support the Water Board's intent to directly address the discharges of waste from irrigated lands, **including providing compliance schedules to reduce nutrient discharges to surface waters and groundwater**, reducing toxic discharges of agricultural pesticides to surface waters and groundwater; reducing sediment discharges from agricultural lands and protecting aquatic habitat.

Group 5 - U3
May 12, 2010 Workshop
Preliminary Draft Agricultural Order

We strongly support the following elements of the Staff recommendations:

1. **Mandatory Best Management Practices (BMPs)** in irrigation management, pesticide runoff, toxicity elimination, and nutrient and salt management must be included.
2. The Salinas, Pajaro and Santa Maria watersheds must be especially addressed as priority intensive agricultural areas (Attach 3, pg 22).
3. Agricultural discharges percolating into groundwater must be of the quality to support all beneficial uses of the water (Attach 3, pg 52).
4. **Dischargers must develop a Farm Plan**, where they must identify their water quality impacts, the management measures to implement, schedule for implementation and verification monitoring to comply with the order. We also agree that dischargers must update their Farm Plans at least annually along with monitoring results (Attach 3, pg 52-53).
5. **Dischargers must conduct specific monitoring and reporting** including individual discharge characterization monitoring, individual discharge monitoring, watershed monitoring and any additional monitoring needed. We also agree that dischargers must submit a plan to monitor groundwater quality in their areas (Attach 3, pg 53). Without being able to locate nutrient loading, it is not possible to effectively reduce contamination. Localized monitoring is essential.
6. There must be a **strict time schedule for compliance**, for the following pollutants to be eliminated from irrigation runoff or treated/ controlled to meet water quality standards (Report, pg 25).

Above all, we strongly support the Water Board's enforcement of these conditions in a manner similar to enforcement of Waste Discharge Requirements (WDRs), and terminating coverage under this program if a discharger fails to comply with these conditions (Attach 3, pg 23).

Recommendations for Effective Implementation

The current draft order indicates the Executive Office "may require" dischargers to conduct sampling of private domestic wells and "may require" that alternative water be supplied to any impacted community water systems (Attach 3, pg 69). We strongly recommend that **dischargers be required to conduct sampling** of private domestic wells in or near agricultural areas with high nitrates in groundwater, submit technical reports and also that **dischargers be required to provide alternative water supplies** or replacement. Leaving this critical piece at the discretion of the Executive Officer (EO) puts an undue political burden on the EO. Instead, the Board should adopt clear criteria that trigger the requirement.

We also strongly encourage the Water Board to put in place non-compliance fines in cases where agricultural dischargers violate these conditions. As we have seen in the past Conditional Waiver, voluntary mechanisms to control agricultural discharges are not sufficient. Currently, there are few consequences for non-compliance and few resources to support staff monitoring of compliance.

Group 5 - U3
May 12, 2010 Workshop
Preliminary Draft Agricultural Order

We encourage that the remaining 10% of the Central Coast Region's total irrigated acreage that is not currently enrolled in the Conditional Waiver program should be enrolled so that the entire region's water may be protected.

We do not agree with the recommendation that the Executive Officer may postpone individual discharge reporting in cases where all dischargers in a watershed or sub-watershed are achieving collective progress towards compliance (Attach 3, pg 54). Joint monitoring will not provide the Board with enough information and data regarding improvements in water quality, nor will it allow the Board to find those dischargers not in compliance.

Lack of surface and groundwater protections have gone on too long at the expense of community and watershed health. Hence, we applaud your initial efforts and strongly urge you to take timely action to put in place stringent requirements for irrigated agriculture discharges so that California's water is truly protected and restored.

Sincerely,



Dipti Bhatnagar
Northern California Program Director
Environmental Justice Coalition for Water
1201 Martin Luther King Jr. Way,
Oakland, CA 94612

Group 5 - U3
May 12, 2010 Workshop
Preliminary Draft Agricultural Order



EPI-Center, 1013 Monterey Street, Suite 202, San Luis Obispo, CA 93401

Phone: 805-781-9932 • Fax: 805-781-9384

San Luis Obispo **COASTKEEPER**[®]

March 31, 2010

Regional Water Quality Control Board
Central Coast Water Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

Subject: Preliminary Staff Recommendations for Regulation of Agricultural Discharges

Dear Chair Young and Honorable Board Members,

San Luis Obispo **COASTKEEPER**[®], a program of Environment in the Public Interest, is dedicated to the protection of water quality, watershed, and coastal regulations in San Luis Obispo and northern Santa Barbara Counties. On behalf of our 800 Central Coast supporters, I wish to submit the following comments regarding the Conditional Agricultural Waiver currently under consideration by your Board.

SLO Coastkeeper applauds the effort by many of the Region 3 irrigated agriculture operations to cooperate with the 2004 Ag Waiver as demonstrated by enrollment in the program as well as participation in the Agricultural Advisory Panel. However, the data provided through the Cooperative Monitoring Program and the Central Coast Ambient Monitoring Program as presented in the Preliminary Staff Report demonstrate that the 2004 Conditional Waiver has done little to successfully protect the beneficial uses of Central Coast waters.

Therefore, SLO Coastkeeper supports the more protective recommendations and proposed conditions Staff has included in the Draft Order for the following reasons:

- The proposed program has a high likelihood of achieving the water quality requirements outlined.
- Proposed timelines are achievable and clear.



San Luis Obispo **COASTKEEPER**[®] a Program of Environment in the Public Interest is a trademark and service mark of **WATERKEEPER**[®] Alliance, Inc. and is licensed for use herein.

Group 5 - U6
May 12, 2010 Workshop
Preliminary Draft Agricultural Order

- Required monitoring provides sufficient feedback to inform your Board, ag operators, and the public about the effectiveness of management practices. SLO Coastkeeper urges that monitoring data be required to be made available in a timely manner for public review.
- Required monitoring and reporting provides clear measures of success/failure and data to support a chain of due process should enforcement action be necessary.

Sincerely,



Gordon Hensley,
San Luis Obispo Coastkeeper



San Luis Obispo COASTKEEPER® a Program of Environment in the Public Interest is a trademark and service mark of WATERKEEPER® Alliance, Inc. and is licensed for use herein.

From: "Santa Lucia Chapter of the Sierra Club" <sierraclub8@gmail.com>
To: <aschroeter@waterboards.ca.gov>
Date: 3/26/2010 7:39 PM
Subject: comments on Ag Order to control discharges from irrigated lands

TO: Angela Schroeter

Agricultural Regulatory Program Manager

California Regional Water Quality Control Board Central Coast Region

RE: Preliminary staff recommendations for an Agricultural Order to control discharges from irrigated lands

Following are the comments of the Santa Lucia Chapter of the Sierra Club, representing Sierra Club members in San Luis Obispo County, on the preliminary draft Agricultural Order.

We share staff's concerns over water quality conditions in the Central Coast region and appreciate the opportunity to discuss the means by which the Water Board could most effectively protect beneficial uses of our waters. As a means of controlling agricultural discharges and improving water quality - specifically to meet the goals of reducing unsafe nitrate levels in surface and groundwater and protecting aquatic habitat from degradation - we strongly commend to the Board's attention the practice of supplying non-denitrified treated effluent from wastewater treatment operations to local growers in water recycling programs.

The Preliminary Draft Agricultural Order notes, at 122, that "Agricultural studies document the common over-application of fertilizers, and fertilizer and animal manure are the most dominant and widespread nitrate sources to groundwater," but does not mandate the use of non-denitrified effluent in water recycling programs for agricultural reuse.

Water reuse consultant Dr. Bahman Sheikh, in describing the Monterey Regional Water Pollution Control Agency recycling program that he designed and oversees, writes: "Farmers and landscape managers normally apply significant quantities of nitrogen (and other nutrients) to the soil before and during growth stages of the plants they cultivate. In switching to recycled water for irrigation, they are usually advised to cut back on their N application rates to adjust for the amounts of N arriving in irrigation water.. Therefore, any treatment processes that result in nitrogen removal would actually culminate in larger additional chemical fertilizer application by the farm/landscape operator." (Technical Memo: Nitrogen (N) in Recycled Water, Dr. Bahman Sheikh, Feb. 5, 2010.)

The Monterey program created a recycling regime in which 12,000 acres of vegetables are irrigated with 13,000 acre-ft per year of recycled water. This amounts to about 1.1 acre-ft per acre on average, resulting in application of about 105 pounds of N per acre. Compared with recommended N application rates for crops grown in Monterey County, nitrogen in recycled water may comprise a range of up to one-third of the fertilizer requirements of the crops grown. That is why farmers in this zone report having cut back their fertilizer applications up to half of what they used to apply prior to switching to recycled water use.

The Pajaro Valley Water Management Agency's recycling program serves an area of 5,000 acres growing artichokes, broccoli, cauliflower, head and leaf lettuce, strawberries, celery, fennel, Brussels sprouts, radicchio, etc. The agency notes on its website that the effluent it provides to growers, in addition to being "highly disinfected, as well as similar in appearance and safe like potable water" also "has the added benefit of nutrients that are useful to plants, making it possible for farmers to use less commercial fertilizers."

The application of chemical fertilizers in inherently uneven concentrations results in a greater chance for soluble N compounds to be carried by irrigation water and rain to deeper, less available, depths than is the case with nitrogen delivered via recycled water.

Per Dr. Sheikh, chemical fertilizers are generally applied in broadcast or side-dress applications, or with irrigation water at one or several discrete times during the growth stages of the crop. Nitrogen arriving in recycled water, on the other hand, is applied gradually and systematically with every irrigation, and the plant roots are exposed to the nutrients at a relatively constant, intimate, and available way. The ready availability of N compounds in recycled water at each irrigation makes them more likely to be uptaken with a higher efficiency than the N compounds applied as chemical fertilizer. Thus, even a partial substitution of recycled water nutrients for commercial fertilizers would increase overall nitrogen use efficiency and decrease loss to groundwater.

Wastewater treatment plants can readily implement side-stream treatment to produce non-denitrified effluent in any desired quantity as a percentage of total treated effluent, should a treatment plant be required to denitrify some portion of effluent for other disposal methods to meet DPH requirements, in addition to water recycling through agricultural exchange or reuse programs.

In summary, there is no environmental, public health or other justification

for nitrogen reduction or removal from the recycled water that will be utilized for irrigation of farm fields at an agronomic rate of water application to the soil. Such removal would trigger higher chemical fertilizer application by farmers, negating any conceivable benefit from N removal from the effluent.

The Regional Water Board is in a position to implement an Agricultural Order that could potentially reduce by half the amount of synthetic fertilizers used by growers, with a corresponding reduction in runoff and overload of nitrates in watersheds and aquatic habitat, by way of a requirement to use non-denitrified effluent for local agricultural operations when these operations are served by current and future water recycling programs.

The Regional Water Board should include in the Agricultural Regulatory Program Implementation and the Management Practice Implementation Requirements of the Agricultural Order a provision for the production of non-denitrified effluent at current and future planned wastewater treatment plants and for plant upgrades in the region as a component of programs producing recycled water for agricultural reuse.

Thank you for the opportunity to comment on the draft Agricultural Order.

For the Santa Lucia Chapter,

Andrew Christie

Chapter Director



CALIFORNIA RURAL LEGAL ASSISTANCE, Inc.

April 1, 2010

Salinas Office
3 Williams Road
Salinas, CA 93905
(831) 757-5221
(831) 757-6212 (fax)
www.crla.org

Jose R. Padilla, Esq.
Executive Director

Luis C. Jaramillo, Esq.
Deputy Director

Migrant Unit

Michael Meuter
*Migrant Unit Director/Director
of Litigation, Advocacy, and Training*

Michael I. Marsh
Directing Attorney

Lisel Holdenried
Agricultural Worker Health Project - Attorney

Lisa Cisneros
Proyecto Poderoso - Director/Attorney

Maria Guadalupe Figueroa
*Farm Worker Sexual Violence Technical
Assistance Program - Director*

Jesus Lopez
Community Worker

Mariano Alvarez
*Indigenous Farm Worker Project -
Community Worker*

Angeles Jimenez
*Proyecto Poderoso -
Community Worker*

Irma H. Ramirez
Administrative Legal Secretary

Ana Paz-Rangel
Administrative Assistant/Legal Secretary

Maria Elena Hernandez
Legal Secretary

Basic Unit

Teri Scarlett
Directing Attorney

Sarah Martinez
Staff Attorney

Elena Dineen
Staff Attorney

Hector De La Rosa
Community Worker

Victoria Canepa
Community Worker

Maria E. Serena
Administrative Legal Secretary

Central Office
631 Howard St., #300
San Francisco, CA 94105
Telephone (415) 777-2752

Angela Schroeter/ Howard Kolb
Central Coast Regional Water Quality Control Board
E-mail: aschroeter@waterboards.ca.gov, hkolb@waterboards.ca.gov

Subject: SUPPORT for the Central Coast Regional Board's Preliminary Draft Recommendations for an Updated Agricultural Order

Dear Regional Water Quality Control Board Members:

Thank you for the opportunity to provide public comments on the Central Coast's Preliminary Draft Recommendations for an Updated Agricultural Order. On behalf of California Rural Legal Assistance, Inc.'s Community Equity Initiative, we applaud your prioritization of this critical program that can protect and restore the quality of the Central Coast region's water. According to the Draft Report, "agricultural discharges (primarily due to contaminated irrigation runoff and percolation to groundwater) are a major cause of water quality impairment" in the region (pg 4).

Groundwater contamination from nitrates severely impacts domestic drinking water supplies in the Central Coast Region. Domestic wells (wells supplying one to a few households) are typically shallower than public supply wells. Based on the limited data available, the number of domestic wells that exceed the nitrate drinking water standard is likely in the range of hundreds to thousands in the Central Coast Region.

In Monterey County, 25 percent of 352 wells sampled (88 wells) had concentrations above the nitrate drinking water standard in the northern Salinas Valley. In portions of the Salinas Valley, up to approximately 50 percent of surveyed wells had concentrations above the nitrate drinking water standard, with average concentrations nearly double the drinking water standard and the highest concentration of nitrate approximately nine times the drinking water standard. Nitrate exceedences in the Gilroy-Hollister and Pajaro groundwater basins are similar, as reported by local agencies/districts for those basins.

Unless there are efforts made to clean-up the nitrates in the shallower aquifers it is likely that the nitrates will force deeper well drilling over time. The community of Morro Bay is a case in point. They have detected nitrates in their wells and have been in discussions with local irrigators to try to prevent further contamination of their community well.

We agree with the Draft Report's analysis that the "current Conditional Waiver lacks clarity and focus on water quality requirements and does not include adequate compliance and verification monitoring... at a minimum, agricultural discharges continue to severely impact water quality in most receiving waters" (pg 19). We strongly support the Board's initiative to create an Updated Agricultural Order, and urge that the Board take **timely action** to prevent further degradation of the Region's water and to restore the water from the pollution that has already occurred. **Specifically**, we strongly support the Water Board's intent to directly address the discharges of waste from irrigated lands, **including providing compliance schedules to reduce nutrient discharges to surface waters and groundwater**, reducing toxic discharges of agricultural pesticides to surface waters and groundwater; reducing sediment discharges from agricultural lands and protecting aquatic habitat.

The Draft Report states that the Board *may require* Dischargers to conduct sampling of private domestic wells in or near agricultural areas with high nitrates in groundwater, submit technical reports and also *may require* Dischargers to provide alternative water supplies or replacement water service to affected public water suppliers or private well owners. **We strongly support the Staff's recommendation in this regard and, in fact, urge you to require this and mandate it in your final report**, so that we may begin to provide disadvantaged communities currently without safe drinking water access to this basic resource.

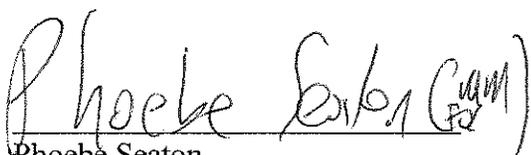
We strongly support the Staff's recommendation to include mandatory Best Management Practices (BMPs) in irrigation management, pesticide runoff, toxicity elimination, and nutrient and salt management.

We strongly support the Staff's recommendation to put in place stringent monitoring and reporting systems for individual discharges, and specific monitoring systems to evaluate groundwater quality and protection in agricultural areas. Without being able to locate nutrient loading, it is not possible to effectively reduce contamination. Localized monitoring is essential.

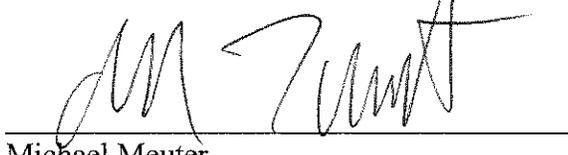
We also strongly encourage the Water Board to put in place non-compliance fines in cases when agricultural dischargers violate these conditions. As we have seen in the past Conditional Waiver, voluntary mechanisms to control agricultural discharges are not sufficient. The Water Board must use its' regulatory authority to regulate discharge, and this includes application of non-compliance fees.

Lack of surface and groundwater protections have gone on too long at the expense of community and watershed health. Hence, we applaud your initial efforts strongly urge you to take timely action to put in place stringent requirements for irrigated agriculture discharges so that California's water is truly protected protected and restored.

Sincerely,



Phoebe Seaton
Community Equity Initiative
Program Director



Michael Meuter
Director of Litigation, Advocacy and Training

Agricultural Order for safe water
Fort Ord Environmental Justice Network, Inc.

LeVonne Stone, Executive Director

335 El Dorado Street, Suite 10D, Monterey CA 93940

Mailing Address - P.O. Box 361 Marina, CA 93933

Telephone: (831) 582-0803 • Email: ejustice@mbay.net • Website: www.foejn.org

April 1, 2010

Angela Schroeter/Howard Kolb

Central Coast Regional Water Quality Control Board

Subject: Support for the Central Coast Regional Board's Preliminary Draft Recommendations for an Updated Agricultural Order

Dear Regional Water Quality Control Board Members:

The Fort Ord Environmental Justice Network is grateful for the chance to submit public comments on the Central Coast's Preliminary Draft Recommendations for an Updated Agricultural Order. We are especially overwhelmed with fact that this issue has been become such a priority, because it has the capability to protect and restore the quality of the Central Coast regions water.

The marine environment in the Central Coast Region is impacted by runoff from irrigated agriculture and other sources. Legacy pesticides have impacted the marine environment and are still found in sediment and tissue at levels of concern today. Currently applied pesticides are persistent in the aquatic environment, but initial testing has not found them in offshore areas of Monterey Bay. However, two Marine Protected Areas (MPAs), Elkhorn Slough and Moro Cojo Slough, are heavily impacted by agricultural chemicals and activities because they are located at the downstream terminus of the Salinas River and Carneros Creek watersheds, and these watersheds are dominated by agricultural land use. The Elkhorn Slough and Moro Cojo Slough MPAs are at very high to extremely high risk for additional degradation of beneficial uses. Other MPAs that are relatively near shore in agricultural areas are at medium risk for degradation of beneficial uses; these include the South Santa Ynez River MPA, and the two Monterey Bay MPAs. Other MPAs that are not near agricultural areas are at medium to low risk from agricultural discharges.

Agricultural Order for safe water

FOEJN is aware of the fact that 88 wells here in this region that were sampled contained concentrations above nitrate drinking water standards in the northern Salinas Valley. In some locations in Salinas Valley up to 50 percent of the wells had concentrations of nitrate in the drinking water that were early double the normal standards. We are all aware that nitrates are responsible for contamination of our groundwater.

We agree with the Draft Report's analysis that the current Conditional Waiver lacks clarity and focus on water quality requirements and does not include adequate compliance and monitoring. This is unacceptable. Agricultural discharges are continually impacting our water. The Draft Report states that the board may require Dischargers to conduct sampling of private domestic wells in or near agricultural areas with high nitrates in groundwater, submit technical reports and also may require Dischargers to provide alternative water supplies or replacement water service to affected public water suppliers or private well owners. We agree with these actions but ask that they be mandatory and also included in your final report so that disenfranchised communities currently drinking unsafe water can have access to the basic right of safe water.

FOEJN believes that every individual has the right to live a life free of contamination and those who are able to make a change should stand up for our communities, and our future.

Sincerely,

LeVonne Stone

LeVonne Stone, Executive Director

Fort Ord Environmental Justice Network, Inc.

831-582-0803

www.foejn.org

Kacey DuBose

Kacey Dubose, Community Outreach Co-ordinator

Fort Ord Environmental Justice Network, Inc.

California Rural Legal Assistance Foundation

MAIN OFFICE

2210 "K" Street, Second Floor
Sacramento, California 95816
(916) 446-7904
Fax: 446-3057

Amagda Pérez, Esq.
Executive Director

BOARD OF DIRECTORS

Ramon Arias, Esq.
San Francisco

Silvia Garcia, Esq.
San Diego

Manuel Magaña
Palmdale

Richard Pearl, Esq.
San Francisco

Alberto Saldamando, Esq.
San Francisco

Rosario Vasquez
Los Angeles

REGIONAL PROJECT OFFICES

Delano
*-Center on Race, Poverty & the
Environment*

Fresno
*-California Rural Citizenship Campaign
-Center on Race, Poverty & the
Environment*

Modesto
-Rural Health Advocacy Institute

Oakland
*-Employment & Labor Law Project
-Labor & Civil Rights Litigation Project*

Oceanside
-Border Initiatives Project

Sacramento
*-Bilingual Education Project
-California Rural Citizenship Campaign
-Labor & Employment Project
-Pesticides & Worker Safety Project
-Rural Housing Project*

San Francisco
-Center on Race, Poverty & the Environment

April 1, 2010

Angela Schroeter/ Howard Kolb
Central Coast Regional Water Quality Control Board

E-mail: aschroeter@waterboards.ca.gov,
hkolb@waterboards.ca.gov

Subject: SUPPORT for the Central Coast Regional Board's Preliminary Draft Recommendations for an Updated Agricultural Order

Dear Regional Water Quality Control Board Members:

Thank you for the opportunity to provide public comments on the Central Coast's Preliminary Draft Recommendations for an Updated Agricultural Order. On behalf of the California Rural Legal Assistance Foundation, we applaud your prioritization of this critical program that can protect and restore the quality of the Central Coast region's water. According to the Draft Report, "agricultural discharges (primarily due to contaminated irrigation runoff and percolation to groundwater) are a major cause of water quality impairment" in the region (pg 4).

Groundwater contamination from nitrates severely impacts domestic drinking water supplies in the Central Coast Region. Domestic wells (wells supplying one to a few households) are typically shallower than public supply wells. Based on the limited data available, the number of domestic wells that exceed the nitrate drinking water standard is likely in the range of hundreds to thousands in the Central Coast Region.

In Monterey County, 25 percent of 352 wells sampled (88 wells) had concentrations above the nitrate drinking water standard in the northern Salinas Valley. In portions of the Salinas Valley, up to approximately 50 percent of surveyed wells had concentrations above the nitrate drinking water standard, with average concentrations nearly double the drinking water standard and the highest concentration of nitrate approximately nine times the drinking water standard. Nitrate exceedences in the Gilroy-Hollister and Pajaro groundwater basins are similar, as reported by local agencies/districts for those basins.

Unless there are efforts made to clean-up the nitrates in the shallower aquifers it is likely that the nitrates will force deeper well drilling over time. The community of Morro Bay is a case in point. They have detected nitrates in their wells and have been in discussions with local irrigators to try to prevent further contamination of their community well.

We agree with the Draft Report's analysis that the "current

Conditional Waiver lacks clarity and focus on water quality requirements and does not include adequate compliance and verification monitoring... at a minimum, agricultural discharges continue to severely impact water quality in most receiving waters” (pg 19). We strongly support the Board’s initiative to create an Updated Agricultural Order, and urge that the Board take **timely action** to prevent further degradation of the Region’s water and to restore the water from the pollution that has already occurred. **Specifically**, we strongly support the Water Board’s intent to directly address the discharges of waste from irrigated lands, **including providing compliance schedules to reduce nutrient discharges to surface waters and groundwater**, reducing toxic discharges of agricultural pesticides to surface waters and groundwater; reducing sediment discharges from agricultural lands and protecting aquatic habitat.

The Draft Report states that the Board *may require* Dischargers to conduct sampling of private domestic wells in or near agricultural areas with high nitrates in groundwater, submit technical reports and also *may require* Dischargers to provide alternative water supplies or replacement water service to affected public water suppliers or private well owners. **We strongly support the Staff’s recommendation in this regard and, in fact, urge you to require this and mandate it in your final report**, so that we may begin to provide disadvantaged communities currently without safe drinking water access to this basic resource.

We strongly support the Staff’s recommendation to include mandatory Best Management Practices (BMPs) in irrigation management, pesticide runoff, toxicity elimination, and nutrient and salt management.

We strongly support the Staff’s recommendation to put in place stringent monitoring and reporting systems for individual discharges, and specific monitoring systems to evaluate groundwater quality and protection in agricultural areas. Without being able to locate nutrient loading, it is not possible to effectively reduce contamination. Localized monitoring is essential.

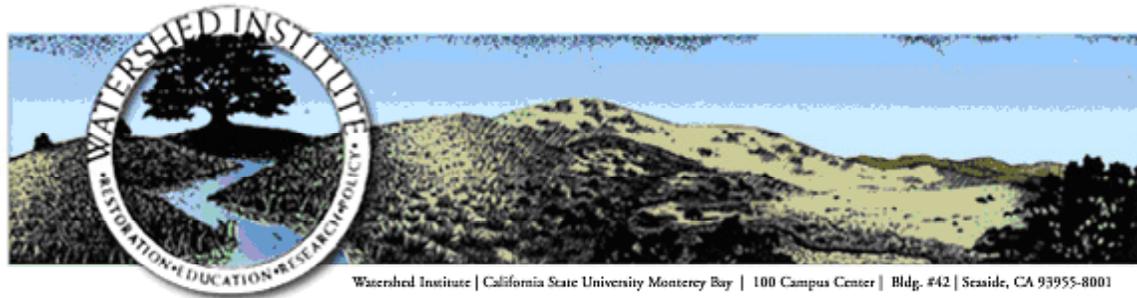
We also strongly encourage the Water Board to put in place non-compliance fines in cases when agricultural dischargers violate these conditions. As we have seen in the past Conditional Waiver, voluntary mechanisms to control agricultural discharges are not sufficient. The Water Board must use its’ regulatory authority to regulate discharge, and this includes application of non-compliance fees.

Lack of surface and groundwater protections have gone on too long at the expense of community and watershed health. Hence, we applaud your initial efforts strongly urge you to take timely action to put in place stringent requirements for irrigated agriculture discharges so that California’s water is truly protected and restored.

Sincerely,



Martha Guzman
California Rural Legal Assistance Foundation



April 1, 2010

Angela Schroeter/ Howard Kolb
Central Coast Regional Water Quality Control Board
895 Aerovista Place
San Luis Obispo, CA 93401-7906
E-mail: aschroeter@waterboards.ca.gov, hkolb@waterboards.ca.gov

Dear Regional Water Quality Control Board Members:

This letter is in support for your Board's Preliminary Draft Recommendations for an Updated Agricultural Order

Thank you for the opportunity to provide public comments on the Central Coast's Preliminary Draft Recommendations for an Updated Agricultural Order. Oh behalf of the Return of the Natives Restoration Education Project of the Watershed Institute at CSU Monterey Bay, we applaud your prioritization of this critical program that can protect and restore the quality of the Central Coast region's water.

Through our education and outreach programs we work with school children from across the county and we frequently field questions from children and teachers about the quality of the water along the stream-banks which we are restoring. We share that though they are able to see only sediment and floating trash as contaminants, dissolved contaminants such as nitrates are also present. We share that Watershed Institute and CSU Monterey Bay students, graduate students and faculty, with other scientists in the region, are involved in monitoring these pollutants which flow to the Monterey Bay but which also percolate into local groundwater. It is at this time in our public presentations that we frequently hear stories about how families fearful of drinking local tap water purchase expensive bottled water. Naturally, many of the children live in urban areas served by larger municipal water systems, but others live in rural areas depending on smaller water systems and wells that draw upon ground water. It is interesting to observe our university students trying to educate the children about the safety of their drinking water while at the same time knowing themselves the difference between point and non-point sources of water pollution that are and are not regulated. We share their perplexity in trying to understand and to explain to younger children and the general public the many factors

(economic, political and social) that contribute to rationales for protecting groundwater and ultimately drinking water in our region.

With our colleagues from the Environmental Justice for Water Coalition we support the Board's initiative to create an Updated Agricultural Order, and urge that the Board take timely action to prevent further degradation of the Region's water and to restore the water from the pollution that has already occurred. Specifically, we support the Water Board's intent to directly address the discharges of waste from irrigated lands, including providing compliance schedules to reduce nutrient discharges to surface waters and groundwater, reducing toxic discharges of agricultural pesticides to surface waters and groundwater; reducing sediment discharges from agricultural lands and protecting aquatic habitat.. This will also directly affect disadvantaged communities currently without safe drinking water access to this basic resource.

Again with our colleagues from the Environmental Justice for Water Coalition we support the Staff's recommendation to include mandatory Best Management Practices in irrigation management, pesticide runoff, toxicity elimination, and nutrient and salt management, and to include stringent monitoring and reporting systems for individual discharges, and specific monitoring systems to evaluate groundwater quality and protection in agricultural areas.

Again, thank you for the opportunity to provide public comments on the Central Coast's Preliminary Draft Recommendations for an Updated Agricultural Order.

Respectfully,



Laura Lee Lienk
Co-Director, Watershed Institute
Director, Return of the Natives Restoration Education Project



April 1, 2010

Dear Central Coast Regional Water Quality Control Board Members and Staff:

I am writing on behalf of the Wild Farm Alliance (WFA) to support CCRWQCB staff's recommendation that strong action be taken to regulate chemical and sediment pollution from Central Coast farms. WFA works nationally and locally along the Central Coast to promote conservation-based agriculture. Safeguarding water quality is a critical aspect of our work and we have installed a number of native grass filter strips and conservation plantings on local farms designed to serve as buffers between production fields and waterways that can capture excess runoff and reduce erosion.

Farmers play a critical role in ensuring that runoff does not degrade nearby waterways and the Monterey Bay because their agricultural practices can either take a significant toll on the environment or serve to protect biodiversity. Water is a commonly held good on the landscape, and should be regulated accordingly.

Maintaining the economic viability of farming is important, and farmers can have high production as well as implement practices that protect the environment. Streamside vegetation helps to filter pathogens, and pollinators and natural enemy insects live in vegetative buffer zones providing economic value. Farmers should be required to protect riparian vegetation and should maintain a vegetated buffer between their crops and any waterways. Growers should responsibly monitor runoff leaving their farm and avoid using excess amounts of fertilizer.

The Board has the legal responsibility to protect the integrity of our water and rivers. Please take this important step in protecting water quality for all members of the Central Coast community and its highly diverse ecosystem.

Sincerely,

Jo Ann Baumgartner, Director

WFA promotes a healthy, viable agriculture that protects and restores wild nature.

EXECUTIVE BOARD
Dan Imhoff
Watershed Media
Dana Jackson
Land Stewardship Project
Mike DiNunzio
Association for the Protection
of the Adirondacks
Dan Kent
Salmon-Safe

BOARD
John Davis
Adirondack Council
Randy Gray
Wildlife Biologist
Dave Henson
Occidental Arts
& Ecology Center
Paula MacKay
Consulting Wildlife
Researcher
Jamie Phillips
Eddy Foundation
Vance Russell
Audubon California
Becky Weed
Thirteen Mile Lamb
& Wool Company

ADVISORS
John Anderson
Hedgerow Farms
Catherine Badgley
University of Michigan
Wendell Berry
Lanes Landing Farm
Robert Bugg
University of California
Dave Foreman
Rewilding Institute
Fred Kirschenmann
Leopold Center
Winona LaDuke
White Earth Land Recovery
Frances Moore Lappé
Small Planet Project
Gary Nabhan
Center for Sustainable
Environments
Reed Noss
University of Central Florida
Alice Waters
Chez Panisse

March 29, 2010

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

Dear Chairman Young:

I rent 280 acres of Santa Maria farmland to Babe' Farms, Inc. 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 will cause undue physical and financial hardships to farms. The recommendations if adopted may cause many to go out of business.

I support the proposals made by the California Farm Bureau, and the Santa Barbara and San Luis Obispo Counties Grower Shipper Association.

Thank you,

Sincerely,



Pat Murray
Bradley Land Company
PO Box 1932
Santa Maria, California 93456

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



VINCENT T. MARTINEZ
 KAREN A. O'NEIL

Thomas Freisler
 (1849-1914)
 Charles "Leo" Freisler
 (1893-1966)
 T.A. Twitchell
 (1902-1933)
 William C. Rice
 (1914-1950)
 Burton J. Twitchell
 (1933-2000)
 Maurice F. Twitchell
 (1930-2000)
 W. Kenneth Rice
 (1940-2005)

March 30, 2010

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

Re: Proposed Order for the Regulation of Discharges from Irrigated Lands

Dear Chairman Young:

I am writing on behalf of the Haslam Trust which owns a large piece of property which would be affected by the proposed Order for Regulation of Discharges from Irrigated lands. I do not support the proposed order. It will cause a severe burden upon businesses, and the rationale behind the it is unjustified and unsubstantiated.

Sincerely,

Vincent T. Martinez
 Vincent T. Martinez
 Trustee of the Haslam Trust

VTM/II

March 30, 2010

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

Re: Conditional Waiver of Discharges from Irrigated Agricultural Lands (R3-2010-00XX)

Dear Chairman Young,

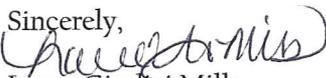
This letter is written on behalf of my mother, Mary Jane Giudici. She owns the Madson Ranch in San Lucas, CA, and leases a portion of it as irrigated farmland. My parents, Allan and Mary Jane, purchased the ranch (riparian habitat and farmland) in 1961. They lost approximately 25 acres of the farmland in 1971 to the State of California and Monterey County, under eminent domain, for the construction of Highway 101 and Bunte Road. In 1983, they lost approximately 9 acres, and in 1995 another 45 acres, of farmland to flooding of the Salinas River. Those 54 acres were never restored as farmland, but instead have restored themselves to riparian habitat.

When my father passed away in March 2007, he left my mother with only 21 acres of farmland, from the original 100-plus acres. If the Central Coast Regional Water Quality Control Board adopts staff's draft 2010 Conditional Waiver of Discharges from Irrigated Agricultural Lands (2010 Draft Ag Waiver), my mother will lose approximately 9 acres of the remaining 21 acres of farmland as a result of staff's proposed buffer requirements. Hundreds of other growers and landowners in Region 3 face a similar fate.

My mother also is concerned the majority of requirements with 2010 Draft Ag Waiver will prove too timely and cost prohibitive for her tenant, a medium size grower, who also leases farmland she co-owns on an adjoining ranch (Giudici Ranch, San Lucas). Like many Region 3 growers, her tenant handles all of the administrative, plus day-to-day on-farm management responsibilities for his farming operation. He would be forced to hire additional staff and/or consultants, in order to comply with the 2010 Draft Ag Waiver requirements.

My experience with the development and implementation of the existing Ag Waiver during my tenure as Consultant with the Salinas River Channel Coalition and Central Coast Water Quality Preservation, Inc. leads me and my mother to respectfully request the Regional Board support the Preliminary Alternative Agricultural Proposal instead of the 2010 Draft Ag Waiver. Thank you, in advance, for considering our request.

Sincerely,



Laura Giudici Mills

Attorney-in-Fact for Mary Jane Giudici

P.O. Box 7112, Spreckels, CA 93962

cc:

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

March 29, 2010

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

Dear Chairman Young:

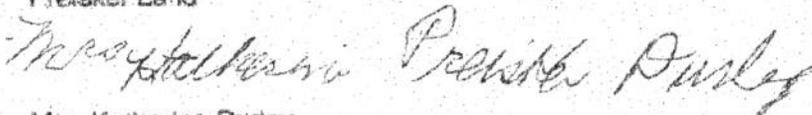
Preisker Land rents 557.74 acres of Santa Maria farmland to Babe' Farms, Inc. I read a summary of your staff's recommendations for the renewal of the Agricultural Waiver. The recommendations related to record keeping, buffers for pesticide applications, leaching of salts, elimination of tile and tail water, excessive monitoring, riparian vegetation, and groundwater will cause undue physical and financial hardships to farms. The recommendations if adopted may cause many to go out of business.

Preisker Land supports the proposals made by the California Farm Bureau, and the Santa Barbara and San Luis Obispo Counties Grower Shipper Association.

Thank you,

Sincerely,

Preisker Land



Mrs. Katherine Durley

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

March 31, 2010

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

Dear Chairman Young:

Boster Family rents 60 acres of Santa Maria farmland to Rio Mesa Berry. 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 will cause undue physical and financial hardships to farms. The recommendations if adopted may cause many to go out of business.

Boster Family supports the proposals made by the California Farm Bureau, and the Santa Barbara and San Luis Obispo Counties Grower Shipper Association.

Thank You,

Sincerely,

Boster Family



Mr. Jim Boster

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

April 1, 2010

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

Re: Preliminary Draft Report and Order For the Regulation of Agricultural Discharges

Dear Board Members and Staff:

Please accept these comments on behalf of Deutsche Bank National Trust Company as trustee for the Eugene Rene LeRoy Trust (the "Trust"). The Trust owns about a dozen agricultural properties in the Santa Maria Valley that are leased to agricultural growers. The Trust submitted a previous comment letter on December 2, 2010, which it hereby incorporates by reference. The Trust has reviewed the Preliminary Report and Preliminary Draft Order for the Regulation of Discharges from Irrigated Lands, published by Board staff on February 1st, 2010 ("Draft Report" and "Draft Order"). The Trust submits the following comments regarding the Draft Report and Order, on behalf of itself and its tenants who submit letters of support to the Board, as well as others who choose to rely on these comments in the future. In sum, the waiver contains excessive requirements that, when considered together and in some instances when considered individually, exceed the Board's authority respecting waivers under Water Code § 13269.

1. Support for 7 County Farm Bureaus' Preliminary Agricultural Proposal

The Trust supports the Seven County Farm Bureaus' Preliminary Alternative Agricultural Proposal submitted in response to the Draft Report and Order, which was developed on behalf of and in cooperation with many stakeholders, and which represents a workable and effective approach. The Trust urges the Board and its staff to use the Farm Bureaus' proposal as a template for developing an agricultural waiver pursuant to Water Code § 13269.

2. Introduction – Consequences for Agriculture if Draft Order Is Implemented as Currently Proposed

The Central Coast agricultural community and economy would suffer greatly from the cumulative effects of a Board decision to: 1) impose some of the most stringent agricultural discharge standards ever known; 2) place large financial and recordkeeping burdens on growers

in order to implement a site-specific surface water and groundwater monitoring program spanning many thousands of parcels; 3) require public disclosure of each farm's operational details; 4) force the loss of riparian farmland; and 5) issue penalties for noncompliance.

On a cumulative basis, implementation of the Draft Order would likely have similar impacts on other agricultural operations and would lead to a sharp decline in the agricultural economy on the Central Coast. The potential consequences for the Trust and its tenants are illustrative. Three tenants have indicated that if the Draft Order is adopted they will likely not continue to farm the Trust's properties, based simply on the expected cost of compliance. Two others believe that the cost of compliance would force them to seek an abatement of current rental rates.

The Draft Order represents a tremendous proposed shift in regulation of discharges that are exempt from regulation under the federal Clean Water Act and, until recently, were virtually exempt from regulation under the California Water Code. Although the Draft Order contains 85 individual requirements, not every requirement is addressed by these comments. Rather, these comments focus on those that most deserve reconsideration.

3. Proposed Water Quality "Conditions"

Although the Board is required to adopt an agricultural waiver that is "conditional" (Water Code § 13269), the Draft Order proposes so-called conditions that are unreasonable and that transcend the intended purpose and scope of an agricultural "waiver." The Draft Order would require each grower to demonstrate compliance with "water quality targets," showing within a short time period that its agricultural runoff and/or receiving waterbodies contain absolutely no toxicity, have nitrate levels that meet drinking water standards (≤ 10 mg/L), and meet similarly stringent numeric targets for turbidity, ammonia, and temperature. In many instances, these targets would require discharges to be cleaner than the water that is applied to agricultural fields. These are not the type of conditions contemplated by the Legislature for agricultural waivers adopted pursuant to Water Code § 13269.

The express purpose of an agricultural waiver is to waive the rule that dischargers must file reports of their discharges and comply with waste discharge requirements. (Water Code §§ 13269(a)(a) (waivers are for purpose of waiving provisions of Water Code §§ 13260 and 13263); 13260(b) ("[n]o report of waste discharge need be filed" if a waiver is issued).) Yet the Draft Order requires comprehensive testing and reporting of discharges, and essentially prescribes general waste discharge requirements for all agricultural discharges in the Central Coast Region (as an "alternative" to ceasing discharges altogether).

In 2003, amendments were proposed to the agricultural waiver provisions of the Water Code that would have required, among other things, that agricultural waivers mandate compliance with water quality objectives and not allow discharges of toxic pollutants.¹ But the

¹ Senate Bill 923 (as introduced Feb. 21, 2003) at pp. 5-6, *available at*: http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_0901-0950/sb_923_bill_20030221_introduced.pdf

Legislature rejected these proposed amendments, instead requiring only that discharges be consistent with the applicable Basin Plan. (Water Code § 13269(a)(1).) This Board should not – indeed may not – adopt an agricultural waiver that imposes the kind of strict water quality targets that were rejected by the Legislature almost 7 years ago.

There is also a proposed requirement that farm operations “must support a functional riparian system and associated beneficial uses” such as “swimming, wading, or kayaking, fishing, wildlife habitat, etc.” (Draft Order at p. 20.) This requirement, among others, goes beyond the achievement of beneficial uses designated in the existing Basin Plan.

4. Proposed Monitoring Requirements

The Water Code directs the Board to consider relevant factors when establishing monitoring requirements, such as “the extent and type of existing monitoring activities” including “existing watershed-based, compliance, and effectiveness monitoring efforts,” and the “size of the project area.” (Water Code § 13269.) The Board should more carefully consider the existence and effectiveness of the current group Cooperative Monitoring Program (CMP), rather than proposing a radically different individual monitoring framework. It should also give consideration to the large size of the Central Coast region when it contemplates whether or not to impose individual farm monitoring requirements. The Board does have authority to require dischargers to furnish monitoring program reports, but the “burden, including costs, of these reports shall bear a *reasonable relationship to the need for the report and the benefits to be obtained* from the reports,” and in requiring such reports the Board must “identify the evidence that supports requiring that person to provide the reports.” (Water Code § 13267(b)(1).) The Draft Report and Order do not indicate why the burden of individual farm monitoring and reporting by thousands of farmers bears a reasonable relationship to the need for or benefit to be derived from such reports by the Board.

Each grower currently participates in the existing CMP, which carries a reasonable fee. Future compliance with the individual monitoring requirements set forth in the Draft Order, however (particularly monitoring for toxicity), would cause a significant increase in cost. The Draft Report and Draft Order do not identify what methods of sampling, testing, processing, etc. would be acceptable to Board staff, nor what the estimated cost of the program would be or the potential sources of funding for the program.

5. Content and Role of Farm Plans

Those portions of reports (such as Farm Plans) submitted to the Board “that might disclose trade secrets or secret processes may not be made available for inspection by the public.” (*Id.* § 13267(b)(2).) Furthermore, farmers must give consent to inspections or, if consent is withheld, inspections may only be made pursuant to a warrant. (*Id.* § 13267(c).) The Draft Report and Draft Order do not indicate that the protections of Water Code §§ 13267(b)(2) and (c), regarding trade secrets and the right to deny consent to inspections, will be upheld.

6. Riparian Vegetation Buffers

The Draft Order would require that within four years all farms must document “the presence of minimum riparian buffer widths adjacent to perennial and intermittent streams,” and “where existing riparian vegetation width is greater” than what is required in the Draft Order, “the Discharger must protect and maintain the maximum buffer width.” (Draft Order at p. 70.) This proposed requirement exceeds the Board’s regulatory authority, is incompatible with the California Leafy Greens Marketing Agreement, and presents potential liabilities for the Board based on the resulting taking of property and/or increased flood risk.

(a) *Limits on the Board’s Authority to Regulate Land Use*

The Draft Order erroneously assumes that the Board has authority to regulate the use of riparian land, rather than the use of water itself, and that the Board can regulate activities that do not involve direct impacts on waters of the state. The Porter-Cologne Water Quality Control Act defines “waters of the state” as “surface water or groundwater, including saline water, within the boundaries of the state.” (Water Code § 13050(e).) The Board’s implicit claim of authority to regulate riparian areas and require landowners to establish vegetation, as set forth in the Draft Report and Draft Order, regardless of the particular quality of nearby waters or the nature of a grower’s discharge, lacks legal support.

(b) *Incompatibility with California Leafy Greens Marketing Agreement*

The proposed requirement that growers maintain and even establish riparian vegetation buffers also presents an inconsistent overlap with existing regulatory schemes, including the regulation of riparian areas by the California Department of Fish and Game and the implementation of the California Leafy Greens Marketing Agreement (LGMA), which operates with oversight from the California Department of Food and Agriculture (CDFA). The goal of the LGMA is to protect public health by reducing potential sources of contamination in California-grown lettuce, spinach, and other leafy greens. It is a mechanism for verifying that growers follow food safety practices. Farmers, shippers and processors representing approximately 99% of the volume of California leafy greens have agreed to follow these practices by signing onto the LGMA, and many of these members are located in the Central Coast region. Farmers essentially have no economical choice but to comply with the LGMA.

Through the CDFA, farms are subject to government audits and certification for the LGMA. Members of the LGMA must follow a set of Food Safety Guidelines for the Production and Harvest of Lettuce and Leafy Greens.² Pursuant to these Guidelines, each member must implement practices that reduce the likelihood of intrusion by “animals of significant risk.” (LGMA Guidelines at p. 13.) Farmers must locate production blocks so as “to minimize potential access by animals of significant risk” (for example by considering the proximity to riparian and vegetated areas), and if increased animal activity occurs a farmer may be required to establish no-harvest areas and take costly steps to reduce animal intrusion. (*Id.* at pp. 45-48.)

² Available at <http://www.caleafygreens.ca.gov/trade/documents/LGMAAcceptedGAPs07.10.09.pdf>

Protecting existing riparian vegetation is one thing, but requiring farmers to establish vegetative buffers is in direct contradiction to the LGMA Guidelines and could result in decertification, reductions in harvest, and extensive measures to prevent the intrusion of animals into agricultural fields.

(c) *Potential Constitutional Violations*

Regulatory takings without just compensation are prohibited by both the federal and California constitutions. (See *McClung v. City of Sumner* (9th Cir. 2008) 548 F.3d 1219, 1225-1226.) The Board cannot adopt a waiver that results in the unconstitutional taking of many thousands of acres of riparian farmland. It is also a violation of the due process rights of landowners to impose a land use requirement that arbitrarily interferes with property rights without supporting evidence, or which (in other words) “lacks any substantial relationship to the public health, safety, or general welfare.” (*Crown Point Development, Inc. v. City of Sun Valley* (9th Cir. 2007) 506 F.3d 851, 855-856.) Finally, property damage that arises from the adoption and implementation of an unreasonable government plan designed to serve a public purpose can find the government liable for “inverse condemnation.” *Paterno v. State of California* (1999) 74 Cal.App.4th 68, 90.

7. Factors Required To Be Considered Under The Water Code

It appears that the Draft Report and Draft Order were issued without first considering the factors set forth in the Water Code, or making a determination about whether the discharges meet the criteria for general waste discharge requirements or are necessary to achieve designated beneficial uses in receiving waters, especially in agricultural drainage ditches, etc. (Water Code §§ 13241, 13263.) Furthermore, requiring farmers to meet water quality standards pertaining to beneficial uses that are not supported by a number of waterbodies is an abuse of discretion.

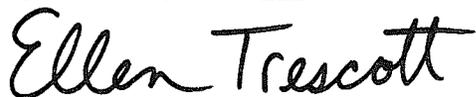
Moreover, the Water Code requires that prior to implementation of any agricultural water quality control program, “an estimate of the total cost of such a program, together with an identification of potential sources of funding, shall be indicated in any regional water quality control plan.” (Water Code § 13141.) And the Board must take into account economic considerations when proposing water quality control plans or establishing water quality objectives. (*Id.* §§ 13240-13241.) Consideration and application of these factors must be made part of the public process leading up to the adoption of a new agricultural waiver.

8. Conclusion

In conclusion, the Trust urges the Board and its staff to reconsider its Draft Order, particularly with respect to the points raised in this comment letter, and to use the 7 County Farm Bureaus’ Preliminary Alternative Agricultural Proposal as a template for developing an agricultural waiver pursuant to Water Code § 13269.

Sincerely,

DOWNEY BRAND LLP

A handwritten signature in black ink that reads "Ellen Trescott". The signature is written in a cursive, flowing style.

Ellen L. Trescott

1068089 1