

Greywater Action
for a sustainable water culture
935 Arlington St.
Oakland, CA 94608
www.greywateraction.org

January 3, 2011

To, Angela Schroeter/ Howard Kolb
Central Coast Regional Water Quality Control Board
Via E-mail: AgOrder@waterboards.ca.gov, or Fax: 805 543 0397.

Subject: SUPPORT WITH ESSENTIAL AMENDMENTS for the Central Coast Regional Board's 2011 [November] Draft Conditional Waiver for Irrigated Agricultural Discharges

Dear Regional Water Quality Control Board Members:

Thank you for the opportunity to continue to provide public comments on the Central Coast's 2011 Draft Recommendations for a Conditional Waiver for Irrigated Agricultural Discharges, released on November 19, 2010. On behalf of Greywater Action, we applaud your prioritization of this critical program that must protect and restore the quality of the Central Coast region's water. Greywater Action works to improve surface and groundwater quality by reducing municipal wastewater discharges and combined sewer overflows. We recognize that agricultural discharges are a significant source of contamination in California waters. On behalf of our 400 + members, we strongly support adoption of agricultural discharge rules that reduce these pollutant loads and the health risk they pose to groundwater-dependent communities.

The 2011 Draft Order's Executive Summary states that, "discharges of waste associated with agricultural discharges (e.g., pesticides, sediment, nutrients) are a major cause of water pollution in the Central Coast region. The water quality impairments are well documented, severe and widespread." (Pg 7, Staff Report)

It has been mandated that the Central Coast Water Board has the "statutory responsibility to protect water quality and beneficial uses such as drinking water and aquatic life habitat... The Central Coast Water Board regulates discharges of waste to the region's surface water and groundwater to protect the beneficial uses of the water. In some cases, such as the discharge of nitrate to groundwater, the Water Board is the principle state agency with regulatory responsibility for coordination and control of water quality." (Pg 11, Staff Report) It is also clear that, "no industry or individual has a legal right to pollute and degrade water quality, while everyone has a legal right to clean water." (Pg 13, Staff Report)

This is especially important since groundwater contamination from nitrates severely impacts domestic drinking water supplies in the Central Coast region. The 2011 Draft Order Staff Report reports that, "thousands of people rely on public supply wells with unsafe levels of nitrate and other pollutants. Excessive nitrate concentration in drinking water is a significant public health issue." (Pg 33, Staff Report) 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

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domestic wells that exceed the nitrate drinking water standard is likely in the range of hundreds to thousands in the Central Coast Region.

At the workshops held at San Luis Obispo on May 12, 2010 and at Watsonville on July 8, 2010, it was repeatedly shown that water quality in the Central Coast is an environmental justice issue, and that water contamination severely hampers drinking water and human health of communities, especially poorer communities, farm-worker camps, etc. It was also repeatedly expressed that the economic and human health costs to society and to communities of nitrate contamination are very high, yet the polluters have been going scot-free.

The extent of nitrate contamination on the Central Coast has been well documented, and especially regions such as the Salinas Valley and Santa Maria have been referred to as “hotspots” by the Regional Board Members at the public workshops, where immediate action is essential.

We support the 2011 Draft Order to the extent that it is an improvement on the 2004 Conditional Waiver which lacked a focus on water quality requirements, and did not contain any compliance or verification monitoring provisions.

However, we are very disappointed that in spite of the verbal commitment to regulate agricultural discharges due to overwhelming evidence of human health and drinking water concerns, the 2011 Draft Order is significantly weaker than the Draft Recommendations released by the Regional Board Staff on February 1, 2010. Below please find our strong amendments to the current 2011 Draft Order.

(1). PROBLEMS WITH THE TIERING STRUCTURE

We support the idea of creating a tiered structure to regulate growers with differing water quality impacts; however, we find that the Tiers as they have been created in the 2011 Draft Order are grossly inadequate. First of all, we are very disappointed that nitrate contamination “hotspot” regions have not been considered as criteria for creating Tiers. This will cause a situation where growers in the highly nitrate-polluted regions of Salinas Valley and Santa Maria may be placed in Tier 1 or 2, with minimal regulation, even though their impact to groundwater and hence to drinking water may be very high.

For instance, since there is no groundwater contamination criterion to set up the tiers, if a discharger’s operation is less than 1000 acres, then they are placed in the low-risk Tier 1 even if they grow crops with high nitrate loading potential such as broccoli, cabbage, cauliflower, celery, etc.

This is especially a concern since it has been reported verbally by the Regional Board staff that 98.4% of farms on the Central Coast fall under the 1000 acres limit. Only 33 farms out of 3000 farming operations on the Central Coast are over 1000 acres, and it is likely that some of those

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are for grazing operations and are not growing crops with high nitrate loading potential. Hence, this inadequate Tiering system may put growers with the capacity to increase groundwater nitrate contamination in the low-risk Tier 1. Tier 3 has significant regulation but it is defined so narrowly as to render the definition useless.

In addition, it is essentially our understanding that Tier 1 dischargers will be subjected to a very low level of regulation. They will be required to enroll and submit an NOI, to comply with general narrative standards, to create a Farm Plan, to complete education classes, to report groundwater quality results and participate in watershed-wide monitoring. Tier 2 dischargers will have to meet these requirements, plus photo reporting of impaired surface water bodies. Tier 1 and 2 dischargers only have to conduct groundwater monitoring 2 times in 1 year during the 5 years of the Draft Order. Hence, it is clear that, beyond the groundwater sampling, Tier 1 and 2 dischargers will not be held to any real regulation of groundwater, even though this has been identified as a human health and drinking water priority.

Hence, we feel strongly that such dischargers in “hotspots” of nitrate contamination are NOT low-risk and the criteria for Tiering must include groundwater nitrate contamination as a factor. Farms in high nitrate contamination areas must automatically be classified as Tier 3 dischargers.

(2). PROBLEMS WITH SPECIFIC LISTING OF DIAZINON AND CHLOROPYRIFOS PESTICIDES TO THE EXCLUSION OF OTHER TOXIC PESTICIDES

We agree that Diazinon and Chloropyrifos are dangerous pesticides with high toxicity. However, we disagree with Staff’s approach to specify just these pesticides in the Tiering criteria to the exclusion of other pesticides which may be just as harmful. This approach also ignores the public health concept of synergism: that two or more pesticides working together may create combined effects and harm that has not even been properly understood or documented. Toxicity does not arise merely from the use of these two pesticides, and we fear that many dischargers will escape Tier 3 high-risk monitoring merely by shifting to other toxic pesticides. Hence, we feel strongly that Staff should not specify just these pesticides in the Tiering criteria, but rather focus on all pesticides that will increase toxicity and damage water quality.

(3). PROBLEMS WITH REMOVING REGULATION ON TILE DRAINS

In the list of changes made to the Draft Agricultural Order due to public input, the Staff Report states that they have, “clarified the intent to address irrigation runoff in the short term with immediate conditions vs. tiledrains in the long term.” (Pg 32, Staff Report) We feel that removing regulation on tile drains is a huge setback to address irrigation runoff in the short-term and the long-term, and will worsen groundwater contamination and will cause harm to human health. For instance, the Blanco drain in the contamination “hotspot” Salinas Valley often registers nitrates at over 200 mg/L, or five times the drinking water standard! Yet the 2011 Draft

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Order would remove regulation of tile drains until the long-term. This is unacceptable. We strongly urge that tile drains be regulated immediately.

(4). PROBLEMS WITH CHANGES IN NUMERIC AND NARRATIVE STANDARDS

The 2011 Draft Order removes essential provisions from the February Draft Order regarding the fact that dischargers must meet water quality compliance at the place where the water leaves their farms. It seems the 2011 Draft Order shifts compliance from the farm to the receiving waters. We feel this significantly weakens the ability of regulation to find the most contaminated dischargers and hold them accountable. In addition, it is unclear how compliance for drinking water standards for groundwater will be met. The Regional Board must focus not just on regulation but on actual outcomes, and hence must identify where the contamination is arising. We feel strongly that the point of compliance for drinking water standards must be the discharger's farm, as this will help to find sources of contamination.

(5). PROBLEMS WITH THE BACKFLOW PREVENTION DEVICES

Backflow prevention devices are being mandated in order to protect groundwater. However, we find it unjustifiable that dischargers are being given 3 years to comply with this requirement. We strongly urge that dischargers be required to install and maintain backflow prevention devices within 1 year.

(6). NEED FOR FINES

We also strongly encourage the Water Board to put in place non-compliance fines in cases when agricultural dischargers violate the stipulated 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.

2011 DRAFT ORDER PROVISIONS THAT WE SUPPORT:

There are many provisions in the 2011 Draft Order that we like and support, with the above-mentioned amendments. Some of these provisions that we support are as follows:

- a) Regulation of both land owners and operators is essential.
- b) Development of nitrate loading risk factors and tracking and reporting requirements.
- c) Requiring installation of backflow prevention devices.
- d) Timelines for compliance.

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- e) All dischargers are required to minimize nutrient discharges from fertilizer and nitrate loading to groundwater so receiving water bodies meet water quality standards and safe drinking water is protected.
- f) Tier 3 dischargers with a high nitrate loading risk must develop and initiate implementation of a certified Irrigation and Nutrient Management Plan (INMP) to meet specified nitrogen balance ratio targets.
- g) That the discharge of waste to groundwater with the beneficial use of municipal or domestic water supply that causes or contributes to an exceedance of drinking water standards established by the United States Environmental Protection Agency (USEPA) or California Department of Public Health (CDPH), whichever is more stringent, is **prohibited**.
- h) The application of fertilizer such that it results in a discharge of waste to groundwater, and causes or contributes to exceedances of water quality standards is **prohibited**.
- i) Dischargers must ensure that agricultural discharges percolating into groundwater must be of such quality at the point where they enter the ground to assure the protection of all actual or designated beneficial uses of groundwater, including drinking water.
- j) The Executive Officer may require Dischargers to locate (inventory) and conduct sampling of private domestic wells in or near agricultural areas with high nitrate in groundwater and submit technical reports evaluating the sampling results. In addition, in compliance with Water Code section 13304, the Central Coast Water Board may require Dischargers to provide alternative water supplies or replacement water service, including wellhead treatment, to affected public water suppliers or private domestic well owners.

Lack of surface and groundwater protections have gone on too long at the expense of community and watershed health. Hence, we applaud your efforts to address water contamination by agriculture. We have strong amendments to the 2011 Draft Order, and support said Order with these amendments. We 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.

Thank you,

Cleo Woelfle-Erskine and Laura Allen
co-founders, Greywater Action