

**VIA E-MAIL**

January 3, 2011

Board Members and Staff  
c/o Howard Kolb  
Central Coast Regional Water Quality Control Board  
AgOrder@waterboards.ca.gov

Re: Draft Order, Monitoring and Reporting Program for Regulation of Discharges from Irrigated Lands

Dear Board Members and Staff:

Please accept these comments on behalf of Deutsche Bank National Trust Company as trustee for the Eugene Rene LeRoy Trust (the "Trust"). The Trust submitted previous comment letters regarding the irrigated lands program on December 2, 2009 and April 1, 2010, which are hereby incorporated by reference. The Trust submits the following comments regarding the November 2010 Draft Order and Monitoring and Reporting Program for the Regulation of Waste Discharges from Irrigated Lands.

1. Support for Agriculture's Alternative Proposal

The Trust supports the Draft Central Coast Agriculture's Alternative Proposal for the Regulation of Discharges from Irrigated Agricultural Lands submitted to the Board on December 3, 2010. The Alternative Proposal is expressly grounded in the legal requirements set forth in the Water Code. It gives due recognition to achievements made in the past 5 years under the existing agricultural waiver program. And it relies on a framework that has been embraced by other regional water boards across the state: grower coalitions and regional (rather than individual) third-party monitoring and reporting. Moreover, as directed by staff,<sup>1</sup> the Alternative Proposal contains measurable and realistic goals, timelines, and milestones. The Board should adopt the Alternative Proposal.

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<sup>1</sup> Despite the Board's directive that its staff should work with stakeholders to develop a revised Draft Order, the Trust is informed that Board staff met only once with the agricultural working group that developed the Alternative Proposal. It bears emphasizing the statement in Kari Fisher's cover letter for the Alternative Proposal submitted on December 3rd: "the agricultural community respectfully requests future and continuing collaboration with Regional Board staff and Board members as a new discharge program is developed."

## 2. Key Flaws in the Draft Order

First, the Draft Order proposes to apply both to landowners and operators (collectively defined as “Dischargers”) but it does not specify what steps a landowner must take if the operator of a farm has enrolled in the agricultural waiver program. The Draft Order states several times that a landowner must “ensure” that an operator is in compliance (see Draft Order at p. 9 and Draft Order Attachment A at p. 44), yet including landowners within the definition of “Discharger” implies that every landowner must enroll in the irrigated lands program. This cannot be what staff intended, and the proposed role of landowners must be clarified.

Second, the Draft Order and accompanying Staff Report neither explain nor justify the proposed criteria for categorizing farms within “Tier 1,” “Tier 2,” or “Tier 3.”<sup>2</sup> For example the 1,000-acre criterion is arbitrary. Large farms have probably done the most to improve water quality in recent years by upgrading their irrigation systems and methods to essentially eliminate non-stormwater irrigation runoff. Another example is described in the comments submitted by Central Coast Water Quality Preservation, Inc.: categorizing farms as “adjacent to” or “within 1,000 feet of” an impaired water body is essentially meaningless because many farms are entirely disconnected from nearby waterways by impermeable levees, or are graded to drain away from waterways and into systems of drainage ditches. This criterion is also arbitrary. The proposed criteria for designating farms within regulatory tiers should be revised.

## 3. Key Flaws in the Monitoring and Reporting Program

The Trust has reviewed comments submitted by Central Coast Water Quality Preservation, Inc. (the entity that runs the Cooperative Monitoring Program under the existing agricultural waiver) regarding certain ambiguities and flaws in the proposed Monitoring and Reporting Program, and the Trust concurs with these concerns. Although Preservation Inc. believes it cannot take a position on the newly proposed requirement that growers conduct individual water quality monitoring, this should *not* be a component of a new agricultural waiver program. Requiring individual monitoring will not only be burdensome and expensive for growers, but is bound to result in non-uniform, unhelpful, voluminous reports that contribute little toward improving water quality. Individual monitoring has been rejected by other regional water quality control boards and it should duly be rejected by this Board.

Sincerely,

DOWNEY BRAND LLP



Ellen L. Trescott

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<sup>2</sup> Not all operations fit within the three proposed tiers because some operations do not meet any of the proposed criteria. A farm located within 1,000 feet of an impaired water body with a total irrigated acreage of less than 1,000 acres that uses chlorpyrifos or diazinon does not appear to be covered by any of the proposed tiers.