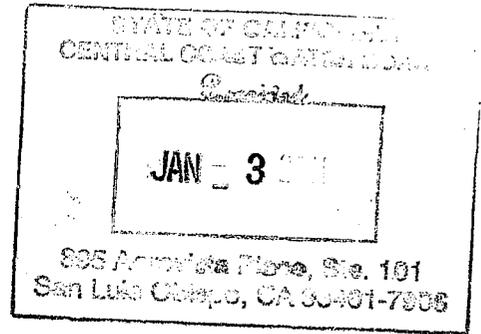


Via email to AgOrder@waterboards.ca.gov

December 29, 2010

Jeffrey S. Young, Chairman of the Board
California Regional Water Quality Control Board
Central Coast Region
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401



Re: Draft Ag Order (dated November, 2010)

Mr. Young,

My husband and I are both engineers with 60 years of combined experience. Karl is a registered Mechanical Engineer and I am an environmental engineer. We recently retired after owning an environmental engineering and compliance consulting firm for 24 years. Additionally, we managed a mutual water company in the past which served 23 homes, including our own. Therefore, we have a considerable amount of experience with water quality issues.

Currently we own and farm a small vineyard that is Sustainability in Practice (SIP™) certified and is subject to the Irrigated Ag Waiver. Our comments on the proposed Draft Ag Order follow. The main focus of our comments is on Tier 1 since we believe that our operation would fall under Tier 1. We are also providing some general comments. These comments represent our personal thoughts after a review of the Draft Ag Order as well as our basic knowledge of these issues.

General Comments

The Draft Ag Order is poorly written, extremely confusing and open for significant interpretation. We spent several days trying to understand the requirements of these documents. We know several other folks who are fairly well educated (mostly scientists) and deeply involved in these issues who have also spent an inordinate amount of time trying to decipher the requirements. No regulatory process needs to be this complicated.

The basic premise of this Order is incorrect. The staff appears to have started with the basis that farmers cannot be trusted. Those of us who work hard to produce a marketable product with the least impact on the environment feel demeaned and frustrated by this approach.

We ask that comments that are submitted after January 3rd be taken into account. By having a public comment period within the holidays, the Water Board staff has in effect limited public comment.

The new Ag Order should focus on the problems identified through the current Ag Waiver, with priority given to the locations with the most impaired water quality. Instead of applying the Ag Order to all irrigated farmland and causing all growers to pay fees and do costly monitoring, the Ag Order should be staged in over a few years with the priority locations addressed first.

Incentives and education go farther than regulation. The Water Board should revise the focus of the proposed Ag Order to instead emphasize education and provide incentives for water quality improvements.

Growers below a certain size (possible 10 acres) should be exempt from most of the requirements of the Ag Order. The costs of compliance with the Ag Order for a small operation are inordinately high.

Tiers and Impaired Waterbodies

We appreciate that the staff has proposed tiering. This is a good step forward. However, the tiers need to be presented more clearly and they need to incorporate some incentives for moving to a lower tier by reducing the risk to water quality. A grower cannot control whether their property is within 1,000 feet of an impacted waterbody nor can they control the size of the operation.

There are inconsistencies between the tier charts and the definitions. It is difficult for a grower to determine which tier is applicable to their operation. A particularly confusing part is the lists of impaired waterbodies.

The Draft Ag Order contains two tables of 2010 Clean Water Act Section 303(d) lists of impaired waterbodies – one for temperature, turbidity or sediment and one for toxicity, pesticides. These lists appear to only be subsets of the 2010 303(d) list for the Central Coast Region. The Ag Order should clearly define the impaired waterbodies that are subject to the Ag Order.

Why are the waterbodies that are impaired for temperature included in the Draft Ag Order when the tiering definitions only refer to waterbodies which are impaired for toxicity, pesticides, nutrients, or sediment? Since water temperature can only be dealt with on a watershed basis and may well not have anything to do with agricultural discharges, temperature should not be included. Where in the Order is the list for those waterbodies impaired for nutrients? Rather than including the pollutant category “nutrient”, the specific pollutant “nitrate” should be used since this is the contaminant of concern. Similarly, chlorpyrifos and diazinon should be considered since these are the pesticides of concern in the proposed Draft Ag Order.

In order to utilize all of our resources most efficiently, it would be logical to prioritize the waterbodies with impairments due to the constituents of concern. A single list of those impaired waterbodies should be referenced in and used for the life of the Ag Order.

SIP Certification should be eligible for lowest tier

We support the comments provided by the Central Coast Vineyard Team (CCVT). We would like to re-iterate that SIP Certification *requires* several practices that directly relate to protecting water quality. These practices are verified by an independent inspector to confirm the grower is meeting the strict eligibility requirements:

- Prohibits the use of chlorpyrifos and diazinon
- Requires the use of soil and plant measurements to determine irrigation scheduling to reduce deep percolation of irrigation water
- Requires the use of a nutrient budget to minimize inputs and maximize nutrient efficiency
- Requires the use of vegetation and additional practices during rainy season to protect the soils, minimize erosion, reduce stormwater runoff, and filter the stormwater
- Complete records and on-site inspection of operations by independent inspector
- Final certification is granted by an independent advisory committee – free from conflict of interest – consisting of industry representatives, university experts and agency staff (Ag Department and RWQCB staff)

Requirements for Tier 1 Growers

It appears that our vineyard would fall into Tier 1. Most of the Tier 1 requirements make sense from a water quality perspective. Many of these requirements should apply to all landowners within the Central Coast region, not just those in irrigated agriculture.

The requirements that all abandoned groundwater wells be destroyed and that backflow prevention devices be installed should be applied throughout the region. Minimizing the presence of bare soil vulnerable to erosion and soil runoff to surface waters and maintaining riparian functions and naturally occurring mixed vegetation cover are practices which are required by SIP. These are reasonable best management practices for vineyards.

Updating the Farm Plan is a reasonable requirement. However, the Water Board should develop clear guidelines and provide grants to organizations to assist growers with the proper development of updated Farm Plans and the associated practices.

Obtaining 15 hours of farm water quality education is probably reasonable for vineyard operations since a fair amount of classes / seminars are generally available through industry associations. However, grants to organizations may be necessary to ensure this education continues to be provided. For non-viticultural operations, grant funding will be needed to enable the development of the necessary educational programs.

Most growers participate in the Cooperative Monitoring Program through Central Coast Water Quality Preservation, Inc. (Preservation, Inc.). As long as Preservation, Inc. can meet the deadlines and requirements, this approach makes sense. However, we do not know whether Preservation, Inc. can meet the deadlines and the new requirements or whether the costs to the growers will increase.

Groundwater Sampling and Reporting

The groundwater sampling requirements are the most costly part of the proposed Draft Ag Order for Tier 1 growers. Water Board staff did not clearly define their objectives or identify how they can manage such an enormous amount of data.

One question that must be asked is whether the concern being addressed is drinking water quality or of the potential contamination of groundwater aquifers by agricultural use of nitrogen-based fertilizers. The first issue is the purview of the California Department of Public Health and County Environmental Health Departments. Data on groundwater quality from drinking water wells has been submitted to local Environmental Health Departments for all new residences for the past several decades, and should be utilized. If the concern is potential contamination of groundwater aquifers, the Water Board should evaluate the data which has already been obtained under the current Ag Waiver and develop a plan to address those impacted locations.

The entire groundwater testing regime should be coordinated with the respective County Environmental Health Departments and local groundwater monitoring programs. Data is already gathered through these programs and should be utilized. After this data is incorporated into a database and mapped, the Water Board along with the other involved agencies can evaluate the data gaps. Then, groundwater could be sampled from representative locations, whether those wells sites are associated with irrigated agriculture or with other land uses. Until that point, it makes little sense to have growers obtain groundwater data that may not be of use.

If the Water Board chooses to head down the path of requiring groundwater data which may be redundant or otherwise unnecessary, the following revisions should be made to the groundwater monitoring requirements.

Although the groundwater constituents that are to be sampled are of interest to growers, several of the constituents do not present a water quality concern. The groundwater testing should be limited to nitrate, chloride, sodium and electrical conductivity.

The purpose of the groundwater monitoring must be established before a proper monitoring program can be developed. The Water Board should provide financial assistance to entities who are already involved with groundwater monitoring programs rather than starting a new program.

If groundwater sampling is to be performed, the well owner should be allowed to obtain the well sample. A professional engineer or professional geologist is not needed or appropriate to perform well sampling and is an unnecessary expense to the well owner. Any conscientious person can obtain a well sample with the minimal instructions provided by the laboratory that provides the sampling containers. By signing the chain of custody documentation, the sampler certifies that they obtained the sample and transferred custody.

Groundwater depths should be tracked as part of groundwater monitoring programs that are developed on the local level (e.g., the Paso Robles Groundwater Basin Management Plan efforts). The Water Board should provide financial assistance to such programs rather than duplicating these efforts. Groundwater level data is only useful if it is obtained on a regular basis (for example, semi-annually) and is input into a database / GIS system and evaluated within a reasonable period of time. A single water level from each well as proposed by the Draft Ag Order would be of little value; however, that data is already available through the well logs that are submitted to the local County Environmental Health Departments.

The cost of obtaining well level data can be quite high for a well owner whose well is not equipped with a permanent sounding device. The grower would have to purchase or rent a sounding device. They would have to ensure that the well has no obstructions that prevent the use of a sounding device. Such obstructions are common and may make determining the well depth impossible without pulling the well pump, which is very costly.

The proposed annual groundwater report is one more item that should be part of a local groundwater monitoring program, not the responsibility of individual growers. Many farmers not do use or do not have internet access. The Water Board is assuming that growers have certain technical skills that many do not have. We need to encourage folks to enter farming, not burden them with unnecessary requirements.

Fees

In addition to the costs of meeting all of the proposed requirements of the Draft Ag Order, growers will be required to pay some unreasonable fees, particularly for the higher tiers.

Conclusion

Our collective dollars as a society would be better spent in efforts which are protective of water quality. These efforts include education of growers and financial assistance to organizations that can help provide this education.

Based on the USDA statistics at <http://www.ers.usda.gov/statefacts/ca.htm>, 47% of California farmers have gross sales of \$10,000 per year or less. Farmers generally work long hours for a relatively low wage. The costs of the proposed Draft Ag Order may be prohibitive for many operations. A full cost / benefit analysis of the Ag Order is needed to fully understand the

impacts on our local growers. Farmers are important to our local economy and supply the food that sustains us.

My husband and I have spent a large amount of time reviewing the proposed Draft Ag Order. However, we are still confused about many of the requirements. Please keep in mind that a lack of comments by many growers should not be considered by the Water Board as an indication of approval or disinterest. The Ag Order and the associated documents represent an enormous amount of material for anyone to review within the available timeframe.

We ask that your Board provide further direction to staff to revise the proposed Ag Order so that it is less burdensome to farmers while being protective of water quality.

Thank you.

A handwritten signature in cursive script, appearing to read "A. Sue Luft", with a long horizontal flourish extending to the right.

A. Sue Luft

A handwritten signature in cursive script, appearing to read "Karl W. Luft", with a long horizontal flourish extending to the right.

Karl W. Luft

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Jeffrey S. Young
Chairman of the Board

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