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Transmission via E-mail to: AgOrder@waterboards.ca.gov

Mr. Howard Kolb
Central Coast Regional Water Quality Control Board
895 Aerovista Place
San Luis Obispo, CA 93401

RE: Comments to Revised Conditional Waiver Regulating Discharges from Irrigated Lands (Draft Order) and Monitoring and Reporting Program (MRP) and Certification of a Subsequent Environmental Impact Report (R3-2011-0006)

Dear Mr. Kolb:

This organization represents growers of vegetables and strawberries with farming operations located in the Santa Maria, Lompoc and Arroyo Grande valleys of the Central Coast of California. A significant amount of the nation's supply of vegetables and strawberries are produced on 107,144 harvested acres resulting in over \$1 billion in gross revenue yearly to the economy of this region.

Our members are very concerned with the scope and complexity of new regulations being proposed by Regional Board staff. The Draft Order and MRP together are 111 pages in length, containing 173 Findings, 9 pages of Water Quality Standards, 147 Terms and Conditions, along with 67 Definitions. The documents also include 10 Tables, including a List of Impaired Water Bodies, the Recommended Nitrate Hazard Index Rating; Groundwater and Surface Water Monitoring Parameters, and a Time Schedule for Key Compliance Dates and Milestones.

A program of this size and complexity requires a robust and thorough vetting of key program elements with the regulated community. Unfortunately, this has not taken place. The recommendations have been developed by Regional Board staff without significant and meaningful dialogue with the agricultural community. This has led to recommendations for water quality objectives that are technically and economically not achievable within the time frames set forth in the Draft Order.

~ Serving Central Coast Agriculture Since 1947 ~

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The decision by Regional Board staff to “go it alone” has resulted in the agricultural community coming together to develop competing alternative recommendations. The focus of the Agricultural Alternative is to increase accountability through the implementation of management practices. Coalitions will be established, governed and funded by the agricultural community to evaluate the effectiveness of such practices at improving water quality and hold growers accountable.

This Association believes both water quality and agricultural interests will be best served through a “melding” of those two approaches. The Board can attempt to harmonize using the public hearing process or could direct Regional Board staff and representatives of the agricultural organizations to meet to discuss, at a minimum, the following program elements:

- The achievability of water quality objectives within the time frames recommended.
- Whether the criteria to establish tiers is reflective of the threat to water quality.
- Whether the range of requirements is proportional to the threat posed by each tier.
- Whether improvements to water quality will be achieved through the alternative “coalition approach” or the Board staff “monitoring and reporting approach.”
- Whether it is fair and equitable to segregate Tier 3 dischargers and impose compliance dates and milestones upon them.
- Reconciling the conflict between preserving aquatic habitat and vegetative buffers with food safety standards common to the industry.
- The burden of reporting all fertilizer and the difficulties of achieving fixed nitrate balance targets.
- Whether individual monitoring or the cooperative monitoring program will best capture trends in water quality.

The Association also offers the following comments to specific provisions of the Draft Order and MRP.

The Size of a Farming Operation By Itself Does Not Pose the Highest Threat to Water Quality

The Tiering system set forth in the Draft Order automatically places all vegetable and strawberry growers with distinct farming **businesses greater than 1000 acres** in the highest Tier. Such operations with less than 1000 acres are placed in lower tiers representing a lower risk to water quality. This is an **arbitrary** distinction. This criteria simply punishes larger farming operations while rewarding others based upon their small size. Large operators, due to their size have no opportunity to move out of Tier 3 regardless of improvements to water quality. Condition 13 of the Draft Order does allow the Executive Office to approve a transfer to a lower tier, but there is no criteria, process or standards enumerated that govern this vague and uncertain transfer process. The threat to water quality is not determined by the size of the farming operation.

The Modified Nitrate Hazard Index Used in the Draft Order Does Not Reflect Risk to Groundwater

The Association believes the risk of salt and nitrate leaching into groundwater is heavily influenced by **soil type**. Those farming in sandy soils typically have to apply more nutrients than farmers in areas with loam soils that hold nutrients. Moreover, irrigation water moves faster through sandy soils into groundwater aquifers than those farming in more textured soils. This important factor is not included in Table 2 of the Draft Order.

Moreover the **Irrigation System Type Rating** is also flawed. Vegetable growers who use sprinklers for plant establishment and then convert to micro-irrigation receive the same ranking as farmers who use sprinklers for the entire growing cycle. Vegetable farmers who continue to use flood and furrow irrigation systems receive only one more point than do growers who convert to drip systems following plant establishment, arguably the single most important change in irrigation practices benefiting water quality in vegetable production. The rating system needs to reward growers who reduce their risk through changes in management practices and account for soil types prone to nitrate leaching.

It is Arbitrary and Unfair to Single out Tier Three Dischargers to Require Them to Meet Compliance Milestones

The Draft Order sets forth dates for Tier 3 dischargers to demonstrate compliance with Toxicity Standards (Condition 98), Sediment and Turbidity Standards (Condition 99) Nutrient in Surface Water (Condition 100) and Nutrients in Groundwater (Condition 101). Staff has estimated that approximately 100 farming operations in Region 3 will fall within Tier 3. The remaining 1600 operators who fall into lower tiers will not be required to demonstrate compliance with these Standards. Such a distinction is inconsistent with the basic tenet of **equal application and protection** of laws.

The Draft Order Sets Forth Discharge Prohibitions that are Arbitrary and Vague

The Draft Order in Condition 25 prohibits the “**presence of bare soil vulnerable to erosion.**” Condition Number 66 states that discharges must minimize the presence of bare soil vulnerable to erosion and stormwater runoff. Condition Number 71 requires erosion control practices to protect the heavy use or bare soil areas from concentrated flows of stormwater. Finally Condition 78 requires the photo monitoring of the presence of bare soils vulnerable to erosion.

This term “presence of bare soil vulnerable to erosion” is not defined in the Order. Those subject to this prohibition have no real basis for determining whether they are in violation of this prohibition. There are times between plantings when an entire agricultural field is bare soil.

There are other times when crops are planted that bare soils are limited to equipment staging areas and access roads. Yet under this prohibition, there is no way for farmers to determine with any amount of certainty whether they are in compliance with this prohibition.

Similarly, Condition 26 prohibits the discharge of **agricultural rubbish and solid waste**. The prohibition against trash does not set forth the amount or location of trash that would trigger an enforcement action. The prohibition is also not linked to any water quality impairment. The Association does not believe that carton dunnage or food wrappers from farm workers' lunches or rubbish in general has any appreciable impact on water quality.

Water Discharged by the Operation of Tile Drains are not Considered Waste and Should not be Subject to the Order

The operation of drainage systems to lower the water table below irrigated lands occurs in the lower end of several coastal valleys. These areas have perched water tables and naturally flowing artesian wells.

Farmers in those areas pump this subsurface water discharging it directly to drainage channels to lower the water table. These discharges typically **do not contain any materials that were not present** prior to the water being brought to the surface and discharged. The drainage system simply raises groundwater to the surface and discharges it without adding any waste substances associated with human or animal origin. Accordingly tile drains should not be included as a regulated type of discharge under the Draft Order.

The Subsequent Environmental Impact Report Understates the Impact to Agricultural Resources and Needs to be Revised and Recirculated.

The Environmental Impact Report submitted fails to analyze the impacts of the project and understates the loss of agricultural resources as a result of Water Quality Buffer Plan requirements.

The analysis in Appendix F determined the level of environmental impacts. It includes only operations greater than 1,000 acres in size located adjacent to waterbodies listed for sediment, turbidity or temperature on the **2006** 303(d) List of Impaired Waterbodies. The conclusion set forth in the report is that approximately 82 to 233 acres would be taken out of agricultural production. This analysis however is not consistent with the recommendations set forth in the Draft Order and MRP.

The Draft Order used the **2010** List of Impaired Waterbodies, which is set forth in Table 1 as triggering a Water Quality Buffer Plan (Draft Order Condition 92). This newer list dramatically expanded the number of impaired waterbodies. Moreover, the MRP on Page 16 (Subparagraph F) requires a water quality buffer plan be prepared by all Tier 3 dischargers located not **adjacent to**, but **within 1,000 feet** of such impaired waterbody.

This discrepancy between the proposed project and what was analyzed results in the impacts being severely understated in the Environmental Impact Report. Moreover, the four **mitigations** identified in the report are **not feasible**. Those mitigations refer to other practices besides buffers which are identified as sediment basins, cover crops and vegetative roads. These mitigations will result in the loss of even more farmland than riparian buffer strips. They do not mitigate the impacts but actually increase the loss of agricultural land.

The findings in the Environmental Impact Report that the percentage of farmland that will be converted to riparian buffers to be **less than significant with mitigation** is based on a flawed analysis. It does not comply with CEQA. It needs to be revised to fairly disclose the impacts consistent with the Draft Order and MRP being recommended for adoption.

Thank you for allowing the Association to submit comments.

Sincerely,

Richard S. Quandt
President & General Counsel