



CALIFORNIA FARM BUREAU FEDERATION

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May 18, 2012

Ben Zabinsky
Agricultural Lands Discharge Program
North Coast Regional Water Quality Control Board
5550 Skylane Blvd., Ste A
Santa Rosa, CA 95403-1072

Re: *Comments on the Agricultural Lands Discharge Program Scope and Program Framework*

Dear Mr. Zabinsky:

The California Farm Bureau Federation (“Farm Bureau”) is a non-governmental, non-profit, voluntary membership California corporation whose purpose is to protect and promote agricultural interests throughout the state of California and to find solutions to the problems of the farm, the farm home, and the rural community. Farm Bureau is California’s largest farm organization, comprised of 53 county Farm Bureaus currently representing more than 74,000 agricultural, associate, and collegiate members in 56 counties. Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California’s resources.

On behalf of the Del Norte County Farm Bureau, Humboldt County Farm Bureau, Lake County Farm Bureau, Marin County Farm Bureau, Mendocino County Farm Bureau, Modoc County Farm Bureau, Siskiyou County Farm Bureau, Sonoma County Farm Bureau, and the Trinity County Farm Bureau, the California Farm Bureau Federation (collectively hereinafter “Farm Bureau”) appreciates the opportunity to provide comments on the Agricultural Lands Discharge Program Draft Program Framework and Tiering Structure presented during the May 3, 4, 8, and 9, 2012 subgroup meetings and respectfully presents the following remarks.

The goal of a Conditional Agricultural Waiver program is to maintain and/or improve water quality over time. The State Water Code and the North Coast Regional Water Quality Control Board’s (“Regional Board”) Basin Plan provide authority for the Regional Board to impose reasonable regulations on dischargers who discharge waste that could affect the quality of waters in the region in order to improve water quality. Farmers and ranchers are equally

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concerned about water quality and the environment and continue to take necessary steps to demonstrate water quality improvements.¹ In order to reach this goal, the primary focus of maintaining and improving water quality *over time* should remain. To further aid in reaching this goal, the Regional Board should evaluate water quality data collected through existing programs and use such data to establish water quality baselines throughout the region. Such data may then be used, as necessary, to implement and adjust management practice implementation to improve water quality over a scientifically feasible timeline with intermediate milestones. The process of designing and adopting a new agricultural discharge program will not be simple or quick. Continued collaboration between the Regional Board and agriculture will be necessary to develop a workable long term solution.

Tiering Structure

As currently proposed, the Draft Tiering Structure does not contain any incentives for growers to continue to implement best management practices and improve water quality. The arbitrary parameters contained within Tier 1 prevent growers from moving into this tier if their fields contain a slope over a designated amount, and/or contain more than a certain amount of roads, and/or are within a certain distance from a stream. Thus, even if a grower with one of the above characteristics is implementing best management practices and poses no risk to water quality, the mere presence of one or more designated physical characteristics on his/her land will prevent the grower from being recognized for his/her positive contributions to maintaining and improving water quality.

Although Tier 1 attempts to group certain physical characteristics together for ease of verification purposes, the restrictions underlying Tier 1 create a structure devoid of incentives and does not account for variation in risks to water quality. A simple but yet effective tiering structure could be developed to protect and improve water quality while not unnecessarily burdening those farmers and ranchers who pose little to no risk to water quality. For example, the structure could be framed in which all growers start out in Tier 1 unless either of the two triggers are met: (1) performance of ground disturbing activities located next to an active waterway or (2) use of pesticides listed as a constituent of concern on the 303(d) list. Meeting either of the two triggers listed above will move growers to Tier 2. If implementation of best management practices is not able to improve water quality issues, the grower is then moved to Tier 3. By framing the tiering structure in such a manner, growers are incentivized to continue to implement best management practices in order to remain a low risk to water quality.

Dictation of Management Practices

The Regional Board has the authority to adopt water quality control plans, water quality objectives to “ensure the reasonable protection of beneficial uses,” and waste discharge requirements. (Wat. Code, §§ 13240, 13241, 13242.) However, the Water Code does not

¹ The agricultural community has been taking necessary steps to demonstrate water quality improvements for numerous years. Through the implementation of best management practices and certification programs, water quality improvements have been documented.

provide the Regional Board with the authority to mandate or dictate specific management and business practices to be undertaken by a landowner to reach the applicable discharge goal. (Wat. Code, § 13360(a).) Specifically, the Water Code states:

No waste discharge requirement or other order of a regional board or the state board or decree of a court issued under this division shall specify the design, location, type of construction, or particular manner in which compliance may be had with that requirement, order, or decree, and the person so ordered shall be permitted to comply with the order in any lawful manner.

(*Ibid.*, emphasis added.) In summation, section 13360 allows the Regional Board to identify the “disease and command that it be cured,” but prohibits the Regional Board from “dictating the cure.” (See *Tahoe Sierra Preservation Council v. State Water Resources Control Board* (1989) 210 Cal.App.3d 1421, 1438, [“The .75 inch numerical SUSMP standard is clearly a ‘design’ standard and a particular manner in which ‘compliance may be had,’ and represents ‘dictating the cure.’ As such, it violates the requirements of Water Code Section 13360(a).”].) When drafting the Tiering Structure and Framework, Farm Bureau would like to caution against the use of requirements that specifically state *how* a discharger will comply and *what* a discharger *must do on their field*. For example, requiring cover crops, limiting use of certain pesticides, and requiring manure and fertilizer application at agronomic rates imposes a “particular manner” in which compliance may be had. For instance, if the goal of a cover crop is to control excessive rates of sediment delivery from surface erosion, the Terms and Conditions of the Ag Waiver could be written as follows:²

Landowners shall implement management practices to protect soil and reduce excessive rates of sediment delivery from the field to receiving waters. Such management practices can include the establishment and maintenance of cover crop/tillage/mulch management practices during the wet season.

By allowing growers to pick the best management practice for their particular field rather than specifying the particular manner of compliance, the grower is given the flexibility to determine the best manner of compliance, and the intent of Water Code section 13360 is achieved.

Definitions

In order for all parties to understand the scope of the Program Framework, Tiering Structure, and Terms and Conditions, please provide definitions for the following terms:

- Drainwater
- Tailwater discharge
- Riparian Area
- Streams—are streams defined using the “blue line” criteria or using “Class I, Class II, and Class III” criteria?
- Hydrological connection

² Farm Bureau suggests the following language for illustrative purposes only.

- Hydrologically connected conveyance
- Agronomic rates

General Questions

- Please provide more information regarding “minimum setbacks from streambank.” Will these setbacks vary depending on the type of activity?
- Please provide more information regarding “riparian areas designed and managed for establishment and maintenance of native vegetation and site potential shade.” Is the establishment of riparian areas a requirement for all or will they be determined on a case-by-case basis? What is the size of these riparian areas?
- Please provide a general estimate of when the group will begin to discuss specifics regarding all of the potentially required management plans (i.e.: Road Management Plan, Nutrient Management Plan, Irrigation Management Plan, Erosion Control Plan, and Grazing Management Plan)?
- Is a “Grazing Management Plan” the same as a “Riparian Grazing Management Plan”?

CONCLUSION

Farm Bureau appreciates the opportunity to submit comments on the Draft Program Framework and Tiering Structure and looks forward to further involvement and discussion with the Regional Board on the development of the Agricultural Lands Discharge Program.

Sincerely,



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Associate Counsel

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