



# California Regional Water Quality Control Board Central Coast Region



**Linda S. Adams.**  
*Acting 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>

**Edmund G. Brown Jr.**  
*Governor*

Draft Agricultural Order  
Public Comments  
for  
March 17, 2011 Board Meeting

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**Individual Growers – Group 2**

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January 3, 2011  
Electronically Submitted to: [AgOrder@waterboards.ca.gov](mailto:AgOrder@waterboards.ca.gov)  
Hard Copy to Follow

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: California Regional Water Quality Control Board, Central Coast Region Draft Order No. R3-2011-0006 ("Draft Ag Order"), dated November 2010 Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands

Dear Honorable Chairman Young:

I have reviewed the Central Coast Region Draft Ag Order and the Proposed Alternative Order and would like to provide my feedback.

We own a 16 acre vineyard in San Miguel, and we are not located near an impaired water body. We utilize drip irrigation between May and October to water the vineyard. From October to May, we do no irrigation at all. We have no tailwater, we utilize good farming practices such as cover crop and we are mindful of what we use for fertilizers and pesticides.

We fully support the ag waiver program that was implemented in 2004 by the Regional Water Quality Control Board. It was a good education vehicle and a very collaborative effort between growers and a regional agency. The new draft ag order has a very different approach. It seems to penalize all growers with new and costly compliance mandates regardless of the impact.

Given the importance of vineyard agriculture and the economic benefit it brings to San Luis Obispo County, it seems to me the Water Board should be working with the growers that truly impact water quality thru incentives instead of a punitive approach by assuming all growers are violators. Burdening small growers with costly compliance regulations will not address the water quality issues identified in the ag order. And, it is one more financial hurdle to overcome in an industry that is already suffering.

Please consider the following changes to the Draft Ag Order:

- An exemption from additional monitoring and requirements should be available for farming practices and operations that are not contributing to water quality degradation.
- Basing the tiers on location and size has no practical bearing on potential contribution to poor water quality. The tiers should be based upon whether there is probable cause for pollution to be transported. Farming operations that do not result in tailwater (i.e. drip irrigated vineyard operations) and are closely monitored for input requirements to the specific plant needs, should be exempt from a tiered approach.
- Dischargers who do not cause tailwater, as is the case for vineyards, should not be subject to receiving water monitoring.
- The requirements for well water monitoring go beyond what is necessary to carry out the order to address pesticides, sediment, and nutrients associated with agricultural discharges.
- Depth to groundwater monitoring should be eliminated from the order.

- Any well testing should be associated specifically to the constituents in question. Additionally, this information should remain proprietary and not be submitted to the Control Board for public record. Particularly, if you are not contributing to the concerns meant to be addressed through this order. The groundwater reporting requirements are over-burdensome and unnecessary.

Although the Alternative Ag Proposal is more rigorous than necessary, it does acknowledge improvements already made over the years and has a more positive approach toward working together for continuous improvements.

I urge you to consider extending the dialogue and comment period to the end of January to allow more growers the time to review these lengthy documents and provide input. .

Regards,  
Lee and Lorraine Steele, Owners  
Estrella Farms  
San Miguel, CA



P.O. Box 1159, Castroville, CA 95012-1159

January 2, 2011

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

Dear Chairman Young,

I am writing this letter to you to express my deep concerns regarding the "New" Staff proposed Region 3 Agricultural Discharge Waiver and my support for the Agricultural Alternative Proposal that the Regional Water Quality Control Board will be reviewing over the upcoming months.

The Staff proposal is a "tiered" approach that is intended to focus on areas with the highest impact to water quality. In reality the proposed tiering system uses qualifiers to assess and rank the level of risk. Two of the three qualifiers have no bases in science, topography, hydrology, pedology and geography. For example, a qualifier of 1000 acres or more is arbitrary and has no scientific basis. This qualifier does nothing to impede or improve water quality. Furthermore, the Staff proposal is regulatory and administratively burdensome and will waste money on excessive paper work rather than on improving water quality.

The Agricultural Alternative Proposal is a "coalition" approach with farmers, landowners, and scientists, from public and private industries working collectively to solve water quality problems that are unique to every watershed. Audits and penalties ensure compliance and participation. Dollars will be spent on improving water quality not paper work. The Agricultural Proposal also includes elements for pilot water improvement projects to better understand, implement, and treat water impairment.

Agriculture in California is an extremely unique, diverse, and competitive industry. We have a successful history of overcoming challenges creatively. The Agricultural Alternative Proposal is our industry's answer to improving water quality, and remaining a viable industry for generations to come. It is for these reasons and many more that I strongly urge the Regional Water Quality Control Board to adopt the Agricultural Alternative Proposal.

Thank you for your time and consideration.

Respectfully,

Michael R. Scattini  
Partner  
LUIS A. SCATTINI & SONS, LP

**HEARST** corporation

**Via Federal Express**

December 30, 2010

Ms. Angela Schroeter,  
Agricultural Regulatory Program Manager  
Regional Water Quality Control Board  
895 Aerovista Place, Suite 101  
San Luis Obispo, CA 93401

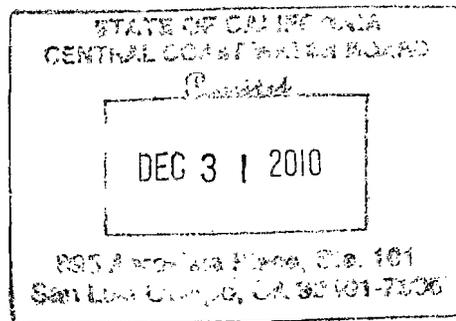
**Re: Draft Order No. R3-2011-0006  
Conditional Waiver of Waste Discharge Requirements for Discharges from  
Irrigated Lands**

Dear Ms. Schroeter,

Hearst Corporation ("Hearst") would like to take this opportunity to provide brief additional comment on the Regional Water Quality Control Board staff's ("RWQCB") latest draft of Order No. R3-2011-006 regarding waivers for irrigated agricultural dischargers (hereinafter "Waiver").

First, we would like to commend the RWQCB for its commitment to preserving and enhancing the quality of water within the central coast region. This is both an important and difficult task and we believe that the RWQCB's success is dependent upon balancing the Waiver's substantive ability to mitigate the targeted agricultural discharges with its functionality and acceptance by the various agricultural operations on the central coast.

In reviewing the numerous correspondences submitted to the RWQCB in this matter, there is still a well-grounded consensus that the proposed Waiver is not a practicable or workable solution for the region's varied water quality problems. Rather than repeat and reiterate what we have already said and what has already been submitted into the record, please allow this letter to serve as acknowledgment of Hearst's support for the positions taken by the various Waiver opponents, most notably the comments set forth by the San Luis Obispo County Farm Bureau, Cattleman's Association and California Avocado Commission. Please note however, that our reference to these agencies in no way excludes our support for the dozens of other small family farms and other agencies that have also expressed meaningful opposition to the Waiver's approach to regulating agricultural discharges, particularly those comments expressing the need for some form of reasonable exemption for "low threat" agriculture operations.



**Martin N. Cepkauskas**  
Director of Real Estate  
Western Properties

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Ms. Angela Schroefler  
December 30, 2010  
Page 2

Again, as a relatively small irrigated agricultural operator (approximately 6 acres of avocados on the San Simeon Ranch and 145 acres of alfalfa on the Jack Ranch, which combined is a very small percentage of the approximately 150,000 acres of both ranches), Hearst is concerned that the proposed extensive management and monitoring requirements of the Waiver, even at the Tier 1 level, will render our avocado and alfalfa operation an unprofitable enterprise and prevent Hearst from expanding its operations in the future. Like many other farmers in the community, we implement all applicable best management practices for our operations and strive to provide the market with excellent quality locally grown commodities with the least possible environmental degradation. Our operations are virtually nitrate free and we believe more consideration is absolutely necessary in order to exempt or at least substantially reduce the proposed costly regulating requirements for such low impact farming operations.

We hope that the RWQCB will consider the concerns of our farming community with all due earnestness, and develop a plan that will achieve its water quality objectives in a practical and feasible manner.

Please call if you have any questions or comments.

Sincerely Yours,  
Hearst Corporation

A handwritten signature in black ink, appearing to read 'Marty Cepkauskas', with a long horizontal line extending to the right.

Marty Cepkauskas,  
Director of Real Estate, Western Properties

cc: Cliff Garrison, Ranch Manager, Hearst Corporation  
Richard Gonzales, San Luis Obispo County Farm Bureau  
Aaron Lazanoff, San Luis Obispo County Cattlemen's Association  
Tom Bellamore, California Avocado Commission  
Timothy J. Carmel, Carmel & Naccasha LLP



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*Governor*

## Public Comments to

Draft Agricultural Order, released 11/19/2010

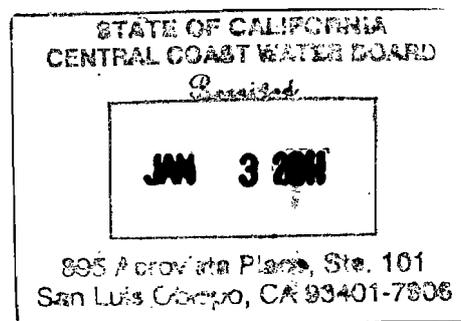
### 55: Form Letter - this letter was received from the following entities:

Name	Date Received
Growers Express, LLC	01/03/2011
River Ranch Fresh Foods, LLC	01/03/2011
Steinbeck County Produce	01/03/2011



January 3, 2011

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



Dear Chairman Young,

As a shipper of produce grown in the Central Coast region of California, I have been monitoring the development of a renewed "Conditional Waiver" for discharges from irrigated lands and am writing to express my concern with staff's most recent proposed draft Ag Order.

This draft Ag Order, if implemented without modification, will adversely affect the ability of the growers I contract with to continue farming productively in this region. River Ranch Fresh Foods, LLC, works with 20 growers across 5,000 acres to distribute over 150,000,000 pounds of iceberg lettuce, leafy greens, broccoli & cauliflower annually. I am committed to working to improve water quality in the region but firmly believe that any new conditions need to be grounded in science, provide flexibility for different approaches, prioritized to address the most significant concerns first and achievable for growers in reasonable timeframes. I fear the current proposed draft Ag Order is unclear and difficult to understand, is not science or risk based in its assignment of priorities and will be highly impractical if not impossible for agricultural operations like mine.

Although there are a number of items in the staff proposal that concern me, including but not limited to jurisdictional challenges, mandated nutrient budgets for vegetable crops, arbitrary tier triggers and a lack of focus on research and innovation, the item that is most immediately disconcerting are the riparian vegetation mandates that contradict nationally-recognized and customer-required food safety practices. This waiver will reverse some of the major food safety improvements we've worked hard for.

Major concerns include:

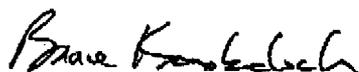
- That operators are prohibited from having bare soils vulnerable to erosion that contribute to an exceedance of sediment run-off.
- That operators must protect existing aquatic habitat by maintaining riparian functions such as streambank shading, aquatic and wildlife support and maintain naturally occurring mixed vegetative cover in aquatic habitat areas
- That by October 1, 2012 Tier 2 and 3 dischargers with operations adjacent to or containing an impaired waterbody for sediment, temperature or turbidity must conduct photo monitoring to document the condition of the waterbody including the estimated widths of vegetative filter strips and management practices or measures to address impairment
- That by October 1, 2015, Tier 3 dischargers with operations adjacent to or containing an impaired waterbody (listed in Table 1) must submit a Water Quality Buffer Plan that protects the waterbody and its associated perennial and intermittent tributaries that includes a minimum 30 foot buffer measured horizontally from the top of bank on either side of the waterway, vegetated zones within the buffer to control temperature, reduce velocity, control sediment deposition, provide treatment through infiltration.

Each of these bulleted concerns directly contradict a grower's ability to meet food safety standards, thereby creating an untenable situation in which growers will be unable to make a decision without breaking a contract, rule or regulation. I would strongly encourage the Central Coast Regional Water Quality Control Board and staff to consider the proposed agricultural alternative as a more pragmatic solution to improving water quality in the region. The "Ag Alternative" encourages growers to work in concert to reduce the discharge of waste in reasonable time frames using practical and proven solutions. The Ag Alternative enjoys broad consensus amongst agriculturalists in the region and if viewed as a baseline could provide a strong starting point for continued or expanded collaboration between the CCRWQB and growers to collaborate on the common goal of improved regional water quality.

The staff draft Ag Order does not foster collaboration, provides no incentives for growers to participate in water quality best management practices and will be difficult to comply with and enforce. It is a punitive proposal that stifles collaboration and innovation. In fact, the "tiering" proposal embodied in the staff draft Ag Order is an example of an arbitrary and punitive approach in that it assigns select operations to high risk Tiers based on size, proximity to surface water and/or crops grown regardless of the actual risk those operations may present. Once in a higher Tier the requirements for an owner/operator are much more stringent and there is no clear path out of that Tier despite the best practices, mitigation measures or improvements present or made by the owner/operator.

I urge you to listen to shipper and grower feedback and suggestions, including mine, and incorporate that feedback into the draft Ag Order. An Ag Order must be designed with achievable objectives and must be a transparent and collaborative process that encourages agricultural stakeholders – as they are uniquely positioned to provide innovative solutions to enhance the region's water quality. The failure to constructively engage growers and landowners will be counterproductive to short and long-term efforts to improve water quality.

Thank you for considering my views.



Bruce Knobloch, President

River Ranch Fresh Foods, LLC, 1156 Abbott Street, Salinas, California 93901

[bknobeloch@rrff.com](mailto:bknobeloch@rrff.com) Main office: 831-758-1390

Cc: Vice Chairman Russell Jeffries  
John Hayashi  
David Hodgin  
Monica Hunter  
Tom O'Malley  
Gary Shallcross  
Roger Briggs, Executive Officer  
Angela Schroeter, Senior EG  
Lisa Horowitz McCann, Environmental Program Manager  
Howard Kolb, Agriculture Order Project Lead Staff



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**Linda S. Adams.**  
*Secretary for  
Environmental Protection*

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**Edmund G. Brown Jr.**  
*Governor*

## Public Comments to

Draft Agricultural Order, released 11/19/2010

### 56: Form Letter - this letter was received from the following 18 individuals:

Name	Date Received
Ashley Escobar	12/30/2010
Betsy Roth	12/30/2010
Dana Rodrigues	01/03/2010
Gary Kobara	01/03/2011
Georgeann Eiskamp	01/03/2011
Jenna Arroyo	12/30/2010
Jerry Rava	12/30/2010
Jerry Rava, II	12/31/2010
John Maulhardt	12/31/2010
Lance Batistich	12/31/2010
Leroy Saruwatari	01/03/2011
Lori McGrenera	12/20/2010
Mark Teixeira	12/31/2010
Melissa Lewis	12/31/2010
Paul Kawaguchi	01/02/2011
Pete Aiello	12/30/2010
Robert Pybas	12/21/2011
Tom Bengard	12/31/2011

**From:** Donna Rodrigues <drodri7574@aol.com>  
**To:** Ag Order Project Lead Howard Kolb <AgOrder@waterboards.ca.gov>  
**Date:** 1/3/2011 9:33 AM  
**Subject:** Ag Order Comment

Ag Order Project Lead Kolb

I am a sole owner of a flower farm operation that consists of 6 small ranches some leased and some owned by me. These ranches are located in the Coastal zone and some inland, but all are located on hilly terrain that make compliance with these orders impossible due to the natural course of the water runoff and in addition our speciality crops require overhead watering for growth and frost protection. We have tried other systems in the past that have not produced the growth results needed for the marketplace, let alone any frost protection.

As a farm owner and/or operator in the Central Coast region, I have been monitoring the development of a renewed "Conditional Waiver" for discharges from irrigated lands and am writing to express my concern with staff's most recent proposed draft Ag Order.

This draft Ag Order, if implemented without modification, will adversely affect my farming operation, reduce the value of my land and impact my ability to continue farming productively in this region. I am committed to working to improve water quality in the region but firmly believe that any new conditions need to be grounded in science, provide flexibility for different approaches, prioritized to address the most significant concerns first and achievable for growers in reasonable timeframes. I fear the current proposed draft Ag Order is unclear and difficult to understand, is not science or risk based in its assignment of priorities and will be highly impractical if not impossible for agricultural operations like mine.

I would strongly encourage the Central Coast Regional Water Quality Control Board and staff to consider the proposed agricultural alternative as a more pragmatic solution to improving water quality in the region. The "Ag Alternative" encourages growers to work in concert to reduce the discharge of waste in reasonable time frames using practical and proven solutions. The Ag Alternative enjoys broad consensus amongst agriculturalists in the region and if viewed as a baseline could provide a strong starting point for continued or expanded collaboration between the CCRWQB and growers to collaborate on the common goal of improved regional water quality.

The staff draft Ag Order does not foster collaboration, provides no incentives for growers to participate in water quality best management practices and will be difficult to comply with and enforce. It is a punitive proposal that stifles collaboration and innovation. In fact, the "tiering" proposal embodied in the staff draft Ag Order is an example of an arbitrary and punitive approach in that it assigns select operations to high risk Tiers based on size, proximity to surface water and/or crops grown regardless of the actual risk those operations may present. Once in a higher Tier the requirements for an owner/operator are much more stringent and there is no clear path out of that Tier despite the best practices, mitigation measures or improvements present or made by the owner/operator.

I urge you to listen to growers' feedback and suggestions, including mine, and incorporate that feedback into the draft Ag Order. An Ag Order must be designed with achievable objectives and must be a transparent and collaborative process that encourages agricultural stakeholders - as they are uniquely positioned to provide innovative solutions to enhance the regions water quality. The failure to constructively engage growers and landowners will be counterproductive to short and longterm efforts to improve water quality.

Implementation of these water regulations as proposed will effectively put my total farming operation out of business. The physical improvements, monitoring and reporting are cost prohibitive to my small operation. If this is adopted as written I will have no choice but to close down my farming operation and send approximately 100 employees to the the unemployment rolls in Santa Cruz and Monterey Counties.

Further to this I fear that the value of my land will be greatly impacted and I will be unable to lease, develop, or sell properties that I have owned for over 20 years.

This is further evidence of our State of California forcing employers to look to other more business friendly states in order to survive. Unfortunately me for I will be forced out of business and shut down as I have no other options.

Sincerely,

Donna R Rodrigues  
PO Box 1625  
Soquel, CA 95073

**AgOrder - Ag Waiver**

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**From:** John Salisbury <john@salisburyvineyards.com>  
**To:** <AgOrder@waterboards.ca.gov>  
**Date:** 1/3/2011 1:48 PM  
**Subject:** Ag Waiver

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To: West Coast Water Board:

We are a small vineyard/winery operation on the coast of Central California that has been farming throughout California for over 160 years (1850). We are an organic operation that uses year around cover crops, no herbicides or insecticides, and have settling ponds and dams to capture silt and impurities that will be lined this summer. The USDA Soil Conservation advisors have looked at our operation and have been impressed with how we deal with water especially how we have cultivated and maintained native grasses. Part of our vineyard is next to a year around flowing creek. We never fertilize or irrigate (dry farmed) this parcel because of the rich soil. The only spray we use is a 1% organic mineral oil base in only 30 gallons of water per acre - three to four times a year. Because of this small amount of spray and heavy growth of wild vines, willows, Sycamore and Oak trees, none of this benign spray can physically reach the creek.

Because we are within 1,000 feet of this creek, we are automatically lumped into Tier 2 with no consideration for our organic farming practices. This field, because of its flat terrain, has no runoff into the creek. This extra cost of complying with your requirements as a Tier 2 grower plus whatever setback you get approved will mean we will probably have to take out 5 acres of winegrapes. This high quality block of Pinot Noir is now in its 11th year and just now becoming a profitable unit. It cost us over \$150,000 cash to install plus an additional \$15,000/year maintenance for 5 years until we got our first full crop. To force us to destroy this vineyard would be a travesty. What do you expect us to put on the property with a \$50,000 an acre purchase price - housing, equipment storage, horse-cow pasture? We surely are going to have to get something back on our investment.

The vineyard is the best possible and least polluting use of the property. If there are not going to be some sensible exemptions to this broad-brush and one size fits all approach to fix the problem, then I guarantee you will not have enough investigators or funds to police your requirements and the program will not achieve its goals. Because growers, like myself, who believe in pure common sense will fight you with everything we have to save our crops. We understand there is a general problem but don't punish those of us who are constantly trying to do the right thing. Please reconsider this Tier system and large setbacks that do not take into account special circumstances. Thank you,

John Salisbury

*Salisbury Vineyards*

Schoolhouse in Avila Valley

6985 Ontario Road, San Luis Obispo, CA 93405

T/F 805-595-9464

M 805-471-3111

Blog: [inthevines.com](http://inthevines.com)

**From:** Lue Miller <lue@montereybaynursery.com>  
**To:** Ag Order Project Lead Howard Kolb <AgOrder@waterboards.ca.gov>  
**Date:** 1/3/2011 2:14 PM  
**Subject:** Ag Order Comment

Ag Order Project Lead Kolb

As a wholesale nursery operator in the Central Coast region, I am concerned about the Discharge Waiver that is about to be implemented.

This is going to be extremely costly and of little benefit for its trouble and expense. It has already caused us to consider whether or not we can afford to stay in business, and provide the 75 full time jobs for those who depend on us for a paycheck.

We instituted runoff recovery and reuse twenty years ago, on our own initiative and at our own expense. This draft Ag Order, if adopted without important changes, will greatly impact our nursery, reduce the value of our land and make questionable the financial survival of our company.

We are committed to working to improve water quality in the region but we firmly believe that any new regulations need to be grounded in science, provide flexibility for different approaches, prioritized to address the most significant concerns first and achievable for growers in reasonable timeframes.

Most importantly, technologies that would make the stated runoff targets achievable are simply not mature enough yet to make those target numbers economically realistic.

I fear the current proposed draft Ag Order is unclear and difficult to understand, is not science or risk based in its assignment of priorities and will be highly impractical if not impossible for agricultural operations like mine.

I would strongly encourage the Central Coast Regional Water Quality Control Board and staff to consider the proposed agricultural alternative as a more pragmatic solution to improving water quality in the region. The "Ag Alternative" encourages growers to work in concert to reduce the discharge of waste in reasonable time frames using practical and proven solutions. The Ag Alternative enjoys broad consensus amongst agriculturalists in the region and if viewed as a baseline could provide a strong starting point for continued or expanded collaboration between the CCRWQB and growers to collaborate on the common goal of improved regional water quality.

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I urge you to listen to growers' feedback and suggestions, including mine, and incorporate that feedback into the draft Ag Order. An Ag Order must be designed with achievable objectives and must be a transparent and collaborative process that encourages agricultural stakeholders - as they are uniquely positioned to provide innovative solutions to enhance the regions water quality. The failure to constructively engage growers and landowners will be counterproductive to short and long term efforts to improve water quality.

Thank you for considering my views.

Sincerely,

Lue Miller  
PO Box 1296  
Watsonville, CA 95077

# LAGUNA MIST FARMS



December 29, 2010

Mr. Jeffrey S. Young  
Board Chair  
California Regional Water Quality Control Board  
Central Coast Region  
895 Aerovista Place, Suite 101  
San Luis Obispo, California 93401

Dear Chairman Young,

I am writing to make comments on the new Region 3 discharge waiver that The Regional Water Quality Control Board will be discussing over the next several months. I am General Manager of Laguna Mist Farms, we farms approximately 1300 acres of vegetable crops on several ranches between Salinas and Gonzales in the Salinas Valley.

After reading the Regional Board Staff's "Recommendations for Water Code Waiver for Agricultural Discharges, and all the supporting materials" we were completely overwhelmed with the regulation that the Regional Board is preparing to burden us with. The tiered structure of the staff's proposal is most concerning. The acreage number of 1,000 acres and 1,000 feet, growing certain crops and using certain pesticides, to be thrust into tier 3 is purely arbitrary and has no scientific foundation. We farm properties that are not adjacent to impacted waterways yet are still apart of the acreage equation. For example, we farm properties that have high levees bordering between ourselves and an impacted waterway, and there is no way that waters from our ranches reach the water way.

Laguna Mist Farms supports Agriculture's Alternative Discharge Proposal. We believe that the Agriculture's alternative waiver will achieve the goals on water quality faster for the following reasons: 1. It takes all dischargers – no matter how large or small the acreage component and holds them accountable; 2. Growers will be audited for compliance; 3. Growers can elect to participate in the CMP or do individual monitoring, but every grower will have to participate; 4. With a grower group coalition as the auditing entity, all growers will have to participate, or face penalties by the Regional Board; and 5. Given the complexity of soils, crop diversity in the Region, and the Regional Board's lack of ability to do follow up visits and audits, the Grower based coalition will make more progress towards reducing discharge issues than the Regional Board's staff's proposal.

Laguna Mist Farms grows fresh vegetables for Ocean Mist Farms. We support the comments on the Staff draft waiver submitted on behalf of Ocean Mist Farms and RC Farms by attorney William Thomas of Best, Best, and Krieger LLP. Thank you for allowing us to comment on this very important issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Scheid".

Paul Scheid  
General Manager  
Laguna Mist Farms



January 2, 2011

Mr. Jeffrey S. Young  
Board Chair  
California Regional Water Quality Control Board  
Central Coast Region  
895 Aerovista Place, Suite 101  
San Luis Obispo, California 93401

Dear Chairman Young,

I am writing to make comments on the new Region 3 discharge waiver that The Regional Water Quality Control Board will be discussing over the next several months.

Boutonnet Farms farms approximately 5,000 acres of artichokes and vegetable crops from Highway 68 to Molera Rd. in Castroville. We employ 45 men during the growing season.

Boutonnet Farms has always been a leader in water conservation and water reuse. The original Monterey Wastewater Reclamation Study for Agriculture was done on lands provided by Boutonnet Farms, Sea Mist Farms (closely related company) and its ownership. Boutonnet Farms has been using recycled water for 12 years in the Castroville Sea Water Intrusion.

The use of recycled water to irrigate our crops is supported by agriculture, leading government officials, and environmental support groups. We take treated wastewater and reuse it instead of sending it out to the Monterey Bay. However, "recycled" water is high in salts, especially Sodium, Chloride, and the water contains Nitrates higher than drinking water standards. The use of tile drains to take these irrigation water leachates away from our crop root zone is absolutely essential in maintaining the productivity of our prime farm lands. Without it we would not be able to continue to farm these properties. Through the use of recycled water, we have helped the Salinas Valley in their efforts to slow the rate of Sea Water Intrusion into the underground aquifers. With our investment in the Recycled Water Projects in the Salinas Valley it seems that we are being penalized for being on the forefront of these water reuse technologies by the Regional Board Staff. The Staff document waffles when it comes to the subject of tile drains. First, we were told that they were excluded, and then we were told that we would have to purify the discharges within a few years. We would like to challenge the Regional Board to help us come up with methodologies that would work – cost effectively – in purifying tile drain discharges. Without these tile drainage systems, it is only a matter of time before the high levels of salt in our recycled water will make our soils unfarmable. Nevertheless, we are proud that we

have been actively involved in keeping our farming properties sustainable through our use of recycled water and advanced irrigation practices.

For over 20 years, Boutonnet Farms has made the transition to drip irrigation wherever possible. We no longer furrow or flood irrigate, and we farm approximately 90% of our acreage on drip. The balance of our acreage is irrigated with sprinklers or a combination of sprinkler and drip irrigation. The costs are high – up to \$5,500 per acre which includes irrigation system design changes, energy efficient pumps and motors, land leveling, land based assessment fees to pay for the recycled water projects, and drip irrigation equipment – like filtration, and drip tape. We are committed to maintaining our farming properties productive and sustainable for the future of our families.

Fertility: we simply can not afford to *not monitor* our input costs closely. Fertilizer costs tripled around the time the recession started. We sample our soils before planting and then determine how much fertilizer we will need for the crop. We have reduced our fertilizer inputs by one-third and we intend to continue to monitor our fertility before each crop planted. However, growing a vegetable crop of any kind is an art, and within the same field - soil types and drainage may not be uniform. Understanding how best to manage the inputs (whether fertilizer or irrigation) on your particular farming properties is key to a successful crop. These are factors that the Regional Board and its staff can not appreciate or understand.

After reading the Regional Board Staff's "Recommendations for Water Code Waiver for Agricultural Discharges, and all the supporting materials" we were completely overwhelmed with the regulation that the Regional Board is preparing to burden us with. The document is very complex, and in many cases, like the Nitrate Hazard Index is not based on sound science. For example, Table 2 has omitted criterion that was part of the original index, a soil type rating. The omission of this factor is indicative of a lack of knowledge about the fact that soil texture and clay content play a very important role in affecting hydraulic conductivity and denitrification, factors that significantly affect nitrate movement and availability in the soil profile. There is no reference or data justifying the omission of this criterion. This index should be used as one tool in the effort to reduce the use of nitrate on our crops.

The Staff admits in their document that it does not have the bodies or resources to properly follow up with site visits and grower outreach. In fact, Preservation Inc has reported to Staff that at least 26 growers have not paid their CMP fees. The names of the operations have been given to the Regional Board with no follow up or penalties against them taken. Why should we expect otherwise from this draft proposal? Once again, the growers who are doing their best to do what's right will be penalized, whereby the others will continue to do what they have been doing.

The Staff's document does not take into account that the average grower will not understand how to implement the waiver. The grower will be lost in a sea of regulation that is hopelessly flawed by its own complexity and lack of understanding of what growing crops entails. The document ignores the risk both personal and financial that the growers undertake when investing in growing a crop – like head lettuce (\$4,000 per acre per crop, and artichokes (\$5,200 per acre per crop). Finally, in reading the staff's recommendations, they underestimate the costs that will be associated with the implementation of a flawed piece of regulation. We are evaluating whether we will have to hire an individual (\$150,000.00 annually) just to understand and help us follow and implement the regulation. The estimated costs are much greater than the staff is estimating. We estimate that sampling and lab costs could run well into the 10's of thousands of dollars annually for an operation our size.

The tiered structure of the staff's proposal is most concerning. The acreage number of 1,000 acres and 1,000 feet, growing certain crops and using certain pesticides, to be thrust into tier 3 is purely arbitrary and has no scientific foundation. We farm properties that are not adjacent to impacted waterways yet are still apart of the acreage equation. For example, we farm properties that have high levees bordering between ourselves and an impacted waterway, and there is no way that waters from our ranches reach the water way. We suggest that the Regional Board look at where the sediment runoff is highest and focus their efforts there first with grower education.

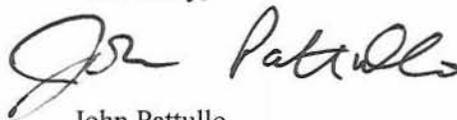
One strategy we've given consideration to would be to divide our ranches into smaller farmed parcels and seek WDR's instead of trying to comply with the Staff proposal. Should we divide our farming properties to lower our net farmed acres? I would not think that would be in the best interest of the Regional Board's mission!

Agriculture has proven that it can regulate itself with the California Leafy Greens Marketing Agreement. That is why Boutonnet Farms supports Agriculture's Alternative Discharge Proposal. We believe that Agriculture's alternative waiver will achieve the goals on water quality faster for the following reasons: 1. It takes all dischargers – no matter how large or small the acreage component and holds them accountable; 2. Growers will be audited for compliance; 3. Growers can elect to participate in the CMP or do individual monitoring, but every grower will have to participate; 4. With a grower group coalition as the auditing entity, all growers will have to participate, or face penalties by the Regional Board; and 5. Given the complexity of soils, crop diversity in the Region, and the Regional Board's lack of ability to do follow up visits and audits, the Grower based coalition will make more progress towards reducing discharge issues than the Regional Board's staff's proposal.

Boutonnet Farms grows artichokes and fresh vegetables for Ocean Mist Farms. We support the comments on the Staff draft waiver submitted on behalf of Ocean Mist Farms and RC Farms by attorney William Thomas of Best, Best, and Krieger LLP.

Finally, we would like to thank you for allowing us to comment on this very important issue. Please take into consideration how difficult it is going to be to monitor every grower/landowner in the Region to ensure they are in compliance with the Regional Board Staff's proposal. It will be nearly impossible. For that reason alone, the Ag alternative discharge waiver proposal is the superior alternative.

Sincerely,

A handwritten signature in black ink that reads "John Pattullo". The signature is fluid and cursive, with the first name "John" being more prominent and the last name "Pattullo" following in a similar style.

John Pattullo  
General Manager  
Boutonnet Farms



**David Costa**  
**Costa Family Farms**

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January 3, 2011

Roger Briggs, Executive Officer  
Central Coast Regional Water Quality Control Board  
895 Aerovista Place, Suite 101  
San Luis Obispo, CA 93401-7906

Dear Roger Briggs:

I am writing to you today to comment on the Preliminary Staff Recommendations of the Central Coast Regional Water Quality Control Board for the Conditional Waiver of Discharges from Irrigated Agricultural Lands. I am a member of a farming family in the Salinas Valley; our farm supports the families of the five owners and over 500 employees.

I have had the opportunity to speak before the Regional Board and also to submit written comments this past year. It appears to me, with regards to staff at least, that the points I tried to make fell on deaf ears. In particular, the complexity of Central Coast agriculture is still not understood with regards to typical ranch sizes, block sizes within the ranch, and the number of individual plantings that go on in a year's time. When I look at the reporting requirements for my operation, especially as it pertains to nutrient applications, I see almost 1400 individual plantings that will have 3 to 4 nutrient applications to be reported in addition to chemical use. I have not seen any answers or proposals from staff with regards to whom, and how, this is going to be managed once this information is received from a grower like myself, and there are 3,000 growers in Region 3.

As I start to look through this most recent draft, the first thing that jumps out is the assignment of Tiers. Only basic questions are asked in this process: "Do you apply chlorpyrifos or diazinon, is your operation located within 1000 feet of an impaired surface water body, do you grow crops with a high potential to discharge nitrogen, and is your operation more or less than 1000 acres?" Nowhere do I see the question, "Do you have irrigation runoff that leaves your ranch?" Staff continues to define runoff as water that leaves your field rather than water that leaves your ranch. Both in written comments this past spring and public comment on May 12th I shared with you details of a \$200,000 project on one of our ranches. This project is dependent on taking water from each of the individual fields on the ranch and moving it through an underground pipeline to a consolidation point at the lower end of the ranch. However, although no irrigation water

\_\_\_\_\_, I am still lumped into Tier III because my operation is greater than 1000 acres and I apply chlorpyrifos and diazinon. Isn't the main question whether you have irrigation runoff or not? Where is the logic when two growers with similar chemical use and irrigation practices are placed into two different tiers merely because one is larger than the other, even if he has no irrigation runoff? Generally speaking, I believe the size of our operation gives us resources to accomplish things that small growers may not be able to accomplish. Instead, this draft penalizes us for that. Not to mention the fact that there are substantial differences in monitoring and reporting requirements between Tier II and III. It shouldn't take a request to the Executive Officer to approve transfer to a lower Tier for something that appears so basic. In addition, there is no mention of a deadline for response from the Executive Officer to that request.

In addition, with regards to our location within 1000 feet of an impaired surface water body, there still are no detailed questions asked. How come nobody asks whether you drain any irrigation runoff, or storm water runoff for that matter, into that impaired surface water body, or does your ground even slope towards that surface water body? To me, these are the important questions.

Anybody who thinks this plan is going to be accomplished for a cost of a few dollars per acre is sadly mistaken. Enrollment fees; a Farm Water Management Plan (Farm Plan) which must be updated annually and include Irrigation Management, Pesticide Management, Nutrient Management, Sediment and Erosion Control (to include storm water), and Aquatic Habitat Protection; sampling requirements; certified laboratory requirements; Annual Compliance Documents; Irrigation and Nutrient Management Plans; progress reports; third-party evaluations of the effectiveness of management practices implemented; Quality Assurance Protection Plans; Water Quality Buffer Plans; photo monitoring; Nitrogen Application Reporting; Individual Discharge Reporting; Groundwater Well Sampling (both irrigation and domestic); a Sampling and Analysis Plan; Irrigation and Nutrient Management Plan Effectiveness Reports; the requirements of "demonstrations that discharge is not causing or contributing to exceedances of water quality standards in waters of the State or United States"..... I'm sure I could find more if I kept looking. What about the requirement that "groundwater samples must be collected by a state registered professional engineer, professional geologist, or third-party approved by the Executive Officer using proper sampling methods, chain of custody, and quality assurance/quality control protocols?" I shudder at the thought of the costs involved for compliance; yet, we haven't even begun to talk about management plan implementation costs!

I'd like to take a moment and talk about Appendix F, the draft technical memorandum. In their memorandum I find it interesting that our \$200,000 project mentioned above was used as an example in the cost considerations. My only mention of this project came in the written and public comments which I mentioned earlier, so I believe that was about all that staff knew about our project, especially since the only staff member who I believe saw our project firsthand had been reassigned to another department some time ago. There has been no verification of the costs involved, no questions asked regarding any engineering involved, no questions asked regarding any liner or seal of the pond, nor any questions asked regarding the adequacy of the size of the structure which was built. I believe its inclusion in this draft document was wrong, especially considering the lack of confirmations mentioned above. In addition, the comment that "consumers share the costs of production by paying higher prices and that the effect on total revenue of increased costs of production is substantially attenuated" tells me that somebody has no clue at all about the realities of the marketplace.

I believe the goals of the draft proposal, the timelines regarding the elimination of irrigation runoff, the meeting of water quality toxicity standards, sediment and turbidity standards, and nutrient and salt water quality standards are in many cases physically impossible. I firmly believe that, and I believe that there has to be a middle ground which shows satisfactory progress towards achieving water quality goals with more reasonable timelines. I just don't see how we can get to where staff thinks we should be on the timeline they are giving us to get there. If the board passes a plan which is not achievable, they will have only set us up for failure while not solving the water quality problem.

Sincerely,

*David Costa*

David Costa  
Costa Family Farms

**AgOrder - New Ag Waiver - Comments for Administrative Record**

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**From:** Roger Moitoso <rogermoitoso@arroyosecovineyards.com>  
**To:** <AgOrder@waterboards.ca.gov>  
**Date:** 1/3/2011 3:08 PM  
**Subject:** New Ag Waiver - Comments for Administrative Record

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Attn: Jeffrey Young, Chairman of the Region 3 Water Board

Dear Chairman Young,

This is an outline of some of the concerns I have about where Region 3's staff is going with this Ag Waiver renewal.

- I. Staff's proposal lacks any scientific reasoning for their tiered system. One example: Number of acres farmed has nothing to do with potential for toxic discharge (i.e. 1001 acres of CCOF certified organically farmed wine grapes has less possibility for toxic discharge than would 100 acres on a 15% slope of conventionally farmed broccoli.)
- II. Staff's proposal for aquatic buffers, protection, and restoration goes way beyond the intent of the law. Disagreement on this issue can only be resolved in court if your board does not correct the staff's interpretation in the new waiver.
- III. Many of your staff's requirements necessitate large capital expenditures in order to comply – such requirements need to be directed to the land owners (not the tenants). A landowner can capitalize such an expenditure and amortize it in the rental agreement with numerous tenants over time, whereas a single tenant does not have that option.
- IV. Region 3's executive director, Roger Briggs, commented publicly that Region 3's surface water – according to the first 5 years of monitoring - is more toxic than other regions within the state. Region 3 intentionally started with the 25 most toxic monitoring sites in the first year (2005), added 25 more sites spread throughout the region during the next year (2006); we intentionally looked for hot-spots to monitor and have been working very diligently on improving the water quality. Your executive director's comments were very disingenuous and intended to play up to the environmental community, rather than working with the landowners, farmers and businessmen who are most concerned about the quality of land, air and water in our communities. This is our life-blood – we can't survive without it.

Best regards,  
- Roger Moitoso

Land Owner, Farmer, and Businessman of Region 3

# MARGARITA VINEYARDS

LLC

22720 El Camino Real Suite A1, Santa Margarita, Ca 93453  
(805) 438-4665 ~ Fax (805) 438-4714

January 3, 2011

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: California Regional Water Quality Control Board, Central Coast Region Draft Order No. R3-2011-0006 ("Draft Ag Order"), dated November 2010 Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands

Dear Honorable Chairman Young:

Although we recognize staff's progress in developing a Tiered Program as a marked improvement from the proposal issued in February 2010, we feel that the proposed program tends to paint all irrigated farmland in the same vein. The Margarita Vineyards use only drip irrigation that is closely monitored, and has 0 run off all nutrient applications are applied through the drip system and all frost protection is done using micro pulsating emitters. The Margarita Vineyards is the Southern-most vineyard in the Paso Robles AVA and benefits from some of the most abundant rainfall in the AVA. The Vineyard is SIP certified and as such adheres to the rigorous standards set by there the Certification program. Margarita Vineyards has made a concerted effort to work with our local governments, neighbors and communities to expand education, awareness, and collaboration on matters that affect our industry and in turn the communities we serve. It is our view that incentives and education go much farther in addressing the end goal of resource protection and conservation, including water quality, more than regulation ever could. We offer the following comments and suggest additional revisions to the approach to make for a more practical and targeted program:

1) Tiered-Approach: Basing the tiers on location and size has no practical bearing on potential contribution to poor water quality. The tiers should be based upon whether there is probable cause for pollution to be transported. Farming operations that do not result in tail water (i.e. drip irrigated vineyard operations) and are closely monitored for input requirements to the specific plant needs should be exempt from a tiered approach.

2) Incentives: Margarita Vineyards utilize deficit irrigation practices, drip tubing, water to root technology, drip irrigation and soil moisture calibrations. These practices should be encouraged and incentives given to maximize such practices that serve to minimize water quality degradation. Incentives and performance-measures to improve water quality should be the focus of requirements. The ability to be exempt from a tiered structure or shift to a lower tier should be an incentive to incorporate best management practices and farming practices that eliminate tail water and improve water quality.

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3) All dischargers, including Tier 1, are subject to: Receiving Water Monitoring and Groundwater Well Reporting:

Receiving Water Monitoring: Dischargers who do not cause tail water, as is the case for vineyards, should not be subject to receiving water monitoring.

Groundwater Well Reporting: The requirements for well water monitoring go beyond what is necessary to carry out the order to address pesticides, sediment, and nutrients associated with agricultural discharges. How does monitoring depth to groundwater address these issues? It may be impossible to measure depth to groundwater due to clearances in the well without pulling the pump and adding a sounding tube. This could add substantial cost for compliance without any justification for this requirement. Depth to groundwater monitoring should be eliminated from the order.

Any well testing should be associated specifically to the constituents in question. Additionally, this information should not be submitted to the Control Board for public record. Particularly, if you are not contributing to the concerns meant to be addressed through this order. The groundwater reporting requirements are over-burdensome and unnecessary.

If groundwater testing is deemed legal and necessary under this Order, we support the Ag Alternative approach to targeting water well testing to the constituents in question by limiting testing to one primary well; the constituents for testing only nitrates, TDS or EC, and pH; and keeping results on-farm in the Farm Plan to maintain proprietary information.

4) Impaired Water bodies – Much confusion surrounds the threshold trigger of 1,000' from an impaired water body. There are several lists and a number of water bodies impaired from other sources aside from sediment, turbidity, nutrient, pesticide, toxicity, or temperature. The final order should include the list of impaired water bodies that would trigger the setback threshold rather than creating ambiguity between what lists, what impaired water bodies, etc.

The final list of impaired water bodies should correlate to the specific impairments called into question by this Order. For example, an impaired water body that is listed under pesticide impairment due to DDT should not be a matter of this order as present farming conditions are not contributing further to this impairment. A single list needs to be referenced and used for the life (5 years) of the Ag Order. Otherwise, there is too much uncertainty in determining what tier you are in.

5) Public Review Process: Insufficient time has been allowed for the public to respond to staff's recommendations in a meaningful way. The Ag Order and the associated documents represent an enormous amount of material for anyone to review within the available timeframe. Additionally the condensed schedule for review over the holiday season is an unfair tactic to reduce the amount of public comments received. Limiting written submittals for review by staff or your Board to the January 3<sup>rd</sup> deadline is counter to typical public review and decision-making and will limit the ability for affected growers, and jurisdictions alike, to provide meaningful comments. Written comments should continue to be allowed and encouraged throughout the Regional Board review and decision-making process.

6) NOI Requirement: The requirement to submit an updated NOI before the updated Ag Order is adopted is problematic in that there is no regulatory mechanism to enforce this. Also, there needs to be a mechanism for data submission in a non-electronic form for those farmers who do not use, or do not have, internet access.

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7) Data Accumulation: Data collection should not exceed that which staff can reasonably review and enforce. Admittedly, staff cannot manage and oversee the extent of data to be collected under staff's proposal. Page 37 of Appendix F states that "with the current staffing and budget, staff cannot review information from, nor inspect, most of the operations in the region". An obvious question is why more data is being requested if staff cannot review the information nor inspect the operations.

Your Board quantified the objectives for the next 5 years during the May and July Workshops to focus on surface water nitrates and organophosphates; secondary sediment and riparian issues should be addressed later. Staff's proposal takes on too much without the necessary tools or ability to make a difference in improving water quality.

8) Cost/Benefit: Although we appreciate the attempt to evaluate costs associated with the Order in Appendix F a full cost/benefit analysis is still needed. The Water Board needs to better define their rationale for the proposed requirements to justify the costs imposed on the agricultural community as well as provide a more accurate cost of the Ag Order.

We were encouraged with the comments and directives given to staff during the workshops in May and July and wish to continue to emphasize the following general considerations as the Board evaluates and develops a final Order:

- a. A successful program is performance-based and provides incentives and opportunities to improve water quality. Arbitrary factors such as operational size and location; unnecessary requirements; burdensome paperwork; and limited resources to manage and enforce does not provide any benefits towards improving water quality.
- b. A longer term approach to improve water quality beyond 5 year increments should be sought. Water quality degradation did not occur overnight and cannot be expected to be solved in a short time horizon without creating negative and unintended consequences to the agricultural community which serves us.
- c. The first 5 year Ag Waiver Program has been a success in collecting data and getting the farming community and regional board to begin talking about solving water quality issues. The next 5 years should encompass a priority-based approach targeting the most extreme issues to build momentum to continue to work collaboratively on water quality concerns.
- d. It is important to maintain a cooperative effort to ensure the long term continuation of solving water quality issues as well as the long term continuation of agricultural production. Preservation of water quality/quantity and a viable food production system are equivalent priorities and should be given equal weight in any program development.

We support the Agricultural Alternative as an improved approach to addressing water quality concerns. Most particularly, we find the Ag Alternative to be more performance-based and focused on research, education, and extension rather than unnecessary and burdensome paperwork that serve no purpose in improving water quality.

# MARGARITA VINEYARDS

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Incentives and education go much farther in addressing the end goal of resource protection than regulation ever could; when people are motivated to do good (particularly by their peers), they will do good. We continue to support efforts that are collaborative, performance-based, educational, and well-researched. We respectfully request your Board give your staff very clear direction to work in conjunction with the agricultural community in developing an incentive-based proactive program that will encourage open dialogue and education among stakeholders.

Sincerely



Karl F. Wittstrom  
Co-owner Margarita Vineyards

January 2, 2010

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

Wayne Gularte  
Rincon Farms, INC  
PO Box 616  
Gonzales, CA 93926

Dear Chairman of the Board and Board Members:

I am a farmer in the Salinas Valley, CA and have been operating this farm since 1987. Before that, I had been working for this farm for past generations of family members since I was ten (10) years old. I currently have to rent over 90% of the land that I farm from other landowners (over half of the landlords are not family and 40 % of the family owned land that I rent are not immediate family); and in order for me to compete with my neighbor farmers I must pay up to \$1700 per acre plus I have to pay all their property taxes assessed to the lands. As a result of this competitive rent, I need to grow the crops best suited for my district of the Salinas Valley; including mostly lettuce, broccoli, celery, cauliflower, baby salad greens, spinach, and asparagus. At 670 acres net farmed, my family-owned farm operation is considered one of the smaller farms in my area of Gonzales and Chualar, CA.

In my professional opinion, I urge that you must reject the staff draft ag waiver released November 19, 2010. As written, it is unworkable and unmanageable. Some provisions of the EIR, if and when ultimately forced upon us farmers, should surely deem the waiver unconstitutional. If the staff thinks that they are being of help to farmers like myself of less than 1000 acres, they are quite mistaken.

On the contrary, government "red tape" including but not limited to certification processes, reports, laboratory analyses, permits, compliances, food safety, and continuous new laws and regulations are driving us small farmers out because we can't afford to hire high-paid extra staff and aids to keep up with all the

aforementioned paperwork-related tasks that I myself personally have to perform. When I graduated from college to become a professional farmer these burdens were not part of farming. This staff draft ag waiver will require a multitude of new documents and paperwork and cost outlay that I have of no time to afford to do; let alone the structural and managerial costs to implement such nonsense of a draft. There is no scientific proof shown that any fertilizer reports, fertilizer permits, or water reports and plans are going to improve water quality. Many other requirements in this new waiver draft have no proof that they are going to improve water quality.

Instead, I already have been (in some cases for decades), helping water quality by planting over-winter cover crops to stop soil erosion from winter storms, I also capture excess irrigation water and use it in permanent pasture lands. I have also installed very expensive irrigation system water savings devices, like the Omni Enviro, that use quantum mechanics to separate the bicarbonate salts from the water molecules so as to make the water absolutely pure (thus I discharge 10% less water seepage into the water table); I use drip irrigation on some crops where it accomplishes further water efficiency. I have buffer zones/filter strips to control soil erosion from water ways. Ten years ago I made costly conversions to organic farming on lands that tend to slope more or lands that are close to water bodies, to the point that I now have had to surrender a ranch in order to reduce my organic farming size. I had to do this to stay in business so as not to go broke from too much costly organic farming.

Despite my many years, in advance, of my proactive water use well before the original ag water waivers, your staff's draft punishes me with all of my early years of this ingenuity and sacrifice in caring for water quality while some of my other fellow farmers may have been less attentive of their use of water. I am fed up with a system that government makes ridiculous blanket laws that are unfair and unjust such as would be in your draft waiver that punishes most of us

just because of the inattentiveness of a few others, in many cases the abuses were decades ago. And individual monitoring would be even worse than cooperative monitoring.

The staff draft puts my farm in Tier III despite my decades of water quality enhancing innovations. From fifteen years of experience I can tell you that converting to organic farming to avoid use of chlorpyrifos and diazinon is not the answer. Organic farming has its niche, but costs 50% more in all inputs with typically 20% lower yields for about 10% higher water requirements. This is a 35% decrease in efficiency of crop yield per acre-foot of water used.

The end result of the staff draft waiver will therefore become a typical case of government getting in the way of farming and just making things worse. Your staff draft waiver would contribute to tendencies towards many ineffective, inefficient trends, unfortunately. This a true hazard for California's farm economy and directly retards state revenues needed to run your agency with no proof of water quality improvement.

I need the freedom as provided by our constitution to run my farm responsibly and not have government watch over my shoulders as sure the staff draft waiver would do. For any so-called "irrigation specialist" to tell me when is the right time to water my crops is ludicrous and preposterous. To have to turn in fertilizer plans and reports of my trade secrets on what I apply and when is nobody's business, including that of any government body. There is no proof that these reports and requirements in the current draft waiver will improve water quality. I would need at least four times as many irrigation water wells on my ranches if I were to have to water the crops when someone else told me to. I find this whole concept in your staff's draft quite unconstitutional. Is government going to pay \$100,000 each for our new wells? Be prepared!

Speaking of unconstitutional, how dare the EIR to have the nerve to determine that I would have to switch my farm operations

to other crops, grazing lands, or dry land farming! The reporters are ignorant of the long term commitments that we have to our landlords and the buyers/shippers of our produce! The EIR is wrong to say that there is less significant impact if ground is converted these ways because it doesn't mention the local economic impact as actually quite a severe environmental impact (as the Salinas Valley Water Coalition proved in court in the 1990's against the Monterey County Water Resources Agency about forcing farmers to outlay enormous expense just to measure water use). The EIR mentions that our fuel bills are also burdensome; indeed they will be with projected \$5.00 per gallon fuel costs in the near future (fuel and fuel related costs are a large majority cost of our cropping budget); thus, we won't be able to absorb any excess costs like the current draft waiver will create!

There is no proof showing that our current farming practices are what the cause is of nitrate overload in the water table; as the draft suggests. Rather, long-past farming practices have been proven to be the cause. We are actually improving our nitrate overload with our current farming practices. The proposed "water quality buffer plan" in the waiver draft should not necessarily apply to any of us that farm next to the Salinas River because for most of us, we do not discharge any water into the Salinas River just because we are adjacent to it!

The whole concept of the current staff draft ag waiver and the related EIR reminds me of what I've read had happened to the farmers that were in the forced Soviet Russian collectivized farming in the 1930's or the Soviet-style enormous "farm factories" that Ceaucescu tried in Romania in the 1980's. Both of these mass experiments were on some of the richest farmlands in the world, and both failed miserably because of the very similar government "red tape" planning and reporting system that your staff proposes. And the worst development after all that had failed with those programs is that their water quality got worse than it was under free enterprise

farming! The famous quote, “those who don’t know their history are doomed to repeat it” applies here with your staff.

Those in your staff who helped draft this current proposal and those who developed the EIR obviously have no understanding of our farming system in the Salinas Valley nor how our nation feeds its people. We have to rent our land over long term commitments of five to ten years with options in order to secure long term relationships with our shipper. To suggest that we change our farming practices to conform to this draft will not necessarily cause farmers to “sell their land” as the EIR mentions because we don’t really own much of it! What is more likely is we would simply get foreclosed on by the banks, shut the business down, go broke, cause a loss of hundreds if not thousands of related jobs, breaking up of family structure and communities; and the state of California as a whole loses the control and stature it has of what kinds of food it produces for this nation.

Also, the loss of farm income tax revenue to California because of the proposed 1000-foot buffer zones adjacent to “known water bodies” alone would be disastrous for the state to be able to recover from. How do we stay alive when we already paid the rent for land that your staff recommends be taken away from us, or if the majority of my farm may be in this proposed buffer zone? It is reported in the Southwest Farm Press that governor-elect Jerry Brown is paying attention to the CA State Dept of Agriculture’s strategies to preserve California Agriculture, which includes two important points: “ease the burden of regulation on ag ...” and “to cultivate the next generation of farmers and ranchers.” With the average age of California farmers now at 57 years old, it is very clear that high costs and red tape from over-regulation similar to the likes of the draft ag waiver is what is causing young adults not to want to nor be able to start a farm or buy into an existing farm.

As a result, taking into consideration of my aforementioned

points, the passage of this current draft waiver will also cause the exportation of our food production to other states if not other countries, that don't have to adhere to the ridiculous waiver like this one being proposed.

In conclusion, I am markedly sure that I have pointed out to you in several ways why the current staff draft waiver is acutely overburdensome, unmanageable, and inevitably unconstitutional because of the outright Stalinist-watchdog approach that it uses to monitor our farming practices.

Although I consider the Ag Alternative Draft Waiver submitted 12/3/2010 to also be very burdensome for my operation, I believe it is more workable than the terrible one your staff created. I also suggest that your staff get a real hands-on experience in what producing food for this country entails instead of trying to regulate us into a country that becomes dependent on foreign produce; where you have no control at all of what they put into the food we eat.

Sincerely,

Wayne Gularte, president and general manager  
Rincon Farms, INC.

**From:** Jim Saunders <Jim@hearstranchwinery.com>  
**To:** <AgOrder@waterboards.ca.gov>  
**Date:** 1/3/2011 4:48 PM  
**Subject:** Proposed Ag Waiver Changes  
**Attachments:** 12\_23\_10 Vineyard Team Ag Order Letter.pdf

Mr. Jeffrey S. Young, Chairman

Mr. Roger Briggs, Executive Officer

CRWQCB

Central Coast Region

895 Aero Vista Place, Suite 101

San Luis Obispo, California 93401

Gentlemen:

I have recently learned of the proposed potential changes to the tier levels and other reporting requirements and therefore apologize for not having our counsel address the specific issues with which we do not concur.

As lifelong members and farmers in this community, we believe we are more cognizant of water issues than most. Years ago, and much prior to the reporting requirements currently imposed, we addressed numerous implementations of water conservation such as:

1. We initiated a cover crop management system which utilizes native grasses in our vineyards to prevent runoff, while not overtaxing moisture content of the soil, thereby requiring more irrigation.
2. We have installed moisture monitoring equipment at several locations on our property to let us know exactly when and how much we need to irrigate.
3. We manage our storm water on site to prevent loss of topsoil and detain water to prevent runoff of water that would normally be wasted.

These are but a few of our programs that we have implemented to address numerous water issues.

We feel that the changes to our tier level and additional reporting requirements seem unjustified and unnecessary.

We believe that the agency needs to carefully consider additional changes prior to implementation of the staff recommendations.

It should also be noted that some farmers and ranchers who are not engaged currently in reporting, do not seem to be governed at all as we have experienced recently when we contacted the agency to inquire on wasteful applications of water by those individuals. In fact, there was not even a body in the agency who could act as an enforcer when wasting of precious water occurs.

I urge you to consider the suggestions as set forth submitted to your agency by the CCTV, in which we are in concurrence.

Please do not hesitate to contact me if I may be of assistance.

Very truly yours,

Jim Saunders

HEARST RANCH WINERY

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Paso Robles, California 93446

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(805) 467-2234 Winery

(805) 927-4100 Tasting Room

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[jim@hearstranchwinery.com](mailto:jim@hearstranchwinery.com)

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)  
Dear Mr. Young,

We own and operate our small family estate vineyard and winery. Collectively, we have decades of experience with irrigated agriculture. Our vineyard is equipped with drip irrigation, soil moisture monitoring, and a year-round cover crop, so we do not adversely impact water quality. We consistently practice sustainable farming practices in both our vineyard and winery. By having a public comment period within the holidays, the Water Board has in effect limited public comment. A lack of detailed comments from farmers in general and grape growers in particular does not indicate approval for or disinterest in what is proposed in the Draft Ag Order.

The Draft Ag Order is poorly written, extremely confusing and open for significant interpretation. We, both college graduates, spent several days trying to understand the requirements of these documents. We know numerous other growers who are extremely knowledgeable 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 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. The entire groundwater testing regime should be coordinated with the respective County Environmental Health Departments and local groundwater monitoring programs. Data has already been gathered through these programs and should be utilized. Until that point, it makes little sense to have growers obtain groundwater data that may not be of use. Farmers such as grape growers who utilize drip irrigation with permanent cover crops do not generate tailwater and should be exempt from these requirements.

We agree with the comments submitted by the Paso Robles Wine Country Alliance and the Central Coast Vineyard Team. 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.

Sincerely,

Victor & Leslie Roberts



## AgOrder - Ag Order Comment

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**From:** Daniel Balbas <DBalbas@berry.net>  
**To:** "AgOrder@waterboards.ca.gov" <AgOrder@waterboards.ca.gov>  
**Date:** 1/3/2011 5:06 PM  
**Subject:** Ag Order Comment

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Dear Howard Kolb,

My name is Daniel Balbas. I am the VP of production of a large berry producer based in North Monterey and Santa Cruz counties with some operations in San Benito County. We have related companies statewide. We grow strawberries, raspberries, blackberries, and blueberries both conventionally and organically. Recently I have been alarmed at the data on the quality of our local groundwater and surface water. Our organization takes the problem seriously. My concern is the escalation of burden put on the farmer. In 2004 the "ag waiver" program was started as a first step. We were in agreement that land users should take steps to mitigate potential pollution and water quality concerns. We went out and did our farm plans. Since that time, I have seen zero feedback, enforcement, or cooperation from RWQCB. We have made our plan updates blindly. There has been considerable confusion over which farms plans had been updated. We have not been able to get clarity from staff if documents have been received. Often, we are relying on landlords or master tenants to submit plans on our behalf and vice-versa. Modern farming often entails rotations among various entities which compounds the confusion. We rarely farm the same piece of land more than one consecutive year. My contention is that you have been understaffed and unable to implement the original ag waiver. I feel that the original waiver farm plans should have had at least minor scrutiny and verification/enforcement. Instead we have not received any feedback at all. Furthermore, I would suspect that some operations have not lived up to their original plans. Now we are being told that we will potentially receive increased limitations, regulation and requirements which are quite fuzzy. I wish the original ag waiver would have been properly implemented before going to the next step. Perhaps we would already be realizing some improvement in our situation. I feel like we never really had a first step in the first place. If the RWQCB had such a difficult time helping folks cooperate during the first phase, I just don't see how this next phase will pan out in a way that is fair and effective.

If a more robust set of requirements does indeed take place, please make it as user friendly as possible. There needs to be adequate staffing to help farmers understand the process. Make it clear who is responsible. We will all be challenged by the reality of crop rotations where the user can change from month to month and year to year. Tier one, tier 2, and tier 3 operations will rotate frequently amongst each other. Be ready for this. Make it clear who is responsible for submitting plans. Be available to help the farming community understand where a given operation is in terms of compliance. You have a poor track record thus far. My fear is that we will continue to submit paperwork blindly at great cost of time and money without the feedback. Help us out. Thank you.

Sincerely,  
Daniel Balbas  
VP of Operations  
Reiter Affiliated Companies

## AgOrder - CRWQCB draft Central coast region, comment

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**From:** SBOE <SBOE@sborchid.com>  
**To:** <AgOrder@waterboards.ca.gov>, SBOE <SBOE@sborchid.com>  
**Date:** 1/3/2011 7:37 PM  
**Subject:** CRWQCB draft Central coast region, comment

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Hello water board people,

Farm owner and operator Alice Gripp writing as a private citizen here.

I am super ambivalent about your CRWQCB Central Region Draft and I'm busy and your meeting records clearly show, buried deep in your on-line documents, that you don't find farmers' comments useful anyway, but here goes. I love to watch our red-headed woodpeckers banging their heads against solid objects- now I am one of them. Sorry about bad casual grammar.

I agree that N and other pollutants are bad for environment, people,...

They need to be reduced in a efficient logical way that does not lead to highly wasteful iterative versions of the best management practices flavor of the month, wasting time, money, and natural resources and causing the end to agriculture in our region.

BUT your document is totally bi-polar about how to work with farmers to improve things..

The Draft repeatedly states that pollution immediately needs to stop, but then you list Due dates out to 10 years (which seems a pretty reasonable time frame). Which would you enforce, especially since in early 2010 you destroyed all trust with farmers that had been building up under the 2004 Wavier? Should trust be listed as an endangered species???

Specifics, with emphasis on Tier 1 because I thinking that's me

\*\*\*\*\* somewhere in your document say where e-mail comments should be sent.\*\*\*\*\* That would have been really helpful. I got this e-mail from am Ag group e-mail. I plan to also fax to SLO because maybe this e-mail is wrong. Sorry I am doing this last minute, but like a typical business person I am very busy at end of year.

Three-month time frame for submission of Quality Assurance Project plan and Sampling And Analysis plan is way too short. I have tried to carefully read that part of your document twice and I have no idea what I am supposed to do because I cannot figure out what I must monitor on my farm and what I can do through cooperative monitoring. I RECOMMEND, AS IN 2004, HAVE UC RUN A SERIES OF CLASSES TO HELP US INCREASINGLY POOR, STUPID FARMERS FILL OUT THE FORMS. THE 15 HOUR UC CLASS I TOOK IN 2004 WAS REALLY HELPFUL WITH BOTH THE FORMS AND LOWERING THE N AND OTHER POLLUTANTS RELEASED BY MY FARM. THE CLASS I ATTENDED REALLY DECREASED THE DISLIKE THE FARMERS HAD FOR THE WATER BOARD. YOU COULD CUT THE TENSION WITH A KNIFE AT THE BEGINNING OF THE FIRST HOUR OF CLASS, BUT THE NICE TEACHER PEOPLE AND THE FREE SANDWICHES REALLY CALMED EVERYONE DOWN BY THE END OF THE FIRST DAY. THERE IS NO WAY TO ORGANIZE AND HAVE THOSE CLASSES IN 3 MONTHS AND LATE SPRING IS A BUSY TIME FOR MANY FARMERS. I ADVISE AT LEAST 6 MONTHS (TO BE READY FOR THE RAINY SEASON) OR PREFERABLY A YEAR, TO ALLOW FARMERS TO ATTEND IN THEIR QUIETER TIMES. And in the obscure links, it sounds like you may not have the database ability to manage us yet. Better to give yourselves a big window and work out the bugs on the early filers.

Explain more clearly in tables which measurements are cooperative and which measurements must be done at a Tier 1 farm. Or maybe I'm just really stupid or missed a critical page or two? UC would be great "translators" and we could all be on the same page and you won't have to explain it 3000 times. I'm all for N test strips- it is a technology I can cope with.

I'm flummoxed by the groundwater measurements if you don't have a well. Is this when you want us to check with our local water supplier to find out the condition of the wells near our farms???? An explicit statement would be helpful.

I actually like the general groundwater measuring concept because unlike runoff, we cannot see it, so we farmers have no idea how much of a problem we are creating, but please give us 5-10 years to experiment how to efficiently and cheaply minimize N into groundwater. If you can get 50-80% improvement cheaply, simply and with a low C footprint, perhaps this is better than 90-100% improvement in expensive, complex, high C footprint mythical Perfectville described on dreaded page 12 (Part B)???? If we didn't have those food safety concerns, I would love to grow big C-sequestering trees with N-rich water or maybe shorter term trees for firewood to lessen use of hydrocarbons.

The power of the Executive Officer and the CCWB to raise Tier level of farms and terminate orders is unchecked and un-balanced. These actions should only be for proven, repeated (at least 2 times) violations in water quality (or crop type). Farmers would not be freely able to voice their complaints and concerns for fear of being up-Tiered or terminated. Are you not in favor of freedom of speech? The rule of law? Due Process?? Same concerns for page 8-9 "IT IS HEREBY ORDERED", points 5-7. Also other rules don't seem to differentiate between a 1 ft piece of tubing getting loose in a huge rain event or a chronic problem of tubing washed into streams regularly. You will have to think of a fair way to differentiate the worst offenders from rare events--best wishes figuring this one from the structure given to you in this Draft.

The Tier is partially determined by Chloropyreathran and Diazanone use. Do you mean non-use from time of enrollment or date of this draft or when??? Luckily we all have our pesticide use records so it will be easy to prove when it was last used. Also the wording of this factor is inexplicably different for Tier 1 and 3a definitions on pages 9 and 11, respectively from those of other Tiers. I don't see a reason for it and the reader wonders why it wasn't used consistently.

I like that smaller farms have it easier in general. A good consequence could be that big agribusiness farms are broken up into smaller possibly more organic possibly more innovative farms. A bad consequence could be that big farms deceptively become small farms. The Draft mentions the Executive Officer is to sort this out, but doesn't give a mechanism to police or appeal (see rant above about Due Process).

It seems like there could be some controversy about that High N crop list, but at least you can fob it off on the UC.

Page 12 of Wavier- Part B: Discharge Prohibitions that Apply to All Dischargers: items 17-28, clearly we should all be in jail and the country should be starving. Even one molecule of N, one Worfrin-killed rat is "contributing" to exceedance of water quality standards. If you reach for only the moon, you might not make any upward progress, but if together playing nice we maybe can get to Mt. Whitney and still be able to eat locally grown produce and allow the Midwest to fresh veg in Winter?? Do we have 0 years or 10 (or 2 or 5) years to improve things??? I cannot tell from your document

Pesticide use during rainy season- It seems like this is unnecessarily restrictive and broad (plus the Ag commissioners think it is their domain). This is where greenhouse and glasshouse growers might be allowed to use them at least? BUT PREFERABLY for all farmers, I more think it should depend on the decay rate of the pesticide and its toxicity in water. I imagine there is quite a variation. One could imagine application could only be made when rain is not predicted for X half-lives. If it does rain sooner, then runoff should be kept on property, but could be done simply, like applied to grassy area or back on fields. No pesticides from Oct (?Sept) to May (June) seems a little extreme and the other solutions seem very very expensive. And recall that winter dormant spray discussion with the Ag commissioner during your comments (how could the questioner not know what a dormant spray is?)

Also about pesticides: because of exotic pests, any farm is subject at any time to have to use a barrage of evil chemicals to eradicate an exotic pest. Immediate extermination of new finds of exotic pests is extremely important. The quick killing of such pest will lead to much less pesticide use later. Don't you wish they would do that for the bed-bug problem?

On a smaller scale, I would prefer to treat a tiny infestation of a pest in the wet winter than a huge infestation in the dry summer. But what is the science on this one??

No mention of nurseries and garden centers except in comments sections. Should we expect some shoe-dropping in this direction in the near future, or are there so few they are insignificant in the big N and pollutant picture for our region? Or maybe it would be their turn in 5 to 10 years?? A problem with outdoor nurseries is many groundwater protection measures might increase runoff during peak rain events, increasing downstream flooding and erosion. Maybe better to have scattered thin canopy trees planted in the ground to drink up N that runs out of pots.

I am concerned that many of your time frames are so short, that the "Best Practices" people use will not really be the truly best practices in the long run, like how we are all stuck with stupid PC's when Mac's are so much better. You do at least mention several times about having farmers and researchers share information and experience, but you don't provide an explicit way to do it. I hope our continuing education will foster it, but I fear people will be so pressed to meet the timetables, that it wouldn't happen (they may feel a bird in the hand is worth 2 in the bush). With 3000 farmers working with you rather than fearing you, progress might be made much quicker. Maybe even sponsor prizes for innovation and key observations. These solutions might be simpler, cheaper, and have a lower C footprint. Okay, this is off topic, but illustrative: I tied for second place in a physics water heater contest using a Ziploc bag and a piece of foil painted black. Everyone else used tons of copper and plastic and welding and time. If you measured heat per dollar or hour, I totally trounced all of them. 3000 of us might well think of simple elegant and cheap solutions for some N and pollutants. I have lots of ideas, but don't know who to tell. I can see otherwise that some farmers might have to go hydroponic, BUT that will take lots of ugly rezoning battles and use a lot of plastic and other resources.

SUMMARY: PLEASE LIST IN AN OBVIOUS PLACE WHERE COMMENTS SHOULD BE SENT. Less N and pollutants good. Groundwater does need to be sampled, but give us lots of time (10 years good) to fix. Upsetting farmers with page 12 is not so useful. I was disappointed there was no mention of the Carbon impact of this Draft Order. The powers of the Executive Director and Water Board are not checked by Due Process. There should be a simple safe procedure to apply pesticides with short half-lives and low water toxicity during the rainy months. It is better to do something well than to do something fast just to feel like you are doing something good. So much N and pesticides have already been released in the past 100 years, that the difference between a 0 year, and 10 year solution don't seem significantly different from a ground water perspective, but is to the viability of farmers and possibly figuring out what are the truly best practices. PLEASE LET THE UC DEVELOP A CLASS TO HELP US FILL OUT THE PAPERWORK AND GIVE US 6-12 MONTHS TO DO IT- YOU DON'T WANT TO WALK ALL 3000 OF US THROUGH THIS IN THREE MONTHS AND IMAGINE THAT FINAL WEEK- THAT FINAL DAY!!!

I really appreciate you reading my comments, which reflect my thoughts, not that of my farm. Yes I know I'm inarticulate- sorry about that.

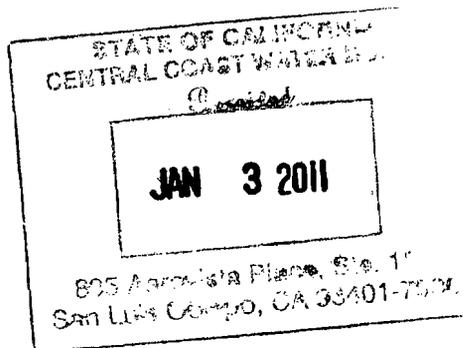
Alice Gripp, private citizen  
 1250 Orchid Dr  
 Santa Barbara, CA 93111  
[sboe@sborchid.com](mailto:sboe@sborchid.com)  
 805 967 1284  
 fx 805 683-3405

## Huntington Farms

December 27, 2010

Re: Proposed Ag Order

Central Coast Regional Water Quality Control Board  
Att: Jeffrey Young, Chairman of the Board  
895 Aeovista Place, Suite 101  
San Luis Obispo, CA 93401



Dear Chairman Young,

I am writing to you on behalf of Huntington Farms, a family run farming operation in the Salinas Valley. I would like to voice my concern with the Central Coast Regional Water Quality Control Board's proposed Ag Order. It is disappointing to have witnessed a process that has been so hostile towards Agriculture when California's income and success rests on the success of Agriculture in this State. It is clear that these proposed rules are completely unrealistic, unworkable, and burdensome for the agricultural industry. I believe that these new rules would add major costs to all agricultural operations without benefiting water quality.

Huntington Farms has been farming vegetables for three generations. We have a vested interest in maintaining a sustainable operation in this valley that we can continue to pass to subsequent generations. The health of the land we farm, the water we use, and the environment that we live and work in has always been a priority in our company and family, as well as the farming community as a whole. We employ over 1,000 people in the Salinas Valley. It is important for us as a company, as well as the community, that farming continues to be viable. If the proposed Ag Order is adopted as it is currently written many productive farm acres will be lost along the central coast and growers will be forced to change practices and spend money on monitoring and reporting that will have no impact on improving water quality. This will equate to a loss of yield, revenue, and eventually a loss of jobs in our Central Coast communities.

To protect water quality Huntington Farms currently utilizes cover crops, drip irrigation, and laser leveling to reduce irrigation and storm water runoff. We have 7.5 miles of farm land around the river that would require buffers if the proposed Ag Order was adopted. This would interfere with our food safety practices and our ability to grow leafy green vegetables and take valuable farm acres out of production.

We feel that the Tier system proposed in the Ag Order is a farce. Almost all growers who farm on the Central Coast would fall into Tier 3. To portray the tier system otherwise is a sham since the majority of farms on the Central Coast grow vegetables and/or strawberries. Many of the Tier 3 requirements are out of touch with reality. Retention ponds have historically been engineered so that water can percolate out of them. How does the staff expect a grower to hold water indefinitely in a pond? In Monterey County we already have strict requirements regarding practices along the Salinas River. It is over kill to require a grower to do more than they are already doing to comply with Fish and Game regulations already in place.

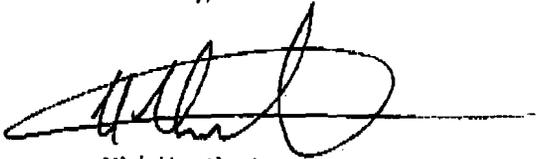
P.O. Box 398  
Soledad, CA 93960

Huntington Farms is in strong support of the Ag Alternative Draft Waiver submitted on December 3, 2010. We believe that to truly improve water quality we must work with researchers and the UC Davis Agricultural Cooperative Extension to utilize the newest technologies. It is with science and research that we will best be able to find practices that work to improve water quality without harming the viability of Agriculture.

I urge the Board to listen to growers' feedback and suggestions, including mine, and incorporate that feedback into the draft Ag Order. Any future Ag Order must be designed with achievable objectives and must be a transparent and collaborative process that utilizes agricultural stakeholders. Loss of grower cooperation will be counterproductive to improving water quality.

Thank you for considering my views.

Sincerely,

A handwritten signature in black ink, appearing to read "Nick Huntington", written over a horizontal line.

Nick Huntington  
President

Cc: Vice Chairman Russell Jeffries  
John Hayashi  
David Hodgkin  
Monica Hunter  
Tom O'Malley  
Gary Shallcross  
Roger Briggs, Executive Officer  
Angela Schroeter, Senior EG  
Lisa Horowitz McCann, Environmental Program Manager  
Howard Kolb, Agriculture Order Project Lead Staff

Kathy D'Andrea  
PO Box 370  
San Miguel, CA 93451

January 3, 2011

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

RE: CENTRAL COAST REGIONAL WATER QUALITY CONTROL BOARD'S  
DRAFT AGRICULTURAL ORDER 2011

Dear California Regional Board:

I am a small farmer of approximately 60 acres of wine grapes. I cannot address the details of this Draft Agricultural Order 2011 for lack of time. This draft was released with a much too short of a time for comment and all during one of the busiest times of putting the vineyard to bed and getting the soil prepared and planted with ground cover before the rains make it impossible... etc.

However, I have read the letters sent by Precision AG Consulting and Central Coast Vineyard Team and I would like to go on record standing behind their excellent and well-crafted comments and suggestions. Yet, I will take time to present to you a personal and the more emotionally frustrating picture facing me.

There are only two of us that work this vineyard due to the fact that I can not afford another helper. As any farmer knows the rule of thumb for vineyard managing is one worker per 20 acres. Being understaffed, I work from 5:30 am to 8 pm seven days a week. And I am sure there are many small vineyard owners that do the same thing.

The draft proposes such expensive and time consuming requirements... that when I understood what it was about, I just threw up my hands in hopelessness and collapsed into a chair. This is a straw that can break the camel's back!

Does the staff that came up with this draft have any experience in farming at all? I highly doubt it. They seem carelessly to dump needless (as by their own admission they will have no opportunity to review the information they request!) requirements, expense and paper work on to already overloaded family farmers who are trying to just barely make ends meet in order to save the family farm and are hoping that at some point the price of wine grapes might rise enough to save something for retirement.

When we started working with Central Coast Vineyard Team years ago, we year by year were able to pay for one more environmental improvement to the vineyard. Our progress was steady, and our resolve determined, and we emptied our bank accounts in the effort to attain certification proof of our loving care for our farm.

We are now proudly SIP Certified Sustainably Farmed and we are independently audited to confirm that we carry out these standards. In addition, this last year we have maintained Organic and Biodynamic standards in order to acquire that certification in two more years. We are doing everything we possibly can to farm responsibly as have many of my friends. But our budgets are VERY TIGHT.

By reducing incentives for creating food and drink (history has shown a number of national governments to have done this purposely as a grasp for power) and I take for one example Chairman Mao, was able to kill off a lot of people due to a shortage of food and hold an iron grip on the rest of the people by controlling food merely by reducing incentives for farmers.

I would hope that this draft is merely incompetently attempted and not a veiled attempt to overload the system, in order to promote a regime change.

However, history often repeats itself and I am hoping that the spirit of cooperation between the farmer and the California Water Quality Control Board can prevail and that all can take step back and take into account the larger picture of, 1) world hunger, 2) the incredible opportunity of an international marketplace, 3) California's need to pay bills and the 4) **farmers ability to produce product** (does any one appreciate that fact?)

Hopefully the CWQCB can find a way to be friendly and not adversarial. To have farmers in a state is a great advantage. Take away their incentives and empty dusty land remains.

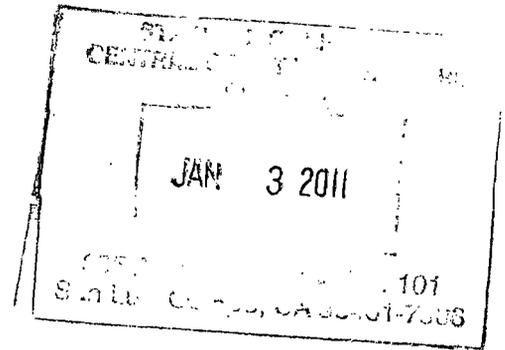
Farmers produce a very valuable product one that keeps people alive! With more to sell, there will be more state bills paid, not by tightening the noose of more and more fees around the farmers' neck, but by putting in place increased incentives to produce high quality product. Possibly the perspective of a larger common goal and the taking of a long historic look and noting continued improvements that have been made, may enable all together to plot the course of **realistic continuous** improvement.

Sincerely,

Kathy D'Andrea

December 30, 2010

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



Dear Mr. Young,

**SUBJECT:** Comments regarding draft Ag Order R3-2011-0006

As a small wine grape grower in the Paso Robles AVA, I write to express my concerns regarding the requirements of the subject draft order.

First, I would like to express my thoughts on the process that has brought us to this point: Having watched this draft order evolve over the past several months, it is apparent that your staff is intent on developing an adversarial climate with a program that will treat farmers (tax payers) as "The enemy". The entire tone of this draft order reeks of distrust and threat. If you (who are directly responsible for staff's attitude and behavior) allow this climate to persist, you will likely "Reap that which you sow"—years of push-back or, at best, reluctant cooperation. I urge the board to take charge of this process and redirect the attitude of staff towards a more cooperative tone.

Now some specific comments concerning the draft order:

I am a small (42 acres planted) operator, use drip irrigation and deficit irrigate the vines, monitor soil moisture (electronically) for irrigation decisions, have no irrigation water run-off, do not use listed pesticides and am more than one mile from the nearest water body. Given that, can you logically explain to me why I should be required to (for example):

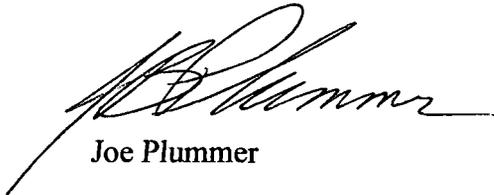
- Initiate receiving water quality monitoring
- Sample groundwater wells
- Monitor/report groundwater depth, etc.

Clearly, my operation fits staff's definition of "Tier 1" and represents minimal risk to impaired water bodies. However, staff's current version of "requirements" penalizes me by "requiring" that I do things that will clearly cost me money and time while doing nothing to reduce contamination of the improved waterways. How can you justify requiring that I analyze my well water (I drink the water) when none leaves the property? How can you justify requiring that I measure depth to groundwater? What does this have to do with your goal of protecting surface water bodies? What qualifications will be

required of the person(s) doing the sampling/measurement? And, finally, what are you going to do with all this data? Who will review it and to what end?

In short, most of the “requirements” for my operation appears to be punitive aimed at “controlling” operations, costing money while adding no value to your stated objective of protecting impaired water bodies. I would ask the Board to instruct staff to justify each of these, and other, “requirements” by developing a “cost” (time and out-of-pocket expenditure) for each requirement as well as a clear statement of the value/benefit of each requirement (specifically what will the data be used for). Once this is completed, I’m sure you will agree the folly of the proposed program and we can begin working, collaboratively, towards a cost-effective program that is solely focused on improving water quality, not controlling farmers.

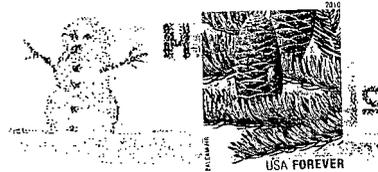
Sincerely,

A handwritten signature in black ink, appearing to read 'Joe Plummer', with a long, sweeping underline that extends to the left and then curves back under the name.

Joe Plummer

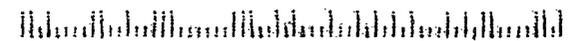
Joe Plummer  
1990 Wellsona Road  
Paso Robles, CA 93446-8533

SANTA CLARITA  
CA 913  
31 DEC 2010 PM 2 T



Attn: Mr. Young  
CA Regional Water Quality Control Board  
Central Coast Region  
895 Aerovista Place, Ste 101  
San Luis Obispo, CA 93401

9340198725



Jensen Family Farms, Inc.  
P.O. Box 718  
Salinas, California 93902  
Tel: 831.758.1406



By Hand Delivery

January 3, 2011

Mr. Jeffrey Young,  
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San Luis Obispo, California 93401

Mr. Russell Jeffries  
Vice-Chairman, Central Coast Regional Water Quality Board  
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Mr. John Hayashi  
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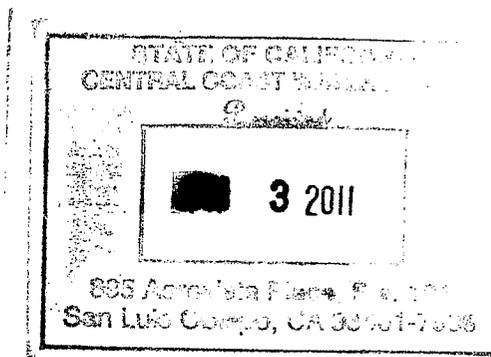
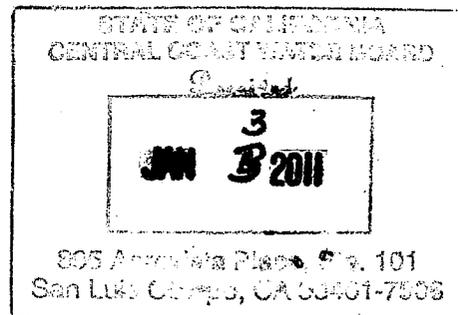
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Re. Comments Of Jensen Family Farms, Inc. to Draft Conditional Waiver of  
Waste Discharge Requirements for Discharges from Irrigated Lands,  
Order No. R3-2011-0006

Dear Gentlepersons:

This letter provides you with the views and comments of Jensen Family Farms, Inc. ("Jensen") concerning the Board's Preliminary Draft Report and Staff Recommendation for the Draft Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands, Oder No. R3-2011-006 ("Proposal").

As an introductory matter, we are a family-owned farming corporation that owns and/or operates six (6) separate farms in the Salinas Valley located between Chualar and Salinas (as well as between Salinas and Marina) which total approximately 1140 acres currently in production. Those farms are located on (1) Spence Road (which farm abuts Highway 101 as well as the Salinas River for over one mile and, in fact, straddles both sides of the River); (2) Somavia Road (which abuts Highway 101 as well as the Salinas River); (3) a farm on Old Stage Road; (4) Esperanza/Old Stage Road (which abuts Highway 101); (5) Potter Road (which abuts Highway 101); and (6) Blanco Road. It irrigates those farms from well water pumped to the surface. Various row crops consisting of iceberg lettuce, romaine lettuce, red leaf lettuce, broccoli and asparagus are grown, as discussed below, on the respective farms. Jensen is the present corporate manifestation of what is a fourth-generation family farming operation in the Salinas Valley that dates back more than 100 years. It is among the leaders of "new" farming practices, having been among the first farming entity to engage in large-scale organic farming in the Salinas Valley, growing as it does organic asparagus on over 100 acres of its primary farming property located at the intersection of Old Stage and Esperanza Roads. As a non-multinational non-vertical agribusiness it thus has close ties to the Salinas Valley and, in fact, is preparing for the next generation to carry on family traditions of nurturing the land. Owned, in great part, by hunters, fishermen, and life-long farmers, it is dedicated to not only maintaining economically viable farming in the Salinas Valley but also in taking actions consistent with necessary reasonable environmental concerns about air, water, and the human environment. Unfortunately, the actions of the Proposal do not even come close to meeting this goal.

A review of the voluminous Proposal (with attachments) reveals a number of major flaws, weaknesses, and inconsistencies. Alone or cumulatively these matters, in the final analysis, lead inexorably to the conclusion that the Proposal has not been fully thought out or developed by the Staff. As a result, adoption of the Proposal would be an abuse of governmental authority for a variety of reasons and on a variety of bases including, but not necessarily limited

to, the following:

1. The 3-tier system, as applied to Jensen, is overbroad and overinclusive and thus violates Jensen's constitutional rights to due process and equal protection in that, for instance, a substantial portion of the Esperanza ranch referenced above falls within Tier 1 as defined (due to the certification of approximately 100 acres as "organic" and the growing of organic asparagus thereon and if it were not located within 1000 feet of Esperanza Creek which is listed on the Section 303 list of impaired waters)) while portions of the remainder may be classifiable as Tier 2/3 but, according to the Proposal, the entire ranch is deemed to be Tier 2/3. It is further overbroad and overinclusive since it fails to consider the types of soil and geology of the various farms falling within the tiers (since that is an important factor in determining whether, if, and how much water leaves the land or is reabsorbed into the aquifer and, additionally, in its definition of what waters (groundwater or tailwater) fall within the purview of the Regional Board for purposes of regulation.
2. The Three-tier approach is based on an unjustifiable and illegal expansion of the Regional Board's authority.
3. The Proposal And Staff's Recommendations fail to comply with California Water Code § 13240 which requires that "[d]uring the process of formulating [water quality control] plans the regional boards shall consult with and consider the recommendations of affected state and local agencies..." by failing to consult any affected agency such as the California Coastal Commission, California Air Resources Board, the Monterey Bay Unified Air Quality Control Board, the federal Environmental Protection Agency, California's Department of Agriculture, ad infinitum. Indeed, the reason for such failure to consult is clear: had Staff consulted with these affected agencies, it would have been advised of the Proposal's myriad of significant negative impacts on literally every aspect of the environment, which impacts are not mitigatable and would preclude adoption of the Proposal.
4. The Proposal and Staff's Recommendations fail to comply with the Porter-Cologne Water Quality Control Act, Cal. Water Code § 13000 et seq., and particularly Section 13241 thereof that specifically requires this Board, in establishing water quality objectives such as those contained in the Proposal, must specifically consider "economic considerations" and "the need for developing housing within the region." That failure is an abuse of discretion that renders the Proposal arbitrary, unreasonable, and capricious.
5. The parameters of the CEQA analysis are too narrow and are intentionally designed to produce a negative declaration rather than a realistic identification and assessment of the significant environmental impacts of the Proposal. Rather than, as it should have and as CEQA demands, consider the impacts on the environment that would be created by use of the two or three specific

technologies available by which compliance with such guidelines may be accomplished, the Staff reasoned that the proscription of Water Code § 13360 which precludes the Board from specifying which technologies must be used created a purported lack of knowledge as to what those technologies are so that, in a syllogistically unsound conclusion, it “can only speculate with respect to the extent there could be adverse environmental effects because it is not known with specificity what actions dischargers may take to comply.”<sup>1</sup> That is wrong for numerous reasons and, in fact, creates a Catch-22 for the Board: since technological feasibility (the existence of technology by which compliance with the pollution guidelines can be accomplished) is a sine qua non requirement for the Proposal to not be arbitrary and unreasonable, either such technology exists and the Staff must set forth the foreseeable environmental impacts of its use) or no such technology exists in which case the Proposal may not be adopted.

6. The CEQA analysis of alternatives is facially inadequate in that it fails to include a discussion of the “no project alternative” option.
7. The CEQA analysis, including significant environmental effects of the application of the presently available technological means of obtaining compliance, requires the preparation of a full EIR prior to further consideration of the Proposal and ultimate rejection of the Proposal due to the significant negative impacts on the environment it would create.
8. The 30-foot buffer zone on farmland is so vague in terms of the point from which measurement begins that it violates the constitutional right to due process.
9. The 30-foot butter zone constitutes an unconstitutional regulatory taking of land and earnings in violation of the Fifth Amendment of the United States Constitution as well as of the California constitution.
10. The underpinning of the entirety of the Proposal’s reporting and compliance regime is based on what is, in the view of Staff, “administratively convenient” even though “administrative convenience” is a State interest that is inadequate to support such a regime and, in any event, the California Environmental Quality Act, Cal.Pub.Res.Code § 21000 et seq. (“CEQA”), precludes the elevation of administrative convenience over environmental concerns and interests.

If Socrates was correct in saying that wisdom is the recognition of how much one does not know,<sup>2</sup> then the Proposal stands as a monument to thwarted wisdom. Peppered throughout with

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<sup>1</sup> Draft Conditional Waiver of Water Discharge Requirements at p. 8.

<sup>2</sup> Plato, Apology of Socrates § 57B.

blatant examples of how much the Staff does not know about agricultural practices and necessities, the geology of the subsoils of the region, the means by which water is returned to the earth after being used for irrigation, that California through its Department of Regulation has approved of various pesticides (including the amounts and methods of their use) about which the Staff finds to be unacceptable farming practices, wisdom mandates that the Proposal be rejected. Indeed, when these factors are fully considered, particularly in absence of a sufficient factual predicate for adopting the Proposal, rejection of the Proposal is the only acceptable choice available to the Board.

**A. The 3-Tier System Created As A Part Of The Pollution Control Regime Is Overinclusive And Overboard, And Thus Violates Jensen's Constitutional Rights To Due Process and Equal Protection**

The keystone of the Proposal is the creation of a 3-tier system by which all farms, wineries, and other agricultural./vicultural entities are categorized for purposes of providing reports, monitoring and information concerning compliance with pollution guidelines. Purportedly created from the Staff's wish to eschew a "one size fits all" reporting/monitoring regime due to the flaws and unfairness of that approach, all that the new tiering system does is to change a "one size fits all" paradigm into a "three sizes fit all" regime which mirrors the original's flaws and unfairness. That this is so is established by several separate considerations.

First, Jensen's Esperanza Road/Old Stage Road ranching acreage provides the paradigmatic situation establishing the tiering's overinclusiveness. That Ranch is approximately 395 net acres in size (excluding the owner's residence, the shop and storage areas, roads, and similar appurtenances). Approximately 100 of those acres is dedicated to exactly the type of agriculture that the Board would conceivably like all of the Region to be dedicated: *i.e.*, organic farming. In this instance, organic asparagus is grown. Under the 3-Tier regime, those fields would be in Tier 1 (were it not for their proximity to Esperanza Creek, a Section 303 impaired waterway). Other portions of the Ranch, however, would be considered to be Tier 2/3 since non-organic crops are grown (including broccoli, leaf lettuce, and cauliflower). This is not an unusual situation throughout the Salinas Valley due to the increase in land dedicated to organic farming. However, since a portion of the Ranch is Tier 2/3, all of the Ranch is considered to be Tier 2/3. That is an overinclusive and overbroad classification in which the linkage between the Proposal's legitimate ends and chosen means to accomplish compliance reporting and provision of information to it is simply too attenuated. The application of that regime to Jensen thus offends and violates Jensen's constitutional rights to due process and equal protection. *See, e.g., Newland v. Bd. Of Governors*, 19 Cal.3d 705 (1977); *City of Cleburne v. Cleburne Living Center*, 473 U.S. 732 (1985).

Second, the tiering system does not take into consideration various important factors – including the geology of the soil and subsoil strata of individual farms within the Region as well as the mechanisms for return of water used for irrigation to the aquifer or surface bodies of water. The 3-tier regime fails to take into account the assimilative capacity of soil. There is considerable treatment of water that occurs as the water makes its way through the soil profile. In many areas it can be reasonably expected that there will be significant dilution and attenuation of constituents prior to reaching any groundwater extraction or egress point. In addition, the Proposal fails to consider that the assimilative capacities of lands covered under the Proposal vary greatly. Indiscriminately using first encountered zone measurements may produce

inconsistent and inaccurate results. Because there is a significant possibility that dilution of constituents will occur before discharge reaches the level at which it is put to beneficial use, and a substantial likelihood that groundwater data collected at the first encountered zone will bear little relationship to the actual impact on beneficial uses in that area, determining compliance with water quality objectives in the first encountered zone is inappropriate.

Moreover, crop, soil, vadose zone, and/or groundwater uptake of potential contaminants effectively mitigates pollution in many cases and are factors which the Tiering system does not take into account. Further, clay layers in many parts of the groundwater system in the Salinas Valley, for instance, prohibit or greatly inhibit the downward movement of water in many areas, and thus isolate deeper waters with beneficial uses from contamination by possible percolating water from irrigated lands. It cannot be -- but was by Staff -- overlooked that water moves through soil due to two types of forces -- gravity and capillary tension. Capillary forces pull water from wet areas into dry areas in any direction. Gravity pulls water downward. Capillary forces vary greatly in magnitude depending on the water content in a given soil and by soil texture. Capillary forces dominate flow conditions in unsaturated soils, while gravity only governs flow in saturated soil conditions. See Gardner, Dr. W.H., *How Water Moves in Soil* (University of Washington 1979). Thus,

1. Surface evaporation and transpiration can create extremely dry near-surface soil conditions in more arid areas, such as many areas within the Central Coast region;
2. Soil moisture content generally increases with depth, so capillary forces can tend to wick water from moist, deep percolation areas toward the adjacent near-surface dry soils rather than downward. This is more likely where more thickness of unsaturated sediments is present between the surface and deep groundwater.
3. Similarly, alternating layers of coarse- and fine-grained sediments can serve as capillary breaks that also act to retard downward movement of groundwater.

The Proposal does not factor in such differentials and treats all dirt the same for purposes of compliance and monitoring. That is an overwhelmingly flawed approach which renders adoption of the proposal an abuse of discretion.

**B. The Three-Tier Approach Is Based On An Unjustifiable And Illegal Expansion Of The Regional Board's Authority.**

The Proposal's overinclusiveness and overbreadth also arises from Staff's attempt to unjustifiably and illegally expand the Regional Board's authority. A review of the Proposal reveals that it seeks to include not only the existing surface water waiver but also expands to include the complex area of groundwater. The Proposal wrongfully assumes that virtually all irrigated agricultural lands, including those that do not drain to surface waters of the State, must be considered as discharging to groundwater. That is simply a factually incorrect assumption. For example, lands that are farmed many hundreds of feet above groundwater and use drip irrigation constituting only a few inches of irrigation water during the summer months coupled with annual winter rainfall of less than ten inches have absolutely no percolation or discharge to groundwater whatsoever, and much less have the capability of carrying a contaminant from the surface many hundreds of feet to underlying underground water, which itself may be decades or hundreds of years old, and may have originated dozens of miles away.

This erroneous conclusion that all irrigated lands discharge to groundwater leads to the erroneous conclusion that the Regional Board even has jurisdiction over all lands and under that alleged jurisdiction the Regional Board has regulatory authority over all irrigators.<sup>3</sup> That assertion of jurisdiction and the requirement that all irrigators must comply with the Proposal's restrictions and mandates ignores the Regional Board limited authority relative to discharges that affect the water quality of waters of the state. See Water Code § 13000 et seq.. This assumption of discharge attempts also to shift the burden of proof from the Regional Board to the farm owner or land operator to disprove the erroneous postulation that all irrigated lands discharge water to groundwater. This is also inconsistent with the burden expressly outlined in Water Code § 13267(b)(1), which states that the Regional Board "shall provide a written explanation of the need for such reports and shall identify the evidence that support requiring reports."

A fundamental limitation of the Regional Board's authority to regulate irrigation practices is that the activity must result in a "discharge of waste" that impacts water quality. Simply because it would be "difficult" or would be "administratively inconvenient" to determine whether individual irrigated lands are creating a discharge of waste does not eliminate the Regional Board's statutory obligation to only regulate activities that actually create a discharge of waste. See Subsection J post. The general notion underlying the Proposal is of groundwater's vulnerability, and that notion is not a surrogate to establishing jurisdiction and cannot be used as the basis for (1) assuming discharge to groundwater aquifers or (2) placing virtually all parcels in

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<sup>3</sup> This is particularly so, for instance, with regard to cattle ranches which abound in number and acreage within this Region. These ranchers are faced with an economic burden to comply with the 2004 regime and the 2011 Proposal even though the Board (including the Proposal and its attachments) fails to demonstrate that their operations have any a significant effect on water quality. Despite this, the actions of the Regional Board staff in the past have presumed that the presence of cattle and grazing on irrigated pasture results in a discharge of water that affects water quality. Additionally, the idea that the natural flow of stormwater from non-irrigated land is presumed to constitute a discharge of waste to the waters of the State and that irrigation of any portion of a parcel has rendered entire parcels – including un-irrigated sections – subject to the Proposal's presumptions is without any factual support offered by either Staff or the Board itself. Thus, the Proposal should have – but did not – avoid the presumption that water running off of irrigated pasture inherently constitutes a discharge of pathogens or other constituents of concern. As stipulated by Porter-Cologne, only activities that discharge or propose to discharge wastes that affect water quality must be covered by regulatory regimes authorized by the Water Code.

Further, pursuing enforcement actions or sending Section 13267 letters based on the broad assertion that, by irrigating a landowner is also discharging and therefore is subject to restrictions and compliance under the Proposal is inconsistent with the law. Section 13267 of the Water Code specifically states that "in requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports." Requiring all irrigators to comply with the Proposal without the Regional Board providing sufficient evidence inappropriately shifts the burden of proof to the farmer or rancher where state law indisputably requires the Regional Board to present evidence of a discharge prior to requiring compliance under the Proposal. The Proposal should – but does not – recognize that not all irrigators within the Region discharge and thus not all are subject to the regulation.

Tier 2 or 3. To do so would be unreasonable because landowners would be faced with the burden of trying to “prove” a negative, which if achievable at all, could only be done at unreasonably great expense.

### C. The Proposal Fails To Comply With Water Code § 13240

The Staff’s failure to comply with the requirements of Water Code § 13260 not only dooms the environmental analysis but, more tellingly, highlights the intrinsic weaknesses of the CEQA analysis and conclusions contained in the Proposal (which is a matter discussed below). Section 13240, of course, commands the Regional Board to

“formulate and adopt water quality control plans<sup>4</sup> for all areas within the region. ... **During the process of formulating such plans the regional boards shall consult with and consider the recommendations of affected state and local agencies....**” (Emphasis supplied)

And yet no mention of compliance with this requirement appears in the Staff Report or other documents submitted relative to the proposal. Independent investigation reveals that the reason for this omission is that affected state and local agencies were not ever consulted by the Staff in preparing the Proposal involved here or, for that matter, its February 2011 predecessor. The “affected state and local agencies” include not only the agencies responsible for air pollution control (including the Air Resources Board and the Monterey Bay Unified Air Quality Control Board), for pollution in general (including the federal Environmental Protection Agency, including water pollution), for conditions along the California coast (including the California Coastal Commission), for the respective counties which make up the Region (Monterey, San Luis Obispo, Santa Barbara, Ventura, Santa Cruz, and San Benito), for agencies charged with oversight of pesticides (including California’s Department of Pesticide Regulation which is responsible for the approval of the types and amounts of pesticides to be used in agriculture/viticulture), California’s Department of Transportation (“Cal-Trans”), and, of course, the United States Departments of Justice (which has jurisdiction over the federal penitentiaries located in Lompoc wherein agricultural activities take place as well as other lands and facilities located in the Region) and Agriculture (which has jurisdiction over several facilities located in the Region which would be subject to the proposal), respectively. Had these affected agencies

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<sup>4</sup> “Water quality control plans” is defined by Water Code § 13050(j) as meaning

“a designation or establishment for the waters within a specified area of all of the following:

- (1) Beneficial uses to be protected.
- (2) Water quality objectives.
- (3) A program of implementation needed for achieving water quality objectives [which, as defined in subsection (h) means the limits or levels of water quality constituents or characteristics which are established for the reasonable protection of beneficial uses of water or the prevention of nuisance within a specific area].”

been consulted the inevitable conclusion is that they would have pointed out, as we have below, that the Proposal once implemented would have significant (and negative) impacts on most areas of the environment. That, most likely, is the reason that Staff did not consult with them.

While most of these agencies will be discussed below, special note should be taken of the Department of Pesticide Control and Cal-Trans as being indicative of the great importance consultation with other agencies must (but did not here) play in the formulation of policy. The Department of Pesticide Control ("DPR") has had a ground water protection program in place since the early 1980's, and is guided by the mandates of the Pesticide Contamination Prevention Act (PCPA) of 1985, Cal. Food & Agriculture Code § 11345 et seq.. . The PCPA requires a formal review of pesticides found in groundwater due to legal agricultural use to determine if continued use can be allowed. This formal review includes findings and recommendations made to the DPR by a subcommittee comprised of one member each from the State Water Resources Control Board, the Office of Environmental Health Hazard Assessment, and DPR. A formal review has been conducted for eight pesticides (ldicarb, atraine, bentazon, bromacil, diuron, norfluarazon, prometon, and simazine) which the DPR decided should be regulated to protect groundwater. Regulation of the parent active ingredient means detected degradation products of these active ingredients are also regulated to protect ground water. Aldicarb requires a permit issued by the county agricultural commissioner for all uses and is subject to use restrictions (management practices) designed to protect ground water statewide. The other seven pesticides require a permit for use in sensitive areas, where specified use restrictions apply, and are subject to additional use restrictions statewide to protect groundwater. The goal of these use restrictions is to reduce pesticide residues to concentrations in groundwater that are below the analytical method detection limit.

The PCPA also requires the DPR to establish the Groundwater Protection List of pesticides that have the potential to pollute groundwater and conduct well sampling to determine whether they have migrated to groundwater. DPR has monitored for approximately 40 pesticide active ingredients (and some of their degradation products) on this list in areas with high use and is developing analytical methods for additional pesticides on the list. Four of those 40 pesticides active ingredients (or their degradation products) have been found in ground water, but the frequency of those detections even in high use areas is extremely low. Of those four, only one appears to meet the conditions that will require a formal review. DPR has also adopted regulations to protect wellheads statewide from any pesticide "handled" near a well. Handling includes mixing, loading, transferring, and applying (including chemigation); and maintaining, servicing, repairing, cleaning or handling equipment used in these activities that may contain residues; and working with opened (including emptied but not rinsed) containers of pesticides. The wellhead protection regulations are also designed to protect wellheads from runoff water containing pesticide residues that may originate far from the wellhead. Backflow prevention regulations are also in place to prevent direct movement of pesticides to ground water that results from backsiphoning of pesticides in tank mixes to being chemigated when a well shuts off.

Thus, DPR's ground water protection program tracks results of well sampling conducted statewide for pesticides, samples for pesticide that have the potential to migrate to ground water, formally reviews detected pesticides and requires users of those pesticides to adopt use restrictions designed to reduce residues to blow the detection limit, requires property operators to take specific actions to protect wellheads from pesticides including from backflow, and reports

annually the results of well sampling for pesticides and all actions taken to protect ground water. And yet consultation with this important agency was not made in the formulation of the Proposal. The net effect of this is that the Proposal seeks, sub rosa, to change pesticide use and related agricultural management practices that have been approved by another state agency which is charged with water protection. The right hand and the left hand apparently act separately when they should, in fact, work together for the common good of the people of California.

Cal-Trans plays a much more limited – but nonetheless important in the overall scheme of things – role relative to matters contained in the Proposal. Cal-Trans, of course, has responsibility for the maintenance and operation of State and Interstate highways within California. Any proposals that would affect the State Highway System are of concern to it. Cal-Trans's office of Stormwater and Hydraulics also has concern about the effects of potential changes in regulation to irrigation runoff into State highway facilities. Cal-Trans is also the agency of concern relative to obtaining Encroachment Permits relative to activities that may occur within Cal-Trans rights of way. Projects impacting waste discharge often do require encroachment permits. In other words, aspects of the Proposal would, if adopted, require Encroachment Permits be obtained by individuals or coalitions.

The result of Staff's failure to consult other agencies charged with various aspects of pollution control is obvious: it causes an exclusive focus only on matters relating only to water quality and ignores, in their entirety, significant impacts created by the proposal on the air, view, and economic matters (just to name three). In that way, the Staff could, quite frankly, write a CEQA analysis recommending only a negative declaration be prepared and which excludes any and all consideration of realistic, foreseeable impacts on the environment as a whole occasioned by the implementation of the Proposal and the compliance therewith by the farming and viticulture industries. **Using the "butterfly effect"<sup>5</sup> analogy, any action taken by the Regional Board without consideration of the affects those actions will have on non-water aspects of the environment in this Region creates a movement of air that will result in significant damage to other aspects of the environment and economy within the Region and, due to the importance of agriculture to California's and the nation's economy as a whole, would have an effect outside the Region as well.** Such a myopic approach disservices the interests of the people of California in creating the Regional Board in the first place. It also affects an incalculable harm on the environment and the population that this Board and its Staff have sworn to protect.

#### **D. The Proposal Fails to Comply with the Porter-Cologne Water Quality Control Act**

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<sup>5</sup> See James Gleick, Chaos: Making a New Science 8 (1987) (discussing the parable of the flapping of a butterfly's wings that creates a minor air current in China, that adds to the accumulative effect in global wind systems, that ends with a hurricane in the Caribbean).

The Proposal also violates the Porter-Cologne Water Quality Control Act, Cal. Water Code § 13000, which is cited by the Staff as a basis of and for its Proposal.<sup>6</sup> Section 13241 is of great import since it defines the duties of the regional boards and provides, in pertinent part,

“Each regional board shall establish such water quality objectives in water quality control plans as in its judgment will ensure the reasonable protection of beneficial uses and the prevention of nuisance; however, it is recognized that it may be possible for the quality of water to be changed to some degree without unreasonably affecting beneficial uses. Factors to be considered by a regional board in establishing water quality objectives shall include, but not necessarily be limited to, all of the following: ...

(d) Economic considerations.

(e) The need for developing housing within the region.”

A review of the Staff’s Proposal reveals that it does not adequately, if at all, address these two matters (a discussion that is necessarily separate and apart from any discussion of such factors under a CEQA analysis, particularly since economic considerations under CEQA are relevant only insofar as they have a direct relationship to environmental affects.) This sort of patent violation of the statutory basis for the Board taking any action at all not only affects a great embarrassment to the Board itself but, more importantly, also negatively impacts the legality of the Board’s actions as a whole since it renders the Proposal categorically arbitrary, unreasonable, and capricious.

Before proceeding with the economic impact of the Proposal, it should be noted that a loss of production that would be associated with lands being set aside for the buffer zone

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<sup>6</sup> As is noted in City of Burbank v. State Water Resources Control Bd., 35 Cal.4<sup>th</sup> 613, 619 (2005)(fns. omitted):

“In California, the controlling law is the Porter-Cologne Water Quality Control Act.... [Citation.] Its goal is ‘to attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible.’ (§ 13000) The task of accomplishing this belongs to the State Water Resources Control Board (State Board) and the nine Regional Water Quality Control Boards; together the State Board and the regional boards comprise ‘the principal state agencies with primary responsibility for the coordination and control of water quality.’ (§ 13001.) ... [¶] Whereas the State Board establishes statewide policy for water quality control (§ 13140), the regional boards ‘formulate and adopt water quality control plans for all areas within [a] region’ (§ 13240). The regional boards’ water quality plans, called ‘basin plans,’ must address the beneficial uses to be protected as well as water quality objectives, and they must establish a program of implementation. (§ 13050, subd. (j).)”

conflicts with the California Leafy Green Marketing Agreement ([see www.ccof.org/leafygreens](http://www.ccof.org/leafygreens)) and the "super metrics" adopted by the California food production industry to address food safety concerns. Neither of these matters were, of course, discussed in the Proposal or accompanying attachments.

That the Proposal will have an enormous impact on the agricultural economy of the Region – and, since it is by far the largest segment of the economy in the Region and a primary source of income – is obvious. The 30-foot buffer zone will cause literally thousands of acres of farmland now under cultivation to cease being cultivated. The direct economic impact of that is obvious: with fewer crops being grown, fewer crops will be sold and otherwise made available to the public, and lower profits that are used by the grower/owner/operator to grow the economy of the Region will result. The value of the land currently being cultivated but which will, under the Proposal, be forced to lay fallow will decrease, the direct result of which will be a significant decrease in property taxes paid which obviously impacts the amounts of money available to local, county, and state governmental units (including this Board) which they believe are necessary for them to function. Cutbacks in the number of laborers necessary to service the agricultural industry will occur: the results of that will be a reduction in the monies being spent in the Region's economy, an increase in governmental benefits being paid to the unemployed, a movement of individuals out of the region, increased foreclosures of homes now being purchased by unemployed laborers, and the resulting impact on the taxes that may be collected by the local and state governments. Indeed, a cascading detrimental economic effect will occur.

Other aspects of the Proposal (including the costs attendant to purchasing, maintaining, and operating the technologies necessary to comply with the pollution control guidelines) will have a similar economic impact: farmers will have to charge more for their products in order to maintain their presently slim profit margins, the cost of living and inflation will increase due to the rising cost of agricultural products, laborers will either not be hired or will be terminated as cost-savings measures necessary to maintain the economic integrity of the farms (the effect of which will be the same as that mentioned above). A variety of other dire economic results will also obtain as a result of the Proposal. In other words, the "butterfly effect" poses a serious economic result to the Region and, indeed, to the country's economy as a whole (noting that, for instance, the CPI increased approximately 1% in 1995 when, due to widespread flooding in the Salinas Valley, few crops were harvested and the costs of vegetables/lettuce/berries, both domestic and imported, increased).

**E. The CEQA Analysis Is Insufficient And Fatally Flawed Due In That, Among Other Things, It Intentionally Fails to Include The Significant Negative Environmental Effects Of Reasonably Foreseeable Actions Necessary to Comply With Pollution Reduction Guidelines**

Giving life to the unacceptable and ultimately self-defeating bureaucratic philosophy that "the ends justify the means," the Proposal is accompanied by an environmental quality analysis that flaunts both the purpose and requirements of the California Environmental Quality Act, Pub. Res. Code § 21000 *et seq.* It focuses entirely on only the purported "direct" impact of the proposal itself without factoring in the Proposal's implementation by the agricultural community in order to comply with the guidelines set by the Board relative to purification of irrigation water running off the land to drinking water purity. It thus creates its own little world where the water is purer but, in the cause of such purity, the remainder of the environment is left to go to hell.

The methodology chosen by the Staff is simply stated by it:

“The Water Board staff has not received any specific evidence by commenters and has little evidence in the record to **demonstrate conclusively** that the proposed draft 2011 Agricultural Order **will result** in significant adverse environmental effects on agricultural or biological resources. The Water Board staff expects that compliance with the proposed draft 2011 Agricultural Order will result in significant beneficial impacts on the environment. The Water Board must require compliance with water quality standards and consistency with its water quality control plan (Basin Plan). The existing 2004 Agricultural Order and the proposed draft 2100 Agricultural Order set forth conditions to achieve compliance with the water quality standards and the Basin Plan. Compliance with the conditions will result in environmental benefits. As set forth in Water Code section 13360, the Water Board may not specify the manner of compliance with orders of the Board; the discharger may comply with the order in any lawful manner. **As a result, the Water Board can only speculate with respect to the extent there could be adverse environmental effects because it not known with specificity what actions discharger may take to comply.** There is not sufficient information to determine the scope of any changes in environmental effects and any potential impacts are very speculative.”

Draft Order at p. 8. (emphasis supplied). That is sophistic and erroneous. **This is illustrated by the following example which presents a close analogy to the position taken by Staff: an applicant wants to build a large tallow/fertilizer/pesticide plant powered by an in-house nuclear reactor on the banks of the Salinas River. Under the Staff’s analytical framework, as far as this Board is concerned only a negative declaration would be required since the construction of the plant would be beneficial to the environment since acres of farmland would be covered in concrete (and thus not leach nitrates or anything else into the soil and waters of the River), and it would be “speculative” to assume that the plant would be built and/or that it would, after being built, ever operate.** Can it reasonably be said that the Regional Board would approve such a project without a full EIR? If not (and the only reasonable answer is that it would not) then no reason exists why what is “good for the goose is not good for the gander” as well. The Board’s status as a governmental agency does not place it in a different position than a private-sector entity when it comes to the responsibility and necessity of performing a full and accurate environmental analysis.

As discussed below, Staff’s insistence that only concrete effects may be considered is without support in the law for the very simple reason that CEQA looks to the existence of “potential” effects and very much relies on foreseeability of effects rather than their concrete present existence. Further, the position taken by Staff essentially creates a Catch-22 in terms of determining whether the Proposal is arbitrary, unreasonable, and capricious which obtains to the detriment of the Proposal. The promulgation of a pollution regulatory regime requiring compliance (as the Proposal here does) must rest on the concept of “technological feasibility.” That is, technology must exist or will exist in the timeframe set for compliance to begin by which compliance with the regulation’s guidelines can be accomplished. *See, e.g., Vigil v. Leavitt*, 381 F.3d 826 (9<sup>th</sup> Cir. 2004); *International Harvester Company v. Ruckelshaus*, 478 F.2d 615 (D.C.Cir. 1974); *In re. Operation of the Missouri River System*, 363 F.Supp.2d 1145 (D.Minn.

2004); Kandra v. United States, 145 F.Supp.2d 1192 (D.Ore. 2001). If it does not then the regime is arbitrary, unreasonable, and capricious. Since Staff obviously would not want that to happen here, it is safe to say that the Staff is familiar with the 3 primary technological means by which compliance might be achieved (and this is particularly so since they were set out at length in our March 31, 2010 letter to the Board regarding its prior Proposal). Those 3 technologies are: (1) reverse osmosis, (2) reverse ion exchange, and (3) catchment basins located on each farm into which all water drains and from which no water is released that will flow into rivers and other bodies of water of concern to the Board.

It must be and is reasonably foreseeable or anticipated by the Board that the owners or operators of agricultural lands will use one or more of the just-delineated three technologies in order to comply with the Proposal guidelines for purifying water. That is all that is required for them to be included in the analysis of significant environmental impacts. It is obvious that the Staff chose to not consider them due to the realization of the immensely significant negative impacts on the environment that the use of one or more of these technologies create. That is not what CEQA permits or allows to be done.

“In evaluating the significance of the environmental effect of a project, the lead agency shall consider direct physical changes in the environment which **may be** caused by the project and **reasonably foreseeable indirect physical changes in the environment** which **may be** caused by the project.” State CEQA Guidelines, § 15064(d) (emphasis supplied). “An indirect physical change in the environment is a physical change in the environment which is not immediately related to the project, but which is caused indirectly by the project. If a direct physical change in the environment in turn causes another change in the environment, then the other change is an indirect physical change in the environment. Id. § 15064(d)(2). Thus, the failure to analyze the foreseeable impacts of the three technologies dooms Staff’s analysis and requires that it be rejected out of hand.

#### **F. The Proposal Does Not Otherwise Comply With The Requirements \ Of California’s Environmental Quality Act**

The conclusion of the Staff’s Initial Study and Environmental Checklist – if adopted – is inconsistent with and violates CEQA. That conclusion, of course, is that the Proposal is good for the environment and, in “fact” is so “good” that it will not have any negative impact. Ignoring the use of the only technologies by which compliance with the Board’s guidelines can be conceivably met, Staff’s conclusion is based on a determination, made with regard to the 79 (excluding subparts) sections appearing on the CEQA Environmental Checklist (which is composed of 17 separate categories), that the impact runs the gamut from “no impact” on 75 of them and “less than significant impact” on the remaining 4. Those four deal with the conversion of farmland to non-agricultural use and the effect on the riparian habitat or wetlands. As a result of that conclusion, no Environmental Impact Report (“EIR”) on the proposal as it would be adopted, including actions necessary to comply with its terms, would be required in the opinion of the Board. Such a conclusion is both factually and legally incorrect. Indeed, it either fails to recognize or take into account the actual or potential significant environmental impacts on 11 of the 17 categories listed in the CEQA checklist including, notably the following numbered items:

- (1) Aesthetics (impacts on scenic vistas and resources through, among other things, the

construction of numerous and sizeable water treatment facilities (such as large reverse osmosis equipment) on lands abutting or otherwise adjacent to major scenic thoroughfares such as Highway 101, Highway 1 (Pacific Coast Highway), Highway 46 (in San Luis Obispo County), River Road (in Monterey County), Halcyon Road (in San Luis Obispo County), Vineyard Drive (in San Luis Obispo County), and Highways 154 and 246 (in Santa Barbara County);

- (2) Agricultural resources (the imposition of a 30 foot buffer zone replacing agricultural lands abutting such things as the Salinas River and all streams and sloughs discharging water into the river or Monterey Bay translates directly into the loss of literally thousands of acres of now-fertile and producing agricultural lands);
- (3) Air quality (additional air pollution arising from the introduction of literally thousands of agricultural land-sited diesel-fueled water treatment facilities, as well as from additional vehicle traffic arising from the need to service such facilities (including the removal of the water purification chemical byproducts as well as the purified water [the latter being available for bottling and commercial sale as drinking water], pollution caused by the construction and working of local facilities to treat the chemical byproducts and to-be-bottled water);
- (4) Biological resources (the potential loss of discharged water draining into the rivers and bodies of water in the Coastal Region due to the sale, by the farmers either independently or cooperatively, of the drinking-water pure water produced on their lands would directly impact the amounts of water in which protected or "of concern" species live);
- (7) Hazards and Hazardous Materials (arising from the transport, use or disposal of chemicals and other by-products of the water purification process by farmers either independently or cooperatively);
- (8) Hydrology and Water Quality (including those items discussed with regard to biological resources ante, depletion of ground water resources or interference with ground water discharge, alteration of the existing drainage patterns);
- (11) Noise (the addition of noise from the operation of the treatment facilities, traffic-related-to the maintenance and care of those facilities as well as transportation of by-products);
- (12) Population and Housing (including the loss of population that would result from the loss of land presently used for agricultural purposes from imposition of the various buffers and setbacks which would thus displace substantial numbers of people, necessitating the construction of replacement housing elsewhere);
- (15) Transportation/Traffic (increase in the number and frequency of vehicle usage of the highways and roads due to the need for servicing of the treatment facilities,

construction of those facilities, the removal of by-products, and other related matters);

(16) Utilities and Service Systems (construction of numerous new water treatment facilities on each farm or tract of land within the Region that presently "discharges" water that will produce the significant environmental effects discussed herein); and,

(17) Mandatory findings of significance (cumulative considerable impacts on the environment which will cause substantial adverse effects in terms of income and other matters relating to the human environment).

Quite simply, the information upon which the proposed negative impact finding is based is woefully incomplete as to the scope of matters considered, and woefully in error regarding the matters it has interpreted and applied as have just been listed and which will be further discussed below. That insufficiency and incorrectness may, among other factors, be due to the apparent lack of coordination and consultation with other governmental agencies, including those involved in pollution-control matters, as to the actual or likely negative significant affects on the environment posed by the Proposal. As mentioned above, these agencies include the California Coastal Commission (which is charged with responsibility for matters occurring in the coastal zone, an area that includes within its parameters much of the agricultural lands covered by the Proposal which are located on Monterey County's North Coast, San Luis Obispo County's South Coast), and Santa Barbara County's North Coast), the California Air Resources Board (that has issued regulations dealing with air pollution produced by diesel engines used in agricultural operations), the Monterey Bay Unified Air Pollution Control District (which has also issued Rules dealing with air pollution caused by diesel engines used in agricultural operations), Cal-Trans, California's Department of Pesticide Regulation, and the federal Environmental Protection Agency (due to the significant amounts of land owned by the federal government and its agencies, including the Department of Agriculture's Old Stage Road operation and Hartnell College's East Campus in Salinas, are of which are located in the Region and directly impacted by the Proposal.<sup>7</sup>)

At the end of the day, it all comes down to this: consideration of the actual water purification equipment and infrastructure that the Proposal requires farmers to build and install on their lands (with all of the related activities arising from the operation and maintenance of that equipment combined with the need to make up, wherever possible, the significant loss in income occasioned by having to retire a hefty portion of their land due to the 30-foot setoff requirement) combined with just plain common sense clearly shows that the Proposal's impact on the environment would be, at a minimum, potentially significant (with or without any mitigation). There is, of course, more. All information leads to the conclusion that if this Proposal is adopted as proposed, the Board will violate CEQA by issuing what amounts to nothing more than a

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<sup>7</sup> The failure to coordinate with the Department of Agriculture is particularly inappropriate since it is charged, by 7 C.F.R. § 377.5(d) with the preparation of National Environmental Protect Act Environmental Impact Statements for its projects (the substance of which might of proved useful to the Board in preparation of the Proposal).

negative declaration (or, at the most, the “functional equivalent” of one) when a “full EIR” is required because “substantial evidence of a fair argument” exists that the Proposal and its implementation may result in “significant environmental impacts.”

In order to make clear the requirements that are not being met by the Proposal’s consideration of environmental impacts, Jensen’s understanding of the requirements of CEQA should first be iterated. As the California Supreme Court noted in Sierra Club v. State Bd. Of Forestry, 7 Cal.4<sup>th</sup> 1215, 1233 (1994), “CEQA compels government first to identify the environmental effects of projects, and then to mitigate those adverse effects through the imposition of feasible mitigation measures or through the selection of feasible alternatives.” If a project – such as the Proposal and its implementation – does not have feasible alternatives or mitigation measures that can substantially lessen or avoid those effect, the project should not be approved. See Mountain Lion Foundation v. Fish & Game Com., 16 Cal.4<sup>th</sup> 105, 134 (1997). CEQA is implemented through initial studies, negative declarations and EIR’s. It requires a governmental agency – such as the Board in its capacity as Lead Agency on his particular “project” -- to prepare an EIR whenever it considers approval of a proposed project that “may have a significant effect on the environment.” Quail Botanical Gardens Foundation, Inc. v. City of Encinatas, 29 Cal.App.4<sup>th</sup> 1597, 1601 (1994); Cal. Pub.Res. Code § 21100. Thus, if there is no substantial evidence a project “may have a significant effect on the environment” or the initial study identifies potential significant effects, but provides for mitigation revisions which make such effects insignificant, a public agency must adopt a negative declaration to such effect and, as a result, no EIR is required. Cal.Pub.Res. Code §§ 21980(d), 21064. However, the Supreme Court has repeatedly recognized that an EIR must be prepared and a negative declaration cannot be certified :whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact. No Oil Co. v. City of Los Angeles, 13 Cal.3d 68, 75 (1974).

What constitutes a “significant effect on the environment” is has a common regulatory definition:

“Significant effect on the environment; means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. An economic or social change by itself shall not be considered a significant effect on the environment. A social or economic change related to a physical change may be considered in determining whether the physical change is significant.”

14 C.C.R. 15382.<sup>8</sup> A “significant effect on the environment’ is thus “limited to substantial, or potentially substantial, adverse changes in physical conditions which exist within the area as defined in Cal. Pub.Res. Code § 21060.5. Pub.Res. Code § 21060.5 defines ‘environment’ as ‘the physical conditions which exist within the area which will be affected by a proposed project,

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<sup>8</sup> The same is not necessarily true with regard when assessing a project under the National Environmental Protection Act (“NEPA) which requires a greater consideration be given to such factors affects on the human environment. See 40 C.F.R. § 1508.14.

including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance.’ See also Lighthouse Field Beach Rescue v. City of Santa Cruz, 131 Cal.App.4<sup>th</sup> 1170, 1180 (2005).

The Board must include a completed environmental checklist prescribed by the State, and a written report addressing reasonable alternatives to the proposed activity and mitigation measures to minimize any significant adverse environmental impacts. 23 C.C.R. § 3777(a). The governing regulations further provide that the “board shall consult with other public agencies having jurisdiction by law with respect to the proposed activity and should consult with persons having special expertise with regard to the environmental effects involved in the proposed activity.” 23 C.C.R. § 3778. The Board must also “prepare written responses to the comments containing significant environmental points raised during the evaluation process.” Id., at § 3779.

Assuming that the Proposal is certified as CEQA exempt, the preparation and approval process for basin plans is the “functional equivalent” of the preparation of an EIR contemplated by CEQA. It is as true in that instance, as it is where a noncertified program is involved, that in those instances where it is determined that a “negative declaration” is approved that such may not be based on a “bare bones” approach in a checklist. See Snarled Traffic Obstructs Progress v. City and County of San Francisco, 74 Cal.App.4<sup>th</sup> 793, 797 n. 4 (1998). In those instances, judicial review of the certified and noncertified project EIR or negative declaration mirror each other. See County of Santa Cruz v. State Bd. Of Forestry, 64 Cal.App.4<sup>th</sup> 826, 8309 (1998). As was noted in State Water Resources Control Bd. Cases, 136 Cal.App.4<sup>th</sup> 674, 723 (2006):

“In a mandate proceeding to review an agency's decision for compliance with CEQA, we review the administrative record to determine whether the agency abused its discretion. ‘**Abuse of discretion is shown if (1) the agency has not proceeded in a manner required by law, or (2) the determination is not supported by substantial evidence.**’ ‘When the informational requirements of CEQA are not complied with, an agency has failed to proceed in “a manner required by law” and has therefore abused its discretion.’ Furthermore, ‘when an agency fails to proceed as required by harmless error analysis is inapplicable. The failure to comply with the law subverts the purposes of CEQA if it omits material necessary to informed decisionmaking and informed public participation. Case law is clear that, in such cases, the error is prejudicial.’ (Internal citations omitted, emphasis supplied)

See also County of Amador v. El Dorado County Water Agency, 76 Cal.App.4<sup>th</sup> 931, 945-946 (1999).

A review of the environmental impact report presented to the Board reveals that it does not comply with the mandatory provisions for completion of an environmental checklist and report that describes the proposed activity, addresses reasonable alternatives, and sets forth mitigation measures to minimize any significant adverse environmental impacts. What exists is a situation where, if approved in its present form, the Board will merely offer a checklist that denied the project would have any environmental impact and obviously intended its documentation to be the functional equivalent of a negative declaration. Quite frankly, the Board

has not considered all significant implications on the environment. Moreover, it is obvious that the proffered checklist that specifies no significant effect on the environment is either the product of insufficient inquiry or is designed to mislead the public in its considerations.

The incepting point in discussing the significant impact on the environment that the Proposal will have upon its implementation is to describe the type of equipment or machinery that the Proposal requires the owners and operators of agricultural land to install on their land and operate in order to comply with the no-discharge requirements imposed by the Proposal. At no point was this done in the Proposal or related documents, indicating that the size, energy source, and other matters relating to those machines (including removal of the extracted chemicals and residues) was not factored into the environmental impact analysis. That, without more, is a fatal flaw. Current technology in these regards appears to present two different types of equipment: a reverse osmosis unit or a reverse ion exchange unit. Siemans Water Technology Corp. ("Siemans") is one of the prominent manufacturers and distributors of that type of equipment. A review of the various reverse osmosis equipment sold by it – all of which can be located at its official Internet webstite at [www.Siemans.com/water](http://www.Siemans.com/water) – reveals that the units necessary to do that which the Proposal requires to be done (and, particularly in view of the need under the Proposal for the farmer to err on the side of having equipment that has too large a volume than that which has a smaller volume in terms of the amount of water purified per minute) are diesel-fuel powered and quite sizeable.

One of the Siemans unit models that appear to be a prime candidate for agricultural use (since it has a flow rate of 25 to 150 gallons per hour, respectively) is described as having the overall dimensions (width x depth x height in inches) as follows:

168 x 40 x 78  
201 x 41 x 78  
196 x 56 x 90  
277 x 56 x 91  
277 x 58 x 91

In other words, these units generally are at least 14 (and as large as 23) feet wide, 3.5 feet to 5.75 feet deep and 6.33 (to 7.6) fee high. That is "one big honking machine." Since such a unit would be needed at each discharge point (and since there are multiple discharge points per field), it can be easily comprehended (but certainly was not by the Proposal) that literally tens of thousands of these units would be placed on farm land in the Region. In each instance, operation of the equipment would produce by-products consisting of chemicals, salts, minerals, and other substances extracted from the water (which would likely have to be stored at least temporarily on site either in large metal storage containers or in lined open air pits in order to avoid leeching into the soil).

Of course, the number of units might be marginally reduced by the construction of infrastructure on each farm (such as above-ground pipes) that would more centralize the discharge points. The purified water produced in the process could also be allowed to run off the land or could be retained and stored for sale as bottled water. (A review of bottled water sold in stores and markets in California reveals that a large amount of it, according to the mandated label

notation, is the product of reverse osmosis. A trip to Costco and inspection of the Kirkland brand bottled water reveals this to be so.) Since each is a relatively sophisticated piece of equipment, each would require on-site maintenance (on both a routine and special-needs basis) which would increase vehicle traffic. That increase in traffic would, of course, be made manifold by the increase in traffic occasioned by vehicles removing all of the by-products and sludge produced in the purification process (a particular need in order to avoid any untoward leakage back into the soil or discharge water). The cascading significant environmental impact caused by each unit – and, of course, the cumulative thousands of such units spread all over the 400,000 acres presently in production (although such acreage will be markedly reduced by the 30 foot set off) – was simply overlooked by the Board in its environmental analysis.

So too was it overlooked that the Board is not the only body charged with being an environmental watchdog in the Coastal Counties. Surprisingly overlooked and apparently (if the Staff Report is to be believed) not included was the California Coastal Commission which is charged with implementation and enforcement of the California Coastal Act of 1976. Cal.Pub.Res. Code § 30000 et seq. Pursuant to that Act, and specifically Pub.Res.Code § 30214, the Commission is charged with the following matter which most assuredly is impacted by the Proposal:”

“The maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the areas’ agricultural economy.  
...”

The Commission’s jurisdiction includes the Coastal Zone. As defined in Cal. Pub.Res. Code § 30103(a), the coastal zone consists

“that land ... of the State of California from the Oregon border to the border of the Republic of Mexico .... Extending inland generally 1,000 yards from the mean high tide line of the sea. In significant coastal estuarine, habitat, and recreational areas [such as Monterey County, San Luis Obispo County, and Santa Barbara County] it extends inland to the first major ridgeline paralleling the sea or five miles from the mean high tide line of the sea, whichever is less ...”

Thus, areas of the Monterey County North Coast – e.g., from Marina to and past Castroville (that represents more than 80% of the artichokes grown in the world), including the areas around Elkhorn Slough and northward -- subject to the Proposal are all located in the Coastal Zone and thus are also subject to Coastal Commission determinations, particularly regarding the scenic viewshed.

The Commission is, in fact, infamous for the zealotry with which it protects scenic views and viewshed of the California coast falling within its jurisdiction. It is difficult to believe that the Commission would not consider the placement of hundreds (and likely thousands) of large Siemens reverse osmosis units on farmland abutting the Pacific Coast Highway to not have a significant impact on that viewshed. Indeed, a coastal development permit is likely required for a farmer to even build such a facility on his land at all. See Cal.Pub.Res. Code § 30106, which defines a “development” subject to that permit to include

“... on land ... the placement or erection of any solid material or structure; discharge or disposal of any .... gaseous, liquid, solid... waste; .... change in the intensity of use of water or of access thereto; construction, reconstruction ... of ... any structure, including any facility of any private, public, or municipal utility ....”

The Commission, which is also well known for rejecting projects because the EIR's or negative declarations submitted to it were deemed insufficient (although in comparison to the one done by the Board here such would be considered to the product of placing all considerations under a microscope and producing a tome on environmental impacts), would take great exception to a finding of “no impact” in terms of the traffic and vehicle air pollution that would accompany the installation, maintenance, and off-site removal of byproducts.

Concern with the scenic views along, for instance, the Highway 101 corridor from Buellton to Prunedale that would be significantly impacted by the placement of purification units all over the highway-adjacent fields was also overlooked by the Board. That such a scenic view exists is undeniable: it strikes something akin to awe to look on either side of Highway One at the long rows of green crops, the grape vineyards, the careful placement of walnut trees. The same is true when driving along Highway 46 surrounded on both sides by what seems to be miles of vineyards, or while driving to the top of Halcyon Road in Arroyo Grande (where it meets the Nipomo Mesa) and looking out at farm land stretching from the ocean to the bluffs and Highway 101.

Even more troubling than the failure to consult with the Coastal Commission is the failure to consult with or obtain air pollution information from the California Air Resources Board (“CARB”) or the Monterey Bay Unified Air Pollution Control District. Concerned with the amount of emissions being released into the atmosphere by diesel-fueled engines used in agricultural operations throughout California (including the Salinas Valley), CARB issued regulations limiting such emissions. As set forth in CARB Resolution 3-30 (February 26, 2004, CARB had studied the effect of such emission and found:

“Excessive diesel exhaust particulate matter emissions for stationary compression-ignition engines, most of which are diesel-fueled, are a significant source of toxic air contaminants which contribute significantly to serious air pollution in communities and across the State.”

This and other documents providing studies and the views of CARB concerning pollution caused by diesel-fueled engines used in agricultural operations may be found at the CARB's official Internet website at [www.arb.ca.gov](http://www.arb.ca.gov). Issued pursuant to Cal. Health & Safety Code § 39666,<sup>9</sup> 17 C.C.R. § 93115 sets fuel and emissions standards for and applies to “any person who owns or operates” “stationary CI engine in California with a rated brake horsepower greater than 50 (>50 bhp).” Section 93115.2(b). The Monterey Bay Unified Air Pollution Control District, acting

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<sup>9</sup> H & S Code §39666, in pertinent part, provides: “(a) Following a noticed public hearing, the state board [CARB] shall adopt airborne toxic control measures to reduce emissions of toxic air contaminants from nonvehicular sources. ....”

pursuant this authority, adopted and issued Rule 1010 which is entitled "Air Toxic Control Measure for Stationary Compression Engines," has as its stated purpose:

"to reduce diesel particulate matter (PM) from stationary diesel-fueled compression ignition (CI) engines and consistent with California Health and Safety Code Section 39666(d) is a replacement rule for 17 California Code of Regulations Section 93116 [sic], Airborne Toxic Control Measure for Stationary Compression Ignition Engines."

Rule 1010.1.1. It applies to, among others, "any person who owns or operates a stationary CI engine in the District with a rated brake horsepower greater than 50 (> 50 bhp)." While Rule 1010, subpart 1.3, specifically exempts agricultural CI engines from the operation of certain emission and fuel requirements and standards (including those for emergency standby diesel-fueled CI engines (> 50 bhp), [subpart 3.2], stationary prime diesel-fueled CI engines (>50 bhp), [subpart 3.3], and certain record-keeping, reporting and monitoring requirements, [Subpart 4.1.1]), it specifically imposes fuel and emission standards on diesel engines used in agricultural operations. I.e. :

"No person shall sell, purchase, or lease for use in the District any new stationary diesel-fueled engine to be used in agricultural operations that has a rated brake horsepower greater than 50, or operate any new stationary diesel-fueled engine to be used in agricultural operations that has a rated brake horsepower greater than 50, unless the engine meets all of the follow emission performance standards..."

Rule 1010.3.4.1. Serious penalties attach for the failure to register such engines and to otherwise comply with the emission standard. In other words, CARB and the Monterey Bay Unified Air Quality etc. Board have found and taken action pertaining to diesel-fueled engines used in agricultural operations throughout all, or most, of this Region.

These regulations and rules were issued due to documented concerns with the air pollution particularly caused by diesel-fueled engines used in agricultural operations (which will now, if the Proposal is adopted, include water purification technologies). While those engines were traditionally used solely for purposes of pumping irrigation water (and were generally limited to a centralized engine per farm), the water purification reverse osmosis engines which each farmer must now install in multiple numbers on his farmland (and which are, in fact, of greater horsepower than generally exists with regard to pump engines) exacerbates the air pollution problem the CARB and Monterey Bay Unified etc. Board believed it necessary to limit by means of their respective regulations and rules. In light of this already patent concern by the California agencies charged with controlling air pollution and the significant impacts thereon of diesel-fueled engines used in agricultural operations, it defies both common sense and belief that the Proposal found no significant impact. That simply is unsupported and unsupportable. It, however, was ignored by the Staff in making its cavalier and unsupported statement, quoted above, that

"The Water Board staff has not received any specific evidence by commenters and has little evidence in the record to **demonstrate conclusively** that the proposed draft 2011 Agricultural Order **will result** in significant adverse environmental effects on agricultural or biological resources."

Draft Order at p. 8.

This same point needs to be appreciated in terms of the failure to consult with the federal Environmental Protection Agency ("EPA"). In this instance, however, the failure is even more profound. Like CARB, the EPA has done numerous studies on the environmental impact of diesel-engine emissions used in stationary positions (in which presumably the purification units could be included). See, e.g., 40 C.F.R. Part 68 (listing stationary non-vehicular engines with emissions standards and referencing supporting environmental studies). Further, since vehicular traffic will no doubt increase in the Coast Counties due to the need for the construction and maintenance of the purification units (including the removal of the chemical, mineral, and other by-products, including purified water suitable for drinking), the EPA should have been consulted as well as to the significant environmental impacts such would have on the air and other areas of pollution concern (including water and the human environment). Indeed, CEQA even contemplates that joint CEQA and NEPA (National Environmental Protection Act) EIR/EIS will be done when appropriate. See 42 U.S.C. § 4321 et seq.; 14 C.C.R. §§ 15170, 15222, 15226 (requiring or encouraging preparation of joint CEQA/NEPA documents). The propriety and need to do so is borne out by reference to significant agricultural activities in, for instance, the Salinas Valley undertaken by the Department of Agriculture: not only does it have an agricultural facility at Hartnell College's East Campus in Salinas but it also has a significant row-crop operation (which includes a pesticide permit) at its facility on Spence Road/Old Stage Road to the south of Salinas.

The loss of agricultural land occasioned by implementation of the Proposal is patent and will have a significant environmental impact not only to agricultural resources (as set forth on the CEQA checklist) but on the human environment (in terms of lost agriculture jobs and the attendant affects such will have on the movement of large numbers of persons out of the Salinas Valley). At least in significant part (excluding, of course, the loss in land available to crop growth due to the installation of the water purification units and accompanying infrastructure), the various buffers and setbacks (including primarily the 30-foot set-off due to the presence of impaired surface water body in which no agricultural pursuit may occur) is the source of such impact. It is beyond belief that the impact of that set-off could be treated as negligible when the areas affected by it in, for instance, the Salinas Valley alone is considered.

The Salinas River is approximately 85 miles long. It has a number of tributaries including

1. the Estrella River from the Carisa Plain (in San Luis Obispo County) that intersects the Salinas River near San Miguel;
2. the Nacimiento River;
3. the San Antonio River;
4. Poncho Rico Creek at San Ardo;
5. the San Lorenzo River which intersects it near King City;
6. the Bitterwater Creek which intersects it east of Greenfield;
7. the Arroyo Seco which intersects it west of Soledad;
8. the Johnson Creek drainage north of Gonzales;
9. the Old Stage Road drainage west of Chualar;
10. the Goat drainage west of Chualar;
11. the Quail Creek drainage west of Spence Road;

12. the Army Corps of Engineers Reclamation Ditch which interests with the Natividad and Gabilan Creeks when then bisects the City of Salinas and empties into the old Salinas River Channel west of Castroville;
13. the Blanco Drain which carries water moved by tile drainage from approximately 10,000 fertile acres west of Salinas and empties into the Salinas River southwest of Castroville;
14. Alisal Slough which carries water removed by tile drainage from approximately 8,000 acres of fertile farmland within the boundaries of the Castroville Irrigation project (which uses reclaimed treated water from the Monterey County Pollution Control Agency);
15. Santa Rita Creek which empties into the Reclamation Ditch;
16. Merit Lake drainage which also empties into the Reclamation Ditch.

There are, in addition, literally hundreds of small drainages which, when combined, accounts for thousands of additional miles of water-adjacent land. Esperanza Creek (which is really nothing more than a drainage ditch) in fact runs through Jensen's Esperanza Road ranch and abuts approximately 0.75 miles of land on both sides of the Creek upon which organic asparagus is grown, and is on the list of impaired waters. It is not difficult to imagine the impact of that being done. Literally tens of thousands of acres of now-producing farm land would no longer exist for that purpose. The workers who earn their livings from tending that land would be accordingly terminated. Those workers, particularly in the present economic climate, would have no other employment available to them in the agriculture-centered Salinas Valley. In addition to defaulting on home loans or just walking away from those houses, these displaced workers would be forced to move to other regions of the California (or, for that matter, elsewhere in the United States) and find not only new jobs but new homes (thereby requiring expansion of housing and infrastructure in those areas). The cascading affects of such a situation can hardly be overstated but were, incomprehensively, overlooked and completely discounted by the Board in its environmental analysis.

A partial answer to the enormous economic impact that would occur from adoption and implementation of the Proposal, however, itself poses significant impact on the water resources of the Coast Counties. The goal of the Proposal is to assure that all discharge water would be purified to the purity level of drinking water (including the removal of all sediments). That, of course, assumes that the purified water would be discharged from the agricultural land into, among other places, the Salinas River. There really is no sound basis underlying that assumption. Americans, to our national shame, are addicted to bottled water (the bottles being a great source of pollution to the oceans and rivers as well as the side-of-the-road).<sup>10</sup> As the New York Times reported on March 19, 2008 in an article entitled "Rising sale of bottled water triggers strong reaction from US conservationists," bottled water sales in the United States in 2007 were 8.82 billion gallons (having a value of \$11,700,000,000). See [www.NYTimes.com](http://www.NYTimes.com). So then why would the farmers of the Central Coast counties – who would have spent large

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<sup>10</sup> By the same means, the production of the bottles themselves used up hundreds of millions of barrels of oil, cause air pollution, and have other significant impacts on the environment. An increase in the number of bottles of water being marketed – as, for instance, "Steinbeck Water from the Salinas Valley" – would necessarily increase such pollution.

amounts of money on the water purification units and otherwise suffered egregious reductions in their profitability due to the loss of land they could actually farm – not, either individually or on a cooperative basis, seek to store and sell (for human consumption) the water they have purified? That would quite obviously reduce the amounts of water going in to, for instance, the Salinas River. That would lower the water levels and just generally have deleterious effects that make the Proposal's concerns with pollution by discharge water pale in comparison. But that too was ignored or overlooked by the Board.

#### **G. The CEQA Analysis Of Alternative Is Facially Inadequate In That It Fails To Include A "No Project Alternative" Option**

In spite of attempts to portray Alternative 1 – simply extending the present waiver program – as the "no project alternative," the Staff's efforts are inaccurate and misleading. In actuality, Alternative 1 is not the "no additional regulation alternative." A "No Project" alternative is intended to reflect what would happen absent any Regional Board action. In this case, no action results in no waiver program whatsoever since the 2004 waiver will lapse on its own terms in March 2011.

"The no project analysis shall discuss the existing conditions at the time the notice of preparation is published, ... as well as what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services." State CEQA Guidelines, § 15126(e)(2). When the existing conditions include implementation of a program or rule that will expire unless some affirmative action is taken, the "No Project" scenario must consider the expiration of that program or rule and its associated ramifications. See Sherwin-Williams Co. v. S. Coast Air Quality Management Dist., 86 Cal.App.4<sup>th</sup> 1258, 1280 (2001)(defendant had properly "defined the "No Project" scenario as "not adopting the proposed amendments to Rule 1113, but instead allowing the expiration of the current product variances for some of the coating categories and maintaining the current version of Rule 1113 as amended by a 1990 court order"). In contrast, when a agency must act affirmatively to extend an existing program or rule, that itself is a project that must be analyzed under CEQA. See Sunset Sky Ranch Pilots Assn. v. County of Sacramento, 47 Cal.4<sup>th</sup> 902, 909 (2009)(country's decision to not renew a conditional use permit that was expiring is not a project under CEQA, but the renewal of the permit would be).

The lack of an accurate "No Project" alternative constitutes a fatal flaw. That alternative is a mandatory component of an EIR. The purpose of this requirement is "to allow decisionmakers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project." State CEQA Guidelines, § 15126.6(e)(1). In this case, no such comparison is possible because the "No Project" alternative is fundamentally inaccurate.

#### **H. The 30-Foot Buffer Requirement Is Vague And Overbroad**

The Proposal requires that farmers create a 30-foot buffer on their farmland which abuts waters described in the preceding section. However, the Proposal does not specify whether measurement of that buffer begins at the bank (defining some definite bank as opposed to one that changes with the rate of flow of the water), in the middle of the body of water, or at the historic high or low water point. That makes it impossible for farmers such as the Jensen's to comply with the requirement since, frankly, they simply cannot know where the 30 feet begins.

That is the paradigm of a regulatory requirement that is so vague and ambiguous that it violates the landowner/operator's constitutional right to due process. Accordingly, that requirement cannot be adopted.

### **I. The Proposal, When Implemented, Will Result In The Regulatory Taking Of Agricultural Land**

The Proposal, if adopted and implemented, will result in the regulatory takings of, among other things, the agricultural land contained in the 30-foot buffer zones.

The Fifth Amendment of the United States Constitution, made applicable to the States (and its political subdivisions such as the Board by the Fourteenth Amendment) specifically protects private property from governmental incursions by preventing "private property [from] be[ing] taken for public use without just compensation." U.S. Constitution, Amend. V.<sup>11</sup> The "Fifth Amendment's guarantee that private property shall not be taken for a public use without just compensation was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." Armstrong v. United States, 364 U.S. 40, 49 (1960). Indeed, James Madison, often described as "the Father of the Constitution,"<sup>12</sup> explained that such protection is government's chief responsibility,<sup>13</sup> because, in the words of Arthur Lee, a Founding Father from Virginia, property is the "guardian of all rights."<sup>14</sup>

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<sup>11</sup> Yet, rather than the barrier of a property rule, the Constitution protects private property by placing in front of the government the hurdle of a liability rule. See Preseault v. I.C.C., 494 U.S. 1, 11 (1990) ("[the Fifth Amendment] is designed 'to secure *compensation* in the event of otherwise proper interference amounting to a taking' " (emphasis in original)). See generally Guido Calabresi & Douglas A. Melamed, Property Rules, Liability Rules and Inalienability: One View of the Cathedral, 85 Harv.L.Rev. 1089 (1972) (discussing property rules and liability rules).

<sup>12</sup> See, e.g., Gonzales v. Raich, 545 U.S. 1, 57 (2005) (O'Connor, J., dissenting); West Lynn Creamery, Inc. v. Healy, 512 U.S. 186, 193 n. 9 (1994); Nelson v. Carland, 42 U.S. 265, 273 (1843). See generally Irving Brant, James Madison: Father of the Constitution, 1787-1800 (1950).

<sup>13</sup> Thus, in a 1792 essay on property published in the National Gazette, James Madison contended that because private property is the foundation of a civil society, property, "being the end of government, that alone is a just government, which impartially secures to every man, whatever is his own." James Madison, Property, in James Madison: Writings 515 (Jack Rakove ed. 1999).

<sup>14</sup> Indeed, Arthur Lee, a Virginia delegate to the Continental Congress, observed that "the right of property is the guardian of every other right, and to deprive a people of this, is in fact to deprive them of their liberty." James W. Ely, Jr., The Guardian Of Every Other Right: A Constitutional History Of Property Rights 26 (2d ed. 1998) (quoting Arthur Lee).

Over the years, the law has distinguished three broad categories of takings: those defined by the governments' powers of eminent domain,<sup>15</sup> those resulting from a "physical invasion" by the government without bringing an eminent domain proceeding,<sup>16</sup> and those resulting from the impact of regulation.<sup>17</sup> The first two, having an older lineage, could be referred to as "traditional takings," and the latter two require a landowner to file an "inverse condemnation" suit seeking just compensation. "While the typical taking occurs when the government acts to condemn property in the exercise of its power of eminent domain, the entire doctrine of inverse condemnation is predicated on the proposition that a taking may occur without such formal proceedings." First English Evangelical Lutheran Church v. County of Los Angeles, 482 U.S. 304, 316 (1987).. Traditionally, all three categories covered interference with private property "to an extent that, as between private parties, a servitude is taken." United States v. Dickson, 331 U.S. 745, 748 (1947).

Of application here, of course, is regulatory takings. Although subject to a long period of evolutionary growth which may prove important in litigation (rather than here), such takings does apply to Jensen. It is settled now that Government regulation goes "too far," and effects a total or "categorical" taking, when it deprives a landowner of all economically viable use of his "parcel as a whole." See Palm Beach Isles Assocs. v. United States, 231 F.3d 1354, 1259-1360 (Fed.Cir. 2000) (differentiating categorical takings from partial ones). If the taking is not of the entire parcel as a whole, either temporally or by its metes and bounds, government regulation can still effect a partial taking pursuant to the fact-intensive Penn Central balancing test: i.e.,

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<sup>15</sup> "Eminent domain refers to a legal proceeding in which a government asserts its authority to condemn property," in exchange for payment of just compensation to the landowner. Agins v. City of Tiburon, 447 U.S. 255, 258 n. 2 (1980). "At the time of the writing of the Constitution and for many years thereafter a government taking meant exactly that-the Government would physically occupy the land." Hendler v. United States, 952 F.2d 1364, 1371 (Fed.Cir. 1991). Before the Civil War, most constitutional issues concerning private property and economic rights and liberties arose under the Commerce Clause and the Contracts Clause. The federal government "undertook relatively few projects"; accordingly, it did not make much use of eminent domain. Due to its relative rarity, "the use of eminent domain to take private property did not receive much attention from the federal courts" during this period. Yet when the government did use eminent domain, it was clear that the Constitution required the government to pay the landowner just compensation. See Calder v. Bull, 3 U.S. (Dall.) 386, 400 (1798)(concluding that when landowners must give up their land for public use, "justice is done by allowing them a reasonable equivalent"). In fact, "[m]uch of the law of eminent domain-both statutory and case-developed for the purpose of providing the procedural structure for government takings; the main issue in the cases was what compensation was just." Hendler, 952 F.2d at 1371.

<sup>16</sup> See, e.g., Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 441 (1982). The aftermath of the Civil War, coupled with industrialization and the growth of corporate enterprise, transformed economic life in America. Land became more valuable as the country became more prosperous and more settled; the states began to take a much more active role in regulating economic affairs and uses of property.

<sup>17</sup> See, e.g., Penn Central Transp. Co. v. New York, 438 U.S. 104 (1978).

“a court determines when regulation goes “too far” and effects a taking by balancing: (1) the “economic impact of the regulation on the claimant”; (2) “the extent to which the regulation has interfered with distinct investment backed expectations”; and (3) “the character of the governmental action.”

Penn Central Transportation Co. v. New York, 438 U.S. at 124. And, once an uncompensated taking has occurred, the remedy is for government to provide just compensation for what it has taken, even if the government action causing the taking is later rescinded, discontinued, or abrogated. Further, for a court to find an unconstitutional taking by applying either the per se rule or the Penn Central balancing test, the property owner must establish a legitimate property interest that is detrimentally affected by the governmental action. See, e.g., Air Pegasus of D.C., Inc. v. United States, 434 F.3d 1206, 1212 (Fed.Cir. 2005)(observing that only those with a valid property interest are entitled to just compensation).

Applying these factors, Jensen possesses the requisite property interest protected by the Fifth Amendment: a fee simple in agricultural lands subject to the Proposal. So the inquiry then moves on to whether the Board’s action constituted a taking” of that interest. The so-called “categorical test” – which applies only in those instances where government action has eliminated “all value” from the land does not apply here since some vestigial value remains (as, for instance, very large parking lots in the middle of the Salinas Valley). The Board’s action does, however, deprive the Jensen’s of the “highest and best use” of all the property (highly producing agricultural farm land). The takings still occurs and the only affected thing is the amount of compensation that needs to be paid. The regulatory character of the Board’s action – based as it allegedly is a myopically narrow concern only with water pollution (even though, as noted, more significant negative impacts arise from the implementation of the Proposal than are affected by the Proposal) – does serve as an adequate excuse or preventative measure that overcomes the partial takings that is affected by the Proposal. See, e.g., Tahoe-Sierra Pres. Council v. Tahoe Reg’l Planning Agency, 535 U.S. 301 (2002).

The takings here extends to the width and breadth of the Coast Counties and implicates some of the most valuable farmland in the United States, having values from approximately \$20,000 an acre to \$50,000 per acre (even in these times of depressed real estate prices). With the legal sufficiency of the Proposal being as tenuous as it is due to the un- and non-considered significant environmental impacts that may be affected by the Proposal, the additional risk that a takings – even if temporary and lasting only one growing season – will occur should cause the Board to reject the Proposal and seek to find other ways to fulfill its statutory mandate.

**J. Administrative Convenience Is Not A Basis By Which The Regional Board May Either Fashion Or Adopt The Proposal And Its Implementation**

In reviewing and rejecting alternative proposals to the one recommended by the Staff, a constant basis for rejecting other proposals was that too much paperwork and too much work for the Staff would result: e.g., in rejecting Option 10 of the “Options Considered” Appendix D at p. 13, it is stated that individual farm reporting “would likely create a significant work load for Water Board staff ...” No offense, that is what the Staff was created for and that is for what they are paid. It is well-settled administrative convenience of this type is an inadequate State interest

to warrant being used to reject or formulate proposals such as this. See, e.g., Natural Resources Defense Council v. EPA, 526 F.3d 591 (9<sup>th</sup> Cir. 2008).

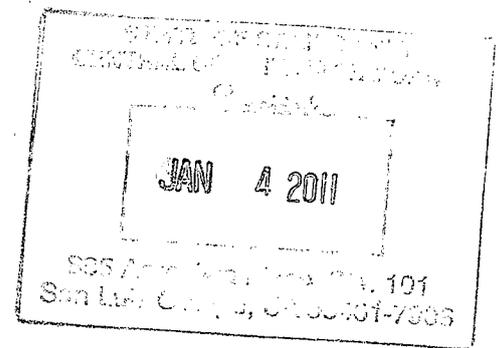
### **K. Conclusion**

In the final analysis, the Proposal is a monument to overreaching by those charged with protecting the water resources of the Central Coast counties. In its attempt to comply with a mandate to control water pollution in the Central Coast, the Board has ignored common sense and, in order to protect the water from pollution, has myopically overlooked or ignored the significant impacts on the environment relative to other areas of concern such as air pollution and the human environment that attend having farmers install water purification units and infrastructure on the land they are left with after losing any ability to effectively or, for that matter, actually farm within buffer and set back areas of, for example, the Salinas River or its tributaries. A regulatory taking of land having sufficient value to bankrupt the most solvent of States will result from the adoption and implementation of the Proposal.

The bureaucratic zeal which informed the formulation of the Proposal must be tempered by the requirements of the law, by knowledge of how agriculture works and the geology in this Region, and by common sense. Indeed, the Proposal results only in the conclusion that Staff was activated more by bureaucratic zeal than by recommending actions which would affect protection of the environment as a whole and the continued success of literally the only part of California's economy that has not been totally destroyed by current economic conditions. The Proposal should be rejected and placed on the dust heap of badly thought-out concepts. While protection of California's waters is and remains a laudable goal, that protection can be afforded by other and more soundly thought out means.

January 2, 2011

Jeffery 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



Dear Sir:

We have operated a 13 acre vineyard near Paso Robles for 30 years. We use drip irrigation and irrigate an average of 30 hours per year. On wet years, such as this year, we may not irrigate at all. We do not fertilize. Our pesticide use consists of one spraying per year for weeds using Goal or Round-up which are unrestricted materials. Some years we may spray one time for leafhoppers using Provado which is also unrestricted. That is the total extent of our pesticide use.

Because of our topography we have no erosion problems. We are not located near a stream. In 30 years we have never been a waste discharger nor is there any possibility that there could be a potential for waste discharge from our operation. I am sure that there are many other farming operations that are similar to ours.

CCRWQCB has never provided any reasons or evidence to justify its policy toward our type of operation. This lack of accountability is unacceptable. As CCRWQCB is proposing a new AG Waiver it would be an excellent time to exclude those of us who have no potential to discharge waste. We feel that imposing requirements upon us or continuing to take money from us amounts to unfair treatment. We feel very strongly that Governmental Organizations have an obligation to treat citizens fairly and that CCRWQCB needs to make fair treatment of people as important as its other goals.

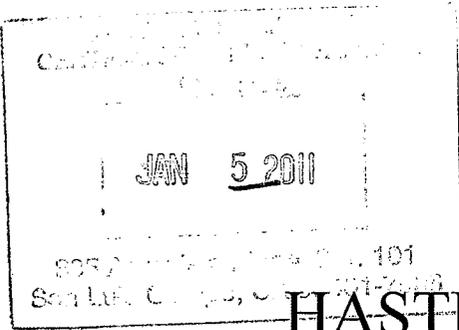
Your latest proposals that require monitoring for our type of operation will achieve absolutely nothing of benefit. They will most certainly cause waste and damage to the economy. It is sad to see that once again you have failed to listen to reasonable proposals from the Agricultural Community.

Your latest proposals reflect both the incompetence of the Board and its Staff and a marked ill will toward Growers such as myself.

A handwritten signature in black ink, appearing to read 'M. D. Caparone', with a long horizontal flourish extending to the right.

M. D. Caparone

CC Abel Maldonado  
Sam Blakeslee



# HRV

## HASTINGS RANCH VINEYARD

“in the heart of the Adelaida”

December 31, 2010

Electronically Submitted to: [AgOrder@waterboards.ca.gov](mailto:AgOrder@waterboards.ca.gov)

Hard Copy to Follow

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: California Regional Water Quality Control Board, Central Coast Region Draft Order No. R3-2011-0006 (“Draft Ag Order”), dated November 2010 Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands

Dear Honorable Chairman Young:

I would, on behalf of Hastings Ranch Vineyard, make a few comments regarding the above referenced proposals.

- 1) Tiered-Approach: I believe that the tiered approach is a mistake as proposed and should be based upon an actual probable cause for pollution. Our operation, by itself, does not automatically create such a situation.
- 2) Incentives: Our vineyards utilizes deficit irrigation practices, drip tubing, water to root technology, drip irrigation and soil moisture calibrations and These practices should be encouraged and incentives given to maximize such practices that serve to minimize water quality degradation
- 3) All dischargers, including Tier 1, are subject to: Receiving Water Monitoring and Groundwater Well Reporting:

Receiving Water Monitoring: Dischargers who do not cause tailwater, as is the case for vineyards, should not be subject to receiving water monitoring.

Groundwater Well Reporting: The requirements for well water monitoring go beyond what is necessary to carry out the order to address pesticides, sediment, and nutrients associated with agricultural discharges. We have several wells and it does not make any sense in our situation that monitoring the depth to groundwater address these issues. We are not located on an aquifer and as such, the suggestion of groundwater well reporting makes no sense in this and many other situations. ? It may be impossible to measure depth to groundwater due to clearances in the well without pulling the pump and adding a sounding tube. This could add substantial cost for compliance without any justification for this requirement. Depth to groundwater monitoring should be eliminated from the order.

Any well testing should be associated specifically to the constituents in question. Additionally, this information should not be submitted to the Control Board for public record. Particularly, if you are not contributing to the concerns meant to be addressed through this order. The groundwater reporting requirements are over-burdensome and unnecessary.

If groundwater testing is deemed legal and necessary under this Order, we support the Ag Alternative approach to targeting water well testing to the constituents in question by limiting testing to one primary well; the constituents for testing only nitrates, TDS or EC, and pH; and keeping results on-farm in the Farm Plan to maintain proprietary information.

I hope you will understand that a successful program is performance-based and provides incentives and opportunities to improve water quality. Arbitrary factors such as operational size and location; unnecessary requirements; burdensome paperwork; and limited resources to manage and enforce does not provide any benefits towards improving water quality.

A longer term approach to improve water quality beyond 5 year increments should be sought. Water quality degradation did not occur overnight and cannot be expected to be solved in a short time horizon without creating negative and unintended consequences to the agricultural community which serves us.

It is our view that the first 5 year Ag Waiver Program has been a success in collecting data and getting the farming community and regional board to begin talking about solving water quality issues. The next 5 years should encompass a priority-based approach targeting the most extreme issues to build momentum to continue to work collaboratively on water quality concerns.

We support the Agricultural Alternative as an improved approach to addressing water quality concerns. Most particularly, we find the Ag Alternative to be more performance-based and focused on research, education, and extension rather than unnecessary and burdensome paperwork that serve no purpose in improving water quality.

Incentives and education go much farther in addressing the end goal of resource protection than regulation ever could; when people are motivated to do good (particularly by their peers), they will do good. We continue to support efforts that are collaborative, performance-based, educational, and well-researched. We respectfully request your Board give your staff very clear direction to work in conjunction with the agricultural community in developing an incentive-based proactive program that will encourage open dialogue and education among stakeholders.

Sincerely,



Newlin Hastings  
Hastings Ranch Vineyard, Paso Robles, Ca

Newlin & Liz Hastings

Vineyard Address: 6880 Adelaida Road, Paso Robles, CA 93446 \* (805)239-2449

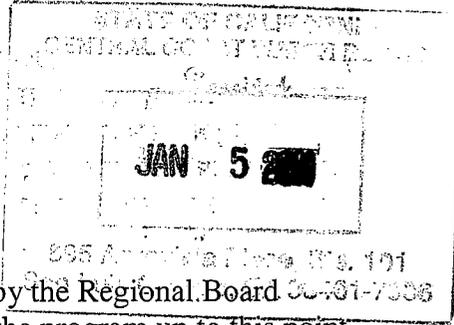
Office Address: 504 First Street, Suite A, Paso Robles, CA 93446 \* (805)237-4040 \* (805)237-4041 Fax  
[nhastings@pacificarealestate.com](mailto:nhastings@pacificarealestate.com)    [hastingsranch@wildblue.net](http://hastingsranch@wildblue.net)

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Central Coast Regional Water Quality Control Board  
Jeffery Young, Board Chair  
895 Aerovista Place, Suite 101  
San Luis Obispo, Ca. 93401-7906



Sir:

I have been following the new proposals for the Ag Waiver by the Regional Board (CCRWQCB), attending meetings, and have participated in the program up to this point in time. While I do not claim to know every detail of every part of this proposal the parts that I do see are interesting to say the least. Let's not discuss the cost for the moment but focus on the expectations and execution.

The plan that was set in place five years ago seems like it is doing what it was intended to do. The monitoring system is in place, education has helped the growers to identify areas of improvement and some results have been achieved. Now we find ourselves in a position where, without regard for current improvements and efforts, we will have to add a considerable amount of time and effort to more regulatory issues, but we are not sure these "improvements" will work. It reminds me of the new diesel regulations: The new order will take many acres of productive ground out of agriculture, monitor activities on a micromanagement level, and were produced with the idea that there is a belief that agricultural activities are responsible for all that ails the Central Coast. Instead we should be continuing our current activities, with an eye for improvement.

In the Board's zeal to adopt their mission exactly to letter of a flawed policy, they have not introduced any common sense into the equation. Discharging water into your neighbor's property, letting it run down the gutter or just using too much is costly to the growers. The growers have no incentive to maintain practices such as these but the regulations are aimed at eliminating these practices. Not only is a tier system cumbersome, it was written so that everyone will qualify for the next level, so it will require more monitoring but results (?).

Please consider the plan proposed by the Six County Coalition. Extensive Industry experience, stewardship of the land and water, and the people who will have to implement the processes have put together a program that can succeed in accomplishing what the Board' mission says, without, now the drum roll for the cost, adding multiple layers of regulators who are regulating the same issues, onerous reporting on an individual basis, and spending unnecessary funds on projects that will not produce results but create more regulation. That is the plan that I support and will achieve the objectives.

Regards,

*Michael Manfre*  
R. Michael Manfre  
Partner



**From:** <Pozovalley@aol.com>  
**To:** <AgOrder@waterboards.ca.gov>  
**CC:** <aschroeter@waterboards.ca.gov>  
**Date:** 12/29/2010 12:32 PM  
**Subject:** CCRWQCB Request for Public Comments on Draft Agricultural Order  
**Attachments:** Letter to CCRWQCB.doc

Steve Arnold  
98 East Pozo Road  
Santa Margarita, California 93453

December 29, 2010

Central Coast Regional Water Quality Control Board  
895 Aerovista Place, Suite 101  
San Luis Obispo, California 93401-7906

Re: CCRWQCB Request for Public Comments on Draft Agricultural Order dated  
November 19, 2010

Dear Board Members,

I am writing to express my concern with your staff's current draft Ag Order. The draft Ag Order will negatively impact my ability to continue producing, but more importantly, if adopted will negatively impact many of the growers that work hard to provide our population with fresh fruits and vegetables. Beyond jeopardizing our food supply, adoption of the current draft ag order could detrimentally affect the state's economy, as ag to date has played an important role in creating jobs statewide.

I am perplexed as to why the current ag waiver cannot be renewed. Six years ago when the current waiver was implemented there was a spirit of cooperation between the RWQCB and the farm community. Has the monitoring data been studied? Have the sources of water quality problems clearly been identified as being a result of current ag practices? If not, is this a good time to jeopardize jobs and food production by adding burdensome and expensive regulatory demands?

There are so many unanswered questions, and so much activity other than irrigated ag in the watersheds that it seems very punitive to add regulation to commercial farmers region wide when it has not been determined that current ag practices are creating water quality problems.

Lastly, adding well monitoring region wide, even where monitoring has not produced evidence of water quality problems, adds more paperwork and expense to small family farmers such as myself. The problem I see with this regulation is that the data will be meaningless without some history of the management practices or natural baseline

information. I agree with my fellow Farm Bureau Members in making the argument below:

*Baseline legacy nitrates are not defined or known. Baseline legacy nitrate loads are necessary prior to measuring possible nitrate loads from farming practices. Further, differing soil types, percolate rates, water table levels, and manner of surface nitrate irrigation application must be considered prior to determining possible nitrate loads due to farming practices.*

In closing, I urge you to renew the current ag waiver. If CCRWQCB used it's current resources to identify absolutely the causes of poor water quality, and tackle those issues before creating more regulation for those that are successfully using best management practices, I think we can truly come together to find workable solutions.

Thank you for the opportunity to comment.

Steve Arnold

**From:** Lynn Miller <shortnsassy@q.com>  
**To:** <AgOrder@waterboards.ca.gov>  
**Date:** 1/2/2011 10:15 PM  
**Subject:** Fw: CCRWQB Request for Public Comments on Draft Agricultural Order dated November 19, 2010 (Out of office)

----- Original Message -----

From: "Angela Schroeter" <ASchroeter@waterboards.ca.gov>  
To: <lmiller@tcsn.net>  
Sent: Sunday, January 02, 2011 11:13 PM  
Subject: Re: CCRWQB Request for Public Comments on Draft Agricultural Order dated November 19, 2010 (Out of office)

I will be out of the office from December 24 - January 2. For assistance during this time, please contact Lisa McCann at (805) 549-3132 or [lmccann@waterboards.ca.gov](mailto:lmccann@waterboards.ca.gov). If the matter is urgent, please contact the receptionist at (805) 549-3147.

If you are submitting comments on the Agricultural Order, please note that comments are due by January 3, 2011. Comments should be submitted via email at: [AgOrder@waterboards.ca.gov](mailto:AgOrder@waterboards.ca.gov) or sent by mail to the address below. Information on the Agricultural Order is on our website at [www.waterboards.ca.gov/centralcoast](http://www.waterboards.ca.gov/centralcoast).

Thank you

\*\*\*\*\*

Angela Schroeter, P.G.  
Central Coast Regional Water Quality Control Board  
895 Aerovista Place, Suite 101  
San Luis Obispo, CA 93401-7906  
Phone: (805) 542-4644  
Fax: (805) 788-3596

[aschroeter@waterboards.ca.gov](mailto:aschroeter@waterboards.ca.gov)  
[www.waterboards.ca.gov](http://www.waterboards.ca.gov)

>>> <lmiller@tcsn.net> 01/02/11 22:13 >>>

Lynn Miller  
PO Box 695  
Buffalo, WY 82834-0695

January 3, 2011

Angela Schroeter  
Agricultural Regulatory Program Manager  
Central Coast Regional Water Quality Control Board  
895 Aerovista Place, Ste 101  
San Luis Obispo, CA 93401-7906

Dear Ms Schroeter:

As I live outside of CA at this time, but still own AG land in Templeton, I am very concerned about Waste Discharge Requirements on Irrigated Lands!

My property has been used for several varieties of crops over the years, with no run off due to "intelligent" farming practices!

I am concerned with the new rules, that future farming will be too expensive, thus STOPPING farming in my area.

I have been following the progress of this Board's renewal of the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands ("Ag Order") and am concerned with staff's draft Ag Order. The draft Ag Order will negatively impact my ability to continue producing. The draft Ag Order contains many undefined and potentially highly impractical requirements for agricultural operations.

There is no mention of any geology or soil types related to well nitrate loads or groundwater percolation. Water tables are generally fluid in nature and water percolating from one farm may not directly attribute to the underlying water table nitrate load.

I urge the Board to listen to growers' feedback and suggestions, including mine, and incorporate that feedback into the draft Ag Order. Any future Ag Order must be designed with achievable objectives and must be a transparent and collaborative process that utilizes agricultural stakeholders. Loss of grower cooperation will be counterproductive to improving water quality.

Thank you for considering my views.

Sincerely,

Lynn Miller  
3076842852

**From:** George Kendall <gwkendall@wildblue.net>  
**To:** <AgOrder@waterboards.ca.gov>  
**Date:** 1/3/2011 4:03 PM  
**Subject:** Comments on November 2010 Draft Ag Order  
**Attachments:** ag order comments.doc

Jeffrey Young  
Chairman of the Central Coast Regional Water Quality Control Board

cc: Angela Schroeter

We would appreciate if you would consider our attached comments on the November 2010 draft ag order.

Thank you,

George W. Kendall and Elizabeth T. Kendall  
Cambria, CA  
January 3, 2011

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

Re: Draft Ag Order (dated November, 2010)

Dear Mr. Young:

My wife and I are retired geologists with previous careers in the petroleum and environmental industries. For the past thirteen years, we have owned and actively operated a small farm (30 irrigated acres) in coastal San Luis Obispo County. We grow avocados, citrus and pumpkins, and we do most of the farm work and marketing ourselves. We have read the draft ag order and appreciate that you are reading our comments. As conscientious farmers who try to minimize our environmental impact, we think that the ag order has a harsh and authoritarian approach that will be more costly and burdensome to many farmers than it needs to be.

In 2004 we took the required 15 hour water quality course and wrote our farm plan. We routinely avail ourselves of industry- and state-supported seminars (Avocado Society, UC Extension), and we have contracted with the NRCS to work on erosion issues. These educational activities have significantly improved our understanding of water quality issues and have shown us how to reduce erosion and improve water quality. These courses have led to increased discussion of these issues and methods among our farming

and ranching neighbors. We think these sorts of educational efforts are far more valuable to improving water quality than many of the proposed reporting and testing requirements in the ag order.

We presume that the requirement for groundwater sampling and testing is to look for nitrate contamination from fertilizer use. Much data already exists in our watershed regarding ground water quality. The community service district downstream from our farm routinely tests its wells. Our own well testing has consistently shown very low (essentially undetectable) nitrate levels. With no large farms in our watershed, it is not remotely likely that normal ag activities will contaminate our water resources with nitrate. A local sewage spill just last week probably caused more environmental damage than any foreseeable ag activity in our area. The water board should not require costly annual groundwater testing by all the little farms in our area because current data show the area to be free of nitrate contamination and without high risk of future contamination. If the water board does require testing, it should specifically list the contaminants to be tested for and allow greater time between tests if contamination is below acceptable levels. Individual farmers should be trusted to sample their own wells, rather than be required to hire expensive professionals.

We think the tiered approach is good, but we are concerned about some of the tier definitions. Our farm is upstream from an urban area where there are urban pollution and municipal pumping issues. Water quality in the urban area is lower than in the upstream agricultural area. The ag order should clearly state which portions of impaired water bodies are subject to Tier 1 versus Tier 2.

We hope that the water board will modify its draft ag order to encourage education and reduce unneeded testing and reporting. The water board should use existing and available data to help focus on problem areas. We hope the board will further clarify tier requirements. The water board should encourage a cooperative and collaborative approach to water quality issues rather than one that is burdensome and ineffective.

Sincerely,

George W. Kendall  
Elizabeth T. Kendall