



SANTA CLARA
COUNTY
FARM BUREAU

Monday, January 3, 2011

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

RE: Draft Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands

Dear Chair Young,

Thank you for accepting comments on the Draft Agricultural Order released November 19, 2010. The Santa Clara County Farm Bureau has been collaborating with the Regional Board to improve water quality for over a decade, even before the first mandatory regulatory program was being considered. Santa Clara Valley farmers are committed to doing our part to address impairments when water quality on the Central Coast does not meet state and federal guidelines for beneficial uses. Our members have sought and received technical advice, attended countless workshops, implemented new management practices, and made capital improvements on their farms, all to improve water quality on the Central Coast where we live and work with our families.

In some ways, the November 19, 2010 proposal is decidedly more reasonable and feasible than the February 1, 2010 proposal. However, on the whole, the existing proposal is so onerous and unworkable that board adoption of the proposal would take valuable farmland out of production, drown Regional Board staff with fruitless paperwork, and result in no marked improvements to water quality on the Central Coast. We urge you to direct staff to make significant changes to the Draft Agricultural Order before you consider adoption.

TIERS

We appreciate the Regional Board's sensitivity to comments received regarding prioritization of water quality impacts and the assertion that "one size does not fit all" following the release of the February preliminary draft. While the attempts to address these concerns are appreciated, they miss the mark. The proposed tiering system, particularly the 1,000-acre component, is both completely arbitrary and impossible for staff to manage. The staff proposal provides no basis for the thousand-acre distinction and we are not aware of any research to support it. If anything, large farms may pose a lower risk to water quality because they are often better positioned to address impairments due to larger amounts of available capital. The tier trigger for proximity to impaired waterbodies is also arbitrary. This tiering component does not consider actual risk posed by a farming operation, but rather groups all adjacent lands into Tiers 2 or 3, regardless of

whether or not the adjacent farming operation poses a risk. For example, an operation located within 1,000 feet of Llagas Creek in Santa Clara County that does not use pesticides and does not have irrigated runoff should not be in Tier 2 solely due to its proximity to an impaired waterbody.

GROUNDWATER

Nitrates in groundwater are problematic in areas of the Central Coast and research suggests that agriculture is partially responsible. Rather than imposing illegal and onerous reporting requirements for irrigated agriculture, we recommend that the Regional Board work with the agriculture community and researchers to identify effective and reasonable management practices to address the legacy nitrates in groundwater and to reduce and eliminate any current nitrate loading. We also urge your reconsideration of the Nitrogen Balance Ratio requirements, which are nothing if not “one-size-fits-all” and for which there is no scientific basis provided.

REGULATION

Throughout the proposed waiver, it is clear that irrigated runoff is not considered a non-point source, though it is classified that way in every piece of state and federal legislation. Agricultural runoff requires a different approach from point sources because as a non-point source it is different. One example of how disconnected and ill informed the Draft Agricultural Order is with regards to appropriate regulation of non-point sources is the assertion in the Executive Summary that “the Water Board’s current regulation of irrigated agriculture is very low relative to other programs.” Current regulation of irrigated agriculture is not low compared to other programs. It is different. In fact, the 2004 Conditional Waiver is one of the strictest regulatory programs of its kind in the nation. If given an appropriate amount of time to demonstrate results, the 2004 Conditional Waiver’s focus on improved management practices would dramatically improve water quality on the Central Coast.

The Regional Board lacks the necessary authority for some of the regulatory requirements in the Draft Agricultural Order. The most glaring example is the nitrogen reporting requirements. Information on nitrogen applications is proprietary and represents a competitive advantage distinguishing the most successful farmers from their neighbors. As we noted in a comment letter on the February 1, 2010 proposal, Section 13267 (b) (2) of the state Water Code prohibits the Regional Board from requiring this proprietary information. Furthermore, since these reports contain information on nitrogen applied, rather than nitrogen discharged, the Regional Board has not demonstrated a “reasonable relationship to the need for the report and the benefits to be obtained from the reports” as required in Section 13267 (b) (1) (a). Another area where the Draft Agricultural Order oversteps the Regional Board’s authority is the vegetated buffer requirements, which we do not believe the Regional Board has the authority to require. Not only are the buffer requirements for Tier 3 growers outside the Board’s authority, they would remove significant amounts of land from production without appropriate CEQA consideration, would decrease the supply of fresh, safe, local produce, and could potentially pose a food safety threat.

Thank you for your consideration of our comments. We look forward to working with the Regional Board and staff to improve the Draft Order to more effectively address water quality impairments on the Central Coast. Please contact Jennifer Williams on our staff at (408) 776-1684 with further inquiries.

Sincerely,



Tim Chiala,
President

Cc: Russell M. Jeffries, Vice Chair
John H. Hayashi, Board Member
David T. Hodgins, Board Member
Monica S. Hunter, Board Member
Roger Briggs, Executive Officer
Michael Thomas, Assistant Executive Officer
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