January 3, 2011

To, Howard Kolb/ Angela Schroeter
Central Coast Regional Water Quality Control Board
805 Aerovista Place, San Luis Obispo, CA 93401
By e-mail: AgOrder@waterboards.ca.gov

Re: COMMENTS on the Central Coast Regional Water Board's November Draft Conditional Waiver for Irrigated Agricultural Discharges

Dear Regional Water Quality Control Board Members (Regional Water Board):

We are writing on behalf of the Environmental Justice Coalition for Water (EJCW), the Central Coast Alliance United for a Sustainable Economy (CAUSE), Food and Water Watch, the Santa Lucia chapter of the Sierra Club, the Desal Response Group, the Southern California Watershed Alliance, Puente de la Costa Sur, and the North Richmond Shoreline Open Space Alliance (NRSOSA) to provide public comments on the Central Coast Regional Water Board's Draft Agricultural Order No. R3-2011-0006, released on November 19, 2010 ('November Draft Order'). For a description of each of these organizations, please see the signature pages below.

The Executive Summary of the November Draft Order states that, "discharges of waste associated with agricultural discharges (e.g., pesticides, sediment, nutrients) are a major cause of water pollution in the Central Coast region. The water quality impairments are well documented, severe and widespread." (Pg 7, Staff Report).

The Staff Report states that the Central Coast Regional Water Board has the "statutory responsibility to protect water quality and beneficial uses such as drinking water and aquatic life habitat…The Central Coast Water Board regulates discharges of waste to the region's surface water and groundwater to protect the beneficial uses of the water. In some cases, such as the discharge of nitrate to groundwater, the Water Board is the principle state agency with regulatory responsibility for coordination and control of water quality." (Pg 11, Staff Report). The Staff

Report also clarifies that "no industry or individual has a legal right to pollute and degrade water quality, while everyone has a legal right to clean water." (Pg 13)

An Effective Program to Protect Central Coast Communities is Necessary

This statutory responsibility of the Regional Board is especially crucial since groundwater contamination from nitrates severely impacts domestic drinking water supplies in the Central Coast region. In fact, the November Draft Order reports that, "thousands of people rely on public supply wells with unsafe levels of nitrate and other pollutants. Excessive nitrate concentration in drinking water is a significant public health issue." (Pg 33, Staff Report).

In the past year, affected communities have come before the Regional Water Board to request for the protection of drinking water and human health. These Central Coast residents have asked the Board to uphold stricter regulations of agricultural discharges and to support groundwater cleanup and to prevent further nitrate contamination. About 500 community residents sent letters to the Regional Board in support of the February 2010 Draft Agricultural Order and its commitment to protect drinking water. A multitude of supporters of the Order attended the public workshops held at San Luis Obispo on May 12, 2010 and at Watsonville on July 8, 2010. Community residents, low-income people, farm-worker women, and representatives from environmental justice, pesticide awareness, faith-based, and sustainable agriculture organizations shared stories of their struggles with drinking water contamination and the overwhelming need to cleanup groundwater. A common theme in their testimony is that water contamination severely hampers drinking water, human health and in turn, the health of communities. Residents highlighted the high costs to society and to communities of nitrate contamination, particularly for farm-worker camps, unincorporated areas, and disadvantaged communities. Allowing the agricultural industry to further pollute groundwater supplies is an environmental injustice.

The extent of nitrate contamination on the Central Coast and the urgent need to address the issue were acknowledged by Regional Board members in their closing comments following both workshops. Regions such as the Salinas Valley, Santa Maria and Pajaro watershed were referred to as "hotspots", where immediate action is essential due to the extent of nitrate contamination. In fact, the November Draft Order acknowledges several times, that drinking water and highly contaminated areas are among their highest priorities. Key concepts identified in the Order:

- "Prioritize based on water quality impacts and make protection of human health and drinking water the highest priority" (Pg 8, Staff Report).
- "Among the highest priorities is to ensure that agricultural discharges do not continue to impair Central Coast communities' and residents' access to safe and reliable drinking water." (Pg 12, Staff Report).
- "'One size does not fit all.' Require more of those discharging the most, creating the greatest impacts, or most threatening water quality." (Pg 8, Staff Report).

<u>We are very disappointed that in spite of the Board's verbal commitment to regulate agricultural discharges due to overwhelming evidence of human health and drinking water concerns, the November Draft Order is significantly weaker than the Draft Recommendations released on February 1, 2010 (hereafter referred to as 'February Draft Order'</u>.

We support the November Draft Order ONLY to the extent that it is a vast improvement on the 2004 Conditional Waiver currently in place, which lacked a focus on water quality requirements, and did not contain any compliance or verification monitoring provisions. However, we strongly feel that the November Draft Order fails to adequately address human health concerns and contamination prevention. Hence, we urge the Regional Water Board to adopt the February Draft Order instead, which complied with state and federal laws and is adequate to protect water quality. Implementation of the February Draft Order would provide Central Coast communities with a tool to help them to achieve access to clean, safe, drinking water.

The November Draft Order Fails to Protect Groundwater Quality

The November Draft Order, while verbalizing its commitment to drinking water and community concerns, has actually removed many of the provisions found in the February Draft Order that would have allowed for an effective focus on water quality. Below please find our amendments to the November Draft Order. Our support of the November Order is contingent on the inclusion of amendments 1-6 below.

(1). CONCERNS WITH THE TIERING STRUCTURE

We support the idea of creating a tiered structure to regulate growers with differing water quality impacts. However, we find that the criteria outlined in the November Draft Order for setting up the Tiers are grossly inadequate.

First of all, we are disappointed that in spite of the verbal commitment to addressing the nitrate contamination "hotspot" regions, these have not even been considered as criteria for creating the Tiers. The Tiers are currently based on (1) size of the farm, (2) distance from an impaired surface water body, (3) use of the specific pesticides – chlorpyrifos and diazinon and (4) growing crops with high nitrate loading potential; however there is no groundwater contamination criterion for the Tiers. This can easily lead to a situation where, if Dischargers' operations are less than 1000 acres, then they may be placed in the low-risk Tier 1 even if they grow crops with high nitrate loading potential such as broccoli, cabbage, cauliflower, celery, etc. If Dischargers are under 1000 acres but are farming high nitrate risk crops in the highly nitrate-polluted regions of Salinas Valley or Santa Maria, they may still be placed in the low-risk Tier 1, even though their impact to groundwater and hence to drinking water may be enormous. Contributing to groundwater contamination can be vast even from small farms.

The inadequate criterion for Tiering is an enormous concern since it has been reported by the Regional Board staff that 98.4% of farms on the Central Coast fall under the 1000 acres limit. Only 33 farms out of 3000 farming operations on the Central Coast are over 1000 acres. It has further been reported by the Staff that there is still a significant acreage of Dischargers growing crops with high nitrate loading potential that fall over 1000 acres. But the reality is that we don't have sufficient data on who is enrolled and who is not. In addition, there is no safeguard against Dischargers dividing up their farms so they appear to be separate smaller farms. Hence size of the farm by itself cannot address groundwater nitrate contamination.

Therefore, we feel strongly that Dischargers farming in "hotspots" of nitrate contamination should NOT be classified as low-risk Tier 1, and the criteria for Tiering must include groundwater nitrate contamination and trends as a factor. Farms located in high nitrate contamination areas that grow high nitrate risk crops must automatically be classified as Tier 3 dischargers regardless of the size of their farms.

Alternatively, Tier 1 Dischargers who are in high-risk nitrate contaminated areas must also be subjected to assessment and reporting of Nitrate Loading Risk, reporting of nitrogen usage, etc. Under the November Draft Order, Tier 1 Dischargers will, essentially, be subjected to a very low level of regulation, especially with regard to groundwater. They will be required to enroll, to comply with general narrative standards, to create a Farm Plan, to complete education classes, participate in watershed-wide monitoring, and Tier 1 dischargers only have to conduct groundwater monitoring twice in one year during the five years of the Draft Order. Beyond the groundwater sampling twice in five years, Tier 1 Dischargers will not be held to any real regulation of groundwater, even though this has been identified as a human health and drinking water priority. This low level of regulation is insufficient.

Tier 2 and 3 dischargers will have to meet additional requirements for groundwater protection, such as evaluation and reporting of nitrate loading risk, reporting of nitrogen usage, etc. This incomplete Tiering system may put growers with the capacity to increase groundwater nitrate contamination in the low-risk Tier 1. Tier 3 and, to some extent, Tier 2 has regulation but these are defined so narrowly as to render the definition useless.

In addition, it is unclear how Tier 2 Dischargers will be required to calculate their nitrate risk. Appendix A, pg 22 states that:

> "Tier 2 and Tier 3 Dischargers must calculate the nitrate loading risk factor for each ranch/ farm included in their operation. The nitrate loading risk factor is a measure of the relative risk of loading nitrate to groundwater. Tier 3 Dischargers must determine the nitrate loading risk factor for each ranch/ farm using the criteria below…
>
> a. Nitrate Hazard Index Rating by Crop Type
> b. Irrigation System Type
> c. Irrigation Water Nitrate Concentration"

This paragraph neglects to explain how Tier 2 Dischargers are to calculate their nitrate risk. The language must be amended to state that Tier 2 and Tier 3 Discharges must determine the nitrate loading risk factor. In addition, Tier 1 Dischargers located in "hotspots" growing high nitrate risk crops must also be made to assess their nitrate loading risk factor using the same method.

The Appendix A of the November Draft Order further states that,

> "Within 10 years from adoption of this Order, Tier 2 Dischargers must demonstrate that they are not causing or contributing to exceedences of water quality standards for nitrate and salts in groundwater. Dischargers may have to implement best management practices, treatment or control measures, or change farming practices to achieve compliance with this Order." (Appendix A, pg 29)

Firstly, it is hard to imagine that the issue of human health having been prioritized by the Regional Board, that such a long time-frame is being given to address this issue. Already, communities are paying with their health and their money for nitrate contaminated water. We

strongly urge that the Regional Board to implement a reasonable time-frame and regulations that ensure communities will not continue suffering from contaminated water for another ten years.

Secondly, as mentioned above, these provisions for reduction of nitrates in groundwater are meaningless if the Tiers continue to be defined as they currently are, as this will not address groundwater contamination at all.

(2). CONCERNS WITH REMOVING REGULATION ON TILE DRAINS

In the list of changes made to the Draft Agricultural Order due to public input, the Staff Report states that they have, "clarified the intent to address irrigation runoff in the short term with immediate conditions vs. tiledrains in the long term." (Pg 32, Staff Report) We feel that removing regulation on tile drains is a huge setback to address irrigation runoff in the short-term and the long-term, and will worsen groundwater contamination and will cause harm to human health. For instance, the Blanco drain in the nitrate-contaminated "hotspot" Salinas Valley often registers nitrates at over 200 mg/L, or five times over the drinking water standard! Yet the November Draft Order would remove regulation of tile drains until later. We find this unacceptable and <u>we strongly urge that tile drains be regulated immediately in order to safeguard groundwater quality.</u>

(3). CONCERNS WITH SPECIFIC LISTING OF DIAZINON AND CHLORPYRIFOS PESTICIDES TO THE EXCLUSION OF OTHER TOXIC PESTICIDES

We agree that Diazinon and Chlorpyrifos are dangerous pesticides with high toxicity. However, we disagree with Staff's approach to specify just these pesticides in the Tiering criteria to the exclusion of other pesticides which may be just as harmful. In fact, the regulation of just these specific pesticides will provide an incentive to growers to switch to other pesticides, and will render this criterion useless.

This approach of naming two particular pesticides also ignores the public health concept of synergism: that two or more pesticides working together may create combined effects and public health harm that has not even been properly understood or documented. Toxicity does not arise merely from the use of these two pesticides, and we fear that many dischargers will escape Tier 3 high-risk monitoring merely by shifting to other toxic pesticides. Hence, we feel strongly that Staff should not specify just these pesticides in the Tiering criteria, but rather focus on general toxicity and damage to water quality.

(4). CONCERNS WITH CHANGES IN NUMERIC AND NARRATIVE STANDARDS

The November Draft Order removes essential provisions from the February Draft Order regarding the fact that dischargers must meet water quality compliance at the place where the runoff leaves their farms. It seems the November Draft Order shifts compliance from the farm to the receiving waters. We feel this significantly weakens the ability of regulation to find the most contaminated dischargers and hold them accountable. In addition, it is unclear how compliance for drinking water standards for groundwater will be met. The Regional Board must focus not

just on regulation but on actual outcomes, and must identify where the contamination is arising. We feel strongly that the point of compliance for drinking water standards must be the Discharger's farm, as this will help to find sources of contamination.

(5). CONCERNS WITH THE BACKFLOW PREVENTION DEVICES

Backflow prevention devices are being mandated in order to protect groundwater. However, we find it unjustifiable that dischargers are being given 3 years to comply with this requirement. We strongly urge that dischargers be required to install and maintain backflow prevention devices within 1 year.

(6). NEED FOR EFFECTIVE ENFORCEMENT AND FINES FOR NON-COMPLIANCE

The November Draft Order is very weak in explaining how enforcement will be implemented effectively. We feel that ultimately there must be an improvement in water quality and the Staff must include timelines, benchmarks and enforcement for the same. It is not sufficient merely to reduce nitrate use by some arbitrary amount, but it must be clear how water quality will improve.

We also strongly encourage the Regional Water Board to put in place significant non-compliance fines in cases when agricultural dischargers violate the stipulated conditions. As we have seen in the past Conditional Waiver, voluntary mechanisms to control agricultural discharges are not sufficient. The Water Board must use its' regulatory authority to regulate discharge, and this includes application of non-compliance fees.

Provisions From The November Draft Order That We Support:

There are certain provisions in the November Draft Order that we like and support, with the above-mentioned amendments. Some of these provisions that we support are as follows:

a) Regulation of both land owners and operators.
b) Development of nitrate loading risk factors and tracking and reporting requirements.
c) Requiring installation of backflow prevention devices.
d) Timelines for compliance.
e) Dischargers are required to minimize nutrient discharges from fertilizer and nitrate loading to groundwater so receiving water bodies meet water quality standards and safe drinking water is protected.
f) Tier 3 dischargers with a high nitrate loading risk must develop and initiate implementation of a certified Irrigation and Nutrient Management Plan (INMP) to meet specified nitrogen balance ratio targets.
g) That the discharge of waste to groundwater with the beneficial use of municipal or domestic water supply that causes or contributes to an exceedance of drinking water standards established by the United States Environmental Protection Agency (USEPA) or California Department of Public Health (CDPH), whichever is more stringent, is **prohibited**.

h) The application of fertilizer such that it results in a discharge of waste to groundwater, and causes or contributes to exceedances of water quality standards is **prohibited**.
i) Dischargers must ensure that agricultural discharges percolating into groundwater must be of such quality at the point where they enter the ground to assure the protection of all actual or designated beneficial uses of groundwater, including drinking water.
j) The Executive Officer may require Dischargers to locate (inventory) and conduct sampling of private domestic wells in or near agricultural areas with high nitrate in groundwater and submit technical reports evaluating the sampling results. In addition, in compliance with Water Code section13304, the Central Coast Water Board may require Dischargers to provide alternative water supplies or replacement water service, including wellhead treatment, to affected public water suppliers or private domestic well owners.

Lack of surface and groundwater protections have gone on too long at the expense of community and watershed health. We applaud your efforts to address water contamination; however, the November Draft Order is significantly weaker than the February Draft Order. We support the February Draft Order and urge you to adopt it. We strongly urge you to take timely action to put in place stringent requirements for irrigated agriculture discharges so that California's water is truly protected and restored.

Thank you,

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The **Environmental Justice Coalition for Water (EJCW)** is a statewide coalition of more than 70 community-based and non-profit organizations working to achieve water justice in California. Water justice is the ability of all communities to access safe, affordable water resources for all beneficial uses. Most relevant to the Water Board's efforts, we work with disadvantaged communities struggling to access to water for basic human needs, such as drinking, bathing, and cooking. These communities are often forced to drink contaminated groundwater, or to pay a high price for alternate water because their drinking water is non-potable.

The **Sierra Club** has been working to protect communities, wild places, and the planet since 1892. It is the oldest and largest grassroots environmental organization in the United States.

Central Coast United for a Sustainable Economy (CAUSE) builds grassroots power for environmental, social and economic justice in the California central coast region. In 2010, CAUSE spoke with 30,000 voters and organized a statewide forum with 1000 people from throughout California for state budget reform. In 2011, CAUSE is working on the redistricting of state assembly, senate and federal congressional districts for fair representation of low wage working families and people of color in the central coast.

Food & Water Watch is a national consumer advocacy organization with 30,000 members in the state of California. We work to ensure the food, water and fish we consume is safe, accessible and sustainable. So we can all enjoy and trust in what we eat and drink, we help people take charge of where their food comes from, keep clean, affordable, public tap water flowing freely to our homes, protect the environmental quality of oceans, demand that government to do its job protecting citizens, and educate about the importance of keeping shared resources transparently managed by public entities.

The **North Richmond Shoreline Open Space Alliance (NRSOSA)** is a group of neighborhood, social justice, community and environmental organizations and individuals committed to saving access to the last remaining open space along the northern shoreline of Richmond, California between Point Molate and Point Pinole.

Puente de la Costa Sur is a 10-year-old, nonprofit organization. Its mission is to provide vital services for men, women, children, and families living in the rural San Mateo South Coast communities of Pescadero, La Honda, Loma Mar, and San Gregorio.

The **Southern California Watershed Alliance** works to achieve sustainable water and watershed management for the long term health of our ecosystems and communities.

The **Desal Response Group** works to provide Californians with education that directly responds to ocean desalination by connecting diverse environmental and community organizations for the promotion of sustainable alternatives to ocean desalination.

References:

- Staff Report, Recommendations for Water Code Waiver for Agricultural Discharges, Central Coast Regional Water Quality Control Board. November 2010, available at http://www.waterboards.ca.gov/centralcoast/water_issues/programs/ag_waivers/docs/12_09_2010_staffrpt/AgOrder_StaffReport.pdf
- Appendix A, Draft Order No. R3-2011-0006, Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands, Central Coast Regional Water Quality Control Board, November 2010, available at: http://www.waterboards.ca.gov/centralcoast/water_issues/programs/ag_waivers/docs/12_09_2010_staffrpt/AgOrder_AppA.pdf
- Appendix B, Draft Monitoring and Reporting Program Order No. R3-2011-0006, For Dischargers Enrolled Under the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands, Central Coast Regional Water Quality Control Board, November 2010, available at: http://www.waterboards.ca.gov/centralcoast/water_issues/programs/ag_waivers/docs/12_09_2010_staffrpt/AgOrder_AppB.pdf
- Appendix C, Time Schedule for Draft Order No. R3-2011-0006, Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands, Central Coast Regional Water Quality Control Board, November 2010, available at: http://www.waterboards.ca.gov/centralcoast/water_issues/programs/ag_waivers/docs/12_09_2010_staffrpt/AgOrder_AppC.pdf