

EXHIBIT “H”

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Ocean Mist Farms and RC Farms

BEFORE THE STATE WATER RESOURCES CONTROL BOARD

LAW OFFICES OF
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SACRAMENTO, CALIFORNIA 95814

OCEAN MIST FARMS AND RC FARMS

vs.

CALIFORNIA REGIONAL WATER
QUALITY CONTROL BOARD,
CENTRAL COAST REGION

SWRCB/OCC File No. _____

DECLARATION OF DENNIS SITES IN
SUPPORT OF REQUEST FOR STAY AND
PETITION FOR REVIEW OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL
BOARD, CENTRAL COAST REGION,
ORDER NOS. R3-2012-0011, R3-2012-0011-
01, R3-2012-0011-02, AND R3-2012-0011-03,
AND RESOLUTION NO. R3-2012-0012

DECLARATION OF DENNIS SITES

I, Dennis Sites, declare as follows:

1. I am the Consultant for RC Farms. In my capacity as the Consultant, I am responsible for RC Farm's enrollment in the 2004 Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands (the "2004 Ag Waiver"). I have personally reviewed California Regional Water Quality Control Board, Central Coast Region's ("Regional Board's") Order No. R3-2012-0011 ("2012 Ag Waiver"), and Order Nos. R3-2012-0011-01, R3-2012-0011-02, and Order No. R3-2012-0011-03 (the "Monitoring and Reporting Program"). Based on my review of the 2012 Ag Waiver and my own knowledge of RC Farms' operations, I know the following facts to be true, and if called upon to do so, I would testify to these facts.

2. RC Farms is a major vegetable grower and packer based in the Salinas Valley, of the Central Coast region. The total irrigated acreage, owned or operated by RC Farms in the Central Coast region, far exceeds 500 acres. Portions of the RC Farm's operations are located within 1000 feet of several surface waterbodies listed on the 2010 List of Impaired Waterbodies, which is attached to the 2012 Ag Waiver as Table 1. As part of its operations, RC Farms has used products containing nitrogen to fertilize its crops and has applied chlorpyrifos and/or diazinon at its farms as agronomic need arises. For at least part of its operations, RC Farms applies fertilizers, pesticides, fumigants or other chemicals as needed by all various legal processes. RC Farms uses irrigation retention ponds as part of its mitigation efforts to improve water quality in the Central Coast region.

3. RC Farms is currently enrolled in the 2004 Ag Waiver. The 2012 Ag Waiver introduced new regulations that are substantially different from those of the 2004 Ag Waiver. The new regulations will significantly impact RC Farms' operations and management.

4. If the enforcement of 2012 Ag Waiver is not stayed immediately, RC Farms will suffer substantial harm. Based on information provided to me by operators of other farms in the Central Coast region, I believe other farms that are similarly situated will also suffer substantial harm under the 2012 Ag Waiver.

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1 5. Specifically, the 2012 Ag Waiver requires that RC Farms immediately comply
 2 with applicable Total Maximum Daily Loads, prevent its existing containment structures (such as
 3 retention ponds or reservoirs) from percolating any waste to groundwater, and maintain riparian
 4 vegetative covers and riparian areas for aquatic and wildlife support. (See 2012 Ag Waiver, p.
 5 24, ¶24, & p. 20, ¶33 & 39.) To satisfy the new regulations that are currently subject to review by
 6 the State Water Resources Control Board ("State Board"), RC Farms will need to hire experts and
 7 consultants to develop a program to comply with the Total Maximum Daily Loads, design and
 8 construct new containment structures to replace its existing retention ponds, and hire and/or train
 9 its employees to maintain riparian vegetative covers and riparian areas. Since these regulations
 10 take effect immediately, RC Farms must act on an urgent basis to avoid any liability under the
 11 2012 Ag Waiver. To comply with these regulations, RC Farms will incur substantial costs,
 12 estimated to be over \$100 per acre, or \$500,000 on an annual basis, all of which will be incurred
 13 during the time that the Petition is subject to review by the State Board. These costs do not
 14 include loss of production when forced to use the nutrient management program required by the
 15 Regional Board.

16 6. Moreover, due to its crops, the size of its farmland and its vicinity to the impaired
 17 waterbodies, RC Farms will have many farms likely be classified as a Tier 2 or Tier 3 participant
 18 pursuant to the 2012 Ag Waiver. As such, RC Farms has to install backflow prevention devices
 19 at its wells and pumps, develop a farm water quality management plan, submit an Annual
 20 Compliance Form, calculate its nitrate loading risk facts, and conduct photo monitoring of surface
 21 waterbodies by October 1, 2012 – less than six months from now. (See 2012 Ag Waiver, p. 19,
 22 ¶31, p. 21, ¶44, & pp. 27-28, ¶¶67, 68 & 69.)

23 7. As a farm with a high nitrate load risk crops (vegetables) we are required to
 24 determine the nitrate uptake for each crop type. The new regulations would require by October 1,
 25 2012 RC Farms to calculate nitrate chemical uptake for each of our many crops, each different
 26 soil type, each different soil pH, and considerable other important variables. These studies and
 27 calculations take many experts, and considerable time to evaluate. We could not possibly comply
 28 within the October 1, 2012 regulatory deadline.

8. The waiver would also require that we initiate an Irrigation and Nutrient Management Plan (INMP) which is to be certified by a CCA or propose a Groundwater Monitoring and Reporting Plan (GMRP) for each ranch unit and assess if waste will cause exceedances of nitrate in groundwater. (Page 29, ¶¶ 74-79.) It is totally an unreasonable requirement for a farmer to calculate the nitrogen uptake for each crop for each ranch, much less calculate how much of a particular nutrient would not be taken up by plants, tied to soil particles or otherwise attenuated by the soil and its organic components and therefore may actually percolate to groundwater.

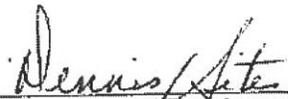
9. Given the size of RC Farms' operations, six months will not even be enough time to implement the required actions. To ensure compliance, RC Farms must take actions now to (a) retain experts and consultants to develop management plan and calculate nitrate loading risks, (b) purchase, install, and maintain the backflow prevention devices for its wells and pumps, and (c) train and/or hire additional employees to perform the required work. As a result, RC Farms will incur substantial costs, estimated to be over \$100 per acre, or \$500,000 on an annual basis, for compliance with regulations that the State Board may later revoke. Again, this does not include loss of production and subsequent revenues.

10. As the State Board may not render its decision on the Petition until well after October 1, 2012, the costs described in paragraphs 5 and 6 above will be incurred during the time that the Petition is subject to review. If a stay is not granted immediately, RC Farms will suffer irreparable and substantial harm as described above.

11. I have not received any information that suggests interested persons or the public interest will be substantially harmed if a stay is granted, and on that basis, I believe that a stay will not cause substantial harm to interested persons or to the public interest.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct.

Executed this 12th day of April, 2012, at Salinas, California.



Dennis Sites, Consultant, RC Farms