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Angela Schroeter/Howard Kolb
Central Coast Regional Water Quality Control Board
Via email: AgOrder@waterboards.ca.gov

RE: 2011 Draft Conditional Waiver for Irrigated Agricultural Discharges

Dear Members of the Regional Water Quality Control Board:

One of the highest priorities for members of the environmental community in Monterey County is the protection and restoration of our water quality. To that end, I testified at the public hearing held by the Regional Board on July 8, 2010 in Watsonville. I appreciate the opportunity to comment on the Central Coast's 2011 Draft Recommendations for a Conditional Waiver for Irrigated Agricultural Discharges, released November 19, 2010. This is a critical program which, if appropriately drafted and implemented, will effectively address what the Draft Order's Executive Summary characterizes as the "well documented, severe and widespread" discharges of pesticides, sediment and nutrients that cause water pollution in the Central Coast region.

Like most members of the public, I expect our government to implement regulations that are effective. To be effective, regulations must be based upon clear, enforceable criteria and must provide accountability and timely response to violations. Unfortunately, the Draft Recommendations released in February 2010 do a better job of meeting those standards than the significantly weakened revised recommendations released nine months later in November 2010. Although at page 13 of the Staff Report staff acknowledges that "no industry or individual has a legal right to pollute and degrade water quality," I am disappointed that the agricultural industry has so effectively lobbied to weaken the earlier recommendations. I agree with staff when it states that "everyone has a legal right to clean water;" and it is in that vein that I submit the following comments.

Compliance requirements should be based upon likelihood of impacts to water quality rather than upon acreage of the agricultural operation.

The concept of regulating growers through a tiered structure which recognizes differing water quality impacts is a good one. However, I strongly disagree with the complete absence of existing groundwater contamination criteria as the basis

for creating those tiers. Despite the fact that the Salinas Valley is identified as a “hotspot” for nitrate contamination of groundwater, the latest version of the recommendations would not prioritize regulation of Salinas Valley growers as anything greater than low-risk Tiers 1 and 2 unless, agriculture operations exceed 1000 acres.

Regional Board staff acknowledged verbally that only 33 out of 3000 farming operations in the Central Coast Region are larger than 1000 acres. This means that cumulatively huge water quality impacts could occur, because the vast majority of land in production would be automatically classified as low-risk. Even operations which grow crops like broccoli, cabbage, cauliflower and celery – crops that have high nitrate loading potential – would be classified as low-risk and subject to low levels of regulation.

As a long-time land-use activist, I would also like to point out that acreage size can be easily manipulated through the subdivision process, especially in Monterey County where subdivision of agricultural land is allowed without discretionary review as long as the land remains in agriculture.

While Tier 3 regulation is significant, because it applies to so few operations and can be so easily manipulated, it will do little to improve or protect water quality in the region. Tiers 1 and 2 rely on non-specific regulation. As I understand them, these are the requirements of Tiers 1 and 2.

Tier 1

- Enroll and submit a Notice of Intent to
 - Comply with general standards
 - Create a Farm Plan
 - Complete education classes
 - Report groundwater quality 2 times per year
 - Participate in watershed-wide monitoring

Tier 2

- All of the above plus photographic reporting of impaired surface water

Clearly, beyond infrequent groundwater sampling, Tier 1 and Tier 2 dischargers are not required to comply with any real groundwater regulation, even though Tier 1 and Tier 2 dischargers make up the vast majority of agricultural operations in identified “hotspots” of groundwater contamination. Because of the well-documented impacts to human health of degraded groundwater quality, I urge the Regional Board to automatically classify as Tier 3 all farming operations in contamination “hotspots.”

Water pollution should be halted at its source.

The February Draft Order required that dischargers must comply with water quality standards at the point where water leaves the farm. The 2011 Draft Order shifts the point of compliance from the farm to the “receiving waters.” Because all land in a watershed drains into the “receiving waters,” this change weakens the ability of regulators to locate and hold accountable the most egregious violators. It also unfairly shifts the burden for compliance onto other farmers who share the “receiving waters” and creates a significant disincentive to comply with higher standards. It is also unclear under this scenario how drinking water standards for groundwater will be met.

This shift from farm to receiving waters is a prime example of creating a regulatory framework that is unenforceable and ineffective. I urge the Regional Board to reinstate the original draft’s requirement that dischargers must comply with water quality standards at the point where water leaves the farm.

All pesticides that damage water quality should be included as criteria in defining regulatory tiers.

While I agree with staff that Diazinon and Chlorpyrifos are dangerous pesticides, I oppose using only these two pesticides in defining the regulatory tiers. This approach excludes other pesticides which may be just as dangerous or even more dangerous. It creates an incentive for dischargers to simply switch to other toxic pesticides in order to avoid Tier 3 regulation. Furthermore, it ignores the potential effects of multiple pesticides when combined and present at the same time. Instead of focusing exclusively on these two pesticides, the Regional Board should consider all pesticides that damage water quality when establishing regulatory tiers.

Fines for non-compliance are a necessary enforcement tool.

Voluntary mechanisms to control harmful agricultural discharges have been in place for years under the old Conditional Waiver program, which is being replaced because it has been ineffective in protecting and restoring water quality in the Central Coast Region. We have learned that voluntary compliance hasn’t worked. The Regional Board has the authority to regulate discharge. It will not succeed unless it applies fines for non-compliance.

Regulation of tile drains should not be delayed.

The revised Draft Agricultural Order has relegated tile drain regulation to the “long-term.” This is a change for the worse. The Blanco Drain, a tile drain in the

Salinas Valley, has a long history of contributing nitrates to both freshwater and saltwater habitats. It frequently contains nitrate levels five times the drinking water standard. Delaying regulation of tile drains, like the Blanco Drain, will continue to allow unnecessary degradation of water quality in the region.

Backflow prevention can and should be implemented immediately.

I strongly support installation of backflow prevention devices to protect groundwater quality. However, I can find no justification for delaying implementation of the requirement for 3 years. Certainly operators can install and maintain backflow prevention devices within 1 year of adoption of the order. Please require that they do so.

Conclusion

I appreciate that the Regional Board and its staff recognize the continuing degradation of surface and groundwater quality as one of the most important environmental, social and economic problems facing the Central Coast Region. I recognize the effort to improve upon the past Conditional Waiver, which has failed to adequately address the issue. However, I cannot support the Draft Order as currently proposed. I urge the Regional Board to seriously consider the objections I've raised in my comments; and I encourage the board to amend the Draft Order accordingly.

Sincerely,

Julie Engell